



**ATCO Utilities  
(ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.)**

**2013 Pension Application**

**January 15, 2015**

**Alberta Utilities Commission**

Decision 2954-D01-2015

ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.)

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Proceeding 2954

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## **1 Introduction**

1. In this decision, the Alberta Utilities Commission must decide whether to approve the ATCO Electric Ltd. (ATCO Electric), ATCO Gas, and ATCO Pipelines,<sup>1</sup> (collectively, the ATCO Utilities) pension costs for 2013. The ATCO Utilities filed an application (the application) requesting approval of the 2013 pension application on December 6, 2013. In accordance with Decision 2011-391,<sup>2</sup> the ATCO Utilities filed an updated Mercer (Canada) Limited (Mercer) actuarial valuation for pension funding as of December 31, 2012 (2012 valuation report) and supporting evidence to recover their full pension costs as identified in the 2012 valuation report. The ATCO Utilities are participants in the “Retirement Plan for Employees of Canadian Utilities Limited and Participating Companies” (pension plan), which is administered by Canadian Utilities Limited (Canadian Utilities).

2. On July 31, 2013, Mercer filed a valuation report on the actuarial valuation of the pension plan with the Alberta Superintendent of Pensions on behalf of Canadian Utilities. The valuation report, filed for funding purposes, was prepared by Mercer for the use of the pension plan administrator to meet its requirements under pension plan and income tax legislation. The valuation was prepared to determine the funded status of the pension plan on a going-concern (unfunded liability) and hypothetical wind-up valuation (solvency basis) at December 31, 2012.

3. The valuation also determined the contributions required by law between 2013 and 2015, or until the next valuation report is filed. According to the 2012 valuation report, the pension plan had a deficiency funding requirement or hypothetical valuation wind-up<sup>3</sup> deficit of \$248.8 million, with annual estimated current service costs of \$35,571,400 and annual minimum special payments of \$28,725,600 (including non-regulated affiliated companies) until December 31, 2024.<sup>4</sup> Canadian Utilities elected to fund the deficiency over 10 years as permitted by temporary solvency funding relief provisions and specified in the *Employment Pension Plans (Partial Exemption and Consolidation of Solvency Deficiencies Amendment Regulation, AR 161/2012*.

4. In the application, the ATCO Utilities requested that the 2013 pension costs of \$7.1 million for ATCO Electric -Transmission (AE-Transmission)<sup>5</sup> and \$5.4 million for ATCO

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<sup>1</sup> ATCO Gas and ATCO Pipelines are divisions of ATCO Gas and Pipelines Ltd.

<sup>2</sup> Decision 2011-391: ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.), 2011 Pension Common Matters, Application No. 1606850, Proceeding ID No. 999, September 27, 2011.

<sup>3</sup> Exhibit 2, Appendix 1, Mercer Valuation Report, page 10 - A hypothetical wind-up valuation determines the relationship between the respective values of the Plan’s assets and its liabilities assuming the Plan is wound up and settled on the valuation date, assuming benefits are settled in accordance with the Act and under circumstances producing the maximum wind-up liabilities on the valuation date.

<sup>4</sup> Exhibit 7, Appendix 6, PDF page 3 of 4.

<sup>5</sup> The ATCO Utilities determined that one-third of ATCO Electric’s DB employees belonged to the Transmission division.

Pipelines (AP)<sup>6</sup> be approved, as established by the 2012 valuation report. The 2013 pension costs as requested by the ATCO Utilities are reproduced below:<sup>7</sup>

**Table 1. 2013 pension costs for ATCO Electric – transmission and ATCO Pipelines**

(\$ millions)	Current service	Funding deficit	Total
<b>ATCO Electric - transmission</b>	\$3.9	\$3.1	\$7.0
Corporate cost allocation	\$0.0	\$0.1	\$0.1
<b>Total</b>	<b>\$3.9</b>	<b>\$3.2</b>	<b>\$7.1</b>
<b>ATCO Pipelines</b>	\$3.0	\$2.3	\$5.3
Corporate allocation	\$0.0	\$0.1	\$0.1
<b>Total</b>	<b>\$3.0</b>	<b>\$2.4</b>	<b>\$5.4</b>

5. Based on an analysis of active and retired employees enrolled in the defined benefit (DB) plan, the ATCO Utilities determined that one-third of ATCO Electric's DB employees belonged to the transmission division.<sup>8</sup>

6. Based on the Commission's direction in Decision 2011-391,<sup>9</sup> the impact of limiting the cost-of-living adjustment (COLA) to 50 per cent of the consumer price index (CPI) to a cap of three per cent (50 per cent COLA) for AE-Transmission and ATCO Pipelines results in a total revenue requirement reduction of \$4.9 million. The ATCO Utilities requested cost recovery using a COLA based on 100 per cent of the CPI to a cap of three per cent (100 per cent COLA) as calculated in the 2012 valuation report, and effective January 1, 2013.

## 2 Regulatory process

7. On August 23, 2013, the ATCO Utilities submitted their first 2013 pension application<sup>10</sup> (initial application) to the Commission to recover their pension costs, including a 100 per cent COLA,<sup>11</sup> and to request approval of their previous application. In accordance with Decision 2011-391,<sup>12</sup> the ATCO Utilities filed a Mercer actuarial valuation for pension funding as of December 31, 2012. The ATCO Utilities also filed evidence in support of the recovery of their full pension costs identified in the 2012 valuation report.

<sup>6</sup> Exhibit 1, application, paragraph 15.

<sup>7</sup> Exhibit 1, application, page 7.

<sup>8</sup> Exhibit 1, application, paragraph 15.

<sup>9</sup> Decision 2011-391, paragraph 100.

<sup>10</sup> Application 1609863, Proceeding 2799.

<sup>11</sup> 100 per cent COLA or full COLA is an unreduced inflation or cost of living adjustment based on the CPI (Canadian) that is applied to retiree payouts capped at a maximum of three per cent.

<sup>12</sup> Decision 2011-391: ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.), 2011 Pension Common Matters, Application No. 1606850, Proceeding ID No. 999, September 27, 2011.

8. The Alberta Court of Appeal dismissed the ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd. appeal of Decision 2011-391 on September 23, 2013.<sup>13</sup>

9. In a letter dated September 27, 2013, the Commission advised the ATCO Utilities that it was closing Proceeding 2799 because the initial application was not consistent with the directions in Decision 2011-391. The Commission indicated that both the application and the 2012 valuation report did not contain the information necessary for the Commission to assess compliance with the directions in Decision 2011-391. The ATCO Utilities were directed to refile their 2013 pension application in a manner consistent with the directions in Decision 2011-391.

10. The ATCO Utilities responded,<sup>14</sup> stating that they disagreed with the Commission's decision to close Proceeding 2799 and requested that the Commission, on its own initiative, reinstitute a process to consider the previous application.

11. On October 25, 2013, the Commission confirmed its closing of Proceeding 2799 and advised the ATCO Utilities to add the following to their initial application:

- i. Information about their compliance with paragraph 96 and related directions in Decision 2011-391.
- ii. Further detail on how these directions should apply to the 100 per cent relief requested in the 2013 pension application.

12. The ATCO Utilities filed a new application on December 6, 2013, wherein they provided the above information, Mercer's actuarial valuation report as at December 31, 2012, and evidence from Mercer with respect to total remuneration and current service costs. The application also included the following appendices with additional studies and analysis to support the amounts requested:

- Appendix 1: Report on the Actuarial Valuation for Funding Purposes as at December 31, 2012 Retirement Plan for Employees of Canadian Utilities Limited and Participating Companies – Plan1 ('Valuation Report'). The report was filed with the Alberta Superintendent of Pensions on July 31, 2013 and determines pension contributions required by law from 2013 – 2015.
- Appendix 2: Analysis of Current Service Cost for Entities Comparable in Size to the ATCO Utilities – 2013 Update (the 'Analysis of Current Service Cost Report'). An updated report using the same comparator companies as the 2011 pension Application No. 1606859, Proceeding ID No. 999, in accordance with directions from the AUC contained in Decision 2010-189 (one company was excluded from the study as their plan was wound up in 2011).
- Appendix 3: Expert Testimony of Nelson Tishcoff on Behalf of ATCO Utilities. The ATCO Utilities engaged Nelson Tishcoff of Mercer to provide expert testimony on the Valuation Report and issues that have arisen as a result of the previous pension proceedings.

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<sup>13</sup> *ATCO Gas and Pipelines Ltd. v Alberta (Utilities Commission)*, 2013 ABCA 310.

<sup>14</sup> Decision 2011-391: ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.), 2011 Pension Common Matters, Application No. 1606850, Proceeding ID No. 999, September 27, 2011.

- [Appendix 4](#): Total Remuneration Review ATCO Utilities (the ‘Total Remuneration Review Report’). Mercer conducted a comprehensive review of Total Remuneration for the ATCO Utilities to assist the AUC and interested parties in assessing the pension costs within the AUC’s established context of total remuneration.

- [Appendix 5](#): Expert Testimony of Kenneth Yung on Behalf of ATCO Utilities. The ATCO Utilities engaged Kenneth Yung of Mercer to provide expert testimony on the Total Remuneration Review Report.

- [Appendix 6](#): Mercer Calculation Using COLA at 50% of CPI. Mercer provides the 2013 annual required employer pension contributions as well as a hypothetical calculation based on COLA at 50% of CPI.

13. The Commission issued a notice of application on December 9, 2013. Any person or group with concerns or objections regarding the application, or who wished to support the application, was required to file a statement of intent to participate (SIP) with the Commission by December 23, 2013.

14. The Commission received SIPs from the following parties:

- AltaGas Utilities Inc.
- The City of Calgary
- the Office of the Utilities Consumer Advocate (UCA)
- the Consumers’ Coalition of Alberta (CCA)

15. In a letter dated December 31, 2013, the Commission set a process schedule, which was subsequently revised based on two extension requests from the ATCO Utilities to adequately respond to information requests (IRs).

16. The revised process schedule was set as follows:

<b>Process step</b>	<b>Deadline dates</b>
IR responses from ATCO Utilities	March 3, 2014
Intervener evidence	March 17, 2014
IRs on intervener evidence	March 27, 2014
Intervener responses to IRs	April 7, 2014
Rebuttal evidence	April 17, 2014
Argument	May 1, 2014
Reply argument	May 15, 2014

17. On March 14, 2014, the UCA brought a motion under Section 9 of AUC [Rule 001: Rules of Practice](#) (AUC Rule 001) requesting that the Commission direct the ATCO Utilities to provide better responses to specific IRs. The Commission received submissions from the ATCO



Utilities<sup>15</sup> that full and adequate responses had been provided and that the UCA's motion should be dismissed. The ATCO Utilities submitted that the UCA's motion failed to include, among other things, how the requested information will assist the Commission in evaluating the application; and also brought a motion (confidentiality motion), pursuant to sections 7, 13, and 31.1(c) of AUC Rule 001.

18. On April 9, 2014, the Commission granted the UCA's motion request for further and better responses to UCA-AU-1(b) and UCA-AU-20, and denied the request for UCA-AU-15(d). With respect to UCA-AU-1(b), the Commission agreed with the UCA that the statement of investment policies and procedures (SIPP) information was relevant to the application. Disclosure of the SIPP was therefore required in order to test the investments made under the pension plan and the asset mix associated with the pension plan. The Commission also approved the ATCO Utilities' request for confidential treatment of their evidence pertaining to Canadian Utilities' SIPP.

19. Any party who wished to receive the confidential material was required to sign a confidentiality undertaking and file it on the record of this proceeding by April 11, 2014. The Commission directed the ATCO Utilities to provide the confidential information in UCA-AU-1(b) to parties who signed confidentiality agreements by April 15, 2014; further and better IR responses to UCA-AU-20 were due no later than April 15, 2014; and a revised process schedule was established.

20. On April 10, 2014, the UCA requested that the Commission adjust its schedule to allow IR responses to be filed by June 2, 2014 because one of its experts had a scheduling conflict. The following day, the ATCO Utilities also requested that their IR responses on intervenor evidence be similarly deferred. On April 14, 2014, the Commission granted the extension requests of the UCA and the ATCO Utilities, and revised the process schedule accordingly:

<b>Process step</b>	<b>Deadline dates</b>	<b>Revised deadline dates</b>
Intervener evidence	April 25, 2014	April 25, 2014
IRs on intervenor evidence	May 5, 2014	May 21, 2014
Intervener responses to IRs	May 15, 2014	June 2, 2014
Rebuttal evidence	May 26, 2014	June 12, 2014
Argument	June 9, 2014	June 26, 2014
Reply argument	June 23, 2014	July 10, 2014

21. On May 21, 2014, the ATCO Utilities requested an oral hearing in order to adequately test the positions advanced by the UCA's expert witnesses. The UCA indicated that it was not opposed to an oral hearing should it be deemed necessary, but that it was premature to conclude that an oral hearing was required until the UCA's IR responses and the ATCO Utilities' rebuttal evidence were filed. The CCA supported the UCA's position. The ATCO Utilities disagreed that further information was required before making a decision on the request for an oral hearing. On June 4, 2014, the Commission agreed that it was premature to make a finding on the need for an

<sup>15</sup> Exhibit 31.02, Letter to AUC re UCA motion.

oral hearing and requested that parties file submissions by June 17, 2014 providing their reasons in support of an oral hearing before ruling on the ATCO Utilities' request.

22. On June 17, 2014, in support of their request for an oral hearing, the ATCO Utilities submitted that there was significant divergence in views between their expert witnesses and the UCA's, and that witness evidence could not be easily examined and questioned through a written process. On the other hand, the UCA indicated that a written process would be sufficient to address the positions put forth by both parties.

23. On June 24, 2014, the Commission granted the ATCO Utilities' request for an oral hearing because of the contentious nature of the diverging expert evidence, and suspended the process schedule.

24. An oral hearing was held on September 15 and 16, 2014 in the Commission's Calgary hearing room. At the conclusion of the oral hearing, dates for argument and reply argument were scheduled for October 3 and 17, 2014, respectively.<sup>16</sup>

25. The Commission considers that the record for this proceeding closed on October 17, 2014.

26. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the argument provided by each party. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

### **3 Background**

27. The pension plan has two components operating under a single plan: the defined benefit component (DB plan) and the defined contribution component (DC plan). In terms of membership, the DC plan was created in 1997 and the DB plan has been closed to new employees since that time. From 1996 to 2009, the ATCO Utilities and customers were not required to make contributions (contribution holiday) to the DB or DC pension plans because the Canadian Utilities pension plan was in a surplus position. The ATCO Utilities submitted that during the contribution holiday, customers benefited by approximately \$370 million by not having to fund pension plan costs through the revenue requirements of the ATCO Utilities, while employees continued to make contributions to the pension plan.<sup>17</sup>

28. The DB plan provides benefits based on a formula which sets out how the employees' monthly pension will be calculated at retirement. For purposes of funding, the formula is subject to actuarial calculations that must be filed periodically with the Superintendent of Pensions.

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<sup>16</sup> Transcript Volume 2, page 382, lines 5 and 6.

<sup>17</sup> Exhibit 1, application, page 7.

29. DC plan funding is based on specified employer and employee contribution rates. A pension earned from the DC plan cannot be determined until the time of retirement because it is subject to the amount of contributions and earnings that have been credited to the particular member for the purchase of a pension from a financial institution at that time.

30. In 2009, the ATCO Utilities' pension plan went into deficit because the actuarial valuation of the pension plan's assets was less than its liabilities. As a result, the obligation of the ATCO Utilities to make employer contributions to the pension plan re-commenced in 2010.

31. On July 10, 2009, the ATCO Utilities submitted an application to the Commission for approval to recover pension costs from customers for their unfunded pension liability. In Decision 2010-189,<sup>18</sup> the Commission approved the requested pension cost recoveries and underlying pension valuation methodology used by Mercer and also directed the ATCO Utilities to file a 2011 pension application (2011 pension application) to specifically address the use of discretion with respect to the COLA provisions of the pension plan, and other Commission directions.

32. The compliance filing to Decision 2010-189 was submitted on June 21, 2010. In Decision 2010-553<sup>19</sup> the Commission directed ATCO Utilities to provide an amended deferral account proposal for special payments; further schedules as part of the 2011 pension application; a breakdown of the special payments amount as reported in the 2009 Actuarial Report; and further details on the composition of the pension funding amounts for 2010 using the schedule format included in the decision.

