Q. Mr. Coyne (page 31) states that Canadian regulators have "accepted" the use of US data and proxy groups to estimate the allowed ROE for Canadian firms. Please provide statements from Canadian decisions that have used US estimates *without any statement of the need for adjustments or judgment* in determining the fair ROE for a Canadian regulated utility. That is, while this Board has consistently downward adjusted ROE evidence from US utilities has any Board explicitly stated that no adjustment is needed.

A. One example is the Alberta Utilities Commission's ("AUC") 2018 Generic Cost of Capital ("GCOC") decision which found the use of both U.S. and Canadian proxy groups to be reasonable:

> *274. The Commission has reviewed the selection process followed by Dr. Cleary, Dr. Villadsen, Mr. Coyne and Mr. Hevert in arriving at each of their proxy groups. With the exception of Dr. Villadsen's U.S. pipeline proxy group and its subsample group, the Commission considers that the selection processes resulted in reasonable proxy groups for application of the ROE estimation models. Regarding Dr. Villadsen's U.S. water utility proxy group, the Commission finds that there is insufficient evidence to exclude this group, beyond Dr. Cleary's submission that he "simply did not feel it was a valid comparator sample."*[378]
>
> *275. The Commission retains its view from the 2016 GCOC decision that although returns awarded by U.S. regulators cannot be used directly in determining a fair return for Alberta utilities, it is reasonable to consider the U.S. market returns data given the globalization of the world economy and integration of North American capital markets.*[379] *Accordingly, the Commission will consider the market-based results from both the Canadian and U.S. proxy groups in this decision, with the exception of the results from Dr. Villadsen's U.S. pipeline proxy group and its subsample group. Even though the Commission agrees that the proxy selection processes resulted in reasonable proxy groups for application in the ROE estimation models, the Commission is mindful of the "dirty window" problem, given that none of the affected utilities raise capital directly in the equity market. Accordingly, a significant amount of judgment by both witnesses and the Commission must be applied when interpreting this data to establish the ROE required by investors in the affected utilities.*

In this Decision, the AUC assessed the results from each of these proxy groups presented by the experts, and did not exclude proxy groups or their results based on differences between the U.S. and Canada.

Another example is found in the Ontario Energy Board's 2009 Report of the Board on the Cost of Capital for Ontario's Regulated Utilities which established the framework for setting ROEs for all electric and gas utilities and remains in place today. In the Board's Report, it found (pages 21-23):

> *By establishing a cost of capital, and an ROE in particular, that is comparable to the return available from the application of invested capital to other enterprises of like risk, the regulator removes a significant barrier that impedes the flow of capital into or out of, a rate regulated entity. The net result is that the regulator is able, as accurately as possible, to determine the opportunity cost of capital for monies invested in utility works, with the ultimate objective being to facilitate efficient investment in the sector.*
>
> *There are a number of specific issues relating to the comparable investment standard that the Board considers are relevant in the context of this cost of capital policy.*
>
> *First, "like" does not mean the "same". The comparable investment standard requires empirical analysis to determine the similarities and differences between rate-regulated entities. It does not require that those entities be "the same".*
>
> *Second, there was a general presumption held by participants representing ratepayer groups in the consultation that Canadian and U.S. utilities are not comparators, due to differences in the "time value of money, the risk value of money and the tax value of money." In other words, because of these differences, Canadian and U.S. utilities cannot be comparators. The Board disagrees and is of the view that they are indeed comparable, and that only an analytical framework in which to apply judgment and a system of weighting are needed. The analyses of Concentric Energy Advisors and Kathy McShane of Foster Associates Inc. are particularly relevant in this regard, and substantially advance the issue of establishing comparability to meet the requirements of the FRS. Further, the Board notes that in the consultation session on October 6, 2009, Dr. Booth stated that it is "absolutely possible" to form a sample from a risky universe that is low risk and compare it to the universe or the population of Canadian utilities. All participants agreed.*
>
> *The Board notes that Concentric did not rely on the entire universe of U.S. utilities for its comparative analysis. Rather, Concentric carefully selected comparable companies based on a series of transparent financial metrics, and the Board is of the view that this approach has considerable merit. Commenting on Concentric's analysis, Union Gas noted that no one else*

