Decision **29006-D01-2025**

Alberta Utilities Commission

Court of Appeal of Alberta–Directed Examination of Distribution Facility Owner Payments Under the Independent System Operator Tariff Customer Contribution Policy

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Contents

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Court of Appeal of Alberta–Directed Examination of Distribution Facility Owner Payments Under the Independent System Operator Tariff Customer Contribution Policy

Decision 29006-D01-2025
Proceeding 29006

1 Decision summary

1. This proceeding was initiated by the Alberta Utilities Commission following the Court of Appeal of Alberta's decision in *AltaLink Management Ltd. v Alberta Utilities Commission,* 2023 ABCA 325 (Appeal Decision), which quashed Decision 26061-D01-2021[1] and remitted issues concerning the lawfulness and treatment of contributions in aid of construction (CIACs)[2] back to the Commission for reconsideration.

2. In this decision, the Commission finds that:

- The Alberta Electric System Operator (AESO) is permitted under the *Electric Utilities Act* and *Transmission Regulation* to establish a customer contribution policy requiring distribution facility owners (DFOs) to pay CIACs in relation to transmission facility construction or upgrades triggered by system access service (SAS) requests.
- The Commission is not compelled by legislation to require transmission facility owners (TFOs) to pay or repay CIACs, to include these amounts in their capital base,[3] or to earn a return on such expenditures.
- The Commission did not err in law by treating CIACs paid by DFOs as expenditures rather than as capital amounts entitled to a return. CIACs are not investments in utility-owned assets by either DFOs or TFOs and thus do not qualify for a return under Section 122(1)(a) of the *Electric Utilities Act*.

3. Further, the Commission finds that CIAC payments should continue to be expensed in the year incurred, as they do not represent utility investments eligible for return, but rather payments to secure transmission access from another utility. However, to address potential rate shock arising from a large or lumpy CIAC, the Commission approves the use of deferral accounts and amortization, consistent with the approach established in Decision 26521-D01-2021.[4]

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[1] Decision 26061-D01-2021: Commission-Directed Examination of Distribution Facility Owner Payments under the Independent System Operator Tariff Customer Contribution Policy, Proceeding 26061, April 23, 2021.

[2] In this decision, general reference to "contributions in aid of construction" are shown as CIACs (plural), while a specific "contribution in aid of construction" is referred to as a CIAC or just CIAC (singular). The decision occasionally also references "customer contributions" and "contributions."

[3] The Court of Appeal of Alberta referred to "capital base" in its decision. In this context, "capital base" is used interchangeably with "rate base," which is the term used in Alberta utility regulation to describe the value of assets on which a utility is permitted to earn a return. For consistency with the Commission's terminology, this decision uses "rate base" throughout.

[4] Decision 26521-D01-2021: Revised Regulatory Accounting Treatment for Alberta Electric System Operator Customer Contributions, Proceeding 26521, October 6, 2021.

4. The Court of Appeal of Alberta did not resolve the substantive legal issue regarding the lawfulness of earning a return on CIAC and the Commission has taken a refreshed view in interpreting the statutory framework. The Commission concludes that neither a DFO nor TFO is entitled to a return on CIAC under current legislation. This conclusion removes misaligned incentives and preserves effective economic discipline in transmission planning.

2 Customer contributions in aid of construction in Alberta

5. CIAC, also known in various regulatory contexts as customer contributions or construction contributions, are financial contributions made by utility customers or other entities to cover a portion of the cost of new infrastructure required to connect them to the utility system. In the context of Alberta's electricity sector, one of the ways that CIAC arise is when DFOs request new or enhanced SAS from the AESO, triggering the need for additional transmission facilities. These CIACs are payments made by the DFOs to the AESO, which are then passed through to the TFOs responsible for building and operating the infrastructure.

6. CIACs are central to the cost-causation principle in utility regulation. They serve as a mechanism to ensure that the party causing the need for new investment bears a share of its cost, mitigating the risk of undue socialization of costs across the broader customer base. CIACs also promote efficient infrastructure siting by sending price signals that encourage economically prudent decisions.

7. Where transmission construction or upgrades are needed to fulfil a DFO's SAS request (SASR),[5] the Independent System Operator (ISO) tariff requires the DFO to pay a CIAC when the cost of the facilities exceed a threshold known as the "maximum local investment" – the maximum the AESO will socialize across the broader transmission customer base. In turn, each DFO recovers the CIAC it paid to the AESO from that DFO's own customers. Depending on the driver for the new or upgraded transmission facilities, the CIAC may be recovered from a single or few DFO customers, or from many or all DFO customers. The practice of requiring DFOs to pay CIAC and recover them through their own distribution tariffs has a regulatory lineage in Alberta dating back over two decades. This approach has been repeatedly approved by the Commission and its predecessor, the Alberta Energy and Utilities Board (board).

8. The Commission has acknowledged CIAC as a necessary tool to preserve economic discipline in infrastructure planning and to prevent inefficient overbuilding. The principles behind CIAC were articulated clearly as early as Decision 2000-01, in which the board emphasized that CIACs ensure new customers bear an appropriate share of the infrastructure costs they cause; prevent inappropriate cross-subsidization by existing customers; and provide clear price signals that guide efficient siting and connection decisions.[6] This approach continued

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5 The parties also referred to these as "distribution-driven transmission projects" or "DDTPs," "distribution-driven TFO capital projects" and "D to T Projects."

6 Decision 2000-01: ESBI Alberta Ltd., 1999/2000 General Tariff Application Phase 1 and 2, Application 990005, Files 1803-1, 1803-3, February 2, 2000, PDF page 276.

consistently in AUC proceedings, including Decision 2005-096,[7] Decision 2007-106[8] and subsequent ISO tariff reviews.

9. Historically, DFOs were permitted to capitalize CIAC (i.e., treat them as capital investments), include them in rate base, and were provided the opportunity to earn a fair return on them under the *Electric Utilities Act*'s cost-recovery principles.[9] The Commission consistently found this appropriate on the basis that CIACs were prudent investments necessary for a DFO's service obligations[10] and that DFOs bore financial risks for the investment and should therefore be entitled to a corresponding return.[11]

10. In Decision 26061-D01-2021, the Commission re-evaluated the fairness and economic signalling effects of this return structure. In that decision, the Commission concluded that the *Electric Utilities Act*, the *Transmission Regulation* and other relevant legislation support the inclusion of a customer contribution policy in the ISO tariff (AESO's customer contribution policy),[12] permit DFOs to seek recovery of customer contribution costs in their tariffs and grant the Commission discretion to determine how customer contributions paid by DFOs are recovered. However, the Commission determined that allowing DFOs to earn a return on customer contributions undermined the effectiveness of the AESO's customer contribution policy, citing the need for stronger price signals and efficiency incentives. The Commission directed that, going forward:

- DFOs would no longer be permitted to earn a return on CIAC paid to the AESO.
- CIAC should be flowed through directly to the specific DFO customer requesting the connection wherever feasible.

11. Decision 26061-D01-2021 prompted appeals from multiple utilities, culminating in the Court of Appeal of Alberta's 2023 decision in *AltaLink Management Ltd. v Alberta Utilities Commission*.[13] While the court did not definitively settle the substantive legal issue – namely, whether it was lawful for the Commission to allow DFOs to include CIAC paid to the AESO in their rate base and earn a return on those amounts – it emphasized the long-standing regulatory framework and utilities' legitimate expectations based on historical Commission treatment.

12. While the Commission's decision is based solely on its legislative analysis of the legal questions remitted to it by the Court of Appeal of Alberta, it is cognizant of the historical context behind CIAC and the emerging landscape. The concept of CIAC has long served as a

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[7] Decision 2005-096: Alberta Electric System Operator (AESO), 2005/2006 General Tariff Application, Application 1363012, August 28, 2005.

[8] Decision 2007-106: Alberta Electric System Operator, 2007 General Tariff Application, Application 1485517, December 21, 2007.

[9] *Electric Utilities Act*, Section 122(1).

[10] DFOs must arrange for SAS from the AESO to serve customers in their service area under Section 105(1)(d) of the *Electric Utilities Act* and undertake financial settlement for those services under Section 101(1)(h) of the *Electric Utilities Act*.

[11] See Decision 26061-D01-2021, Section 3.1.2, for discussion of the ISO tariff and history of customer contribution policy.

[12] The AESO's current customer contribution policy, also referred to as the AESO policy, the contribution policy, or simply the policy, is incorporated into and forms part of the current effective ISO tariff at Section 4: Classification and Allocation of Connection Projects Costs; see also ISO tariff, Section 5: Changes to System Access Service and Section 6: Financial Obligations for Connection Projects.

[13] *AltaLink Management Ltd. v Alberta Utilities Commission*, 2023 ABCA 325.

cornerstone in Alberta's regulatory approach to allocating the costs of new utility infrastructure. Anchored in principles of cost causation, fairness and economic efficiency, CIAC historically provided a practical solution for balancing the financial responsibilities between new customers, utilities and the broader customer base.

13. For over two decades, the model of DFO CIACs recovered through distribution tariffs and included in rate base functioned within a regulatory and operational context where its assumptions held true. However, that context has evolved. Today's utility environment is marked by increasing demands for transparent price signals, more granular cost responsibility and regulatory models that seek to limit embedded cross-subsidization. It is also marked by new and emerging technologies[14] that significantly challenge the idea of a default transmission-based solution. Rather, electricity systems can be enhanced and optimized in ways that were not contemplated when CIACs were first developed and implemented.

14. In short, while the CIAC framework under which the DFOs included their contributions in their rate bases with an opportunity to earn a return on them was in place for many years, its effectiveness has come into question as the operational, regulatory and economic context of Alberta's electricity sector and its bulk electricity system have evolved. The combination of a maturing industry structure, emerging technologies, changes in system planning practices and heightened focus on cost accountability has exposed a misalignment between past practice and current regulatory objectives. This disconnect prompted the Commission's 2021 policy shift, and subsequent litigation underscored the tension between long-standing practices and this evolving context.

3 Historical background and prior related decisions

15. The history of the issues within this proceeding is long and complex and is rooted in a legal and regulatory dispute over the AESO's customer contribution policy, which governs DFO payments of CIAC to TFOs under the ISO tariff. This policy, a regulatory construct approved by the Commission over two decades ago, has been contested by AltaLink in recent years due to its perceived inconsistency with the *Electric Utilities Act*.

16. The AESO's customer contribution policy emerged over 20 years ago when the board, the Commission's predecessor, approved the AESO's customer contribution framework. This approval established that DFOs, as well as customers wanting to connect directly to the transmission system (direct-connect customers), must pay CIAC to TFOs for new transmission facilities. Historically, pre-April 23, 2021, CIACs were treated as DFO investments, allowing DFOs to earn a return of and on such investments, while all CIACs reduced the TFO's investment. TFOs did not, therefore, earn returns on the CIAC amounts. This framework reflects Alberta's restructured electric utility industry, where the *Electric Utilities Act,* enacted following deregulation in the 1990s, separated transmission and distribution functions. The AESO, as the sole provider of SAS, evaluates DFO requests via SASRs, directs TFOs to build facilities

[14] Emerging technologies in this context include distributed energy resources such as solar photovoltaic systems, battery storage, demand-side management solutions, microgrids, and other non-wires alternatives that can reduce or defer the need for traditional transmission infrastructure by addressing system needs locally or through enhanced grid flexibility.

through a Needs Identification Document (NID), and recovers costs through its tariff. TFOs, like AltaLink, bear all construction costs (minus the CIAC) for the facilities.