33. On December 15, 2010, the ATCO Utilities filed their 2011 pension common matters application.<sup>20</sup> On September 27, 2011, the Commission issued Decision 2011-391, in which the Commission made the following determinations:

- The Commission found that COLA discretion was an available tool for the pension administrator to manage DB plan pension costs and the unfunded pension liability. (paragraph 83)
- The Commission rejected the ATCO Utilities' position that a change in COLA would lead to difficulty in attracting and retaining employees given the backend loading of benefits from the DB plan. A change in COLA would not detrimentally and materially impact the competitiveness of the ATCO Utilities' ability to attract and retain new employees. (paragraphs 90 and 91)
- From 2012 onwards, for regulatory purposes, the Commission reduced COLA from 100 per cent to 50 per cent. The Commission directed the ATCO Utilities to inform the Commission whether Canadian Utilities would continue its existing COLA administrative practice, or whether the COLA administrative practice of the DB plan would be amended to align with the COLA approved for regulatory purposes. (paragraphs 96 and 101)

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<sup>18</sup> Decision 2010-189: ATCO Utilities Pension Common Matters, Application No.1605254, Proceeding No. 226, April 30, 2010.

<sup>19</sup> Decision 2010-553: ATCO Utilities, Compliance Filing Pursuant to Decision 2010-189, ATCO Utilities Pension Common Matters, Application No. 1606289, Proceeding No. 693, December 1, 2010.

<sup>20</sup> Application No. 1606850, Proceeding No. 999.

- The Commission confirmed the continued need for the special payments deferral account and related reconciliations for forecast to actual differences of the ongoing special payments and any special payment adjustments that could result due to changes in actuarial assumptions. The special payments deferral account was approved for 2010 onwards, and the treatment and scope would be reviewed in conjunction with any updated or ongoing actuarial reports submitted to the Superintendent of Pensions. (paragraphs 100 and 117)
- The Commission stated that the DB plan special payments placeholder amounts for 2010 to 2012 would remain as placeholders until further information was provided with the ATCO Utilities' compliance filing. (paragraph 141)

34. The Commission also stated that in determining the pension costs to be included in revenue requirement, it would consider the relevant circumstances, including the next valuation report accepted by the Superintendent of Pensions and any unfunded liability:

... At the time of the filing of the next valuation submission, the Commission will review all of the relevant circumstances, including the size of any unfunded liability, when considering any adjustment for regulatory purposes to the COLA amount used in determining the pension cost component of revenue requirement. In this context, the Commission will consider increasing the percentage of CPI included in the annual COLA amount included in pension expense should the current DB Plan unfunded liability significantly decrease. Similarly, the Commission will consider further decreasing the percentage of CPI included in the annual COLA amount included in pension expense should the current DB Plan unfunded liability significantly increase.<sup>21</sup>

35. On December 1, 2011, the ATCO Utilities filed their compliance filing<sup>22</sup> to Decision 2011-391<sup>23</sup> wherein the ATCO Utilities:

- provided their revised 2012 revenue requirements reflecting the COLA adjustments directed by Decision 2011-391 for each of ATCO Electric Ltd., ATCO Gas, and ATCO Pipelines.
- requested finalization of ATCO Electric Ltd., ATCO Gas, and ATCO Pipelines pension revenue requirement amounts for the years 2010, 2011, and 2012.
- proposed to no longer collect the capital component of its pension cost on a cash basis and to fund it as part of each of ATCO Electric Ltd., ATCO Gas, and ATCO Pipelines' invested capital.

36. In Decision [2012-077](#),<sup>24</sup> released on March 22, 2012, the Commission denied a request for a review and variance of Decision 2011-391.

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<sup>21</sup> Decision 2011-391, paragraph 104.

<sup>22</sup> ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.), 2011 Pension Common Matters Compliance Filing, Application No. 1607949, Proceeding No. 1599.

<sup>23</sup> Decision 2011-391: ATCO Utilities (ATCO Gas, ATCO Pipelines (divisions of ATCO Gas and Pipelines Ltd.), and ATCO Electric Ltd.), 2011 Pension Common Matters, Application No. 1606850, Proceeding No. 999, September 27, 2011.

37. On June 14, 2012, the Commission issued [Decision 2012-166](#),<sup>25</sup> in which it found that the ATCO Utilities complied with all directions except for directions 8, 10 and 11. These directions related to the ATCO Utilities' proposal to no longer collect the capital component of pension cost on a cash basis. The Commission also found that the proposals subject to directions 8, 10 and 11 required further revisions to the existing placeholders, and directed the ATCO Utilities:

- to reconcile the DC pension costs for ATCO Electric;
- to submit a further compliance filing by August 15, 2012 to address the directions 8, 10, and 11; and
- to provide, the impact to existing placeholders and all supporting information pertaining to the calculation of future liabilities by employee, for each regulated and unregulated entity, as part of all future pension deferral account applications brought to settle the balances of special payment amounts.

38. On September 12, 2012, the Commission issued [Decision 2012-237](#),<sup>26</sup> Rate Regulation Initiative, Distribution Performance-Based Regulation (PBR decision), which established performance-based rates for distribution utilities. In the PBR decision, the Commission found the following with regard to pension expenses:

695. With respect to the existing special payment deferral accounts of ATCO Gas and ATCO Electric distribution, the Commission considers that under a PBR environment there is no need to monitor timing differences for which deferral accounts were created. Accordingly, the existing special payment deferral accounts for ATCO Gas and ATCO Electric distribution will be discontinued upon implementation of PBR.

696. In the event of a material change to a company's special payment obligations (either positively or negatively), a Z factor application would be available to address the change.

39. On December 7, 2012, the Commission issued [Decision 2012-331](#)<sup>27</sup> (second compliance filing decision) in which the Commission found that the ATCO Utilities complied with all the directions in [Decision 2012-166](#).<sup>28</sup> In the second compliance filing, the ATCO Utilities applied to collect pension costs for AE-Transmission as cash, rather than as an item in rate base, in order to support their credit metrics. The ATCO Utilities submitted that a large infrastructure build was applying downward pressure to the credit metrics of AE-Transmission. The Commission

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<sup>24</sup> Decision 2012-077: ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.), Decision on Request for Review and Variance of AUC Decision 2011-391, Application No. 1607856, Proceeding No. 1556, March 22, 2012.

<sup>25</sup> Decision 2012-166, ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.), 2011 Pension Common Matters Compliance Filing, Application No. 1607949, Proceeding No. 1599, June 14, 2012.

<sup>26</sup> Decision 2012-237: Rate Regulation Initiative Distribution Performance-Based Regulation, Application No. 1606029, Proceeding No. 566, September 12, 2012.

<sup>27</sup> Decision 2012-331: ATCO Utilities (ATCO Gas, ATCO Pipelines (divisions of ATCO Gas and Pipelines Ltd.) and ATCO Electric Ltd.) 2011 Pension Common Matters Second Compliance Filing, Application No. 1608750, Proceeding No. 2078, December 7, 2012.

<sup>28</sup> Decision 2012-166: ATCO Utilities (ATCO Gas, ATCO Pipelines (divisions of ATCO Gas and Pipelines Ltd.), and ATCO Electric Ltd.), 2011 Pension Common Matters Compliance Filing, Application No. 1607949, Proceeding No. 1599, June 14, 2012.

approved the change in the collection of AE-Transmission's pension cost on a cash basis because it would improve the cash-flow analysis and creditworthiness of AE-Transmission.

40. The Commission also approved the pension costs revenue requirements for 2010, 2011 and 2012 and the final refund or collection amounts for each utility, on a final basis. This determination was based on the Commission's approval in Decision 2012-166 to collect pension costs as an item in rate base and for final pension costs to be included in the 2010 to 2012 revenue requirement of each utility. The Commission reduced the COLA to be included in the 2012 revenue requirements to 50 per cent of Canada CPI. This reduction to the COLA was made in accordance with its finding at paragraph 92, and related direction, in Decision 2011-391:

92. Based on the above considerations and analysis and subject to the directions below, the Commission finds that until the Commission otherwise directs, 50 per cent of Canada CPI up to the three per cent maximum permitted by the DB Plan represents a reasonable level for setting the COLA amount for the purposes of determining the pension cost amounts for regulatory purposes for all employees, including both retirees and active employees, which are components of revenue requirements or capital amounts for each of the ATCO Utilities.<sup>29</sup>

As a result, the Commission reduced the 2012 pension costs for ATCO Gas, ATCO Electric Ltd., and ATCO Pipelines by \$2.2 million, \$1.6 million and \$0.4 million, respectively.

#### 4 Pension legislation

41. The provincial pension legislation at the time of the filing of the application was the *Employment Pension Plans Act*, RSA 2000, c. E-8, (2000 *Pension Act*). On September 1, 2014, during the course of the proceeding, the *Employment Pension Plans Act*, SA 2012, c. E-8.1 (2012 *Pension Act*) came into force. Both versions of the acts require that plan funding be adequate to protect the rights and obligations of members covered by the plan. The administrator of the plan stands in a fiduciary capacity in relation to members, and others entitled to benefits.<sup>30</sup> Under both of the 2000 and 2012 pension acts, the responsibilities of the administrator include ensuring that the plan documents comply with the act.<sup>31</sup>

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<sup>29</sup> Decision 2011-391: ATCO Utilities (ATCO Gas, ATCO Pipelines (divisions of ATCO Gas and Pipelines Ltd.), and ATCO Electric Ltd.), 2011 Pension Common Matters, Application No. 1606850, Proceeding No. 999, September 27, 2011, paragraph 92, page 21.

<sup>30</sup> Section 13(5) of the *Employment Pensions Plans Act* RSA 2000, c. E-8; and Section 35(2) of the *Employment Pension Plans Act*, SA 2012 c. E-8.1.

<sup>31</sup> Section 13(2) of the *Employment Pensions Plans Act* RSA 2000, c. E-8 states, "The administrator shall ensure that the plan, including its contractual provisions and the other plan documents, complies with this Act"; and Section 35(6)(a) of the *Employment Pension Plans Act*, SA 2012 c. E-8.1 states, "In addition to any other responsibilities under this Act, an administrator of a pension plan must (a) ensure that the plan documents comply with this Act and the regulations."

42. For a plan with DB provisions, the administrator must file, at prescribed times, an actuarial valuation and a cost certificate with the Superintendent of Pensions.<sup>32</sup> A pension plan must also meet the funding and solvency requirements for DB provisions, as stipulated in the act.

43. Section 48(2) of the 2000 *Pension Act* provided that “Subject to subsection (6), a pension plan must provide for funding in accordance with the prescribed tests for the solvency of pension plans and other provisions of the regulations, that is adequate to provide for payment of all benefits.” Section 48(3) stipulated that a pension plan must be funded in accordance with the actuarial valuation reports and cost certificates. Section 48(4) read:

Subject to subsection (6), an employer, or in the case of a plan under whose terms the employer or employers and the employees have joint responsibility for funding the plan and that meets the prescribed criteria, those employers and employees shall make contributions to the plan that are sufficient to pay for all the benefits in accordance with the requirements referred to in subsection (2).

44. Section 45(1) of the 2012 *Pension Act* states that participating employers in a pension plan must comply with the funding requirements applicable to the plan. Section 52(2) states:

The plan text document of a pension plan must provide that the plan must be funded by the participating employers, or in the case of a jointly sponsored plan, by the participating employers and the active members, in accordance with (a) the funding requirements prescribed for the purposes of this section, and (b) the most current actuarial valuation report and cost certificate, filed in relation to the plan, as amended in accordance with any notification of the Superintendent under section 38(3).

45. Cost-of-living adjustments are considered ancillary benefits under the pension plan legislation and regulations.<sup>33</sup>

46. The regulation in force at the time of filing the application, the *Employment Pension Plans Regulation*, AR 35/2000, required special payments into the plan over a 15-year period (maximum) when the plan is underfunded but still sufficiently funded to meet the prescribed solvency tests.<sup>34</sup> Special payments sufficient to amortize the underfunding over a maximum five-year period are required where funding is insufficient (a solvency deficiency)<sup>35</sup> to meet the prescribed solvency tests set out in Section 48(2) of the 2000 *Pension Act*.

47. On September 19, 2012, the *Employment Pension Plans (Partial Exemption and Consolidation of Solvency Deficiencies) Amendment Regulation*, AR 161/2012 (amendment regulation) introduced short-term funding relief provisions and amended the *Employment Pension Plans Regulation*, AR 35/2000. Under the amendment regulation, upon application by a plan administration to the Superintendent of Pensions, solvency deficiencies could be

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<sup>32</sup> Sections 13(4) and 14(3)(b) of the *Employment Pensions Plans Act* RSA 2000, c. E-8; and Section 38(b) of the *Employment Pension Plans Act*, SA 2012 c. E-8.1.

<sup>33</sup> Section 42 of the *Employment Pensions Plans Act* RSA 2000, c. E-8 and Section 44 of the *Employment Pension Plans Regulation*, AR 35/2000; and Section 92(1)(d) of the *Employment Pension Plans Act*, SA 2012 c. E-8.1.

<sup>34</sup> Section 48(3)(b) of the *Employment Pension Plans Regulation*, AR 35/2000 prescribes the 15-year period for unfunded liabilities.

<sup>35</sup> Section 48(3)(c) of the *Employment Pension Plans Regulation*, AR 35/2000 prescribes the five-year period for solvency deficiencies.

consolidated and amortized over a period not exceeding 10 years,<sup>36</sup> rather than five years. The application could be made in respect of any actuarial valuation report with a review date between December 31, 2011, and December 31, 2012, and for applications filed with the Superintendent of Pensions prior to December 31, 2012. As a result of the amendment regulation, Canadian Utilities elected to consolidate and amortize its solvency deficiency over a period of 10 years resulting in an annual solvency payment of \$14,526,000.<sup>37</sup>

48. On December 13, 2013, the Superintendent of Pensions granted Canadian Utilities a temporary extension to the solvency amortization period for the pension plan from five years to 10 years. The extension expires December 31, 2022.<sup>38</sup>

49. Pursuant to Section 42 of the 2012 *Pension Act*, the administrator of the plan must establish a governance policy. The *Employment Pension Plans Regulation*, AR 154/2014,<sup>39</sup> (2014 pension regulation) states that the governance policy established must set out the structures and processes for overseeing, managing, and administering a plan. It also must set out performance measures and monitoring, establish procedures, include a code of conduct, identify material risks that apply to the plan and establish internal controls to manage those risks.<sup>40</sup> A funding policy is also required under Section 44 of the 2012 *Pension Act* and must be available to the Superintendent of Pensions upon request.

50. The 2012 *Pension Act* provides that a solvency reserve account may be established for a pension plan with DB provisions, and funds may be deposited into the account for solvency deficiency payments.<sup>41</sup> The 2014 pension regulation sets out the calculations for an actuarial excess in relation to solvency reserve accounts, an actuarial excess in relation to a benefit formula component of a plan, and a surplus in relation to a benefit formula component of a plan.<sup>42</sup> For a plan that establishes a solvency reserve account, a plan must not have an unfunded liability.<sup>43</sup>

51. For DB provisions of a plan, there must be a review of the plan prepared by a Fellow of the Canadian Institute of Actuaries not more than three years after the last review date for the plan.<sup>44</sup> Section 49(5) of the 2014 pension regulation provides that an actuarial valuation report and a cost certificate must include the following:

- (a) the normal actuarial cost applicable to each benefit formula component, payable by the participating employer and active members, if applicable

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<sup>36</sup> Government of Alberta, Treasury Board and Finance, EPPA Update 12-01, [Defined Benefit Funding Relief Provisions – 2012](#), issued September 2012, updated October 2012.

<sup>37</sup> Exhibit 28.01, ATCO Utilities IR responses to the AUC, AUC-AB-14(b).

<sup>38</sup> Exhibit 28.01, ATCO Utilities IR responses to the AUC, AUC-AU-14(c) Attachment.

<sup>39</sup> Repeals Alberta Regulation 35/2000. The *Employment Pension Plans Regulation*, AR 154/2014, came into force on September 1, 2014, except for sections 104 to 120, sections 122 to 139, and Section 141. These sections come into force on January 1, 2015.

<sup>40</sup> *Employment Pension Plans Regulation*, AR 154/2014, Section 53.

<sup>41</sup> *Employment Pension Plans Regulation*, AR 154/2014, Section 54.