> *in the consultation performed this kind of detailed analysis of U.S. comparators. The use of a principled, analytical, and transparent approach to determine a low risk comparator group from a riskier universe for the purpose of informing the Board's judgment was supported by various participants in the consultation.*
>
> *…The Board is of the view that the U.S. is a relevant source for comparable data. The Board often looks to the regulatory policies of State and Federal agencies in the United States for guidance on regulatory issues in the province of Ontario. For example, in recent consultations, the Board has been informed by U.S. regulatory policies relating to low income customer concerns, transmission cost connection responsibility for renewable generation, and productivity factors for 3rd generation incentive ratemaking.*
>
> *Finally, the Board agrees with Enbridge that, while it is possible to conduct DCF and CAPM analyses on publicly-traded Canadian utility holding companies of comparable risk, there are relatively few of these companies. As a result, the Board concludes that North American gas and electric utilities provide a relevant and objective source of data for comparison.*

In its Trans Québec & Maritimes Pipeline Inc. ("TQM") Decision, the National Energy Board ("NEB") (now the Canadian Energy Regulator) also found that U.S. market returns are relevant to the cost of capital for Canadian firms, and that the regulatory regimes in Canada and the U.S. are sufficiently similar as to justify comparison. The NEB appears to view U.S. market returns as valuable information in establishing the cost of capital for Canadian utilities. Moreover, the NEB found that Canadian utilities are competing for capital in global financial markets that are increasingly integrated. The NEB recognized that it is no longer possible to view Canada as insulated from the remainder of the investing world, and that doing so would be detrimental to the ability of Canadian utilities to compete for capital.[1] Importantly, the NEB also found that the regulatory regimes in the U.S. and Canada were sufficiently similar as to justify comparison between utilities in the two countries, stating:

> *The Board is not persuaded that the U.S. regulatory system exposes utilities to notable risks of major losses due either to unusual events or cost disallowances. The Board views the losses and disallowances experienced by U.S. regulated entities as a result of the restructuring that took place to terminate the merchant gas function of pipelines, as well as some other circumstances such as the Duquesne nuclear build, to be, to a*

[1] National Energy Board, Reasons for Decision, TQM RH-1-2008 (March 2009), at 66-72.

> *large extent, unique events. The Board also finds that such instances are not likely to weigh significantly in investors' perceptions today, and would thus have little or no impact on cost of capital.*[2]

Finally, the British Columbia Utilities Commission ("BCUC") has accepted the use of U.S. data, stating:

> *In addition, the Commission Panel continues to be prepared to accept the use of historical and forecast data of U.S. utilities when applied: as a check to Canadian data, as a substitute for Canadian data when Canadian data do not exist in significant quantity or quality, or as a supplement to Canadian data when Canadian data gives unreliable results. Given the paucity of relevant Canadian data, the Commission Panel considers that natural gas distribution companies operating in the US have the potential to act as a useful proxy in determining TGI's capital structure, ROE, and credit metrics.*[3]

The BCUC affirmed this position in its 2013 Generic Cost of Capital Decision:

> *The Commission Panel reaffirms the 2009 Decision determination on when to use historical and forecast data for US utilities. Canadian utilities need to be able to compete in a global marketplace and be allowed a return for them to do so. In addition, the Panel accepts that there continues to be limited Canadian data upon which to rely and considers that there may be times when natural gas companies operating within the US may prove to be a useful proxy in determining the cost of capital. Accordingly, we have determined that it is appropriate to continue to accept the use of historical and forecast data for US utilities and securities as outlined in the 2006 Decision and again in the 2009 Decision.*

And,

> *[I]n the view of the Commission Panel, the use of US data must be considered on a case by case basis and weighed with consideration to the sample being relied upon and any jurisdictional differences which may exist.*[4]

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[2] *Ibid.*

[3] British Columbia Utilities Commission, In the Matter of Terasen Gas Inc., Terasen Gas (Vancouver Island) Inc., Terasen Gas (Whistler) Inc., Return on Equity and Capital Structure, Decision G-158-09, December 16, 2009, at 16.

[4] British Columbia Utilities Commission, Generic Cost of Capital Proceeding (Stage I), Decision, May 10, 2013, at 20.

The BCUC made an explicit adjustment to the U.S. return data in its 2009 decision involving Terasen Gas, but has not made explicit adjustments to U.S. data in more recent cost of capital decisions.