17. While the contribution policy dates back further, the direct line of decisions that have led to this proceeding include:

- Decision 22942-D02-2019.[15]
- Decision 24932-D01-2020.[16]
- Decision 26061-D01-2021.
- Decision 26608-D01-2021.[17]
- *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2022 ABCA 18 (the Permission to Appeal (PTA) Decision).
- Appeal Decision.

18. In Proceeding 22942, AltaLink argued that the ISO tariff was unlawful, asserting it allowed DFOs to invest in and earn returns on transmission facilities – owned solely by TFOs – while reducing TFO returns. AltaLink contended that this contravened the *Electric Utilities Act*'s ownership-based framework under Section 121(2)(b) (requiring tariff compliance with law) and Section 122(1)(a) (mandating a fair return on TFO investment).

19. In Decision 22942-D02-2019, the Commission found that nothing in the legislation prohibited a DFO from making a contribution under the ISO tariff or from earning a return on the contribution.[18] However, the Commission approved AltaLink's customer contribution proposal, a mechanism where TFOs refund CIAC to DFOs through the AESO, transferring the "investment" and return thereon from the DFO to the TFO, with costs recovered from the DFO's customers. This approved proposal also provided that all unamortized balances relating to contributions made by Fortis under the AESO customer contribution policy in the pre-January 1, 2018, period would be transferred to AltaLink. Decision 22942-D02-2019 found that AltaLink's contribution proposal could result in a material financial benefit to customers and was therefore in the public interest.

20. In Proceeding 24932, the Commission reconsidered Decision 22942-D02-2019. In Decision 24932-D01-2020, the Commission rescinded the requirements in Section 8.1 of Decision 22942-D02-2019 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. The Commission cited Fortis's evidence of potential tax costs and customer harm from the transfer of CIACs, finding that no "principled reasons" justified using Fortis's regulatory tax pools to mitigate impacts. The

[15] Decision 22942-D02-2019: Alberta Electric System Operator, 218 ISO Tariff Application, Proceeding 22942, September 22, 2019.

[16] Decision 24932-D01-2020: Commission-Initiated Review and Variance of Decision 22942-D02-2019, Proceeding 24932, November 4, 2020.

[17] Decision 26608-D01-2021: ATCO Electric Ltd., ENMAX Power Corporation and FortisAlberta Inc., Decision on Preliminary Question, Application for Review of Decision 26061-D01-2021, Commission-Directed Examination of Distribution Facility Owner Payments under the Independent System Operator Tariff Customer Contribution Policy, Proceeding 26608, Applications 26608-A001, 26608-A002, 26608-A003, October 1, 2021.

[18] Decision 22942-D02-2019, PDF page 209.

Commission concluded that implementing the rate base transfer and AltaLink's proposal would result in costs to customers that outweighed the benefits. The Commission reinstated the AESO's previous customer contribution policy and indicated it would initiate a new proceeding to examine the policy's legality and whether there was a need for a new policy.

21. The Commission initiated Proceeding 26061 to consider the legality and treatment of customer contributions. In Decision 26061-D01-2021, the Commission modified the AESO policy prospectively – CIACs paid after April 23, 2021, would be expensed by DFOs (not capitalized and therefore not earning returns), but still offset TFO rate bases, while pre-2021 CIACs remained DFO investments included in the DFO rate bases until fully depreciated. The Commission upheld the policy's core structure, concluding its rate-setting authority allowed such flexibility, despite AltaLink's argument that both treatments violated the *Electric Utilities Act* by denying TFOs' returns on their full investment.

22. One of the outcomes of the Commission's determinations in Decision 26061-D01-2021 is that neither TFOs nor DFOs would have the ability to add CIAC to rate base and therefore be provided a reasonable opportunity to recover any return[19] on the same. This was to avoid nullifying the price signal, to bring discipline to the cost of new facilities and better serve the public interest.

23. AltaLink, ATCO Electric, ENMAX and EPCOR sought permission to appeal Decision 22942-D02-2019, Decision 24932-D01-2020 and Decision 26061-D01-2021.[20] Permission to appeal Decision 22942-D02-2019 and Decision 24932-D01-2020 was denied, with Slatter J.A. writing that "not having a live appeal on these essentially interim decisions will not create an issue estoppel or limit the Court's ability to engage the issues" because "the substance of the issues arises from [Decision 26061-D01-2021]."[21] Permission to appeal Decision 26061-D01-2021 was granted on the following three issues:

(i) Did the Commission fail to meet the requirements of procedural fairness because inadequate notice was given of the way it intended to deal with CIAC?

(ii) Is the long-established Commission customer contribution policy lawful? Was the Commission compelled by the legislation to allow transmission system owners to pay or repay the CIAC, including the resulting costs in their rate base, and earn a return on the expenditure?

(iii) Did the Commission err in law in treating the CIACs as expenditures, rather than as capital amounts on which some component of the utility system is entitled to earn a rate of return?

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19 Section 122(1)(a) of the *Electric Utilities Act* specifies that "When considering a tariff application, 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** … (iii) any return required to be paid to preferred shareholders of the electric utility relating to the investment, (iv) a fair return on the equity of shareholders of the electric utility as it relates to the investment, …" Parties generally referred to the ability of an electric utility to "earn a return" as a short form for this legislative language. The Commission has likewise used "eligibility to earn a return" or "being provided with a reasonable opportunity to earn a return" throughout, as a short form reference to the specific framing in the statute. (emphasis added)

20 *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2022 ABCA 18.

21 *AltaLink Management Ltd v Alberta (Utilities Commission)*, 2022 ABCA 18, paragraph 29.

24. In the subsequent Appeal Decision, the Court of Appeal of Alberta allowed the appeal on the first issue, quashed Decision 26061-D01-2021, and returned issues two and three to the Commission for rehearing and reconsideration.

25. In accordance with that direction, the Commission initiated this proceeding on April 26, 2024. The Commission pre-registered the parties that originally participated in Proceeding 26061 and invited any other interested person to register. The following parties actively participated in this proceeding:

- AltaLink Management Ltd.
- ATCO Electric Ltd.
- Consumers’ Coalition of Alberta (CCA)
- ENMAX Power Corporation
- EPCOR Distribution & Transmission Inc. (EPCOR)
- FortisAlberta Inc.
- Independent System Operator (ISO or AESO)
- Office of the Utilities Consumer Advocate (UCA)
- Alberta Federation of Rural Electrical Associations (AFREA)

26. TransAlta Corporation and Lionstooth Energy also registered, but did not actively participate in this proceeding.

27. On October 15, 2024, the Commission notified parties that the core issues to be determined in this proceeding are the questions remitted to the Commission by the Court of Appeal of Alberta, as follows:

(1) Is the long-established Commission customer contribution policy lawful?

(2) Was the Commission compelled by the legislation to allow transmission system owners to pay or repay the CIAC, including the resulting costs in their capital base, and earn a return on the expenditure?

(3) Did the Commission err in law in treating the CIAC as expenditures, rather than as capital amounts on which some component of the utility system is entitled to earn a rate of return?

28. The Commission set out a process for the proceeding that included the simultaneous filing of evidence by all parties, a round of information requests (IRs), simultaneous filing of rebuttal evidence, written argument and oral reply argument. The Commission noted that it may arrive at different conclusions than those proposed by the parties, and that it may render decisions on issues that arise from the submissions it receives.[22]

[22] Exhibit 29006-X0036, AUC letter – Issues list and procedural schedule, October 15, 2024.

29. The Court of Appeal of Alberta characterized the issues as questions of law requiring statutory interpretation and suggested considerations like ownership definitions and risk allocation. As a result, in this proceeding the Commission has considered the legal parameters that apply to the AESO's customer contribution policy. While the Commission accepts that these issues are framed as questions of law, its consideration of them does not occur in a vacuum. The Commission therefore also accepted evidence related to DFO contribution policy alternatives and relevant principles and objectives associated with a contribution policy and, after answering the questions remitted to it, the Commission considers the policy implications of its findings.

30. The AESO indicated that it intends to conduct a holistic review of its contribution policy after the conclusion of this proceeding, in a process that will involve consultation with stakeholders. While the Commission has considered policy-related evidence in this proceeding, the Commission's decision does not include specific advice or direction to the AESO related to the mechanics of its contribution policy, nor does it limit the potential solutions available to the AESO aside from defining applicable legal parameters as outlined in the issues set out above. However, the Commission provides some observations for the AESO to consider in its consultation. The Commission will consider any proposed changes to the AESO's tariff, if and when the AESO applies for such changes in a future proceeding.

31. The remainder of this decision addresses the issues returned to the Commission by the Court of Appeal of Alberta including relevant statutory interpretation principles and the legislative framework. The Commission goes on to discuss the implications of this decision going forward, provides comments on the merits of a contribution policy and considerations for further policy refinement.

32. As noted above, among the questions remitted to the Commission by the Court of Appeal of Alberta is whether the Commission erred in law in treating CIACs as expenditures, rather than as capital amounts on which some component of the utility system is **entitled** to earn a rate of return. While the phrasing of this question includes the concept of "entitlement," the Commission's analysis of this question instead focuses on the specific language in Section 122(1) of the *Electric Utilities Act*, which refers to "reasonable opportunity" in the context of a utility earning a return.

4 Statutory interpretation principles

33. The starting point for interpreting statutory provisions is Driedger's modern principle of statutory interpretation. Driedger's principle and its application to the statutory scheme administered by the Commission was explained by the Supreme Court of Canada in *Stores Block*.[23] The court stated that the principle requires that "the words of an act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act and the intention of Parliament." The court clarified that it looks first at the grammatical and ordinary meaning of a provision and then examines the entire statutory context and legislative intent. The court concluded: "the ultimate goal is to discover the clear intent of the legislature and the true purpose of the statute while preserving the harmony, coherence and consistency of the legislative scheme."

[23] *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 37.

34. While parties were generally aligned on the foundational principles of statutory interpretation,[24] Fortis relied on the Supreme Court of Canada's decision in *Auer*[25] for what it submitted should be the test applied by the Commission in this proceeding. Fortis submitted that because this proceeding constitutes a review of the lawfulness of the AESO's contribution policy as subordinate legislation, the Commission must consider: (i) whether the policy is consistent with the specific provisions of its enabling statute and its overriding purpose and object; (ii) whether the policy benefits from a presumption of validity that places the burden on the challengers of the policy; (iii) a broad and purposeful approach to statutory interpretation; and (iv) that the review should not involve an assessment of policy merits.[26]

35. The Commission finds that its assessment of the AESO's customer contribution policy must take into account whether the policy is consistent with the specific provisions of its enabling statute and its overriding purpose and object using a broad and purposeful approach to statutory interpretation. However, the Commission does not find that the policy benefits from a presumption of validity or that the burden lies with the challengers of the policy.

36. This proceeding was initiated as a result of the Court of Appeal of Alberta's decision remitting certain issues back to the Commission for reconsideration. In the Appeal Decision, the court characterized the issues returned to the Commission as questions of law which it indicated attract a standard of correctness on review. This context is distinct from that in *Auer* which involved a judicial review of subordinate legislation.

37. With respect to whether the Commission's assessment of a CIAC should avoid consideration of policy merits, parties took varying approaches. While some – like AltaLink and EPCOR – focused strictly on statutory interpretation, others, including the UCA, AFREA and the AESO, viewed policy context such as price signals, cost causation and system incentives as relevant to understanding or supporting the legal analysis. In answering the questions remitted by the Court of Appeal of Alberta, the Commission has focused its analysis on the relevant legislation, rather than the history, objectives or merits of the AESO policy. Following its conclusions on the remitted questions, the Commission goes on to provide commentary on the merits of the AESO policy and considerations for improvement going forward.