<sup>42</sup> *Employment Pension Plans Regulation*, AR 154/2014, Section 3.

<sup>43</sup> EPPA Update 14-03, New Legislation – Summary of changes, issued July 2014, available at the Treasury Board and Finance website: <http://www.finance.alberta.ca/publications/pensions/PDF/update-1403.PDF>.

<sup>44</sup> Sections 48(2) and 48(3)(b).



- (i) for the fiscal year following the review date if the review date falls on the last day of a fiscal year, or
  - (ii) for the fiscal year in which the review date falls if the review date falls on a day other than the last day of a fiscal year; ...
- (b) the rules by which the following amounts were determined:
- (ii) in the case of a jointly sponsored plan,
    - (A) the amount of the contributions the participating employer must make, and the amount of the contributions the active members must make, in respect of the normal actuarial cost;
    - (B) the amount of any required special payments the participating employer and active members must make;
- (c) subject to subsection (10), for each unfunded liability, if any,
- (i) the date of its establishment,
  - (ii) its unamortized balance,
  - (iii) the special payments to be made by the participating employer, or, in the case of a jointly sponsored plan, by the participating employer and the active members, to amortize it, and
  - (iv) the date at which it will be amortized;
- (d) if the plan text document contains a defined benefit provision, one of the following:
- (i) a statement that in the opinion of the reviewer the defined benefit component does not have a solvency deficiency;
  - (ii) for each solvency deficiency, if any,
    - (A) the date of its establishment,
    - (B) its unamortized balance,
    - (C) the special payments to be made by the participating employer, or, in the case of a jointly sponsored plan, by the participating employer and the active members, to amortize it, and
    - (D) the date at which it will be amortized;

52. The 2014 pension regulation contains provisions for payment of a solvency deficiency over a five year period and for payment of an unfunded liability of a benefit formula component of a pension plan over a 15-year period.<sup>45</sup> Section 60 sets out the funding requirements and how

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<sup>45</sup> Sections 59 (d) and (e) specify how the five and 15-year time periods will be applied.

special payments can be made for solvency deficiencies, and unfunded liabilities, related to the DB provisions of a plan.

53. While the Commission is aware that pension legislation has changed effective September 1, 2014, it is also aware that at the time of filing the application, the ATCO Utilities relied on a 2012 actuarial valuation report by Mercer,<sup>46</sup> and the pension legislative framework in place at that time. The Commission has previously considered that the reasonableness of the COLA amount must be evaluated in the circumstances at the time that the ATCO Utilities applied to include the pension expense in revenue requirement.<sup>47</sup> It is reasonable to extend this approach to the application for pension costs under the Commission's authority in the *Gas Utilities Act*, RSA 2000, c. G-5. and the *Electric Utilities Act*, RSA 2003, c. E-5.1, given that the application and supporting documents were prepared based on the pension legislation in force at that time.

## 5 Pension plan

54. The pension plan has two components operating under a single plan, the DB plan and the DC plan. The DC plan was established on January 1, 1997 coinciding with the closing of the DB plan. Any new employees post January 1, 1997 were only eligible to join the DC plan. The assets of the Canadian Utilities pension plan, which include the DC and DB plans, are not segregated between the ATCO Utilities and non-utility companies but pooled with balance sheet and funding requirements determined on an aggregated basis.

55. The participating companies in the pension plan are:

- Canadian Utilities
- ATCO Electric Ltd. (AE-Transmission and AE- Distribution)
- ATCO Gas and Pipelines Ltd. which includes the distribution division, ATCO Gas, and the transmission division, ATCO Pipelines
- ATCO Energy Solutions Ltd.
- ATCO I-Tek Inc.
- ATCO I-Tek Business Services Ltd.<sup>48</sup>

56. As of December 31, 2012, the number of employees in the pension plan were as follows:<sup>49</sup>

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<sup>46</sup> Transcript, Volume 1, pages 38 and 29.

<sup>47</sup> Decision 2011-391, paragraph 87.

<sup>48</sup> Exhibit 25.01, ATCO Utilities responses to AUC IRs, AUC-AU-23(b).

<sup>49</sup> Exhibit 25.01, ATCO Utilities responses to AUC IRs, AUC-AU-6(c).

**Table 2. Breakdown of DB and DC employees under the pension plan**

	DB plan employees	DC plan employees
ATCO Gas	680	1203
ATCO Electric Ltd.	410	2057
ATCO Pipelines	123	240
Corporate	10	138
Non-regulated	239	1254
<b>Total</b>	<b>1472</b>	<b>4892</b>

57. Canadian Utilities, as the pension plan administrator, has a fiduciary obligation to members of the pension plan and not to any other party, including customers.<sup>50</sup> The Canadian Utilities Management Pension Committee, Canadian Utilities Board Pension Committee and Canadian Utilities Board of Directors are involved in managing the pension plan, and in reviewing and approving the COLA to be granted in each year.<sup>51</sup> The COLA payout methodology, amongst other assumptions, is subsequently incorporated by the pension plan's actuary to estimate the growth in future pension liabilities. The ATCO Utilities provided an overview of the specific entities involved in administering the pension plan:

The CU Management Pension Committee consists of four senior officers of Canadian Utilities Limited. The primary responsibilities of the Committee are to:

- a. supervise and manage the operations of the Plans and the investment of the Plan assets so as to ensure compliance with the Plan terms and all applicable legislation and regulatory policies in respect of the Plans;
- b. establish and implement appropriate procedures and internal controls in order to ensure that the Corporation fulfills its relevant statutory and fiduciary duties as administrator of the Plans; and
- c. report and make recommendations to the CU Board Pension Committee.

The CU Management Pension Committee makes a formal recommendation to the CU Board Pension Committee. The CU Board Pension Committee reviews the recommendation and provides approval as it considers appropriate. The recommendation is then presented and approved by the Canadian Utilities (CU) Board of Directors.

Canadian Utilities Limited (CU) Board Pension Committee, consists of four Directors. The primary responsibilities of the Committee are to:

- a. oversee the governance structure for the Plans;
- b. approve policy decisions relating to benefit design and liability management, and funding and investment policies for the Plans; and
- c. approve the selection of investment managers and investment options for the Plans.

<sup>50</sup> Transcript Volume 1, page 82, lines 3 to 16.

<sup>51</sup> Exhibit 27.01, ATCO Utilities responses to UCA IRs, UCA-AU-1(e).

The Committee reports to the CU Board of Directors on a regular basis, or as requested by the Board. The Committee will develop procedures to assist it in carrying out its duties.<sup>52</sup>

## 6 Discussion of issues and findings

### 6.1 The scope of the AUC's jurisdiction in assessing pension plan costs

58. The ATCO Utilities submitted in the application that the legislative provisions that permit the inclusion of pension costs in customer rates are Section 122 of the *Electric Utilities Act*, sections 36 and 37 of the *Gas Utilities Act*, and Section 4(3) of the *Roles, Relationships and Responsibilities Regulation*, AR186/2003 (for gas). These provisions require that utilities be given a reasonable opportunity to recover their prudently-incurred costs of providing utility service.

59. The ATCO Utilities submitted that the Commission's jurisdiction has two primary mandates: to ensure that just and reasonable rates are charged to customers and to ensure the safety and reliability of the services provided. The ATCO Utilities submitted "... in the context of this proceeding the second prong of the Commission's jurisdiction is not relevant and was not raised by parties herein, as the recovery of the requested pension costs will not impact the services provided by the ATCO Utilities."<sup>53</sup>

60. The ATCO Utilities argued that the Commission should focus its assessment on whether the overall costs to be included in revenue requirement are reasonable and prudently incurred.<sup>54</sup> The ATCO Utilities argued that the Commission should not insert itself into the role of the management of the utilities it regulates, supervise the administration of the pension plan, and involve itself in corporate decisions regarding the structure of the pension or individual components of overall compensation paid to utility employees.<sup>55</sup> The ATCO Utilities referred to previous court decisions related to the Commission's jurisdiction, and stated these decisions were confirmed by the Commission in Decision 2014-169,<sup>56</sup> ATCO Utilities 2010 Evergreen Application.<sup>57</sup>

61. The ATCO Utilities provided several examples of instances where the Commission did not get involved in decisions made concerning the pension plan, which were of benefit to the utility and to customers:

- the decision to close the DB plan to new membership on January 1, 1997

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<sup>52</sup> Exhibit 27.01, ATCO Utilities responses to UCA IRs, UCA-AU-1 d(ii).

<sup>53</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 8.

<sup>54</sup> Exhibit 87.01, ATCO Utilities argument, paragraphs 8, 9 and 13.

<sup>55</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 9.

<sup>56</sup> Decision 2014-169: ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.), 2010 Evergreen Proceeding for Provision of Information Technology and Customer Care and Billing Services Post 2009 (2010 Evergreen Application), Application No. 1605338, Proceeding No. 240, June 13, 2014.

<sup>57</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 8; and Exhibit 92.01 ATCO Utilities reply argument, paragraph 3.

- the decision to take contribution holidays for both the DB plan and the DC plan components of the pension plan between 1996 and 2009
- the decision of the plan administrator to refrain from changing the benefits under the pension plan when there was a significant surplus in the pension plan
- the overall compensation and how the various components should be weighed or balanced.<sup>58</sup>

62. The ATCO Utilities argued that these types of decisions were for the company to make and not the Commission. They also argued that taking into consideration potential rate impacts is entirely inappropriate and does not go to a determination of whether the costs are prudently incurred by the ATCO Utilities and therefore those costs should be recoverable in the utilities' respective revenue requirements.<sup>59</sup> The ATCO Utilities argued that the Federal Court of Appeal in *TransCanada v. Canada (National Energy Board)*,<sup>60</sup> (*TransCanada* decision) confirmed that taking into consideration rate impacts was inappropriate when assessing the recovery of costs incurred by a regulated utility:

..... if the Commission is concerned with the resultant rate impacts of its decisions, it has available to it measures within its ratemaking authority to address the manner in which costs approved for recovery are actually collected from ratepayers; but this does not go to the legitimacy of collecting such costs in the first place.<sup>61</sup>

63. The UCA argued that the Commission has broad jurisdictional powers when considering pension costs. The UCA submitted that the Commission is obligated to ensure that overall compensation costs are prudent, and that the components that make up overall compensation are both necessary and reasonable.

64. The UCA submitted that the Commission is entitled to engage in an assessment of the management of the pension plan within the context of its mandate in setting just and reasonable rates,<sup>62</sup> and argued that the Alberta Court of Appeal clearly recognized the assessment of management decisions as properly informing a determination of just and reasonable rates in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, (*Deferred Gas Account* decision), as follows:<sup>63</sup>

The applicable legislative provisions do give the Board authority to fix 'just and reasonable' rates, a specific mandate connected to the general legislative purpose. The words 'just and reasonable' suggest that the criteria with which the Board exercises its power is flexible and discretionary, and subject to limited review ...<sup>64</sup>

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<sup>58</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 10.

<sup>59</sup> Exhibit 92.01 ATCO Utilities reply argument, paragraph 4.

<sup>60</sup> *TransCanada v. Canada (National Energy Board)*, [2004] FCJ No. 654.

<sup>61</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 17, referencing Exhibit 25.01, ATCO Utilities IR responses to the AUC, AUC-AU-11(b).

<sup>62</sup> Exhibit 90.02, UCA reply argument, paragraph 30.

<sup>63</sup> Exhibit 90.02, UCA reply argument, paragraphs 23 to 26.

<sup>64</sup> *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2005 ABCA 122, paragraph 49.

ATCO's customers are charged with the actual cost of gas supplied by ATCO. Actual costs incurred by a utility are reflected in the DGA balance. Those costs depend in part on that utility's management strategy, including the execution and management of a hedging plan. Assessing management decisions may necessarily factor into a reconciliation hearing and the Board's determination and implementation of just and reasonable rates.<sup>65</sup>

65. The UCA submitted that the Commission has previously considered and ruled upon the structure of the ATCO Utilities' overall compensation, and its various components, citing Decision 2007-071,<sup>66</sup> where the Board considered total compensation and the approval of funding for the variable pay program component.<sup>67</sup> Further, the UCA submitted that the examples cited by the ATCO Utilities, where the Commission was purportedly not involved in management decisions affecting the pension plan, are not instructive because these instances did not impact the primary mandates of the Commission and were not raised as issues before the Commission.<sup>68</sup> The UCA argued that these examples are distinctly different from the application, where the ATCO Utilities requested approval of inclusion of material monetary amounts in revenue requirements, and the Commission's overarching mandate in setting just and reasonable rates.<sup>69</sup>

66. The UCA submitted that the Commission is not prohibited from considering the impact on customers in assessing whether the rates applied-for are just and reasonable. The UCA cited the Alberta Court of Appeal in *ATCO Electric Ltd. v. Alberta (Energy & Utilities Board)*,<sup>70</sup> (*ATCO Electric* decision) where the court determined that the fixing of rates in the public interest has historically meant consideration of both sides of the rate-paying equation, i.e., customers and the utility. This involves a balancing of interests that informs the overall determination of just and reasonable rates.<sup>71</sup>

67. The UCA also noted that the ATCO Utilities referenced the *TransCanada* decision, where the Federal Court of Appeal, in dealing with a complicated formula addressing the allowable return on equity, found that there was no room for consideration of the resulting impact on customers when determining the cost of equity capital. The UCA submitted that it could not agree with the ATCO Utilities' characterization of the decision, or with its purported effects. The UCA argued that the *TransCanada* decision did not prohibit the regulator from considering the impact on customers in assessing whether rates are just and reasonable, as the Federal Court of Appeal itself recognized in paragraph 34 of the *TransCanada* decision.<sup>72</sup>

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<sup>65</sup> *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2005 ABCA 122, paragraph 52.

<sup>66</sup> Decision 2007-071: *ATCO Electric Ltd.* 2007-2008 General Tariff Application – Phase I, Application No. 1485740, September 22, 2007.

<sup>67</sup> Exhibit 90.02, UCA reply argument, paragraph 28.

<sup>68</sup> Exhibit 90.02, UCA reply argument, paragraph 29 and paragraph 27 citing Exhibit 87.01. Argument of the ATCO Utilities at paragraph 10.

<sup>69</sup> Exhibit 90.02, UCA reply argument, paragraph 29.

<sup>70</sup> 2004 ABCA 215, at paragraphs 132 and 133.

<sup>71</sup> Exhibit 90.02, UCA reply argument, paragraphs 31 and 32.

<sup>72</sup> Exhibit 90.02, UCA reply argument, paragraphs 34 and 35.

### Commission findings

68. The Commission's jurisdiction to determine just and reasonable rates is found in the *Gas Utilities Act* for ATCO Gas and ATCO Pipelines, and the *Electric Utilities Act* for ATCO Electric Ltd.

69. Sections 36 and 37 of the *Gas Utilities Act* authorizes the Commission to determine just and reasonable rates. Section 4(3) of the *Roles, Relationships and Responsibilities Regulation*, AR186/2003, under the *Gas Utilities Act*, provides that a gas distributor is entitled to recover in its tariffs its prudent costs as determined by the Commission.

70. For new rates to be approved by the Commission under Section 44(3) of the *Gas Utilities Act*, the burden of proof to show that the increases, changes or alterations are just and reasonable is on the owner of the gas utility.

71. Section 124(1) of the *Electric Utilities Act* gives the Commission the discretion to approve a tariff or any part of it with or without changes, or to refuse to approve a tariff or any part of it. Section 121(4) states that the burden of proof to demonstrate that a tariff is just and reasonable lies with the utility, as the entity seeking approval of the tariff.

72. When considering whether to approve a tariff application, the Commission must ensure that a tariff is just and reasonable under Section 121(2)(a) of the *Electric Utilities Act*. Section 122 of the *Electric Utilities Act* requires the Commission, when considering a tariff application, to have regard for the principle that the tariff that it approves must provide the owner of the utility with a reasonable opportunity to recover its prudent costs.

73. The Commission considers that the *Electric Utilities Act* and the *Gas Utilities Act* provide the Commission with the authority to set just and reasonable rates. The Commission considers that the legislative framework provides the authority for the Commission to determine just and reasonable rates ultimately borne by customers, while providing the utility a reasonable opportunity to recovery its prudent costs.

74. Further, the Commission's jurisdiction to ensure just and reasonable rates is consistent with its findings in decisions [2009-151](#)<sup>73</sup> and 2014-169 as well as the findings of the courts. In Decision 2014-169, the Commission stated:

82. The Commission considers that there is no disagreement amongst the parties that the determination of the jurisdictional issues must be undertaken in light of its two primary mandates as identified by the Supreme Court of Canada in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2006 SCC 4, namely, its mandate to ensure just and reasonable rates and its mandate to ensure the integrity and safety of utility systems (including service quality standards). (footnotes removed)

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<sup>73</sup> Decision 2009-151, AltaLink Management Ltd. and TransAlta Corporation, 2009 and 2010 Transmission Facility Owner Tariffs, October 2, 2009.

136. The Commission accepts that its two primary mandates, as confirmed by the Supreme Court of Canada in *Stores Block*, are to ensure just and reasonable rates and ensure safety and integrity of the utility system in Alberta. It further considers that all exercises of its jurisdiction must flow in some way from its obligation to discharge one or both of these identified mandates.

75. The Commission finds that the Alberta Court of Appeal in the *Deferred Gas Account* decision supported the finding that the Alberta Energy and Utilities Board (the Board) can assess management decisions. As stated by the court in paragraph 72:

The Board's broad discretion to set just and reasonable utilities rates must be exercised in the public interest, which requires consideration of both sides of the rate paying equation: ATCO Electric, *supra* at 132. That process implicitly entails scrutiny of management decisions. With respect to negotiated settlements Fraser C.J.A. held in ATCO Electric at para. 145 that the Board "is entitled to assume that what the utility has negotiated and agreed to is in fact in the utility's best interests." However, in the context of rate setting, the starting point for scrutinizing management decisions is the presumption that it is in the utility's interest to make prudent decisions which also reflect the interests of its customers, by avoiding needless expenditure. That presumption will matter only when the scales are evenly balanced.

76. As mentioned above, in Decision 2009-151 the Commission discussed prudent management and setting just and reasonable rates at paragraph 161:

The Commission considers that prudent management is one of the fundamental responsibilities of a utility and would prefer not to be prescriptive as to how a utility manages its affairs. Equally, the Commission also considers that it is the regulator's responsibility to assure itself that a proposed activity or program is justifiable and prudent in providing regulated service and that the costs to undertake the activity or program that underpin the revenue requirement forecast of a utility are reasonable. Furthermore, from a broader perspective, the Commission must assure itself that the utility is able to provide safe and reliable service at just and reasonable rates in return for a reasonable opportunity to recover a return on its investment and a return of its investment. This obligation has been termed the regulatory compact.

77. In considering whether the inclusion of the forecast pension costs in rates is reasonable in the current application, the Commission must assess the management decisions made with respect to the forecast pension costs and those made with respect to the funding of the pension plan. The Commission finds that the scope of its jurisdiction includes an assessment of the management decisions and the discretion to determine just and reasonable rates. This finding is consistent with its mandate and the Alberta Court of Appeal's findings in the *Deferred Gas Account* decision, which relied on the *ATCO Electric* decision.

78. The Commission notes that Canadian Utilities, as the pension administrator, is governed by the Alberta pension legislation. Canadian Utilities is the corporate vehicle that administers the plan and the ATCO Utilities are the regulated entities under the *Gas Utilities Act* and the *Electric Utilities Act* that have the onus to demonstrate that the pension cost amounts to be recovered through the ATCO Utilities' revenue requirements, and ultimately through rates, are reasonable.



The ATCO Utilities have argued that the customers have benefited greatly from the actions of the plan administrator regarding the management of the pension plan and that this is a key and relevant consideration supporting the prudence of the overall pension costs incurred, including the COLA.<sup>74</sup> The Commission considers that the Alberta pension legislation and related regulations, while instructive on the parameters, procedures and requirements of the pension plan, does not extend to whether the ATCO Utilities' forecast pension costs should be approved for regulatory rate-setting purposes. The determination of whether pension costs amounts are recoverable through rates is prescribed by the Commission's authority and its mandates under the provisions of the *Gas Utilities Act* and the *Electric Utilities Act*.

79. In their submissions, the ATCO Utilities referenced the *TransCanada* decision of the Federal Court of Appeal and submitted that the consideration of the rate impact on customers when assessing the recovery of costs was inappropriate. The relevant paragraphs of the *TransCanada* decision, which dealt with rate of return on equity, are as follows:

[34] To put the matter another way, when the cost of service methodology is used to determine just and reasonable tolls, if the Board does not permit the Mainline to recover its costs because it has understated the Mainline's cost of equity capital, the Mainline will be unable to earn a fair return on equity. The tolls will therefore not be just and reasonable from the Mainline's point of view. On the other hand, the tolls must also be just and reasonable from the point of view of the Mainline's customers and the ultimate consumers who rely on service from the Mainline. Therefore, customers and consumers have an interest in ensuring that the Mainline's costs are not overstated. As respondents' counsel pointed out, there are numerous costing issues that may be subject to challenge. Questions may arise about, among other things, the allocation of costs between the Mainline and other divisions of the appellant; whether costs have been, or are being, prudently incurred; and whether the Mainline's compensation plans are reasonable. And, specific to this appeal, customers and consumers have an interest in ensuring that the Mainline's cost of equity is not overstated.

...

- c) The Board did not improperly consider the impact on customers or consumers of increasing tolls to reflect the appellant's costs.

[35] In oral argument, the appellant conceded that it does not object to its customers having input into the Board's cost determinations and in particular, its cost of capital determination, provided the issues in dispute are restricted to the costs of the Mainline. However, the appellant does object to the Board taking the impact of tolls on customers and consumers into account in determining the Mainline's cost of equity capital. The appellant says that the required rate of return on equity must be determined solely on the basis of the Mainline's cost of equity capital. The impact of any resulting toll increases on customers or consumers is an irrelevant consideration in that determination. The appellant does concede that when the final tolls are being fixed, the impact on the customers and consumers may be relevant, but insists that it is irrelevant when determining the required return on equity.

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<sup>74</sup> Exhibit 87.01, ATCO argument, paragraph 36.

[36] I think that this argument is sound and in keeping with the decision of the Supreme Court in *Northwestern Utilities*. The cost of equity capital does not change because allowing the Mainline to recover it would cause an increase in tolls. Under the Board's Equity Risk Premium methodology, the cost of equity capital is driven by the Board's estimate of the risk-free interest rate and the degree of risk investors perceive in the "benchmark" pipeline. The higher the risk, the higher their required rate of return. The degree of risk specific to the Mainline is accounted for by adjustments to its deemed capital structure. Accordingly, the cost to the Mainline of providing that rate of return on the equity component of its deemed capital structure is unaffected by the impact of tolls on customers or consumers.

...

[42] While the Board observed that the increase would not be an undue burden on shippers, there is no suggestion that the increase in the equity component of the Mainline's deemed capital structure was in any way suppressed by considerations of its impact on customers or consumers. Nor, as I have said, is there any indication that the Board determined a required rate of return on equity for the Mainline and then adjusted it downward based on the impact it would have on tolls. In the absence of some indication in the Board's reasons, there is no basis for such an assumption.

80. The Commission does not consider that the *TransCanada* decision limits the Commission's authority to set just and reasonable rates and the pension costs to be included in the ATCO Utilities' revenue requirements.

81. In Decision 2010-189, for example, the Commission found that the pension administrator's discretion in setting the annual COLA amount was one of the tools available to assist with addressing the DB unfunded liability. At paragraphs 118, 119 and 122, the Commission stated:

A change to the ATCO Utilities long standing administrative practice of granting COLA equivalent to 100 per cent of the increase in the CPI, up to the three per cent cap, represents a possible means of mitigating a significant portion of the projected Pension Plan deficit. While ATCO Utilities have argued that there may be legal issues associated with a change to this long standing administrative practice, the Commission considers that these legal considerations are primarily a product of ATCO Utilities' own creation as a result of employee/pensioner communications and/or administrative practices that do not reflect the full discretion provided in the COLA provisions in the Pension Plan. The Commission considers that ratepayers should not bear any incremental pension funding costs which arise as a result of reduced Pension Plan flexibility with respect to annual COLA where it is demonstrated that such incremental costs prove to be unreasonable or imprudent in the circumstances. This is true particularly if current administrative practices prevented Canadian Utilities from reducing the COLA in order to reduce an unfunded liability when it may have been prudent to have done so in the circumstances.

In this regard, the Commission directs ATCO Utilities to take such steps as may be required to ensure that the flexibility and discretion provided by the wording of the Pension Plan in determining the annual COLA may be fully exercised.

...

The Commission notes the revised position of UCA regarding the recommended level of COLA and the corresponding changes that result. To the Commission, this confirms the uncertainty of determining what a reasonable level for COLA should be in isolation from the other factors to be considered by management in making prudent decisions when forecasting utility revenue requirement. While the Commission does not consider that ratepayers should bear the costs of adherence to an administrative practice which may not be warranted and that the level of COLA may be one of many tools available to assist with managing the pension deficit, the COLA provision should be evaluated as part of the overall compensation available from a competitive employer who must also balance its long term pension funding obligations as a regulated utility in a prudent manner ...

82. The Commission agrees with the findings of the Court of Appeal's *Deferred Gas Account* decision that the process of setting just and reasonable rates implicitly entails scrutiny of management decisions. Consistent with Decision 2010-189, management decisions or administrative practices, i.e., with respect to the pension plan and the unfunded liability, are relevant considerations in determining the recovery of pension plan costs through rates. The management decisions and administrative practices on pension funding and the level of COLA will have a resultant impact on the forecast pension costs that are recovered through rates in a given test year. In Decision 2011-391, the Commission observed that "[b]oth ATCO Utilities and the UCA identified the financial position of the DB plan as one of the factors that should be considered when establishing COLA."<sup>75</sup> The Commission considers that the assessment of the factors to be considered by management in making its decisions, including the financial position and funding considerations, is relevant to the determination of the forecast pension costs to be included in utility revenue requirement.

83. The Commission finds that a review of forecast pension costs using this approach is consistent with the setting of just and reasonable rates and is not contrary to the Federal Court of Appeal's judgment on the return on equity in the *TransCanada* decision. Further, the ATCO Utilities have not sufficiently explained why the *TransCanada* decision findings on return on equity (capital) are inconsistent with the Commission's mandate in setting just and reasonable rates, and how the court's findings should be interpreted, in this instance, with respect to the ATCO Utilities' pension costs recoverable through rates.

## **6.2 Is the valuation report at December 31, 2013, relevant to the ATCO Utilities' application?**

84. Subsequent to the filing of the current application, the ATCO Utilities filed a 2014 pension application (2014 pension application)<sup>76</sup> which included a valuation report on the actuarial valuation for funding purposes as at December 31, 2013 (2013 valuation report), which showed an improved financial position of the pension plan. A comparison of the 2013 valuation report and 2012 valuation report is provided in the table below:

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<sup>75</sup> Decision 2011-189, paragraph 79.

<sup>76</sup> Proceeding No. 3405, ATCO Utilities 2014 Pension Application.

**Table 3. Comparison of final position of the DB plan<sup>77</sup>**

	Financial position of the DB plan as at December 31, 2013	Financial position of the DB plan as at December 31, 2012
Going concern valuation	(\$49,859,800)	(\$123,162,900)
Hypothetical wind-up valuation	\$193,846,900	(\$248,849,300)
Required minimum annual special payments	\$6,050,400	\$28,725,600

85. The UCA argued that the 2013 valuation report is irrelevant to this proceeding and should be ignored in its entirety, because it has no impact on the DB plan's 2013 funding requirements.<sup>78</sup>

86. Although the 2014 pension application and 2013 valuation report are untested, the CCA submitted that the 2012 valuation report has quickly become "stale-dated" and cannot be used for ratemaking purposes in 2013 because it does not reflect the significantly improved market conditions in 2013. The CCA argued that the Commission has often maintained it must make decisions based on the most current evidence before it. Therefore, reliance on a stale-dated valuation report to determine costs that are to be charged to customers is not appropriate, especially when the most recent information is available.<sup>79</sup>

87. Considering the significant decline in the pension plan deficiency between December 31, 2012, and December 31, 2013, the CCA recommended that for purposes of the pension deferral accounts for AE-Transmission and ATCO Pipelines, the Commission should only allow the mid-point of the pension plan deficiency amounts as determined in the valuation reports for 2012 and 2013, respectively. The ATCO Utilities should be directed, in their compliance filing, to calculate the 2013 solvency payments based on the 2013 mid-year amounts of the pension plan deficiency, for purposes of the pension plan deferral account. In order to determine if the change in pension costs for AE-Distribution and ATCO Gas meet the Z factor test approved in Decision 2012-237, the PBR decision, the ATCO Utilities should also be directed to provide, in their compliance filing, detailed calculations that show the difference between the pension expense included in the 2013 PBR rates and pension costs determined using the 2013 mid-year approach recommended above. Without such information, customers have no basis to initiate an application, if necessary, for a Z factor adjustment.<sup>80</sup>

88. The UCA disagreed with the conclusions of the CCA. The UCA noted that both expert witnesses, Mr. Tishcoff and Mr. Johnston, have unequivocally stated the 2013 valuation report has no relevance in determining pension contributions for 2013.

89. The ATCO Utilities cited Mr. Tishcoff's explanation that it is neither possible nor permissible to use the results of the 2013 valuation report for purposes of establishing the contribution requirements in 2013. This is not legally permitted under the Alberta pension legislation, and it is clear from the record that this information was not available, and could not

<sup>77</sup> Proceeding No. 3405, Exhibit 2, Valuation Report, page 1.

<sup>78</sup> Exhibit 86.01, UCA argument, paragraph 37.

<sup>79</sup> Exhibit 88.01, CCA argument paragraphs 15 to 16.

<sup>80</sup> Exhibit 88.01, CCA argument paragraphs 17 to 18.

have been available, during 2013. The ATCO Utilities submitted that the CCA's recommendation should be rejected.

### Commission findings

90. The Commission finds that the 2013 valuation report should not be used to determine pension contributions for 2013. The Commission agrees with the ATCO Utilities and the UCA that the 2012 valuation report is the relevant report for purposes of establishing the contributions for 2013. The ATCO Utilities' 2013 pension costs are based on the 2012 valuation report which is consistent with Decision 2011-391, where the Commission stated the following regarding the actuarial valuation expected to occur in 2012:

... Before the Commission will reconsider this direction, ATCO Utilities will be required to file a new DB plan funding valuation submission based on the next actuarial valuation to be filed with and accepted by the Superintendent of Pensions. At the time of the filing of the next valuation submission, the Commission will review all of the relevant circumstances, including the size of any unfunded liability, when considering any adjustment for regulatory purposes to the COLA amount used in determining the pension cost component of revenue requirement ...<sup>81</sup>

91. Utilizing the 2012 valuation report filed with the application is also consistent with the information provided on the record of the proceeding in order to set the pension contributions for 2013. The evidence provided by Mr. Tishcoff and Mr. Johnston that the 2012 valuation report relates to the 2013 forecast pension costs, and not the 2013 valuation report, supports this finding. Lastly, although the 2013 valuation report has not been tested in this proceeding, it will be tested in the proceeding related to the ATCO Utilities 2014 pension application.<sup>82</sup> Consequently, the CCA's request that a mid-point for the 2012 and 2013 valuation reports should be used is denied.

### 6.3 Should the Commission consider past actions by the pension administrator when assessing 2013 pension costs?

92. The ATCO Utilities stated that between 1996 and 2009, the ATCO Utilities' customers have benefited by approximately \$370 million, by not having to fund pension plan costs, while the employees continued to make contributions to the pension plan. The DB plan and DC plan are part of the same pension plan by which customers have benefitted in the amount of approximately \$44 million from the use of the pension fund surplus from 1996 to 2009 to eliminate the required contributions for DC plan members. These benefits would have been foregone if the DB plan were separate from the pension plan. In fact, the current service cost for the DB component of the pension plan is slightly lower in 2013 compared to 2012. Had the DB pension plan not been closed effective January 1, 1997, the costs to utility customers would have been higher. For example, the additional costs in 2012 alone would have been approximately \$40 million higher.<sup>83</sup>

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<sup>81</sup> Decision 2011-391, paragraph 104.

<sup>82</sup> Application No. 1610833, Proceeding No. 3405.

<sup>83</sup> Exhibit 1, Application, pages 7 and 8.