5 Legislative framework

38. The *Electric Utilities Act* and the *Hydro and Electric Energy Act*, and the respective regulations made pursuant to these acts, set out the legislative framework governing the provision of electricity service in Alberta. Operating as companion legislation, the *Electric Utilities Act* establishes the duties and obligations of utilities and the AESO to provide service to customers in the electricity market, and the recovery of expenditures through a tariff, while the *Hydro and Electric Energy Act* focuses on the construction and operation of the physical assets used to deliver electricity. The *Transmission Regulation* supplements the legislative framework as it pertains to the provision and costing of transmission services in Alberta.

[24] Exhibit 29006-X0032, Agreed Statement of Facts and Law (September 27, 2024).
[25] *Auer v Auer*, 2024 SCC 36.
[26] Transcript, Volume 1, pages 136-138.

39. Of particular relevance to the issues in this proceeding are the *Electric Utilities Act* and the *Transmission Regulation*. Section 5 of the *Electric Utilities Act* sets out the purposes of the act, which include:

> 5 The purposes of this Act are:
>
> (b) to provide for a competitive power pool so that an efficient electricity market based on fair and open competition can develop, where all persons wishing to exchange electric energy through the power pool may do so on non-discriminatory terms and may make financial arrangements to manage financial risk associated with the pool price;
>
> …
>
> (h) to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency.

40. The Court of Appeal of Alberta has also provided guidance on the scheme, purpose and legislative intent of the *Electric Utilities Act*:[27]

> [13] For this reason, one of the key purposes of the 1995 Act was to provide a framework for a competitive power pool so that an efficient market for electricity based on fair and open competition could develop in Alberta: s.6(b). To enhance the likelihood of increased competition, the goal was to separate, that is unbundle, electricity services along functional lines – generation, transmission and distribution – and to treat each separately for accounting, regulatory and operational purposes. Hence the Legislature's adoption of a new industry model designed to eliminate monopolistic power, promote market entry, and foster and strengthen competition.

41. Under the *Electric Utilities Act*, the AESO is the sole provider of SAS and is mandated to prepare a tariff for transmission access that is approved by the Commission.[28] DFOs must arrange for SAS from the AESO to serve customers in their service area and undertake financial settlement for those services.[29] TFOs construct and operate transmission infrastructure upon direction from the AESO, based on an approved NID.[30]

6 Determination on issues retuned by the Court of Appeal of Alberta

42. In response to the questions returned to the Commission by the Court of Appeal of Alberta, the Commission finds that the AESO is permitted to establish a customer contribution policy requiring DFOs to make CIACs in relation to transmission facility construction or upgrades as a result of a SASR. The Commission finds that it is not compelled by legislation to allow TFOs to pay or repay CIAC or to permit a TFO to include the resulting costs in its rate base to provide it with a reasonable opportunity to recover any return on the CIAC amount.

43. The Commission also finds that it did not err in law in requiring DFOs to treat CIACs as expenditures, rather than as capital amounts on which the DFO must be given a reasonable

[27] *ATCO Electric Limited v. Alberta (Energy and Utilities Board)*, 2004 ABCA 215 (CanLII), paragraph 13.
[28] Sections 28 and 30.
[29] *Electric Utilities Act*, sections 105(1)(d) and (h).
[30] *Electric Utilities Act*, sections 34-35.

opportunity to recover any return on its investment. Under the existing AESO customer contribution policy, neither a DFO nor TFO is eligible to earn a return on a CIAC.

44. The Commission explains how it arrived at these conclusions in the sections that follow. The Commission notes that because the questions being reconsidered in this decision are fundamentally intertwined and required assessment of the same underlying legislative provisions, it has structured this decision based on the statutory framework and the parties' key contentions rather than addressing each of the three issues set out in the issues list in turn. This approach is intended to avoid repetition and provide clarity in answering the questions remitted to the Commission.

6.1 What is the AESO's authority to establish a customer contribution policy?

45. In general, parties did not consider the concept of a customer contribution policy to be unlawful.[31] Rather, certain parties took issue with the way the current policy is designed; the most contentious issue was whether a DFO or TFO must be given a reasonable opportunity to earn a return on the contribution amount. In answering this question, some parties challenged whether the AESO can impose a customer contribution policy at all.

46. ATCO Electric took the position that, because TFOs are not customers of the AESO, the AESO cannot compel a TFO to accept CIAC from DFOs under the ISO tariff.[32] In support of their argument, AltaLink and EPCOR submitted that the concept of customer contributions does not exist in the applicable legislation and cannot override the specific words enacted by legislature.[33] [34]

47. While neither the *Electric Utilities Act* nor its regulations expressly deal with the establishment of a customer contribution policy, this legislative framework contains a number of provisions that authorize the AESO to establish a customer contribution policy. In particular, Section 30 of the *Electric Utilities Act* sets out the requirements for an ISO tariff which is foundational to the Commission's assessment of the AESO's customer contribution policy.

48. Section 30 of the *Electric Utilities Act*, provides that:

> 30(1) The Independent System Operator must submit to the Commission, for approval under Part 9, a single tariff setting out
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> > (a) the rates to be charged by the Independent System Operator for each class of system access service, and
> >
> > (b) the terms and conditions that apply to each class of system access service provided by the Independent System Operator to persons connected to the transmission system.

31 Exhibit 29006-X0185, ATCO Electric written argument, paragraphs 32-33; Exhibit 29006-X0189, Fortis's written argument, paragraphs 24, 92-93; Exhibit 29006-X0180, CCA's written argument, paragraph 7; Exhibit 29006-X0068, ENMAX evidence, PDF page 16, paragraph 55; Exhibit 29006-X0183, ENMAX argument, PDF page 4, paragraph 7; Exhibit 29006-X0067, AltaLink evidence, PDF page 15, paragraph 28.
32 Exhibit 29006-X0185, ATCO Electric written argument, PDF pages 4-8.
33 Exhibit 29006-X0182.01, AltaLink final written argument, PDF page 19.
34 Exhibit 29006-X0179, EDTI written argument 29006, PDF page 8.

> (2) The rates to be charged by the Independent System Operator for each class of service must reflect the prudent costs that are reasonably attributable to each class of system access service provided by the Independent System Operator, and the rates must
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> (a) be sufficient to recover
>
> (i) the amounts to be paid under the approved tariff of the owner of each transmission facility,
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> …
>
> (iv) any other prudent costs and expenses the Commission considers appropriate,
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> …
>
> (c) include any other costs, expenses and revenue determined in accordance with the regulations made by the Minister under section 99.
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> (3) The rates set out in the tariff
>
> (a) shall not be different for owners of electric distribution systems, customers who are industrial systems or a person who has made an arrangement under section 101(2) as a result of the location of those systems or persons on the transmission system, and
>
> (b) are not unjust or unreasonable simply because they comply with clause (a).

49. These provisions require the AESO to establish rates in its tariff that reflect the prudent costs attributable to each class of SAS, which must be sufficient to recover amounts to be paid under the approved tariff of each TFO. The tariff must also set out the terms and conditions that apply to each class of SAS provided by the AESO to persons connected to the transmission system. The Commission finds that these provisions are sufficiently broad to permit the AESO to establish a contribution policy. In fact, a contribution policy is a reasonable mechanism by which the AESO can, consistent with its legislative requirement, ensure the recovery of prudent costs attributable to each class of SAS. Further, the requirement that the ISO tariff include the terms and conditions that apply to each class of SAS specifically allows the AESO to impose, subject to alignment with the legislation and to Commission approval, terms and conditions that may include provisions such as those contemplated by a contribution policy.

50. The permissibility of a DFO CIAC under the AESO's tariff is also supported when Section 30 of the *Electric Utilities Act* is read together with Section 47(a) of the *Transmission Regulation*. Under that section, the Commission must ensure that when approving an ISO tariff under Section 122 of the *Electric Utilities Act*, the just and reasonable costs of the transmission system are charged to DFOs and other load customers that receive SAS from the AESO, and that the amount payable by a DFO is recoverable in its tariff. Section 47(a) states:

> 47 When considering an application for approval of the ISO tariff under sections 121 and 122 of the Act, the Commission must
>
> (a) ensure
>
> (i) the just and reasonable costs of the transmission system are wholly charged to DFOs, customers who are industrial systems and persons who have made an arrangement under section 101(2) of the Act, and exporters, to the extent required by the ISO tariff, and

(ii) the amount payable by a DFO is recoverable in the DFO's tariff,

51. Given that the AESO's authority to establish a customer contribution policy is supported by the relevant legislation, the Commission finds ATCO Electric's position that a TFO cannot be compelled to accept CIACs from DFOs under the ISO tariff to be inconsistent with the statutory scheme. The Commission agrees with the UCA's submissions on this point that the *Electric Utilities Act* contains specific provisions giving the AESO authority over a TFO.[35]

52. Under the *Electric Utilities Act*, the AESO has broad duties including the duty to arrange for the expansion or enhancement of the transmission system in an economically rational way. This also supports the finding that the AESO's customer contribution policy is consistent with the legislation.[36] As a result, while the legislation does not expressly use the words "customer contribution," the legislation does provide the AESO authority to establish a tariff which, subject to Commission approval, sets out rates that are required to be paid by those in each class of SAS including the terms and conditions applicable to each such class. Consistent with the analysis above, the Commission finds that this authority, read together with the AESO's legislative duties is sufficiently broad to permit the AESO to establish a customer contribution policy.

53. Regarding whether a TFO can refuse to accept a CIAC, Section 39(2) of the *Electric Utilities Act* requires a TFO to assist the AESO "in any manner" to enable the AESO to carry out its duties, responsibilities or functions. Section 39(3)(d) mandates TFOs to comply with the AESO's standards and practices to enable the AESO to carry out its duties, responsibilities or functions. A TFO is only able to refuse to comply with a direction of the AESO if such compliance would result in a risk of damage to its transmission system, safety to its employees or the public or undue injury to the environment.[37] The AESO's authority to establish a customer contribution policy read together with the duties assigned to a TFO under the *Electric Utilities Act* clearly support that a TFO is required to accept a CIAC made pursuant to a Commission-approved ISO tariff that includes a customer contribution policy. If a TFO could simply refuse to accept a CIAC as suggested by ATCO Electric, this would frustrate the legislature's intention by effectively giving a TFO veto power over a legally established and Commission-approved ISO tariff, which expressly includes the contributions policy.

6.2 What are "the costs and expenses associated with capital related to the owner's investment in the electric utility" for purposes of earning a return under Section 122(1)(a)?

54. Underlying the issues returned to the Commission by the Court of Appeal of Alberta is whether either a DFO or TFO must be provided with a reasonable opportunity to earn a return on a CIAC. Addressing this question and the related issues returned by the Court of Appeal of Alberta necessarily requires an interpretation of Section 122(1) of the *Electric Utilities Act*:

> **122(1)** When considering a tariff application, 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

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[35] Exhibit 29006-X0177, UCA written argument, PDF pages 20-21.
[36] *Electric Utilities Act*, Section 17.
[37] *Electric Utilities Act*, Section 39(4).