93. The ATCO Utilities submitted that Canadian Utilities has governed its administration of the pension plan in a prudent and reasonable manner throughout the pension plan's history by:

- achieving a lower solvency deficiency relative to other Canadian pension plans
- implementing cost containment measures and pre-emptively closing the DB provisions of the pension plan
- introducing a DC provision to the pension plan on January 1, 1997, and closing the DB provision to new entrants at that time
- not paying a COLA to employees who left the plan prior to retirement eligibility
- capping the maximum COLA increase at three per cent
- limited pension coverage to base salaries.

94. The ATCO Utilities also noted that the “backend loading” feature of the DB plan is a key part of the overall benefits promised to employees who are members of such a DB plan. To deprive the DB plan members of these planned and expected benefits in such circumstances is wholly inappropriate and unfair.

95. The UCA argued that whether Canadian Utilities acted prudently or reasonably in the past in managing pension expenses is irrelevant to the current proceeding.<sup>84</sup> Rather, the requirement for a utility to demonstrate that its costs are prudently incurred and that the resulting rates are just and reasonable is ongoing.<sup>85</sup> The ATCO Utilities have failed to provide evidence in this proceeding that shows that Canadian Utilities has prudently managed the pension plan as it pertains to 2013 pension costs.<sup>86</sup>

### Commission findings

96. The main question before the Commission in this proceeding is whether the 2013 forecast pension costs should be included in the ATCO Utilities' rates in 2013. In answering that question, the Commission can only consider the management decisions or administrative practices that relate to the 2013 forecast pension costs, or that may affect the pension plan on a go-forward basis. The Commission recognizes that the past actions of the pension plan administrator and the back-end loading nature of the DB plan are factors that are relevant to this determination to the extent that they are reflected in the 2013 application and supporting documents i.e. the 2012 pension valuation. Accordingly, the Commission's determination will take into account all evidence filed on the record of the proceeding that relates to the 2013 forecast pension costs or the pension plan on a go-forward basis.

#### **6.4 Should the Commission assess pension costs based on a review of the DB plan and DC plan on a combined pension plan basis?**

97. The ATCO Utilities argued that contrary to Decision 2011-391, it is not appropriate for the Commission to separate the DB plan and the DC plan and only consider the DB plan for purposes of assessing the recovery of the costs because only one pension plan is filed for pension regulatory reporting and income tax purposes. Further, the ATCO Utilities submitted that

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<sup>84</sup> Exhibit 86.01, UCA argument, paragraph 131.

<sup>85</sup> Exhibit 86.01, UCA argument, paragraph 131.

<sup>86</sup> Exhibit 86.01, UCA argument, paragraph 132.

customers have benefited from a single plan. For example, closing the DB component of the pension plan to new entrants in 1997 led directly to significant savings regarding pension costs in future years. The decision to close the DB plan is also inextricably linked to the current status of the pension plan because the DB plan would no longer have new, “lower cost young employees” that would off-set the remaining older, higher cost members.<sup>87</sup> Further, the surplus in the pension plan from 1996 to 2009 resulted in a contribution holiday for the utility and customers with respect to funding both DC and DB plans.

98. The ATCO Utilities referenced the Analysis of Current Service Cost For Entities Comparable in Size to the ATCO Utilities – 2013 Update (cost report) in Appendix 2 which showed that the pension plan's current service cost ranks in the eighth position (below the median) out of 11 comparable utilities.<sup>88</sup> Mr. Tishcoff explained that it is inappropriate to rank the current service costs for DB plan members in isolation. The ATCO Utilities argued that the evidence provided by Mercer clearly confirms that the pension plan’s current service cost is below the median for comparable utilities.

99. The UCA submitted that the ATCO Utilities did not provide any statutory provision, or prior Commission precedent, to support their assertions that it is inappropriate to consider the DB plan in isolation.<sup>89</sup> The UCA argued that the legislated discretion granted to the Commission in setting just and reasonable rates is broad and gives the Commission considerable flexibility in determining the appropriate criteria to be considered in its analysis.<sup>90</sup> The UCA noted that the Commission determined that it was appropriate and necessary to consider the costs of the DB plan separately from the DC plan in decisions 2010-189 and 2011-391.<sup>91</sup>

100. The UCA submitted that the current shortfall is a result of the plan sponsor failing to take necessary steps to manage the pension expense that gets charged to the ATCO Utilities and mitigate, to the extent possible, the effects of a “natural bias to the ongoing deterioration.”<sup>92</sup> The UCA argued that the large unfunded liability at issue in this proceeding, the requisite magnitude of annual special payments required, and the ability to manage that unfunded liability through the exercise of discretion in awarding COLA, are unique to the DB plan.<sup>93</sup>

101. The UCA submitted that the ATCO Utilities’ assertion that pension costs are below the median is misleading.<sup>94</sup> While the ATCO Utilities provided evidence that the current service costs of the pension plan are below the median, this analysis compares current service costs of both the DC and DB plans, in contrast to the Commission’s direction in Decision 2011-391 that “the most useful comparison is based on the DB plan only which was the intended focus of the required competitiveness comparison for DB plans on the potential impacts from a change in COLA.”<sup>95</sup> The UCA noted that Mercer updated its evidence to compare current service costs for

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<sup>87</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 32.

<sup>88</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 49.

<sup>89</sup> Exhibit 90.02, UCA reply argument, paragraphs 15 and 16.

<sup>90</sup> Exhibit 90.02, Exhibit 25.01, ATCO Utilities IR responses to the AUC, paragraph 15 citing *ATCO Gas and Pipelines Ltd. v Alberta (Energy and Utilities Board)*, 2005 ABCA 122 at paragraph 49.

<sup>91</sup> Exhibit 90.02, Exhibit 25.01, ATCO Utilities IR responses to the AUC, paragraph 15.

<sup>92</sup> Exhibit 90.02, Exhibit 25.01, ATCO Utilities IR responses to the AUC, paragraphs 18 and 19.

<sup>93</sup> Exhibit 90.02, Exhibit 25.01, ATCO Utilities IR responses to the AUC, paragraph 20.

<sup>94</sup> Exhibit 86.01, UCA argument, paragraph 116.

<sup>95</sup> Exhibit 86.01, UCA argument, paragraph 116 and 118 citing Decision 2011-391, at paragraph 89.

the DB plan wherein the ATCO Utilities ranked third relative to 11 comparable utilities,<sup>96</sup> which is greater than the median.

### Commission findings

102. The Commission recognizes that the pension plan is a combined pension plan. Based on the evidence provided by Mercer, the Commission finds that the current service costs of the pension plan on a combined DB and DC plan basis or DB plan only basis are either slightly below or above the median. The Commission considers that the current service costs on a combined DB and DC plan basis or DB plan only are consistent with those incurred by its peer comparators.

103. As stated in Section 6.1 above, management decisions and administrative practices on pension funding and the level of COLA will have a resultant impact on the forecast pension costs for which recovery is sought through rates in a given test year. The funding requirements for the DB and DC plans are different because of the inherent differences in these types of plans, as confirmed in the pension legislation requirements i.e. the DB plan is formula-based on the actuarial report and costing certificate, whereas the DC plan is based on employer contributions set out in the plan document. The Commission notes that the pension plan's current service costs rank in eighth position (below the median) out of 11 comparable utilities.<sup>97</sup> When assessing the DB plan on an individual basis, current service costs for the DB plan result in ranking the ATCO Utilities third relative to 11 comparable utilities,<sup>98</sup> which is greater than the median. The current service costs for the DB plan illustrate that there is a distinction between the DB and DC portions of the plan and, for regulatory purposes, the differences in the DB and DC plans should be considered in establishing just and reasonable rates.

104. Because the COLA provision is included only in the DB plan, the Commission remains of the view that in assessing the competitiveness of the plan, "the most useful comparison is based on the DB plan only which was the intended focus of the required competitiveness comparison for DB plans on the potential impacts from a change in COLA."<sup>99</sup>

### 6.5 Total remuneration review

105. The ATCO Utilities argued that the Commission has consistently taken the view that pension costs, including the applicable COLA provisions, should be evaluated as part of the overall compensation. According to the ATCO Utilities, the expert evidence indicated that COLA provisions should not be considered in isolation but in the context of the pension benefits as a whole, consistent with prior Commission decisions.<sup>100</sup> The ATCO Utilities cited Decision 2009-151<sup>101</sup> as an example where the Commission has made an assessment of costs on a total compensation basis and submitted that the Commission has also indicated that it is inappropriate

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<sup>96</sup> Exhibit 86.01, UCA argument, paragraph 119 citing Exhibit 27.01, Information Response to AU-UCA-4(b) and Exhibit 42.03.UCA-2954, Evidence of Pat Johnston, A23, page 28.

<sup>97</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 49.

<sup>98</sup> Exhibit 86.01, UCA argument paragraph 119 citing Exhibit 27.01, ATCO Utilities information response to UCA, AU-UCA-4(b); and Exhibit 42.03.UCA-2954, Evidence of Pat Johnston, A23, page 28.

<sup>99</sup> Decision 2011-391, paragraph 89.

<sup>100</sup> Decision 2009-151, paragraph 96; and Decision 2012-091, paragraph 357.

<sup>101</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 15.



to examine a single aspect of compensation in isolation without considering the overall compensation paid to employees. Mr. Lattoni, the expert witness for the UCA on total remuneration, agreed with the ATCO Utilities that compensation decisions are the responsibility of management.<sup>102</sup>

106. The ATCO Utilities submitted that a 50 per cent COLA, consistent with the Commission findings in Decision 2011-391, deprives the ATCO Utilities of any opportunity to recover its prudently incurred costs, and results in the ATCO Utilities' overall compensation being below the median of its peer comparators. The ATCO Utilities submitted that the total remuneration review confirmed that the ATCO Utilities' total compensation was fair and reasonable and reflected prudently incurred costs, even with 100 per cent COLA.<sup>103</sup> The ATCO Utilities relied on Mercer's total remuneration review (remuneration review)<sup>104</sup> as evidence that their total remuneration is four per cent below the 50th percentile,<sup>105</sup> which was later updated to 3.5 per cent by Mr. Yung, Mercer's remuneration expert.<sup>106</sup> Based on these submissions, the ATCO Utilities argued that the pension plan costs and COLA applied at 100 per cent of CPI to a maximum of three per cent should be approved, as filed.

107. The ATCO Utilities argued that their ability to attract or retain employees was not put forward in evidence as a reason to justify the level of COLA awarded annually (at 50 per cent of CPI or 100 per cent of CPI) in the current application and that the UCA's evidence put forward with respect to retention is not relevant to the application.<sup>107</sup>

108. Mr. Lattoni was critical of the remuneration review and identified several potential sources of error inherent in its design, including the manner of collecting survey data, the representation of the overall talent market in which the ATCO Utilities compete, the process of job matching, the sampling methodology utilized, and target and actual pay data.<sup>108</sup> The ATCO Utilities noted Mr. Lattoni's indication during cross-examination that his assertions were speculative and not based on any evidence or data.<sup>109</sup>

109. The UCA submitted that in Decision 2009-151, the Commission recognized its responsibility in assuring itself that both the proposed total compensation, and the individual components, are necessary and reasonable.<sup>110</sup> The UCA submitted that the Commission is obligated to ensure that overall compensation costs are prudent, and that the components that make up overall compensation are both necessary and reasonable.<sup>111</sup> The UCA submitted that

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<sup>102</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 55, Transcript Volume 2, pages 273, 278, 367, 368

<sup>103</sup> Exhibit 92.01 ATCO Utilities reply argument, paragraphs 34 to 36, and 37.

<sup>104</sup> Exhibit 86.01, paragraph 103 citing Exhibit 5.ATCO GAS-2954, Total Remuneration Review – ATCO Utilities.

<sup>105</sup> Exhibit 86.01, UCA argument, paragraph 104.

<sup>106</sup> Exhibit 86.01, UCA argument, paragraph 104 citing Exhibit 27.01.ATCO GAS, Information Response to UCA-AU-16 and Transcript Volume 1, page 102, line 20 to page 103, line 12.

<sup>107</sup> Exhibit 92.01, ATCO Utilities reply argument, paragraph 27.

<sup>108</sup> Exhibit 86.01, UCA argument, paragraph 105 citing Exhibit 42.02.UCA-2954, Evidence of Marc Lattoni, A3, page 2.

<sup>109</sup> Transcript Volume 2, pages 293 to 307, and 335 to 338.

<sup>110</sup> Exhibit 90.02, UCA reply argument, paragraph 11 citing Decision 2009-151, AltaLink Management Ltd. and TransAlta Corporation, 2009 and 2010 Transmission Facility Owner Tariffs at paragraph 96.

<sup>111</sup> Exhibit 86.01, UCA reply argument, paragraph 120 citing Decision 2009-151, AltaLink Management Ltd. and TransAlta Corporation, 2009 and 2010 Transmission Facility Owner Tariffs at paragraph 96.

there are a number of issues with the remuneration review that cast considerable doubt as to whether the 3.5 per cent or 4 per cent should be considered accurate or statistically significant.<sup>112</sup>

110. The UCA argued that the testimony of Mr. Yung demonstrated that:

- the number of companies that the ATCO Utilities competes with for talent is unclear<sup>113</sup>
- directly relevant entities may not be included in the peer group<sup>114</sup>
- the ATCO Utilities may have relied on assumptions in the data collection process<sup>115</sup>

111. While the UCA acknowledged that there are potential sources of error inherent in all compensation studies, the UCA submitted that sources of error in the remuneration review could have been reduced by using random sampling, large data sets of surveys, carefully controlled job analyses and matching protocols, comparable time period base pay and annual incentive data, and realized long-term incentives analyses, for example.<sup>116</sup>

112. The UCA noted that the remuneration review shows a market compensation range of +10/-10 per cent of the median or 50th percentile.<sup>117</sup> The UCA submitted that this means that negative 4 per cent of the 50th percentile is competitive,<sup>118</sup> relying on Mr. Yung's testimony, and also on Mr. Lattoni's evidence, which stated:

Mercer concludes that "... these results show that ATCO utilities are generally market competitive ..." and that "... +/- 10% of P50 represents a market competitive range ....". Given that Mercer (and presumably ATCO) agrees that its analysis and conclusion of "market competitive" has an acceptable margin of error of 20%, in my opinion, no adjustments in pay are required nor warranted based on this analysis.<sup>119</sup>

113. The remuneration review is based on an award of 100 per cent COLA. The UCA submitted that the same rationale applies to an award of 50 per cent COLA, which changes the 4 per cent or 3.5 per cent short of the 50th percentile target pay positioning to 3.8 per cent.<sup>120</sup>

114. Consistent with Decision 2011-391,<sup>121</sup> the UCA argued that the Commission should reject the ATCO Utilities' argument that a change in COLA would detrimentally and materially impact the competitiveness of the ATCO Utilities' position in the employment marketplace and its ability to attract and retain employees.<sup>122</sup> The UCA submitted that a change in annual COLA will

<sup>112</sup> Exhibit 86.01, UCA argument, paragraph 104.

<sup>113</sup> Exhibit 86.01, UCA argument, paragraph 106 citing Transcript Volume 1, page 113, lines 6-23.

<sup>114</sup> Exhibit 86.01, UCA argument, paragraph 107 citing Transcript Volume 1, page 129, line 8 to page 131, line 2.

<sup>115</sup> Exhibit 86.01, UCA argument, paragraph 108 citing Transcript Volume 1, page 121, line 12 to page 122, line 1.

<sup>116</sup> Exhibit 86.01, UCA argument, paragraph 110 citing Exhibit 42.02.UCA-2954, Evidence of Marc Lattoni, A15, page 13.

<sup>117</sup> Exhibit 86.01, UCA argument, paragraph 111 citing Exhibit 42.02.UCA-2954, Evidence of Marc Lattoni, A15, page 13.

<sup>118</sup> Exhibit 86.01, UCA argument, paragraph 112 citing Transcript Volume 1, page 215, line 24 to page 216, line 2.

<sup>119</sup> Exhibit 86.01, UCA argument, paragraph 111 citing Exhibit 42.02.UCA-2954, Evidence of Marc Lattoni, A15, page 13.

<sup>120</sup> Exhibit 86.01, UCA argument, paragraph 115 citing Exhibit 27.01.ATCO GAS-2954, Information Response to UCA, UCA-AU-16(a).

<sup>121</sup> Decision 2011-391, at paragraph 91.