> (a) the costs and expenses associated with capital related to the owner's investment in the electric utility, including
>
> > (i) depreciation,
> >
> > (ii) interest paid on money borrowed for the purpose of the investment,
> >
> > (iii) any return required to be paid to preferred shareholders of the electric utility relating to the investment,
> >
> > (iv) a fair return on the equity of shareholders of the electric utility as it relates to the investment, and
> >
> > (v) taxes associated with the investment,
> >
> > if the costs and expenses are prudent and if, in the Commission's opinion, they provide an appropriate composition of debt and equity for the investment,
>
> (b) other prudent costs and expenses associated with isolated generating units, energy storage resources, transmission, exchange or distribution of electricity or associated with the Independent System Operator if, in the Commission's opinion, they are applicable to the electric utility,
>
> (c) amounts that the owner is required to pay under this Act or the regulations,
>
> …
>
> (h) any other prudent costs and expenses that the Commission considers appropriate, including a fair allocation of the owner's costs and expenses that relate to any or all of the owner's electric utilities.

55. For a utility to be provided, through its tariff, with a reasonable opportunity to earn a return on a CIAC, these must be "costs and expenses associated with capital related to the owner's investment in the electric utility" as provided for under this section. This phrase contains several terms (capital, owner and investment) that are relevant to the Commission's assessment of the AESO customer contribution policy, some of which are defined in the *Electric Utilities Act* and some that are not.

6.2.1 Who is an "owner" under Section 122(1)(a) and what do they own?

56. As described above, under the AESO's customer contribution policy a DFO makes a CIAC in relation to a transmission facility. In general, parties agreed that a DFO does not acquire an ownership interest in a transmission asset when it makes a CIAC as the transmission asset is exclusively owned by the respective TFO. The Commission agrees with this interpretation and finds it to be consistent with the meaning of "owner" and other relevant definitions in the *Electric Utilities Act*:

> **1(1)** In this Act,
>
> …
>
> (jj) "owner", in respect of a generating unit, an energy storage resource, a transmission facility or an electric distribution system, means the owner, operator, manager or lessee

> of that unit, storage resource, facility or system, or any person who is acting as an agent for the owner, operator, manager or lessee, and in the event that one of those persons becomes bankrupt or insolvent, includes any trustee, liquidator or receiver appointed in respect of the bankruptcy or insolvency;
>
> …
>
> (o) "electric utility" means an isolated generating unit, a transmission facility or an electric distribution system that is used …
>
> (m) "electric distribution system" means the plant, works, equipment, systems and services necessary to distribute electricity in a service area, but does not include
>
> (i) a generating unit,
>
> (ii) a transmission facility, or
>
> (iii) an energy storage resource that is a component of an energy storage facility, except as approved by the Commission in accordance with section 25.1 of the *Hydro and Electric Energy Act*;
>
> (bbb) "transmission facility" means an arrangement of conductors and transformation equipment that transmits electricity from the high voltage terminal of the generation transformer to the low voltage terminal of the step down transformer operating phase to phase at a nominal high voltage level of more than 25 000 volts to a nominal low voltage level of 25 000 volts or less, and includes …
>
> but does not include
>
> …
>
> (viii) an electric distribution system, or …

57. The *Electric Utilities Act* distinguishes between transmission facilities and electric distribution systems, expressly excluding the other in each respective definition. Given that any overlap between a transmission facility and electric distribution system is expressly excluded through these definitions, it would be contrary to legislative interpretation principles to find that a DFO can acquire an ownership interest in a TFO asset by making a CIAC. Rather, a TFO is the sole owner of its transmission facilities. In addition, the DFO is not an agent for the TFO as the DFO does not act on behalf of, or represent, the TFO nor did any party argue that the DFO obtains beneficial ownership through payment of the CIAC.

6.2.2 What is the meaning of "investment" under Section 122(1)(a)?

58. Several parties made submissions on the meaning of "investment," a term that is not defined in the legislation. Sources for these definitions included dictionaries and case law commentary from various jurisdictions and levels of court. While definitions varied, consistent among them is that the term "investment" comprises an outlay of money, for the acquisition of an asset, with the expectation of a rate of return or future benefit.[38] For instance, Black's Law Dictionary defines investment as "[a]n expenditure to acquire property or assets to produce revenue; a capital outlay."[39] In interpreting this term, the Commission considers "investment" to

[38] Exhibit 29006-X0185, ATCO written argument, paragraphs 40-41; Exhibit 29006-X0067, AltaLink evidence, paragraphs 129-130; Exhibit 29006-X0145, AML-CCA-2025JAN20-002(a); Exhibit 29006-X0149, Reply submission of the CCA, paragraph 13.

[39] Black's Law Dictionary, Ninth Edition, 2009 Thomson Reuters.

be distinct from “owner” in that ownership of a transmission asset does not equate to unlimited investment in all aspects of that facility.

59. In the context of transmission construction or upgrades in response to a DFO SASR, part of this construction or upgrade is funded by a TFO’s investment in its transmission facility while part of it is funded by the DFO CIAC. The TFO’s investment is made up of funds actually paid to construct or upgrade the transmission facility for which it benefits by earning a return of and on these capital amounts invested by it in the construction or upgrade. This return on the amounts it actually contributed to build or upgrade, in addition to other mechanisms such as recovery of operating and maintenance costs through its Commission-approved tariff (and as further discussed in Section 6.3), compensates a TFO for risks associated with its exclusive ownership of those facilities.

60. With respect to the CIAC paid by the DFO in respect of the transmission assets required to be built or upgraded, this does not amount to an investment by either the DFO or TFO in those assets. This is because a TFO makes no outlay of money for the portion covered by the CIAC. The TFO therefore typically does not need to borrow or use shareholder equity to fund the CIAC-covered portion, although cash-flow timing considerations may result in temporary financing needs. Based on the record of this proceeding, it appears that the TFO typically receives a CIAC from a DFO prior to project construction.[40] [41] However, even if the TFO were to make the initial cash outlay for some or all of the project construction costs prior to receiving the full DFO CIAC amount, the Commission still does not consider the CIAC portion to be the TFO’s investment. This is because a CIAC is raised and ultimately paid by the DFO, and the DFO CIAC offsets the TFO’s costs of constructing the transmission project.[42] In either case, the TFO’s investment in the transmission facility is net of a CIAC. A DFO actually funds the CIAC portion of the required construction of or upgrade to or new transmission asset, but neither acquires nor owns any portion of the asset associated with its contribution. While the TFO has not paid or invested the full amount of the asset, it remains the exclusive owner of such asset. This is consistent with the distinction in the *Electric Utilities Act* between transmission facilities and distribution systems and the concepts of ownership and investment. In this circumstance, a DFO CIAC is more analogous to a customer payment for services (a concept discussed further in Section 6.4). The payment of a CIAC does not give the payor a right of ownership, as that principle is articulated in *Stores Block*.[43]

6.2.3 What is the meaning of “capital” under Section 122(1)(a)?

61. Parties also made submissions on the meaning of “capital,” another term that is not defined in the relevant legislation.

62. Parties offered definitions of the term “capital” and “capital investment.” AltaLink referred to Black’s Law Dictionary for the definitions of “capital” as, in part, “1. Money or assets invested, or available for investment, in a business. 2. The total assets of a business, esp. those

[40] Exhibit 29006-X0118, Figure 1 – New or Upgraded Transmission Facilities Resulting in Payment of CIAC, FORTIS-AUC-2025JAN20-003, PDF page 10.
[41] Exhibit 29006-X0034, ASFL Figure A-1 - AltaLink Proposal schematics, PDF page 1.
[42] Transcript, Volume 1, page 268, lines 14-22.
[43] *ATCO Gas and Pipelines Ltd. v Alberta (Energy and Utilities Board)*, 2006 SCC 4, paragraph 68.

that help generate profits."[44] EPCOR similarly cited Black's Law Dictionary for the definition of "capital investment" as "the commitment of money or capital to purchase financial instruments or other assets in order to gain profitable returns in the form of interest, income {dividend}, or appreciation of the value of the instrument."[45] The Commission further notes that Black's Law Dictionary defines "capital expenditure" as "An outlay of funds to acquire or improve a fixed asset"[46] and "capital asset" as "A long-term asset used in the operation of a business or used to produce goods or services, such as equipment, land or an industrial plant."[47]

63. ENMAX submitted that the words "capital" and "investment" must be given their ordinary meaning, and that transmission projects resulting from a DFO SASR are capital assets for the same reason that all transmission facilities are capital assets. ENMAX further submitted that distribution-driven transmission projects whose need is driven by load growth are required to allow a DFO to fulfil its statutory obligations to provide safe, reliable and economic distribution service. It submitted that as a result, CIAC is a DFO's investment in its own electric distribution utility for the purposes of Section 122(1)(a).[48] ENMAX clarified that by paying a CIAC, a DFO is not investing in the transmission facility that is legally owned by the relevant TFO as a "tangible asset." However, it argued that for accounting purposes, a customer contribution paid by a DFO that cannot be recovered from individual end use customers is an "intangible asset" and earns a return.[49]

64. AltaLink submitted that in the context of Section 122(1)(a) of the *Electric Utilities Act*, "a TFO's 'investment' refers to the money it expends on return-generating assets, which are the transmission facilities that it owns. These transmission facilities are the TFO's 'capital'. A TFO's transmission facilities are therefore 'capital related to the [TFO's] investment in the [TFO's] electric utility' within the meaning of section 122(1)(a)."[50] The Commission agrees that a transmission facility is a capital asset within the ordinary meaning of that term, but it disagrees that the meaning of "capital" in Section 122(1)(a) can be equated with the meaning of "capital asset" as suggested by AltaLink. It can be presumed that had the legislature intended the word "capital" in Section 122(1)(a) to mean "capital asset," "electric utility" or "transmission facility," it would have used one of those terms instead of capital, as it does elsewhere in the *Electric Utilities Act*.[51]

65. The Commission understands that contributions paid by DFOs are typically funded through debt and equity raised by the DFO. As Fortis stated, in the years where there is equity and debt financing approved, the equity raised would include equity to fund CIAC.[52] The Commission finds that "capital" in Section 122(1)(a) of the *Electric Utilities Act* refers to the funds, debt and equity, comprising the investment in the electric utility. This is distinct from the

44 Exhibit 29006-X0067, AltaLink evidence, PDF page 59, paragraph 134, citing B.A. Garner, ed, Black's Law Dictionary, 12th ed. (Thomson Reuters, 2024) sub verbo "capital."
45 Exhibit 29006-X0064, EDTI evidence, PDF page 14, paragraph 30, citing Black's Law Dictionary (online ed.), "Capital Investment."
46 Black's Law Dictionary, 11th ed. (Thomson Reuters, 2019), "capital expenditure."
47 Black's Law Dictionary, 11th ed. (Thomson Reuters, 2019), "capital asset."
48 Exhibit 29006-X0183, ENMAX argument, PDF page 8, paragraphs 25-26.
49 Exhibit 29006-X0183, ENMAX argument, PDF pages 8-9, paragraphs 27-32.
50 Exhibit 29006-X0067, AltaLink evidence, PDF page 61, paragraph 138.
51 *Electric Utilities Act* includes definitions for "electric utility" and "transmission facility." It also uses the term "capital asset" in Section 14(1)(a), referring to the ISO budget, and Section 82(1), referring to the Balancing Pool budget.
52 Transcript, Volume 1, page 165.

TFO's costs associated with constructing the transmission facility, which are net of CIAC and comprise the TFO's capital investment in the transmission facility. In the context of a DFO CIAC, "capital" refers to the debt and equity raised to fund the CIAC.

66. While CIACs funded by debt and equity raised by a DFO are "capital" within the ordinary meaning of that term, they are not "capital related to the owner's investment in the electric utility." This is because, as explained above, the DFO does not invest in or obtain any ownership in the transmission facility through its payment of a CIAC.

67. In this regard, the Commission does not accept ENMAX's argument that a DFO CIAC is an "intangible asset" and is thus capable of earning a return. As advanced by AltaLink, ENMAX's approach relies on the accounting concept in International Accounting Standard 16 (IAS 16)[53] that costs "directly attributable" to bringing an asset to completion may be capitalized.[54] The Commission agrees with AltaLink that the accounting standard in IAS 16 does not assist the Commission in the legal interpretation of "capital related to the owner's investment in the electric utility" in Section 122(1)(a). As discussed above, these words in the *Electric Utilities Act* along with the act's definitions of owner, electric utility, electric distribution system and electric transmission system reproduced above, do not favour an interpretation that allows DFO investment in a transmission system. Additionally, IAS 38,[55] which applies to the treatment of intangible assets, makes it clear that an entity must have the capacity to control the asset and obtain future economic benefits that arise from that asset, or the ability to restrict the access of others to that resource. DFOs do not have control over the transmission assets that are paid for, in part, through a CIAC.

68. Similarly, a TFO does not raise the "capital" (debt or equity) that funds the CIAC; rather, it receives this capital through the AESO, from the DFO. As a result, a CIAC paid by a DFO does not constitute an investment of capital by the TFO in its transmission facility for the purposes of Section 122(1)(a).

6.3 Is a TFO eligible to earn a return on a DFO CIAC under Section 122(1)(a)?

69. Under Section 122(1)(a) of the *Electric Utilities Act*, the reference to "owner of an electric utility" and "owner's investment in the electric utility" must, for the purposes of the current analysis, be read in the context of a DFO CIAC, which is a payment towards the construction or upgrade of a transmission facility. Based on this, and the distinction between transmission facilities and electric distribution systems in the *Electric Utilities Act*, the assets in question are transmission facilities that legislatively can be owned only by the TFO. However, as discussed below, ownership alone is not determinative of the question of whether a TFO must be given a reasonable opportunity to earn a return on CIAC.

70. For a TFO to be eligible to earn a return on a CIAC under Section 122(1)(a) of the *Electric Utilities Act*, the CIAC must be "costs and expenses associated with capital related to the **owner's investment** in the electric utility [emphasis added]." Where a TFO responds to a DFO SASR by constructing or upgrading a transmission facility, the TFO can be said to have invested

[53] International Accounting Standard 16 (IAS 16) provides guidelines on how to account for property, plant and equipment
[54] Exhibit 29006-X0150, AltaLink rebuttal evidence, PDF page 26, paragraph 72.
[55] International Accounting Standard 38 (IAS 38) provides guidelines on intangible assets.

in its electric utility. However, the amount a TFO invests is the amount that the TFO actually pays to construct or upgrade its assets. Where there is a DFO CIAC, the TFO's invested capital amount is reduced by the amount of the CIAC paid by a DFO. The Commission finds it helpful in conducting this aspect of the analysis to examine similar (though not identical) payments made towards transmission facilities in other contexts. For example, if a government subsidy or grant is provided in respect of a transmission facility, the government funding does not give the government an ownership interest in a transmission asset. It simply reduces the cost the TFO pays for it. In this case, the amount on which the TFO is given a reasonable opportunity to earn a return is net of the subsidy provided. Similarly, where customers connect directly to the transmissions system, the TFO's return on investment is net of a CIAC.

71. The reference to "owner's investment in the electric utility" necessarily implies that there may be other costs incurred in respect of an electric utility that are not borne by the owner of that asset and on which the payor that incurred the costs is not required to be provided with a reasonable opportunity to earn a return. It follows that where a CIAC is paid by the DFO, that amount is not a cost nor an expense associated with capital related to the investment by the TFO – as owner – in its electric utility. Rather, it is a DFO contribution towards a transmission facility. Put another way, a CIAC paid by a DFO is separate from and unrelated to the TFO's investment in its transmission facility, having no impact on the TFO's ownership of, but reducing the amount of the TFO's investment in the facility that becomes part of the TFO's electric utility. Accordingly, where a DFO makes a CIAC towards a transmission facility, the TFO has not invested the amount of the CIAC as part of the "capital related to the owner's investment in the electric utility" and is therefore not required to be provided with a reasonable opportunity to earn a return on that amount. Rather the TFO's tariff must provide the TFO, as owner of the transmission utility, with a reasonable opportunity to recover the prudent costs and expenses associated with the capital related to its actual investment, which is net of the CIAC funded by the DFO. These costs and expenses include depreciation, interest paid on money borrowed for the purpose of the investment, any return required to be paid to preferred shareholders, a fair return on shareholder equity related to the investment and taxes associated with the investment.

72. AltaLink, EPCOR and ATCO Electric all submitted that the AESO policy is contrary to law because it allocates investment in transmission facilities to DFOs and commensurately deprives TFOs of capital-related costs that they have a statutory right to recover including the fair return that is intended to compensate them for their risks of owning the transmission facilities. In AltaLink and EPCOR's view, the Commission is obligated by Section 121(2)(b) of the *Electric Utilities Act* to require the payment or repayment of a DFO CIAC by a TFO.[56] [57] AltaLink asserted that there is nothing in legislation that provides that a TFO's investment in its own transmission facilities may be reduced or offset by amounts received from a DFO, relying on the distinction between transmission and distribution in the legislation and the concept of private ownership, which it suggests is intended to foster a stable and predictable climate for transmission investment.[58]

73. Section 121(2) of the *Electric Utilities Act* requires that when the Commission is considering whether to approve a tariff application, it must ensure that the tariff is just and

56 Exhibit 29006-X0182.01, AML final written argument, PDF pages 4, 7-8.
57 Exhibit 29006-X0179, EDTI – Written argument 29006, PDF pages 6-7.
58 Exhibit 29006-X0182.01, AML final written argument, PDF pages 6-7.

reasonable and not unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of law. Based on the Commission's assessment of a CIAC in this decision and its conclusion that CIACs are consistent with the legislative scheme, the Commission does not find it is obligated under this or any other provision to require the payment or repayment of a CIAC by a TFO.

74. There is nothing in the legislation to indicate that only a TFO may contribute to the costs of a transmission facility; the legislative limitation is simply that only the owner of a transmission facility may be eligible to earn a return on and of its own capital investment in its facility. In fact, as further discussed in this decision, there are express provisions outside of Section 122(1)(a), such as sections 122(1)(b), (c) and (h), that provide for recovery of other prudent costs and expenses associated with, among others, transmission.

75. Taken as a whole, the legislative scheme contemplates an efficient use of the electric system, including transmission facilities, that does not compel 100 per cent investment by the owner in such systems. This is made clear by the practice of allowing grants and other subsidies as well as other forms of contribution towards assets 100 per cent owned, but not necessarily 100 per cent paid for, by the owner.

76. This conclusion is further supported when considering Section 121(1)(3) of the *Electric Utilities Act*, which states that a tariff that provides incentives for efficiency is not unjust nor unreasonable simply because it provides for those incentives. The relevance of providing incentives for efficiency is also evident when considering that an express purpose of the *Electric Utilities Act* is to incent efficiency. In addition to being consistent with the legislative scheme, and as discussed in more detail in the following sections, the customer contribution policy is intended to incent efficiency in how the electric system is expanded and funded.

77. The Commission also disagrees with AltaLink, EPCOR and ATCO Electric that the AESO policy is contrary to law because it allocates investment in transmission facilities to DFOs and commensurately deprives TFOs' recovery of capital-related costs. As discussed above, the AESO's authority to establish a contribution policy is well grounded in the relevant legislation. While DFO CIACs are not investments in transmission facilities, in the context of the construction or upgrade of a transmission facility in response to a DFO SASR, a TFO is provided with an opportunity to invest in its transmission facility and a reasonable opportunity to earn a return on that investment. This return appropriately compensates a TFO for risks incurred as the owner of the transmission facility, which is commensurate with its actual investment in that facility. In making this determination, it is relevant that TFOs do not bear the risk associated with funding a CIAC payment. Further, general risks associated with the ownership and operation of a transmission facility are addressed through other regulatory mechanisms, such as a cost of capital and revenue requirement, including specific tariff mechanisms that address items like adjustments to capital structure, the rate of return, insurance and the recovery of prudent operating and maintenance (O&M) costs.[59] In addition, if infrastructure is damaged or destroyed, the Commission can consider whether customers are required to pay the net book value of old assets and to fund the capital costs of replacement assets. The TFO also retains the benefits of asset ownership and the proceeds from any sale or salvage of assets, regardless of the DFO's contribution. Nothing about this arrangement violates the legal separation of distribution and transmission ownership, nor is it unjust or unreasonable – the TFO remains the exclusive owner

[59] For example, see Transcript, Volume 1, pages 29-32.

of the transmission facility notwithstanding a CIAC, is given a reasonable opportunity to earn a return on amounts it actually invests in its facility and its tariff, and other available regulatory mechanisms address the risks associated with ownership and operation of the facility.

78. This interpretation is consistent with the language contained in Section 122(1)(a) of the *Electric Utilities Act*. In particular, the Commission must provide the owner of an electric utility with a "reasonable opportunity to recover." The ordinary meaning of the term "recover" in this context suggests that a person, in this case a utility, is regaining possession of something. The Commission considers therefore that this section is intended to allow for the recovery of costs actually borne. Since the TFO did not pay nor incur the CIAC, it cannot recover it. As such, the TFO must be given a reasonable opportunity to recover the net invested amount, including return.

79. While it is not central to the analysis of this section, the Commission notes further that the phrase "reasonable opportunity" also qualifies the language in this section. This means that there is no entitlement – a TFO is not guaranteed to recover 100 per cent of its capital costs and expenses related to its investment and is certainly not guaranteed to recover amounts that it has not invested. This phrase, read together with the different amounts, costs and expenses set out under this section, indicates that a utility owner is not *entitled* to recover all costs and expenses associated with capital related to its investment in the electric utility. Rather, where the investment was indeed made by an owner, the relevant tariff must provide the owner with a reasonable opportunity to recover the costs and expenses associated with that investment.

80. AltaLink and EPCOR submitted that Section 122(1)(a) requires that a TFO must be given a reasonable opportunity to recover the full amount of a CIAC and recover the costs and expenses associated with that capital, including a fair return on shareholder equity.[60] [61] Similarly, ATCO Electric expressed the view that Section 122(1)(a) requires that either the TFO or DFO be afforded a reasonable opportunity to recover the full amount of a CIAC and earn a fair return as it relates to those investments.[62] As explained above, a CIAC paid by a DFO is not a TFO investment in its transmission facility, and therefore a TFO is not eligible to earn a return on it. Similarly, as described in further detail below, a DFO is also ineligible to earn a return on a CIAC given that CIAC amounts are not investments by a DFO in its own utility.

81. While the outcome of the legislative interpretation set out in this decision is that neither a DFO nor a TFO is eligible to earn a return on DFO CIACs, this does not deprive either utility of a reasonable opportunity to recover the costs, expenses and amounts that properly fall under Section 122(1) of the *Electric Utilities Act*. Regarding the principle of "reasonable opportunity," the Commission finds the analysis in Decision 27658-D02-2023 to be instructive.[63] In that decision, the Commission determined that "reasonable opportunity" applies to amounts actually and prudently invested, citing commentary from the Court of Appeal of Alberta that "[w]ords like 'just', 'reasonable', 'unduly' and 'prudent' bestow broad discretionary powers on the Commission. This is expansive text."[64]

60 Exhibit 29006-X0182.01, AML final written argument, PDF page 9.
61 Exhibit 29006-X0179, EDTI – Written argument 29006, PDF pages 4-6.
62 Exhibit 29006-X0185, ATCO Electric's written argument, PDF page 13.
63 Decision 27658-D02-2023: Residential Standards of Service and Maximum Investment Levels – Phase 2, Proceeding 27658, October 18, 2023, PDF page 15, paragraph 39.
64 *Equs Rea Ltd v Alberta (Utilities Commission)*, 2023 ABCA 142, paragraph 94.