<sup>122</sup> Exhibit 86.01, UCA argument, paragraph 129.

have no impact on employees participating in the DC plan and, because new employees are only entitled to join the DC plan, would have no impact on attracting new employees.<sup>123</sup> The UCA argued that for members in the DB plan, the “extreme back-end loading” of pension entitlements in the DB plan creates a strong financial incentive for employees to continue employment with the ATCO Utilities until retirement.<sup>124</sup>

115. The UCA submitted that a change from a 100 per cent to a 50 per cent COLA would have minimal impact on the overall competitive position of the pension plan, because an award of 50 per cent COLA, changes the 3.5 per cent short of the 50th percentile target pay positioning to 3.8 per cent. Further, the UCA noted Mr. Johnston’s evidence that indicated additional contributions under 100 per cent COLA is an “... exceptionally inefficient expenditure of dollars towards improving the competitiveness of overall compensation,” estimating that only \$0.077 per \$1.00 of additional contribution would be applied towards improving the competitive position of the overall compensation of the ATCO Utilities.<sup>125</sup>

### Commission findings

116. The Commission must review both the reasonableness of overall total compensation and individual components, such as pension costs, to ensure the costs are prudent and the rates ultimately borne by customers are reasonable. In Decision 2009-151, the Commission stated:

The Commission agrees with CG [Consumer Group] that its focus should be on total compensation and not on the details of the individual components. Total compensation includes consideration of employee pension and benefits in addition to base pay, STIP, LTIP, and perquisites. The Commission accepts that incentive plans are a necessary component of total direct compensation in order to provide employees with a competitive compensation package. The Commission also considers that a utility must retain some flexibility in its ability to tailor its total compensation to attract and retain skilled labour so that it can provide safe and reliable service and meet customers’ needs. Notwithstanding, the Commission also considers that it has a responsibility to assure itself that the proposed level of total compensation is prudent and that the components that make up total compensation are both necessary and reasonable.<sup>126</sup>

117. Total compensation information is useful to the Commission in evaluating the ATCO Utilities’ 2013 forecast pension costs. Total remuneration and current service costs were included in the application to support the inclusion of 100 per cent COLA in rates. The ATCO Utilities stated there would be minimal change in their competitive positioning if the COLA were changed to 50 per cent because the DB plan makes up a relatively small proportion of their total remuneration. This is illustrated in the following table:<sup>127</sup>

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<sup>123</sup> Exhibit 86.01, UCA argument, paragraph 125.

<sup>124</sup> Exhibit 86.01, UCA argument, paragraph 126 citing Exhibit 42.03.UCA-2954, Evidence of Pat Johnston, A12, pages 9-10.

<sup>125</sup> Exhibit 86.01, UCA argument, paragraph 128 citing Exhibit 42.03,UCA-2954, Evidence of Pat Johnston, A5, pages 5 and 22, and A21, page 22.

<sup>126</sup> Exhibit 90.02, UCA reply argument, paragraph 11 citing Decision 2009-151, AltaLink Management Ltd. and TransAlta Corporation, 2009 and 2010 Transmission Facility Owner Tariffs, at paragraph 96.

<sup>127</sup> Exhibit 27.01, ATCO Utilities IR responses to the UCA, UCA-AU-16(a).

**Table 4. The ATCO Utilities' total remuneration compared to Mercer total remuneration review peer group**

Compensation element	Mercer total remuneration review (100 per cent COLA)	50 per cent COLA assumption
Target total remuneration	-3.5 per cent	-3.8 per cent

118. As shown in the above table, applying a 100 per cent COLA versus a 50 per cent COLA results in incremental current service costs of approximately \$3.5 million and \$12.2 million in special payment expenses, but has a negligible impact on the ATCO Utilities' total remuneration compared to its peer comparator (-3.8 to -3.5 per cent of the 50th percentile).

119. During questioning by Commission counsel, Mr. Yung confirmed that in aggregate, the ATCO Utilities' total compensation at negative 4 per cent of median is close enough to the 50th percentile and that the company is market competitive.<sup>128</sup> Mr. Yung also confirmed that the ATCO Utilities would no longer be competitive if they were outside the plus or minus 10 per cent band target in the remuneration review, on a position level basis:

Q. Correct? So is there a percentage that Mercer has in mind? Like, is there a number that Mercer has that would cause them to say you're no longer competitive?

A. MR. YUNG: It would be the statement that we made on page 5 there.

Q. Is it the 10 per cent?

A. MR. YUNG: On a position-level bias, it's the 10 per cent.<sup>129</sup>

120. The Commission considers that a 50 per cent COLA would not have an impact on market competitiveness because the ATCO Utilities are within plus or minus 10 per cent of the 50th percentile. The impact of COLA is not significant enough to support an increase to a 100 per cent COLA because the difference between a 100 per cent COLA and a 50 per cent COLA on total remuneration is the difference between -3.5 per cent and -3.8 per cent.

121. Accordingly, the Commission finds that an incremental expenditure of over \$15 million should not be recovered from utility customers because the Mercer survey demonstrates that the ATCO Utilities are market competitive in total remuneration when compared to the peer group.

122. Consistent with Decision 2011-391, the Commission continues to be of the view that the impact of a potential reduction to the COLA is not relevant to retention issues for DC plan members because they are not entitled to a COLA.

123. The Commission is not persuaded that the ATCO Utilities' new evidence on total remuneration, current service costs, or whether or not treating DB and DC plans on a combined or isolated basis provided on the record of this proceeding supports an increase in a COLA above 50 per cent.

<sup>128</sup> Transcript Volume 1, pages 214 and 215.

<sup>129</sup> Transcript Volume 1, page 215, lines 1 to 15.

## 6.6 Does Canadian Utilities have discretion in its application of COLA based on the provisions of the pension plan?

124. The ATCO Utilities argued that the pension plan has been prudently and reasonably managed by Canadian Utilities, which has governed its administration of the pension plan throughout the pension plan's long history. The ATCO Utilities argued that to deny the prudently- incurred pension costs and a 100 per cent COLA due to the financial position of the pension plan as at December 31, 2012, fails to reflect the prudent historical actions of Canadian Utilities, the natural volatility that exists in the investments markets, the expected COLA reward that is a back-end benefit attributable to DB pension plan employees, and the reasonableness of the pension costs relative to its peer comparators. Further, the ATCO Utilities submitted that the 2012 valuation report clearly shows that the financial position of the pension plan, the current service costs, and special payments are reasonable costs to be borne by both non-regulated and regulated participating companies of the pension plan.

125. The ATCO Utilities asserted that the provisions of the pension plan provide Canadian Utilities, as the pension administrator, discretion in applying the COLA provisions of the pension plan, and in particular, noted there is no reference to the financial position of the pension plan in Section 6.9 or Section 6.12 of the pension plan text document. The ATCO Utilities submitted that the short-term funding position of the DB plan should not play a material role in setting the level of the required annual COLA adjustment. The expert evidence provided by Mr. Tishcoff supported the ATCO Utilities' position that it is not appropriate to take the financial position of the pension plan into account in setting the level of annual COLA adjustment, and, regardless, it should not be considered as a primary factor in establishing the level of COLA in any year. In explaining his rationale, Mr. Tishcoff stated that doing otherwise would not be consistent with the specific language of the pension plan, and would not recognize that the existence of a current funding excess or deficit is largely part of the cyclical nature of investments.<sup>130</sup>

126. The ATCO Utilities noted that the evidence of Mr. Johnston, witness for the UCA, suggested that the positive experience gained in 2013 does not alter the long-term deterioration in the financial position of the pension plan. Contrary to Mr. Johnston's position, Mr. Tishcoff in his rebuttal evidence<sup>131</sup> projected a solvency surplus for the foreseeable future. Mr. Tishcoff provided a numerical update of the funding position of the pension plan as at December 31, 2013, with respect to both the pension plan's solvency position and the going-concern funded position. Under both approaches Mr. Tishcoff noted a material improvement compared to the position of the pension plan as at December 31, 2012. Based on the change in the results of the valuation reports as at December 31, 2012, compared to December 31, 2013, Mr. Tishcoff estimated that the annual required special payment funding for the pension plan is reduced from \$28.7 million to \$6.1 million, and that the solvency position of the pension plan is a \$193 million surplus, as at December 31, 2013. The ATCO Utilities also noted that Mr. Johnston agreed that the changes included in the 2013 pension valuation cannot impact 2013 contributions.<sup>132</sup>

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<sup>130</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 40.

<sup>131</sup> Exhibit 52.03, Rebuttal Evidence, pages 4 and 5.

<sup>132</sup> Exhibit 87.01, ATCO Utilities argument, paragraphs 23 and 26, and Transcript Volume 2, pages 328 to 331.

The ATCO Utilities submitted that the market valuation as at December 31, 2013, shows that market fluctuations can play a major role in a pension plan's funding position.<sup>133</sup>

127. Both Mr. Tishcoff and Mr. Johnston acknowledged that a plan administrator is required to follow the language of the plan and the applicable legislation.<sup>134</sup> The ATCO Utilities argued that there is no reference to the funding position of the pension plan among the factors expressly included in the pension plan language and that the pension plan requires an annual adjustment determined by the pension administrator that will not exceed three per cent per annum.<sup>135</sup>

128. The UCA submitted that the terms of the DB plan grant the plan administrator discretion in setting an annual COLA.<sup>136</sup> The UCA noted that the Commission has acknowledged the "flexibility and discretion provided by the pension plan in determining the annual COLA" in Decision 2010-189,<sup>137</sup> and there have been no amendments to the DB plan text since that time.<sup>138</sup>

129. During the hearing, Mr. Tishcoff described two typical types of pension plans: contractual/mechanical and ad hoc/discretionary.<sup>139</sup> The UCA submitted that Mr. Tishcoff acknowledged some level of discretion when he described the DB plan as different in terms of adjustments and not contractual.<sup>140</sup> The UCA noted that when asked about the provision of flexibility in the second sentence of sections 6.9(a) and 6.12(a), Mr. Tishcoff described it as not a guarantee of a payment and as "something different than a contractual obligation."<sup>141</sup>

130. The UCA argued that the ATCO Utilities interpreted the pension plan text as affording Canadian Utilities some discretion, but not unfettered discretion,<sup>142</sup> and that this discretion is evident in the application of the pension plan.<sup>143</sup> For example, regarding the term "adjustment," the UCA cited Ms. Field's testimony that the ATCO Utilities equated "adjustment" with "increase,"<sup>144</sup> while Mr. Tishcoff testified that an "adjustment" does not equate to an increase, but the expectation would be an adjustment based on CPI.<sup>145</sup>

131. The UCA submitted that COLA provisions require the plan sponsor to take into consideration certain factors, but do not preclude the plan sponsor from considering any other factor.<sup>146</sup> In considering the annual percentage changes in CPI, the UCA argued that the plan sponsor has exercised discretion in ignoring annual percentage changes in CPI for the preceding

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<sup>133</sup> Exhibit 87.01, ATCO Utilities argument, paragraphs 40 and 41.

<sup>134</sup> Transcript Volume 1, pages 88, 89, 149, and 190; and Volume 2, page 313.

<sup>135</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 42.

<sup>136</sup> Exhibit 86.01, UCA argument, paragraph 90.

<sup>137</sup> Decision 2010-189: ATCO Utilities, Pension Common Matters, Application No.1605254, Proceeding No. 226, paragraph 119.

<sup>138</sup> Exhibit 86.01, UCA argument, paragraph 67 citing Transcript Volume 1, page 62, lines 2-4.

<sup>139</sup> Transcript Volume 1, page 198, line 10 to page 199, line 8.

<sup>140</sup> Exhibit 86.01, UCA argument, paragraph 70, citing Transcript Volume 1, page 198, line 10, to page 199, line 8; Transcript Volume 2, page 262, line 11, to 263, line 9.

<sup>141</sup> Exhibit 86.01, UCA argument, paragraph 70 citing Transcript Volume 1, page 155, line 2, to page 157, line 3.

<sup>142</sup> Exhibit 86.01, UCA argument, paragraph 76 citing Exhibit 52.02.ATCO GAS-2954, Rebuttal Evidence of the ATCO Utilities, A4, page 4.

<sup>143</sup> Exhibit 86.01, UCA argument, paragraph 76.

<sup>144</sup> Exhibit 86.01, UCA argument, paragraph 76 citing Transcript, Volume 1, page 191, line 6-23.

<sup>145</sup> Exhibit 86.01, UCA argument, paragraph 80 and 81 citing Transcript, page 199, lines 9-21.

<sup>146</sup> Exhibit 90.02, UCA argument, paragraph 40.

year if they are negative, except where the trend persists over an extended period of time.<sup>147</sup> Further, the UCA argued that Section 11.1 of the DB plan provides additional evidence of discretion, because it grants Canadian Utilities or the administrator the power to resolve ambiguity in the DB plan text.<sup>148</sup>

132. The UCA disagreed with the ATCO Utilities' position that the funding position is not a relevant factor in informing the annual COLA determination for the DB plan.<sup>149</sup> The UCA noted that the ATCO Utilities previously confirmed that a generic plan administrator would consider funding position when exercising its discretion in determining an annual COLA award.<sup>150</sup> It is appropriate to utilize discretionary COLA to manage and reduce the underfunded liability of the DB plan where, as in this case, there is a long-term hypothetical wind-up shortfall,<sup>151</sup> contrary to Mr. Tishcoff's testimony that the deviation in funding position is a short-term effect.<sup>152</sup>

133. The UCA submitted that maintaining the level of COLA to be recovered through the revenue requirement at 50 per cent is fair and reasonable in the circumstances.<sup>153</sup> In considering what is fair and reasonable, the UCA noted that the Commission must consider the public interest, including DB plan members, pension plan members as a whole, and ratepayers.<sup>154</sup> The UCA claimed that the ATCO Utilities' practice of awarding a 100 per cent COLA, despite the substantial deterioration in the financial position of the DB plan, is unfair to the entire pension plan membership, because it increases the future risk of all other members,<sup>155</sup> and to ratepayers, who would pay increased contributions to the regulated utilities through the revenue requirement.<sup>156</sup>

### Commission findings

134. The DB plan COLA provisions are found in sections 6.9(a) and 6.12(a) of the pension plan:

#### Section 6.9(a)

The annual adjustment will be as determined by the Company but will not exceed 3% per annum. In calculating the annual adjustment the Company will take into consideration annual percentage changes in the Consumer Price Index for Canada and any previous adjustments paid. [Company refers to CU]<sup>157</sup>

#### Section 6.12(a)

<sup>147</sup> Exhibit 86.01, UCA argument, paragraph 86 citing Transcript Volume 2, page 254, line 14 to page 255, line 6.

<sup>148</sup> Exhibit 86.01, UCA argument, paragraph 87 and 88 citing Transcript Volume 2, page 361, line 20, to page 362, line 2.

<sup>149</sup> Exhibit 86.01, UCA argument, paragraph 91 citing Exhibit 52.02.ATCO GAS-2954, Rebuttal Evidence of the ATCO Utilities, A9, page 8 and paragraph 92 citing Exhibit 52.03.ATCO GAS-2954, Rebuttal Evidence of Nelson Tishcoff, A12, pages 5-6.

<sup>150</sup> Exhibit 86.01, UCA argument, paragraph 91 citing Decision 2011-391, at paragraph 79.

<sup>151</sup> Exhibit 86.01, UCA argument, paragraph 97.

<sup>152</sup> Exhibit 86.01, UCA argument, paragraph 96.

<sup>153</sup> Exhibit 86.01, UCA argument, paragraph 152.

<sup>154</sup> Exhibit 86.01, UCA argument, paragraph 152.

<sup>155</sup> Exhibit 86.01, UCA argument, paragraph 145-6 citing Transcript Volume 2, page 357, lines 4-18.

<sup>156</sup> Exhibit 86.01, UCA argument, paragraph 147-148, 152, citing Transcript Volume 2, page 360, lines 3-9.

<sup>157</sup> Exhibit 25.01, ATCO Utilities IR responses to the AUC, AUC-AU-23(a), Attachment 1, the retirement plan for Canadian Utilities Limited and Participating Companies, plan 1, PDF page 113.