82. Certain parties submitted that the terms "associated" and "related to" are broad terms that capture DFO CIACs in respect of a transmission facility. While these are broad terms, in the specific context of Section 122(1)(a), the Commission considers that these terms add specificity. Section 122(1)(a) provides that the tariff of an owner of an electric utility must provide a reasonable opportunity to recover the costs and expenses *associated with* capital *related to* the owner's investment in the electric utility. The language "associated with" specifies that the "costs and expenses" must be linked to capital, therefore narrowing the category of "costs and expenses." The language "related to" specifies that the "capital" (to which the costs and expense must be associated) must, in turn, be linked to an investment by the owner and must be made in that owner's electric utility. These terms therefore narrow the language of the section rather than broaden it. In any event, the Commission has earlier determined that eligibility to earn a return as set out in Section 122(1)(a) is applicable to the "owner's investment in the electric utility," which the Commission has concluded DFO CIACs are not.

6.4 Is a DFO eligible to earn a return on a DFO CIAC under Section 122(1)(a)?

83. The parties took different positions on whether CIAC paid by a DFO should be treated as expenditures or as capital amounts upon which a DFO should earn a return. The AESO, the UCA and the CCA took the position that DFO CIAC should be treated as expenditures. The UCA further submitted that CIAC should be recovered by the TFO as no-cost capital, and by the DFO as O&M expenditures under Section 122(1)(b), (c) or (h) of the *Electric Utilities Act*.[65] AltaLink, the only pure-play TFO that participated in this proceeding, argued that DFO CIAC must be treated as capital upon which only the TFO is entitled to a return. ATCO Electric, EPCOR and ENMAX submitted that CIACs should be treated as capital amounts upon which the TFO should earn a return or, in the alternative, upon which the DFO should earn a return. Fortis, the only pure-play DFO that participated in this proceeding, did not take a position on whether a CIAC should be treated as a capital amount upon which a return can be earned. AFREA similarly took no position.

84. The AESO submitted that in the context of the DFO's tariff, the "owner's investment" in Section 122(1)(a) means investment that the DFO has made in *distribution* utilities and therefore does not apply to any CIACs that the DFO has paid to the TFO under the ISO tariff for the use of the TFO's transmission facility. The AESO argued that a CIAC is a prudent cost that a DFO has to pay and therefore falls under Section 122(1) generally, including Section 122(1)(h), and therefore there is no legislative entitlement for a DFO to earn a return on a CIAC.[66] The AESO further submitted that treating CIACs as expenditures provides for a strong anti-distortionary price signal to end-use customers, and that if the Commission determined that CIACs must be treated as capital costs, that capital should be paid by DFOs, not TFOs. The AESO ultimately submitted that whether DFO CIACs should be recovered as an expense, or as a capital item, is within the Commission's discretion.[67]

85. ATCO Electric submitted that because the legal framework permits a utility to earn a return of and on capital that is prudently invested in that utility's system, the Commission is not permitted to deny both the TFO and DFO from earning a return on and of the full amount of the CIAC, as a prudent capital investment. ATCO Electric submitted that it is open to the

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[65] Exhibit 29006-X0177, UCA argument, paragraph 4(iii).
[66] Exhibit 29006-X0186, AESO argument, paragraphs 56 and 67.
[67] Exhibit 29006-X0186, AESO argument, paragraph 77.

Commission to find that DFOs are entitled to a fair return because DFOs are bound by the ISO tariff, which requires the payment of a CIAC for distribution-driven transmission projects. ATCO Electric argued that under the current ISO tariff, DFOs must pay a CIAC in order to fulfil their legislative mandate, including the duties of a DFO under Section 105 of the *Electric Utilities Act*, to provide utility services to customer. ATCO Electric noted that DFOs cannot deny customers system access nor limit usage of the electric system.[68]

86. EPCOR submitted that a transmission facility is a capital investment and that the term "investment" necessarily implies an investor, which must be either the TFO or the DFO. EPCOR's alternative position was that a CIAC must be treated as a DFO investment capable of earning a return under Section 122(1)(a) for the purposes of the DFO's tariff.[69] EPCOR submitted that there is no evidence of legislative intent to depart from the fundamental premise that a utility owner invests and provides service in the expectation of recovering a fair return on its invested capital, and that presuming such intent would jeopardize a utility's ability to attract and retain capital, in contravention of the purpose of utility legislation generally and the *Electric Utilities Act* in particular.[70]

87. ENMAX specifically argued that under Section 122(1)(a), a DFO should be permitted to earn a return because a DFO payment of a CIAC is an investment in an "intangible asset" and thus an investment in the DFO's own distribution system. The Commission rejected this argument in Section 6.2.3 above. ENMAX further submitted that a CIAC can only be treated as no-cost capital, meaning capital for which a utility earns no return, where the contribution can reasonably be recovered from an identifiable end-use customer that triggered the need for a distribution-driven transmission project. ENMAX stated there have been no instances in ENMAX's system where the need for a distribution-driven transmission project was driven by a single end-use customer.[71]

88. Both ATCO Electric and ENMAX argued that treating customer contributions that cannot reasonably be recovered from an end-use customer as expenditures is contrary to Section 121(2) of the *Electric Utilities Act* because this treats costs for distribution-driven transmission projects differently from other transmission and distribution assets used to provide utility service to customers. ENMAX further submitted that not permitting a return on CIAC could result in a scenario where a TFO can include in rate base and earn a return on the portion of facility construction costs that are not covered by a customer contribution, while the cost subject to a CIAC would be expensed.[72]

89. The Commission finds that the DFO is not entitled to earn a return on a CIAC it pays in respect of a transmission facility, regardless of whether the driver for facility construction is one customer or many. This is consistent with a plain reading of the phrase "costs and expenses associated with capital **related to the owner's investment in the electric utility** [emphasis added]" in Section 122(1)(a), which requires the owner's investment to be made in respect of its own utility to be eligible for a return. In this context, a DFO CIAC is made in respect of a

68 Exhibit 29006-X0056, ATCO Electric evidence, PDF pages 18-19, paragraphs 47-49.
69 Exhibit 29006-X0064, EDTI evidence, PDF pages 14-15, paragraphs 28-33.
70 Exhibit 29006-X0064, EDTI evidence, PDF pages 17-20, paragraphs 37-45.
71 Exhibit 29006-X0183, ENMAX argument, PDF pages 3-4, paragraphs 4-6; see also PDF pages 6-7, paragraphs 15-24.
72 Exhibit 29006-X0183, ENMAX argument, paragraphs 11, 33-45; Exhibit 29006-X0056, ATCO Electric evidence, paragraph 37.

transmission facility in which the DFO has no ownership interest, rather than an investment in a distribution facility. As such, the DFO is ineligible to earn a return on the CIAC amount.

90. The Commission does not agree that treating a CIAC as an expenditure is contrary to Section 121(2) of the *Electric Utilities Act*, which requires the Commission to ensure that a tariff is just and reasonable and "not unduly preferential, arbitrarily or unjustly discriminatory or inconsistent with or in contravention of this or any other enactment or any law." As explained above, the requirement for a utility tariff to provide that utility with the reasonable opportunity to earn a return relates only to the costs and expenses associated with capital related to the owner's investment in its own electric utility. The legislation does not require either a TFO or DFO tariff to provide an opportunity to earn a return on CIAC amounts contributed by a DFO towards a transmission project, because these CIACs are not a TFO investment in its transmission facility, nor are they a DFO investment in the DFO's distribution facility.

91. Further, Section 121(2) must be considered together with Section 121(3) of the *Electric Utilities Act*, which states that "a tariff that provides incentives for efficiency is not unjust or unreasonable simply because it provides those incentives." It is also instructive to consider the stated purposes of the *Electric Utilities Act*, which includes, "to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency."

92. The intention of the AESO customer contribution policy approved as part of the ISO tariff has consistently been to send efficient price signals to incent end-use customers to choose the most economical connection solution when considering alternative siting options. In Decision 26061-D01-2021, the Commission found that permitting DFOs to earn a return on a CIAC in DFO tariffs distorted, muted or removed these price signals and, most notably, converted what were intended to be price signals, to revenue signals to DFOs. In a scenario where both the transmitter and the distributor are provided the opportunity to earn a return on transmission investment, there exists an inherent incentive for transmission solutions over distribution or other, potentially more efficient, cost-effective and system optimized solutions.[73] The Commission determined that not permitting DFOs to earn a return on a CIAC paid to the AESO would help to alleviate these concerns and incent the efficiencies the AESO customer contribution policy was intended to achieve.[74] A customer contribution policy that attempts to incent efficiencies in this manner does not contravene Section 121(2) or the purposes of the *Electric Utilities Act* and is expressly permitted under Section 121(3).

93. While a DFO is not eligible to earn a return on a CIAC paid in respect of a transmission facility, a DFO may recover the CIAC as an expense under sections 122(1)(b), (c) or (h). This position was adopted by the UCA, which stated that there is nothing in the *Electric Utilities Act* that prevents a DFO from recovering a CIAC through its tariff as an O&M expenditure.[75] In the Commission's view, because a DFO pays a CIAC pursuant to its legislative duty to provide distribution utility services, and because a CIAC is required to be paid to the AESO to secure transmission access from another utility – by way of a SASR or system access **service** request, CIACs are more akin to a payment for a service than they are to an investment in a capital asset. The service is access to the bulk electric system secured through the AESO and provided by a

[73] Decision 26061-D01-2021, paragraphs 125-128.
[74] Decision 26061-D01-2021, paragraphs 132-133.
[75] Exhibit 29006-X0177, UCA argument, paragraphs 13-22.

specific TFO. The CIAC is therefore most appropriately construed as an operational expense incurred by the DFO. As argued by the AESO, a CIAC is a component of the rates a DFO must pay as a customer of the AESO in order gain access to the transmission system and thus have sufficient electricity to distribute by means of the DFO's electric distribution system.[76] The DFO may therefore include a CIAC as an expense under sections 122(1)(b), (c) or (h) in its distribution tariff prepared under Section 102(1) of the *Electric Utilities Act*, which allows the DFO to recover "the prudent costs of providing electric distribution service by means of the owner's electric distribution system."

94. As the UCA stated, sections 122(1)(b) through (h) are broadly worded and do not reference the concepts of "investment" or "capital" at all.[77] Section 122(1)(b) allows a DFO to recover "other prudent costs and expenses associated with … transmission, exchange or distribution of electricity or associated with the Independent System Operator if, in the Commission's opinion, they are applicable to the electric utility." In the Commission's view, a CIAC is a cost for a service paid by the DFO that is associated with transmission. Similarly, sections 122(1)(c) and (h) also are applicable due to the general nature of the type of prudent costs a DFO is allowed to recover. As a result, the Commission agrees that if a DFO is required to pay CIAC to a TFO as part of the AESO policy, such a payment, if determined to be prudent by the Commission, would fall under sections 122(1)(b), (c) or (h). The DFO therefore has a reasonable opportunity to recover the associated expense, provided it is prudently incurred.