The annual adjustment will be as determined by the Company but will not exceed 3% per annum. In calculating the adjustment the Company will take into consideration the annual percentage changes in the Consumer Price Index for Canada and any previous adjustments paid. [Company refers to CU]<sup>158</sup>

135. Mr. Tishcoff indicated that generally some pension plans are mechanical, and other pension plans are more discretionary, or ad hoc, in the application of COLA. The pension plan that governs the ATCO Utilities is somewhere in the middle of these two types of plans.<sup>159</sup> The following exchange between Mr. Tishcoff and Commission counsel shows the distinctive nature of the pension plan:

... You've seen plans that don't have discretion in them; right?

A. MR. TISHCOFF: Yes.

Q. And they say, "Thou shall increase my payout every year by 2 per cent or 5 per cent," or whatever it is?

A. MR. TISHCOFF: Yes.

Q. Right. And then there are plans that have discretionary provisions where there's an up to, perhaps there's a cap; right?

A. MR. TISHCOFF: Well, my take on it is the typical types of plans -- there's two typical types of plans. There's either contractual, the first one you talked about, where it's part of the formula that says, you will get CPI, whatever the formula is, what percentage to some maximum, and you get it every year. There's no -- it's just like any other formula. It's part of the administration of the plan.

Q. Right. It's mechanical?

A. MR. TISHCOFF: It's mechanical. There's lots of plans that I call pure ad hoc. They're discretionary. They're pure ad hoc. The plan says something like the company, the plan sponsor, whatever, has -- company has the -- can make -- can increase pensions as they see fit, whenever they see fit. That's the other extreme.

Q. So we've got the bookends now.

A. MR. TISHCOFF: This one is different.

Q. Where is this one on these bookends?

A. MR. TISHCOFF: All I know it's in between, and it's different. I haven't seen very many plans that say "there will be an increase but" and factoring in these things because either it says there will be an increase or it says we'll -- there may be an increase and we may -- they might write in the plan provisions what they're going to think about in deciding what that increase will be.<sup>160</sup>

136. When discussing the provision of flexibility in the second sentence of sections 6.9(a) and 6.12(a), Mr. Tishcoff further indicated that he understood these provisions to mean that "an annual adjustment will be provided as determined by the company and will not exceed three per cent per annum" and that "it is not a guarantee of a payment."<sup>161</sup> Mr. Tishcoff also indicated that the pension plan's COLA provisions were neither mechanical nor purely discretionary provisions but somewhere in between.

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<sup>158</sup> Exhibit 25.01, ATCO Utilities IR responses to the AUC, AUC-AU-23(a), Attachment 1, the retirement plan for Canadian Utilities Limited and Participating Companies, plan 1, PDF page 114.

<sup>159</sup> Transcript Volume 1, pages 198-199

<sup>160</sup> Transcript, Volume 1, page 198, lines 1 to 25, and page 199, lines 1 to 8.

<sup>161</sup> Transcript Volume 1, page 155, lines 13 to 15, and page 156, lines 12 to 15.



137. Further, Mr. Wright, Senior Vice-President of Regulatory for ATCO Gas, ATCO Electric, and ATCO Pipelines, indicated that the ATCO Utilities are not required to consider the financial status of the pension plan.<sup>162</sup>

138. The Commission finds that (i) there are no explicit provisions included in sections 6.9(a) and 6.12(a) that clearly prescribe a mechanical application of COLA like a contractual plan that has no discretion; (ii) the pension plan does not clearly define how Canadian Utilities would take into consideration the CPI and previous adjustments made in setting its COLA for a given year; and (iii) the pension plan does not specifically link the unfunded liability or financial position of the pension plan to the COLA provisions in sections 6.9 and 6.12(a).

139. The Commission also finds that Canadian Utilities has discretion under sections 6.9(a) and 6.12(a) of the DB plan when applying a COLA. Sections 6.9(a) and 6.12(a) indicate that the annual adjustment will be as determined by the company and also that, "In calculating the adjustment the Company will take into consideration the annual percentage changes in the Consumer Price Index for Canada and any previous adjustments paid." The Commission acknowledges that the consideration of CPI for Canada and previous adjustments in the calculation of the COLA does not preclude the annual adjustment from being determined by Canadian Utilities, or preclude Canadian Utilities from taking such steps as may be required to ensure that the discretion provided in the wording of the pension plan in determining the annual COLA is fully exercised.

140. In an exchange between the ATCO Utilities and counsel for the UCA on Section 6.9 of the pension plan, Ms. Field confirmed that if deflation occurred, a zero inflation factor would apply to the annual COLA:

Q. Okay. So your understanding is that those words "effective January -- 1 January 2008 all adjustments will occur annually on 1 January of each calendar year," that those words require the plan administrator to make an adjustment every single year to increase COLA?

A. MS. FIELD: Yes, that's right. I mean, there are cases where inflation was zero. So there was no adjustment required. But, otherwise, the language does say all adjustments will occur annually on 1 January.

Q. What if the adjustment is zero, just like you said? If the decision was zero adjustment, then you don't make one on January 1. You just continue with the benefit that was paid without an adjustment to COLA; correct?

A. MS. FIELD: The circumstance where there was an adjustment of zero, there was -- I think there was a period of deflation in that year.<sup>163</sup>

141. This exchange illustrates that the application of the annual COLA is more than a mere mechanical exercise based on CPI and involves some judgment on whether a COLA will be made in a given year.

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<sup>162</sup> Transcript Volume 1, page 70, lines 23 and 24.

<sup>163</sup> Transcript Volume 1, page 86, line 25, and page 87, lines 1 to 15.

142. The Commission agrees with the UCA that the funding of the pension plan may be a relevant factor in determining the annual COLA for regulatory purposes. In Decision 2010-189 the Commission considered the discretion available to Canadian Utilities in setting the annual COLA amount as one of the tools available to assist with addressing the DB plan's deficit. The Commission stated:

118. A change to the ATCO Utilities long standing administrative practice of granting COLA equivalent to 100 per cent of the increase in the CPI, up to the three per cent cap, represents a possible means of mitigating a significant portion of the projected Pension Plan deficit. While ATCO Utilities have argued that there may be legal issues associated with a change to this long standing administrative practice, the Commission considers that these legal considerations are primarily a product of ATCO Utilities' own creation as a result of employee/pensioner communications and/or administrative practices that do not reflect the full discretion provided in the COLA provisions in the Pension Plan. The Commission considers that ratepayers should not bear any incremental pension funding costs which arise as a result of reduced Pension Plan flexibility with respect to annual COLA where it is demonstrated that such incremental costs prove to be unreasonable or imprudent in the circumstances. This is true particularly if current administrative practices prevented Canadian Utilities from reducing the COLA in order to reduce an unfunded liability when it may have been prudent to have done so in the circumstances.<sup>164</sup>

119. In this regard, the Commission directs ATCO Utilities to take such steps as may be required to ensure that the flexibility and discretion provided by the wording of the Pension Plan in determining the annual COLA may be fully exercised.

120. The Commission directs ATCO Utilities to prepare future revenue requirement forecasts of pension costs in a manner which reflects the flexibility and discretion provided by the wording of the Pension Plan in determining the annual COLA. ATCO Utilities should be prepared to fully justify the level of COLA included in pension funding forecasts ...<sup>165</sup>

...

122. ... While the Commission does not consider that ratepayers should bear the costs of adherence to an administrative practice which may not be warranted and that the level of COLA may be one of many tools available to assist with managing the pension deficit, the COLA provision should be evaluated as part of the overall compensation available from a competitive employer who must also balance its long term pension funding obligations as a regulated utility in a prudent manner.<sup>166</sup>

143. Canadian Utilities has previously taken steps that reduced pension costs and financial risks to the utilities and customers in closing the DB plan to new entrants in 1997 and in capping the COLA provision at three per cent. The Commission is of the view that the annual application of a COLA is one of the other tools available to Canadian Utilities to manage pension deficits that may arise under the provisions of the pension plan. The management decisions and

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<sup>164</sup> Decision 2010-189, page 28, paragraph 118.

<sup>165</sup> Decision 2010-189, page 28, paragraph 120.

<sup>166</sup> Decision 2010-189, page 28, paragraph 122.

administrative practices on pension funding and the level of COLA will have a resulting impact on the forecast pension costs for which recovery is sought through rates in a given test year, and will be used by the Commission in determining just and reasonable rates (see section 6.1 above).

144. The Commission has reviewed the evidence on the record and finds that there has not been a material change in circumstances or changes to the provisions of the pension plan that persuades the Commission to find that an increase in the COLA to 100 per cent of CPI to a cap of three per cent is reasonable. Given the unfunded liability of the pension plan, the Commission finds, consistent with decisions 2010-189 and 2011-391, that there remains a pension plan deficit that is to be recovered through regulated rates. In Decision 2011-391, the Commission stated that the availability and exercise of that discretion is a relevant and material consideration for the Commission to take into account in determining the reasonableness of the pension expense which the ATCO Utilities have requested for inclusion in their respective revenue requirements.<sup>167</sup> The Commission remains of the view that an application of the COLA at 50 per cent of CPI up to three per cent is reasonable in setting just and reasonable rates, considering both the interests of the ATCO Utilities and of customers.

**6.7 Have the ATCO Utilities reduced pension costs to reflect incremental differences, and related compounding impacts on future years, between the COLA awarded by Canadian Utilities and the COLA approved by the Commission in Decision 2011-391?**

145. The UCA submitted that there is a significant and material deficit in the DB plan on a going concern valuation (unfunded liability) and a hypothetical wind-up valuation (solvency on plan termination).<sup>168</sup> The UCA argued that while the funding shortfall of the DB plan on a going concern valuation decreased slightly in that time (i.e., slight increase in financial position), the pension plan now faces a substantial shortfall, as opposed to a surplus, on a hypothetical wind-up valuation.<sup>169</sup> Table 5 below shows the going-concern valuation and hypothetical wind-up valuation, as at December 31, 2009 and December 31, 2012:

**Table 5. Comparison of the financial position of the DB plan, 2009 to 2012<sup>170</sup>**

	Financial position of the DB plan as at December 31, 2009	Financial position of the DB plan as at December 31, 2012
Going-concern valuation	(\$157,126,300)	(\$123,162,900)
Hypothetical wind-up valuation	\$171,709,700	(\$248,849,300)
Required minimum annual special payments	\$16,410,000	\$28,725,600

146. The UCA noted that in Decision 2011-391,<sup>171</sup> the Commission directed the ATCO Utilities, as follows:

<sup>167</sup> Decision 2011-391, paragraph 83.

<sup>168</sup> Exhibit 86.01, UCA argument, paragraph 53.

<sup>169</sup> Exhibit 86.02, UCA argument, paragraph 24.

<sup>170</sup> Exhibit 86.01, UCA argument, paragraph 24 citing Exhibit 2.00.ATCO GAS-2954, Report on the Actuarial Valuation for Funding Purposes as at December 31, - 2012, Retirement Plan for Employees of Canadian Utilities Limited and Participating Companies – Plan 1 [2012 Actuarial Valuation], page 1, PDF page 4.

... commencing January 1, 2012 onwards to exclude all incremental differences, and related compounding impacts on future years, between COLA awarded by CUL that exceeds the COLA level approved by the Commission for regulatory purposes.<sup>172</sup>

147. The UCA argued that its analysis of Mercer's alternative hypothetical results assuming an award of 50 per cent COLA showed that Mercer erred by not adjusting the assets to reflect that a higher level of pension payments was paid out in 2012 under a 100 per cent COLA relative to what would have been paid out had a 50 per cent COLA been applied.<sup>173</sup> The UCA relied on the ATCO Utilities' IR response that stated that actual payments to retirees during 2012, including an award of 100 per cent COLA, were \$996,000 higher than what would have been paid out in 2012 assuming an award of 50 per cent COLA.<sup>174</sup> After adjusting for interest, the UCA submitted that the value of the pension plan assets ought to have increased by approximately \$1,042,400.<sup>175</sup> The UCA submitted that had Mercer's analysis been consistent with the Commission's direction, the DB plan as at December 31, 2012, assuming 50 per cent COLA and as evidenced by the 50 per cent COLA valuation,<sup>176</sup> would have reflected a further reduction in 2013 DB plan costs of \$120,300 for the DB plan as a whole, and \$104,300 for the regulated utilities.<sup>177</sup>

### Commission findings

148. In Decision 2011-391, the Commission concluded that:

102. Further, if ATCO Utilities continues its past administrative practice of granting the COLA at 100 per cent of CPI up to a three per cent maximum, the Commission, subject to the exception described above with respect to the 2012 special payments, directs ATCO Utilities commencing January 1, 2012 onwards to exclude all incremental differences, and related compounding impacts on future years, between COLA awarded by CUL that exceeds the COLA level approved by the Commission for regulatory purposes. These incremental differences shall be excluded from the base used for calculating future period pension costs for regulatory purposes and no compounding impacts related to these incremental amounts shall be included in future years.

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<sup>171</sup> Decision 2011-391: ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.) 2011 Pension Common Matters, Application No. 1606840, Proceeding No. 99.

<sup>172</sup> Exhibit 86.01, UCA argument, paragraph 61; citing Decision 2011-391: ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.) 2011 Pension Common Matters, Application No. 1606840, Proceeding No. 99, paragraph 102.

<sup>173</sup> Exhibit 76.02, UCA Opening Statement of Pat Johnston, page 1 citing Exhibit 7.00.ATCO GAS-2954, Letter from Nelson Tishcoff to Wayne Wright re: Alternative Hypothetical Results of Valuation Report.

<sup>174</sup> Exhibit 86.01, UCA argument, paragraph 58 citing Exhibit 25.01.ATCO GAS-2954, information response to AUC-AU-2(i), PDF page 12.

<sup>175</sup> Exhibit 86.01, UCA argument, paragraph 59 citing Exhibit 25.01.ATCO GAS-2954, IR response to AUC, AUC-AU-2(i) and Mr. Johnston's precise calculations are detailed in Exhibit 81.01.UCA-2954, Undertaking 2 of Pat Johnston.

<sup>176</sup> Exhibit 7, Letter from Nelson Tishcoff to Wayne Wright re: Alternative Hypothetical Results of Valuation Report.

<sup>177</sup> Exhibit 86.01, UCA argument, paragraph 62 citing Exhibit 52.03, Rebuttal Evidence of Nelson Tishcoff, A6, page 3.

149. In response to AUC-AU-2(i),<sup>178</sup> the ATCO Utilities included a payout to retirees with a COLA at 100 per cent of CPI (capped at three per cent) for 2012 despite the 50 per cent threshold established by the Commission in Decision 2011-391, shown in the table below:

**Table 6. Analysis of defined benefit pension costs, active employees and retirees by CU plan participants**

	ATCO Gas	ATCO Electric - Distribution	ATCO Electric - Transmission	ATCO Pipelines	Regulated -Other	Non-regulated	Total
Number of 2011 DB plan retirees (row A)	934	931	166	138	108	82	1,759
2011 DB pension costs paid to retirees (row B) (\$ thousands)	24,437	12,086	6,043	3,732	4,199	1,737	52,234
Number of 2012 DB plan active employees (row C)	728	293	147	133	10	263	1,574
Number of 2012 DB plan retirees (row D)	972	340	170	137	112	98	1,829
2012 DB pension costs paid to retirees (row E) (\$ thousands)	26,725	13,764	6,882	4,151	4,465	1,997	57,984
2012 DB pension costs paid to retirees if COLA at 50% (row F) (\$ thousands)	26,295	13,518	6,759	4,071	4,377	1,968	56,988
Difference (row E-F) (row G) (\$ thousands)	430	246	123	80	88	29	996
Number of 2013 active DB plan employees (row H)	680	273	137	123	10	239	1,462
Number of 2013 DB plan retirees (row I)	1,000	359	180	144	111	113	1,907

150. Based on the above table, the Commission agrees with the UCA that \$996,000 has been paid to retirees in 2012 above the approved 50 per cent COLA established by the Commission in Decision 2011-391. The Commission considers that consistent with its direction, these amounts (including interest) paid to retirees should not be recovered through the ATCO Utilities' pension expense recovered through rates.

151. As a result of the findings in this decision, the ATCO Utilities are directed to reduce the 2013 pension expense, for each utility or category included in the above table, by removing the 100 per cent COLA used in 2012, which in aggregate results in a total reduction to 2013 DB plan costs of \$120,300, and a \$104,300 reduction attributable to the regulated utilities. For all calculations of future pension costs used for regulatory purposes, the ATCO Utilities are directed to reduce pension costs to reflect a 50 per cent COLA in accordance with Decision 2011-391 and this decision, and to remove any accruing or compounding impact of the 100 per cent COLA amount from their revenue requirements.