6.5 How should CIACs be treated?

95. Having determined that neither TFOs nor DFOs are eligible to earn a return on a CIAC, the Commission turns to how a CIAC should be treated going forward, and how a CIAC previously included in DFO rate base should be treated. In his opinion evidence for the CCA, Dustin Madsen of Emrydia Consulting Corporation recommended that all contributions made by a DFO to a TFO should be expensed in the year that those contributions are paid to ensure that the costs are borne by the party that caused them. D. Madsen explained that, unless there is a change to the ISO tariff or a DFO's distribution tariff that permits the recovery of incremental costs from specific customers, the immediate expensing of costs to all distribution customers remains the best alternative available to all parties at this time.[78]

96. ENMAX argued against expensing customer contributions based on regulatory principles of cost-causation and intergenerational equity. It submitted that distribution-driven transmission projects are primarily point of delivery (POD) substations, the costs of which should be recovered over the decades of lifespan of the facility to ensure the customers that use the asset pay for it, and that one generation of customers does not pay the cost of providing utility service to another generation.[79]

97. ATCO Electric submitted that a CIAC that is not attributable to an identifiable customer should be treated as a capital amount because it is a long-term investment in assets that are used to provide utility service. It further submitted that "the capital invested in general system upgrades should be collected from the end-use customer over the life of the asset, consistent with

76 Exhibit 29006-X0186, AESO argument, paragraphs 53-58.
77 Exhibit 29006-X0177, UCA argument, PDF page 4, paragraphs 13-14.
78 Exhibit 29006-X0054, CCA evidence, PDF page 15.
79 Exhibit 29006-X0183, ENMAX argument, PDF pages 8-9, paragraph 35.

the treatment for an investment either through the transmission or distribution rates."[80] It argued that "expensing these goods in year one and collecting the cost from DFO end-use customers in the same year, without an identifiable customer, would make customers involuntary sources of funding of utility assets. This is impermissible in ATCO Electric's view and could be viewed as double-dipping given that the DFOs' end-use customers receive their economic discipline signal via the DFOs' investment levels at the time of connection."[81]

98. The Commission finds that it is appropriate for the DFO to expense a CIAC in the year that it occurs. Since CIAC payments are not added to the DFO's rate base, and no return is earned on them, treating them as an operating expense ensures that costs are recognized in the period in which they are incurred. This approach maintains transparency by directly reflecting the financial outlay in customer rates without creating a regulatory asset that would otherwise remain on the DFO's books without an associated return.

99. Additionally, expensing a CIAC aligns with the underlying principle that these payments do not represent an investment in utility-owned assets, but rather a payment to secure access to transmission facilities owned by another entity. Following its reconsideration of the treatment of a CIAC in this decision, the Commission also continues to be of the view that immediate expensing of CIACs best aligns with broader cost-responsibility considerations, by helping to ensure that customers who benefit from access to the transmission system contribute to the costs of that access up front, rather than deferring those costs to future customer cohorts who may or may not derive comparable benefits over the asset's lifespan.

100. In its rebuttal evidence, EPCOR stated that if a CIAC is required to be expensed, there is a risk of rate shock occurring where many or a single large CIAC is required.[82] In its rebuttal evidence, ATCO Electric expressed similar concerns about rate volatility.[83]

101. The Commission shares the concerns expressed by EPCOR and ATCO Electric with respect to rate shock. Accordingly, it may be necessary to establish a deferral account that is amortized over a longer period if expensing a CIAC in the year it occurs will cause rate shock. This finding is consistent with the Commission determination of the regulatory accounting treatment for AESO contributions in Decision 26521-D01-2021. Similar to the findings in that decision, the Commission finds that the DFO should provide an annual forecast for the CIAC using the Y factor,[84] which would be subject to a true-up in a subsequent annual rate filing. Also, the Commission finds that DFOs should have the ability to recommend an amortization period on a case-by-case basis that considers a DFO's unique circumstances, such as impact to customer rates and the SASR that led to the CIAC in the first instance. This approach is also consistent with the Commission's findings in Decision 26521-D01-2021, where the Commission determined that contributions represent significant, sometimes lumpy, costs that, if expensed immediately without mitigation, risk creating undue rate volatility and customer bill impacts. The deferral account and amortization approach approved in Decision 26521-D01-2021

80 Exhibit 29006-X0056, ATCO Electric evidence, PDF pages 19-20, paragraphs 50-51.
81 Exhibit 29006-X0056, ATCO Electric evidence, PDF page 16, paragraph 37.
82 Exhibit 29006-X0161, EDTI rebuttal evidence, PDF pages 9-10, paragraph 24.
83 Exhibit 29006-X0159, ATCO Electric rebuttal evidence, PDF page 3, paragraph 5.
84 The Y factor is a component of the PBR plan that allows for an adjustment for certain flow-through costs that are recovered by a DFO from, or refunded, to customers directly (see Decision 27388-D01-2023: 2024-2028 Performance-Based Regulation Plan for Alberta Electric and Gas Distribution Utilities, Proceeding 27388, October 4, 2023, Appendix 5, PDF page 118).

effectively balanced cost-causation principles with rate stability. In the current case, the Commission finds that extending this treatment similarly ensures that contributions are recovered in a just, reasonable and predictable manner that is, to the extent possible, aligned with customers' use of the system over time.

102. Because the Commission has found that TFOs are not eligible to earn a return on a DFO CIAC, it is not necessary for the Commission to determine whether AltaLink's proposal to transfer rate base from DFOs to TFOs beginning January 1, 2018, constitutes impermissible retroactive or retrospective ratemaking. The Commission notes that the Court of Appeal of Alberta did not expressly remit this issue for reconsideration in its decision; however, AltaLink raised the proposal again in this proceeding as part of its submissions on appropriate remedies flowing from the Commission's ultimate findings on the CIAC treatment. In any event, on a practical note, the Commission is of the view that applying anything other than a prospective approach to the treatment of a CIAC, including any rate base transfer, would be difficult to administer, harm customers, and is not in the public interest. Parties to this proceeding stated that AltaLink's rate base transfer proposal would "require revisiting and revising eight years of customer rates"[85] and would be an "administrative nightmare."[86] The Commission therefore finds that any rate base transfer is inconsistent with its determinations herein.

103. With respect to DFOs expensing rather than rate basing CIACs, the Commission notes that this decision does not result in treatment of CIACs that is different from that resulting from Decision 26061-D01-2021. If the treatment of CIACs was to be retroactively implemented by unwinding historical DFO rates to record CIACs that were included in DFO rate base for the purpose of treating these past, partially depreciated CIACs as expenses, this would create substantial administrative burden, undermine the certainty and finality of utility tariffs and customer rates, and therefore risk harm to utilities and customers. Specifically, unwinding the treatment of DFO CIACs would require revisiting approved DFO rates to record CIACs as expenses from January 1, 2018, through April 23, 2021. This would then require that the 2023 rate base used in the cost-of-service rebasing proceedings for electric DFOs be adjusted to remove the CIACs that were recorded in rate base from January 1, 2018, to April 23, 2021. This would, in turn, impact the rates approved in the 2023 cost-of-service rebasing decisions. Because the 2023 rates served as the going-in rates for the PBR3 term, this adjustment would also impact the approved 2024 and 2025 rates. In addition to the significant administrative burden and accounting complexity caused by unwinding approved rates, there is also the risk that DFO customers would experience substantial bill increases as CIACs for three years would be removed from the DFO's rate base and expensed in a single year (rather than being recovered over the life of the asset).

104. Due to the complexity and potentially significant costs to utilities and customers of unwinding previously approved rates, including the risk of negative customer bill impacts, the Commission maintains its finding from Decision 26061-D01-2021 that the tariff recovery mechanism in effect for a CIAC made prior to the release of that decision shall continue to be in effect until the CIAC costs currently in DFO rate base are fully depreciated.[87] Throughout the proceedings where the Commission has contemplated this issue, it has sought to cause the least amount of harm to customers while maintaining the intent and objectives of the contribution

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[85] Exhibit 29006-X0153, Fortis rebuttal evidence, paragraph 18.
[86] Transcript, Volume 1, page 72, line 18.
[87] Decision 26061-D01-2021, paragraph 142.

policy, including the evolving utility environment, and most importantly, aligning with the statutory scheme. The Commission finds that adopting a go-forward approach appropriately balances the need to ensure alignment with the legislation and to protect utilities and customers from harm driven by a retroactive unwinding of the treatment of CIACs prior to Decision 26061-D01-2021; addressing the treatment of CIACs prospectively is therefore in the public interest.

7 Policy objectives supporting CIAC

105. Having determined that the AESO is permitted to establish a customer contribution policy that requires DFOs to make CIACs in relation to the construction or upgrade of transmission facilities required as a result of a SASR and that neither the DFO nor TFO is eligible to earn a return on CIACs under the existing legislation, the Commission now provides some comments on the policy rationale behind a CIAC. The Commission concludes that, from both legislative and policy perspectives, it is not in the public interest for either a DFO or a TFO to earn a return on customer contributions.

106. The Commission continues to support the principles it has repeatedly identified as the foundation for a customer contribution policy, the most important of which is the establishment of an effective price signal for the siting of connection facilities. In the Commission’s view, the AESO’s customer contribution policy should exert an economic discipline on siting decisions by sending price signals, reflective of the AESO’s economics, to connecting customers. Further, customer contributions are intended to balance the economic effects of connecting a new customer between existing customers and the new customer.

107. As explained previously in this decision, a CIAC is required from a connecting customer when the construction and associated costs of transmission facilities required to provide SAS exceed the amount that the AESO determines should be recoverable from all transmission customers. Because connecting customers are required to bear a portion of transmission project costs by way of a CIAC, as determined on a project-specific basis by the AESO, they are incented to (i) request the most economical connection facilities and service requirements that meet their needs; and (ii) take into account proximity to the existing or planned transmission system when considering alternative locations for their load to be served. In turn, these contribution amounts reduce the investment required to be made by the TFO (with the TFO and connecting customer each paying their portion of project costs as determined by the AESO contribution calculations and the TFO receiving a return of, and on, its actual investment). As a result, existing customers do not unduly subsidize the construction of new facilities.

108. In Decision 26061-D01-2021, the Commission found that the previous long-established policy failed to provide effective price signals intended to incent end-use customers to choose the most economical connection solution. The Commission found that it is in the public interest and necessary to (i) remove the profit element (i.e., return) earned on any AESO contribution payments DFOs make; and (ii) to the extent possible, flow these contributions through to the DFO customer that is choosing between a transmission and distribution connection. This resulted in the current policy of DFOs being required to account for the contribution payments as an expense item, instead of including them in rate base, and thus not being able to earn a return on a CIAC.

109. The Commission acknowledges the submissions of ENMAX that where a SASR is required in response to generalized load increases, the price signal related to a customer contribution policy becomes less pronounced. There is, however, merit to the existing customer contribution policy as it addresses important policy objectives. Further, the Commission agrees with the UCA that there is a superior price signal if DFOs are required to treat CIACs as expenses rather than capital amounts,[88] and is of the same view as the AESO, that treating CIACs as expenditures provides the strongest and least-distortionary price signal to end-users.[89]

110. By first removing the profit element associated with the previous treatment of DFO CIACs, the conflict between the incentive for a DFO to increase its rate base and the requirement to consider the least-cost technical solution to meet customer connection requirements is removed. Second, by flowing the AESO customer contributions, where possible, to the specific customers that require the connection and therefore cause incremental system costs to be incurred, the price signal is imposed on the customer by requiring the customer to pay a portion of the costs. Even where a specific customer or set of customers cannot be identified, as with generalized load growth, it is important that the DFO's customers pay the CIAC portion of the costs they cause to the system. This cost or price signal will impact decisions the DFO makes on behalf of its customers both with respect to siting and to the nature and size of the facilities required to meet a customer's needs or the needs arising from generalized load growth.