<sup>178</sup> Exhibit 25.01, ATCO Utilities IR responses to the AUC, PDF pages 11-12.

## 6.8 Statement of investment policies and practices

152. During the proceedings the ATCO Utilities were requested to provide materials with respect to the investment strategy employed for the pension plan. The ATCO Utilities filed the statement of investment policies and practices (SIPP) relating to the pension plan on a confidential basis with the Commission and parties. The ATCO Utilities submitted that Canadian Utilities acted within the requirements of the SIPP in making its investment choices and performing its functions under the pension plan and that there is simply no basis to support the view that Canadian Utilities has in any way acted in an inappropriate manner; therefore, no action is required by the Commission.<sup>179</sup>

153. In confidential reply argument, the UCA raised concerns with respect to Canadian Utilities' governance of the pension plan, failure to produce witnesses to address SIPP matters, and the ATCO Utilities' unwillingness to disclose information even on a confidential basis.

154. The ATCO Utilities submitted that its refusal to provide confidential materials should not infer that Canadian Utilities has acted in an inappropriate fashion.<sup>180</sup> With respect to the UCA's assertion that the ATCO Utilities failed to produce any witnesses from Canadian Utilities to speak to matters related to the SIPP, the record indicates Ms. Field (Senior Director – Pension and Benefits for the ATCO Group, Human Resources) from the ATCO Head Office was present to speak to these matters.

## Commission findings

155. The Commission has reviewed the evidence and argument by the UCA and the ATCO Utilities with respect to Canadian Utilities' SIPP. The Commission finds that the evidence filed in the confidential portion of this proceeding demonstrates that the pension plan's investments and asset mix are consistent with the parameters of the SIPP. Although greater transparency on SIPP matters would have been preferred, there is insufficient evidence on the record to indicate that Canadian Utilities' investment management decisions are inconsistent with the requirements of its SIPP or the parameters of the pension plan.

## 6.9 Summary of findings and updates to existing pension cost placeholders

156. The Commission approves for regulatory purposes the application of 50 per cent of CPI to a maximum of three per cent as a reasonable COLA while the pension plan is in a deficit position. This results in reduced current service costs and the elimination of going concern special payments for both regulated and non-regulated participating companies of the pension plan as shown in Table 7 below:

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<sup>179</sup> Exhibit 87.01, ATCO Utilities argument, paragraph 68.

<sup>180</sup> Exhibit 92.01 ATCO Utilities reply argument, paragraph 40.

**Table 7. Comparison of the actual contribution requirements for the regulated companies against 50 per cent COLA costing<sup>181</sup>**

<b>Annual employer DB contributions – actual results</b>				
	Current service cost	Going-concern special payments	Solvency special payments	Total
Gas	\$13,780,500	\$5,962,200	\$6,231,300	\$25,974,000
Electric	\$11,811,600	\$4,659,900	\$4,675,900	\$21,147,400
Pipelines	\$3,023,400	\$1,139,500	\$11,475,700	\$15,638,600
Corporate	\$410,700	\$446,200	\$554,000	\$1,410,900
<b>Total</b>	<b>\$29,026,200</b>	<b>\$12,207,800</b>	<b>\$12,606,900</b>	<b>\$53,840,900</b>
<b>Annual employer DB disallowed contributions</b>				
	Current service cost	Going-concern special payments	Solvency special payments	Total
Gas	\$1,588,300	\$5,962,200	\$5,292,200	\$12,842,700
Electric	\$1,366,400	\$4,659,900	\$3,970,200	\$9,996,500
Pipelines	\$348,100	\$1,139,500	\$971,600	\$2,459,200
Corporate	\$45,000	\$446,200	\$470,900	\$962,100
<b>Total</b>	<b>\$3,347,800</b>	<b>\$12,207,800</b>	<b>\$10,704,900</b>	<b>\$26,260,500</b>
<b>Annual employer 50% COLA costing – alternative hypothetical results</b>				
	Current service cost	Going-concern special payments	Solvency special payments	Total
Gas	\$12,192,200	-	\$939,100	\$13,131,300
Electric	\$10,445,200	-	\$705,700	\$11,151,900
Pipelines	\$2,675,300	-	\$174,100	\$2,849,400
Corporate	\$365,700	-	\$83,100	\$448,800
<b>Total</b>	<b>\$25,678,400</b>	<b>-</b>	<b>\$1,902,000</b>	<b>\$27,581,400</b>

157. Mercer reported the minimum monthly payments that must be made to the pension plan to eliminate any unfunded liability and any solvency deficiency at the valuation date as follows.<sup>182</sup>

**Table 8. Minimum monthly payments required to be made to the pension plan to eliminate unfunded liability and any solvency deficiency**

<b>Minimum monthly payments</b>				
	Effective date	Payment	Last payment	Present valuation at current date
Unfunded liability	December 31, 2009	\$1,183,300	December 31, 2024	\$123,011,100
Solvency	December 31, 2012	\$1,210,500	December 31, 2022	\$125,838,200
<b>Total</b>		<b>\$2,393,800</b>		<b>\$248,849,300</b>

158. The Commission's determination of a 50 per cent COLA is strictly related to what reasonable pension costs are for regulatory purposes and their inclusion in the ATCO Utilities' revenue requirements. Based on the findings in this decision, and until the Commission

<sup>181</sup> Exhibit 7, Appendix 6, Appendix 2 – Comparing the actual contribution requirements with the 50 per cent COLA costing, page 4.

<sup>182</sup> Exhibit 2, Appendix 1, Mercer Valuation Report, page 20, PDF, page 23.

otherwise directs, a 50 per cent COLA represents a reasonable level for setting the COLA amount for regulatory purposes.

159. The Commission directs the ATCO Utilities to revise, in its compliance filing, the COLA amounts included in the annual pension costs of each of the ATCO Utilities based on a 50 per cent COLA. The determination in this decision directly impacts the revenue requirement and pension costs of the ATCO Utilities' transmission utilities, AE-Transmission and ATCO Pipelines. AE-Distribution and ATCO Gas are currently under PBR, where the impact of pension costs is subject to the PBR formula, unless an application for an exogenous adjustment to the formula is made to the Commission because there is material change to a company's special payment obligations.

160. The Commission found that the existing placeholders for ATCO Pipelines and AE-Transmission, in Decision 2013-430,<sup>183</sup> should continue pending a Commission determination of pension costs based on an updated Mercer valuation report.<sup>184</sup> Costs that were included in the pension cost placeholders were the DB costs, special payments, and an allocation of costs between administration and general, operation and maintenance, and capital.

161. In Decision 2014-167,<sup>185</sup> ATCO Electric's 2013-2014 transmission general tariff application (GTA) compliance filing, the Commission stated:

Regarding the current service portion of defined benefit pension costs, the Commission continues to hold the view expressed in Decision 2011-391 quoted above, that the deferral account as established in Decision 2011-391 is not intended to capture changes which arise as a result of differences between forecasted and actual employee information. Therefore, the Commission denies ATCO Electric's request for a deferral account to flow-through the impact of any changes between the actual and forecast defined benefit plan pension payments, other than for the recovery of special payment costs as approved in Decision 2011-391.

162. In Decision 2014-348,<sup>186</sup> ATCO Electric's 2013-2014 transmission GTA second compliance filing, the Commission made the following findings in paragraphs 16 to 18:

In Attachment 3, Placeholder Schedule 3 submitted in response to this direction, ATCO Electric included placeholder amounts related to defined benefit special payment costs of \$1.8 million for each of 2013 and 2014 as shown in the table below:

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<sup>183</sup> Decision 2013-430: ATCO Pipelines, 2013-2014 General Rate Application, Application No. 1609158, Proceeding No. 2322, December 4, 2013.

<sup>184</sup> Decision 2013-430, paragraph 331.

<sup>185</sup> Decision 2014-167: ATCO Electric Ltd. 2013-2014 Transmission General Tariff Application Compliance Filing, Application No. 1610056, Proceeding No. 2904, June 12, 2014.

<sup>186</sup> Decision 2014-348: ATCO Electric Ltd., 2013-2014 Transmission General Tariff Application Second Compliance Filing, Application No. 1610733, Proceeding No. 3337, December 15, 2014.



Table 2: Summary of defined benefit plan costs for 2013 and 2014

	<b>2013 GTA forecast</b>	<b>2014 GTA forecast</b>
	(\$ million)	
Special payments	1.8	1.8
Current service	2.9	2.6
Total	4.7	4.4

Note: amounts shown represent combined operation and maintenance (O&M) and capital components of defined benefit pension costs.

The existing defined benefit special payments deferral account, as approved in Decision 2011-391 and discussed in Decision 2014-167, will allow ATCO Electric to recover the actual defined benefit plan special payment costs.

Regarding the current service portion of defined benefit pension costs, these amounts are not covered by the existing defined benefit special payments deferral account. ATCO Electric correctly did not include these costs in its revised Attachment 3, Placeholder Schedule 3. The amounts as forecast by ATCO Electric in the GTA for defined benefit current service costs as shown in the above table are approved as final.

163. The current service pension costs remain subject to placeholder treatment for ATCO Pipelines pending the Commission's approval of a compliance filing to this decision. Deferral account treatment is only afforded to special payment costs for the transmission utilities, ATCO Pipelines and ATCO Electric, as a result of the findings in PBR in Decision 2012-237.

164. The Commission directs the ATCO Utilities to identify the impact of the findings of this decision as it applies to all of the ATCO Utilities by completing the detailed table below, and to clearly identify the breakdown between current service costs and special payments costs. The current service costs and special payment DB costs shall be identified as separate items, and the value of each of these should be further broken down into the capital versus operating and maintenance (O&M) portions, including the resulting revenue requirement impacts as shown below:

**Table 9. Summary of 2013 pension costs**

DB pension costs	2013 pension costs				2013 revenue requirement impacts			
	AE-D	AE-T	AG	AP	AE-D	AE-T	AG	AP
<b>Current service costs</b>								
Operating								
Capital								
Total								
<b>Special payments</b>								
Going concern								
Operating								
Capital								
Going concern total								
Solvency								
Operating								
Capital								
Solvency total								
<b>DC pension costs</b>								
Operating								
Capital								
Total								
Total DB current service costs								
Total DB special payments								
Total DC current service costs								
Number of DB plan employees								
Number of DC plan employees								

165. In response to a Commission information request, the ATCO Utilities provided their pension cost placeholders for the 2013 and 2014 test years as follows:<sup>187</sup>

**Table 10. Pension cost placeholders (\$ millions)**

Pension cost placeholders	2013		2014	
	O&M	Capital	O&M	Capital
AE-Distribution	0	0	0	0
AE-Transmission	2.2	5.2	2.2	5
ATCO Pipelines	4.6	1.3	4.6	1.3
ATCO Gas	0	0	0	0

166. With regard to the above table, the ATCO Utilities are directed, as part of their compliance filing, to reconcile these amounts with the findings in this decision, Decision 2014-348 and Decision 2013-430.

<sup>187</sup> Exhibit 25.01, ATCO Utilities IR response to AUC, AUC-AU-2(e).

167. The ATCO Utilities are also directed to reproduce Table 10 in their compliance filing, including columns which display the approved operations and maintenance, and capital amounts, for 2013 and 2014 based on applying a 50 per cent cost-of-living adjustment. The ATCO Utilities are further directed to provide the impact to AE-Transmission and ATCO Pipelines' revenue requirements that arise from applying a cost-of-living adjustment at 50 per cent of CPI, and to confirm that the placeholders will be adjusted for AE-Transmission and ATCO Pipelines in their next general tariff applications.

## 7 Order

168. It is hereby ordered that:

- (1) The Commission directs the ATCO Utilities to submit a compliance filing in accordance with the directions set out in this decision by March 16, 2015.

Dated on January 15, 2015.

### Alberta Utilities Commission

*(original signed by)*

Anne Michaud  
Panel Chair

*(original signed by)*

Bill Lyttle  
Commission Member

*(original signed by)*

Tudor Beattie  
Commission Member



## Appendix 1 – Proceeding participants

<b>Name of organization (abbreviation) counsel or representative</b>
ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd. (ATCO Utilities) B. Jones E. Kiefer L. Kerckhof J. Reed T. Wallace D. Wilson W. Wright B. Yee C. Field L. Keough M. Synnott
AltaGas Utilities Inc. L. Chan N. J. McKenzie
The City of Calgary H. Johnson M. Rowe D. Evanchuk
Consumers' Coalition of Alberta (CCA) A. Merani J. A. Wachowich
Office of the Utilities Consumer Advocate (UCA) H. Gnez M. Morel R. Spragins P. Johnston C. Randall McCreary B. Schwanak K. Arrowsmith K. Joynt R. Bell M. Lattoni

The Alberta Utilities Commission

Commission Panel

- A. Michaud, Panel Chair
- B. Lyttle, Commission Member
- T. Beattie, Commission Member

Commission Staff

- C. Wall (Commission counsel)
- A. Sabo (Commission counsel)
- M. McJannet
- D. Cherniwchan
- J. Graham
- M. Kopp-van Egteren
- D. Ward

**Appendix 2 – Oral hearing – registered appearances**

<b>Name of organization (abbreviation) counsel or representative</b>	<b>Witnesses</b>
ATCO Utilities L. Keough C. Pardell	ATCO Panel C. Field W. Wright N. Tishcoff K. Yung
Consumers' Coalition of Alberta (CCA) J.A. Wachowich	
Office of the Utilities Consumer Advocate (UCA) C. Randall McCreary B. Schwanak	UCA Panel P. Johnston M. Lattoni
The Alberta Utilities Commission  Commission Panel A. Michaud, Panel Chair B. Lyttle, Commission Member T. Beattie, Commission Member  Commission Staff C. Wall (Commission counsel) M. McJannet M. Kopp-van Egteren D. Ward	

### Appendix 3 – Summary of Commission directions

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

1. As a result of the findings in this decision, the ATCO Utilities are directed to reduce the 2013 pension expense, for each utility or category included in the above table, by removing the 100 per cent COLA used in 2012, which in aggregate results in a total reduction to 2013 DB plan costs of \$120,300, and a \$104,300 reduction attributable to the regulated utilities. For all calculations of future pension costs used for regulatory purposes, the ATCO Utilities are directed to reduce pension costs to reflect a 50 per cent COLA in accordance with Decision 2011-391 and this decision, and to remove any accruing or compounding impact of the 100 per cent COLA amount from their revenue requirements..... Paragraph 151
2. The Commission directs the ATCO Utilities to revise, in its compliance filing, the COLA amounts included in the annual pension costs of each of the ATCO Utilities based on a 50 per cent COLA. The determination in this decision directly impacts the revenue requirement and pension costs of the ATCO Utilities’ transmission utilities, AE-Transmission and ATCO Pipelines. AE-Distribution and ATCO Gas are currently under PBR, where the impact of pension costs is subject to the PBR formula, unless an application for an exogenous adjustment to the formula is made to the Commission because there is material change to a company’s special payment obligations.  
..... Paragraph 159
3. The Commission directs the ATCO Utilities to identify the impact of the findings of this decision as it applies to all of the ATCO Utilities by completing the detailed table below, and to clearly identify the breakdown between current service costs and special payments costs. The current service costs and special payment DB costs shall be identified as separate items, and the value of each of these should be further broken down into the capital versus operating and maintenance (O&M) portions, including the resulting revenue requirement impacts as shown below..... Paragraph 164
4. With regard to the above table, the ATCO Utilities are directed, as part of their compliance filing, to reconcile these amounts with the findings in this decision, Decision 2014-348 and Decision 2013-430. .... Paragraph 166
5. The ATCO Utilities are also directed to reproduce in their compliance filing, Table 10 including columns which display the approved operations and maintenance, and capital amounts, for 2013 and 2014 based on applying a 50 per cent cost-of-living adjustment. The ATCO Utilities are also directed to provide the impact to AE-Transmission and ATCO Pipelines’ revenue requirements that arise from applying a cost-of-living adjustment at 50 per cent of CPI, and to confirm that the placeholders will be adjusted for AE-Transmission and ATCO Pipelines in their next general tariff applications.  
..... Paragraph 167



6. It is hereby ordered that: The Commission directs the ATCO Utilities to submit a compliance filing in accordance with the directions set out in this decision by March 16, 2015..... Paragraph 168