111. Under the previous policy, there was a general incentive for DFOs to increase the amount of AESO customer contributions because the DFO was eligible to recover the CIAC and earn a return thereon. The DFO was therefore able to grow its rate base by requesting system expansion and socializing the costs it caused. This incentive was exacerbated by the fact that a DFO has a degree of influence, through SASRs, on transmission project requirements, associated costs, and therefore AESO customer contribution amounts. As a result, DFOs were able to pass the costs of a CIAC on to distribution customers, and the recovery of an AESO customer contribution was indistinguishable from the way in which a DFO recovers its capital investments in its own distribution assets and put the DFO's contributions under the same incentives. To that effect, the Commission finds that the previous policy provided an opportunity for a DFO to earn a regulated return on an expenditure that carries none of the risk of asset ownership. As the UCA stated, transmission assets paid for by a CIAC are not part of the DFO's electric utility and are not related to any capital assets owned or operated by the DFO.[90]

112. With respect to a TFO, under the legislation they are not eligible to earn a return on a DFO-paid CIAC. Allowing a TFO to earn a return on AESO customer contributions, whether paid by a DFO or, as proposed by AltaLink, paid or repaid by a TFO, would socialize the full cost of the transmission facility and remove any economic discipline or attribution of cost-causation offered by a DFO CIAC. The consequences of this include nullifying the price signal to customers that is intended to bring economic discipline to the costs, siting and choice of new facilities, as well as removing incentives for the utility to seek out non-transmission solutions or ensure that any solution is cost-effective. This, in turn, risks potential transmission overbuild and unnecessary costs to customers. Consequently, the policy considerations underlying DFO CIACs

[88] Exhibit 29006-X0177, UCA written argument, paragraphs 11-12.
[89] Exhibit 29006-X0186, AESO written argument, paragraph 77.
[90] Exhibit 29006-X0177, UCA written argument, paragraphs 7-10.

support the Commission's findings resulting from the legislative analysis that it is not in the public interest for either a DFO or a TFO to earn a return on customer contributions.

8 Considerations for further policy refinement

113. The Commission has, in this decision, reconsidered the central questions remitted to it by the Court of Appeal of Alberta regarding the treatment of CIACs under Alberta's legislative and regulatory framework. However, the Commission considers it important to offer broader observations on the usefulness of CIACs, particularly DFO to TFO contributions, as a continuing regulatory instrument. These observations are made in light of the evidence presented by the parties in this proceeding and the Commission's evolving understanding of the challenges and trade-offs embedded in Alberta's current contribution framework.

114. The DFO to TFO contribution mechanism originated to reflect principles of cost causation and to mitigate the full socialization of transmission build-out costs. While that rationale remains valid in principle, parties including ATCO Electric and ENMAX emphasized that this mechanism is increasingly difficult to justify in practice, particularly as distribution-driven transmission projects are often triggered by general load growth rather than identifiable customers. In such cases, these parties argued that the "point of contribution" becomes conceptual rather than concrete, and any resulting cost signal is unlikely to reach a specific party whose behaviour it might influence.

115. Fortis acknowledged the original rationale for the AESO's customer contribution policy but cautioned that where contributions are not directly tied to a customer decision, the signal is weakened or altogether lost. The AESO itself noted that while contributions are useful for preserving economic discipline, a comprehensive policy review is needed to determine whether they still function as effective pricing tools across different project types.

116. ATCO Electric submitted that the current customer contribution policy no longer meets its intended purposes, and that system needs and cost allocation could be adequately managed through the NID and facility approval processes. The Commission does not agree that these processes alone provide sufficient safeguards to ensure economic discipline or fair cost allocation.

117. The NID and facility approval processes primarily serve to establish the technical need and prudence of proposed transmission projects, assessing whether the proposed facilities are necessary to maintain system reliability and meet forecasted load growth. However, these processes do not contain mechanisms to allocate costs directly to the parties whose requests or actions drive the need for investment. Without a contribution policy, there is no structural requirement for those benefiting from a connection or causing incremental system costs to bear any share of those costs, leading to broader socialization of expenses across the entire provincial customer base.

118. Moreover, the absence of a CIAC framework would remove an important economic price signal. While it is true, as ENMAX argued, that price signals may be weaker in the context of DFO driven projects intended to address general load growth on a particular distribution system, the Commission finds that eliminating DFO CIAC entirely would exacerbate incentives for utilities to pursue capital-intensive, transmission-biased solutions without adequate consideration

of alternative, lower-cost options, including non-wires solutions. ENMAX and Fortis further noted that eliminating DFO CIACs entirely would result in the entire cost of some system expansions, particularly for POD substations, to be absorbed into the transmission rate base, even when triggered by load from one distribution service area. Properly designed, a customer contribution policy should ensure that utilities and their customers remain sensitive to the costs caused by their connection or expansion decisions, maintain financial accountability (i.e., considering who should pay the costs caused), and create system optimization incentives that seek out right-sized and cost-effective solutions; these are not embedded within the current technical approval focus of the NID and the facility approval processes. In both types of proceedings, the Commission is reviewing a transmission solution, which refers to the construction or upgrade of physical transmission assets, rather than demand-side, market-based, non-wires alternatives that might otherwise address system needs in a more cost-effective manner.

119. Further, the Commission has limited ability to assess price signals and their effectiveness in a NID proceeding or its related facility approval proceeding. For example, in a NID proceeding, the AESO submits a NID that describes the need for new transmission and proposes a transmission solution to meet that need. However, the Commission is limited in its ability to assess transmission solutions in NID applications because Section 38(e) of the *Transmission Regulation* creates a legislative presumption of correctness. Under Section 38(e), the Commission must consider the AESO's assessment of need to be correct unless the application is contested by an interested person, and that interested person satisfies the Commission that the AESO's assessment of need is technically deficient, or approval of the NID would not be in the public interest. Additionally, because Section 29 of the *Electric Utilities Act* requires the AESO to provide a market participant who makes a SASR with a "reasonable opportunity" to exchange electric energy and ancillary services, the AESO is likely to submit a NID to the Commission under Section 34(1) of the *Electric Utilities Act* in reliance on a TFO's or DFO's assessment of need. In the separate but related facility application proceeding, the Commission does not assess need. Rather, its considerations are focused on the public interest, often in respect of route alternatives proposed by the TFO for new transmission infrastructure. These limitations on the NID and facility approval processes have the potential to lead to a scheme where, in the absence of a contribution policy, neither the AESO nor the Commission have the tools to sufficiently assess the need associated with new transmission infrastructure or the drivers of same. This concern can be compounded where the DFOs seeking to meet incremental customer demand and TFOs that are mandated to construct and operate transmission facilities are both incented to seek transmission solutions if both are eligible to earn a return on amounts spent towards a transmission project.

120. Therefore, while NID and facility approvals remain critical processes for confirming system need and project prudence, the Commission concludes that they must operate alongside a well-designed customer contribution policy to ensure cost responsibility aligns with cost causation, discourage inefficient investments, encourage system optimization, and maintain fairness for all customers within Alberta's electricity system. Future contribution policies should reflect broader system planning objectives, including fairness, investment/economic discipline and alignment of risk with ownership and control.

121. The Commission reiterates the importance of preserving the ratemaking principle that those who cause costs should bear them. A contribution framework continues to offer value by

preventing undue cross-subsidization, particularly when one customer or class drives incremental investment. The Commission notes that neither a TFO nor a DFO will have the opportunity to earn a return on CIACs under the current policy, the legality of which has been affirmed in this decision. This aligns with the statutory framework and removes a misaligned incentive while preserving the economic logic of requiring contributions where cost causation can be meaningfully identified. As discussed earlier in this decision, parties such as Fortis, ENMAX and ATCO Electric raised concerns that CIACs not directly tied to identifiable customer decisions may weaken price signals and undermine their intended purpose. The Commission believes these concerns can be addressed through policy refinement, not wholesale abandonment. Contribution policies, appropriately structured, remain an important tool for encouraging system optimization, discouraging excessive or unnecessary capital investment and aligning system costs with system usage.

122. Several parties, including ATCO Electric and the AESO, proposed frameworks or pathways for updating the contribution policy. ATCO Electric suggested that in some cases, the AESO could recover CIACs from DFOs and assign cost recovery as a matter of AESO-tariff design, while preserving TFO accountability and compliance with the statutory framework. Fortis and the AESO both emphasized the importance of aligning the policy with traditional no-cost capital principles and avoiding any mechanism that leads to earning a return on customer-contributed assets.

123. Building on these observations, and in light of the broader record in this proceeding, the Commission encourages the AESO to consider the following as part of its next review:

- Whether the current CIAC framework continues to align with system realities;
- How contribution policies might better support the evaluation and use of non-wires alternatives and system optimization;
- The extent to which cost causation and accountability can be preserved under generalized load growth scenarios; and,
- Whether policy clarity could be improved by simplifying or standardizing treatment across project types.

124. The Commission concludes that the CIAC policy, as it relates to DFO contributions towards transmission construction or upgrades, should not be discontinued outright, but its rationale and implementation must evolve. Future iterations of the policy should focus less on theoretical price signals and more on practical cost accountability, equity across customer classes, and incentives that support cost-effective, economic and optimized system development. If done properly, CIACs can still play a constructive role – provided they are transparent, proportional and structured to reinforce, not distort, the economic signals and regulatory expectations that underpin Alberta's utility framework.

9 Order

125. It is hereby ordered that:

(1) The AESO customer contribution policy, as currently set out in the ISO tariff, remains in effect, pending the Commission's review and approval of any future

amendments brought forward by the AESO in accordance with its upcoming policy review.

(2) DFOs shall continue to treat CIACs paid to the AESO as expenses in the year incurred, unless otherwise directed by the Commission in a future proceeding.

(3) DFOs continue to be permitted to utilize a deferral account mechanism to amortize CIAC payments over a longer period on a case-by-case basis, where immediate expensing would result in undue rate volatility, subject to Commission approval in subsequent rate filings.

(4) The regulatory accounting treatment of CIAC made prior to April 23, 2021, as set out in Decision 26061-D01-2021, shall continue to apply until such costs are fully depreciated.

Dated on July 22, 2025.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Vice-Chair

(original signed by)

Renée Marx
Commission Member

(original signed by)

Michael Arthur
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) **Company name of counsel or representative**
AltaLink Management Ltd. (AltaLink) Borden Ladner Gervais LLP
ATCO Electric Ltd. (ATCO Electric) Bennett Jones LLP
Consumers' Coalition of Alberta (CCA)
ENMAX Power Corporation (ENMAX)
EPCOR Distribution & Transmission Inc. (EPCOR) Borden Ladner Gervais LLP
FortisAlberta Inc. (Fortis) Jensen Shawa Solomon Duguid Hawkes LLP
Independent System Operator/Alberta Electric System Operator (ISO or AESO) Norton Rose Fulbright LLP
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP M. Good R. Stout
Alberta Federation of Rural Electrification Associations (AFREA) Russ Bell & Associates Inc. Shores Jardine LLP
TransAlta Corporation
Lionstooth Energy

Alberta Utilities Commission

Commission panel
- K. Sebalj, Vice-Chair
- R. Marx, Commission Member
- M. Arthur, Commission Member

Commission staff
- R. Watson (Commission counsel)
- N. Fitz-Simon (Commission counsel)
- A. Jukov
- S. Sharma
- A. Spurrell
- M. Logan