



**ATCO Gas
(A Division of ATCO Gas and Pipelines Ltd.)**

**Phase II Review and Variance Decision on Decision 2011-450
2011-2012 General Rate Application Phase I**

February 22, 2013

The Alberta Utilities Commission

Decision 2013-057: ATCO Gas (A Division of ATCO Gas and Pipelines Ltd.)

Phase II Review and Variance Decision on Decision 2011-450

2011-2012 General Rate Application Phase I

Application No. 1608121

Proceeding ID No. 1698

February 22, 2013

Published by

The Alberta Utilities Commission

Fifth Avenue Place, Fourth Floor, 425 First Street SW

Calgary, Alberta

T2P 3L8

Telephone: (403) 592-8845

Fax: (403) 592-4406

Website: www.auc.ab.ca

Contents

1	Introduction and background.....	1
2	Customer Information System enhancement program costs for 2011 and 2012	3
3	Oracle Human Resource Management System (Oracle HRMS or HRX).....	5
4	NEB/NGTL hearing matters.....	11
5	Late payment penalty (LPP)	13
6	Calgary office lease	18
	Appendix 1 – Proceeding participants	22
	Appendix 3 – Summary of Commission directions.....	24

List of tables

Table 1.	CIS enhancement projects planned for the test years	5
Table 2.	ATCO Gas/ATCO Electric Oracle HRX Cost Breakdown	8

1 Introduction and background

1. On February 3, 2012, ATCO Gas (AG), a division of ATCO Gas and Pipelines Ltd. (AGPL), filed a review and variance application (R&V application) regarding Decision 2011-450,¹ pursuant to Section 10 of the *Alberta Utilities Commission Act*, SA 2007, c. A-372 and Alberta Utilities Commission (AUC or Commission) Rule 016: *Review and Variance of Commission Decisions* (Rule 016).

2. ATCO Gas submitted that the AUC committed errors of fact, law and/or jurisdiction in relation to various issues in Decision 2011-450 which raise substantial doubt as to the correctness of Decision 2011-450 pursuant to Section 12(a)(i) of AUC Rule 016. ATCO Gas also submitted that there are new facts, changes in circumstances and/or facts not previously placed in evidence for various issues that could reasonably lead the AUC to materially vary or rescind Decision 2011-450 pursuant to Section 12(a)(ii) of AUC Rule 016.

3. In this decision, the Commission panel that provided its findings in Decision 2011-450 regarding ATCO Gas's 2011-2012 general rate application is referred to as the "hearing panel" and the Commission panel that considered the R&V application is referred to as the "review panel".

4. On June 8, 2012, the Commission released Decision 2012-156² in which the Commission granted ATCO Gas's request to review Decision 2011-450 on certain issues, specifically:

- (a) Customer Information System (CIS) enhancement program costs for 2011 and 2012
- (b) Oracle Human Resource Management System costs for 2011 and 2012
- (c) inclusion of \$300,000 forecast costs for legal fees related to participation in National Energy Board (NEB) hearings for 2011 and 2012 regarding NOVA Gas Transmission Ltd. (NGTL)
- (d) recovery of the costs associated with the settlement regarding the late payment penalty
- (e) Calgary office lease

5. On June 8, 2012, the Commission also issued a notice of review³ requiring that any party not currently registered in the proceeding who wished to intervene submit a statement of intent to participate (SIP) to the Commission by the participation closing deadline of 2 p.m.,

¹ Decision 2011-450: ATCO Gas (a Division of ATCO Gas and Pipelines Ltd.), 2011-2012 General Rate Application Phase I, Application No. 1606822, Proceeding ID No. 969, December 5, 2011.

² Decision 2012-156: ATCO Gas (a Division of ATCO Gas and Pipelines Ltd.), Decision on Request for Review and Variance of AUC Decision 2011-450, Application No. 1608121, Proceeding ID No.1698, June 08, 2012

³ Exhibit 14.01.

June 22, 2012. The Commission received SIPs from Direct Energy Marketing Ltd. (DEML), The City of Calgary (Calgary), and the Consumers' Coalition of Alberta (CCA).

6. The review panel also directed parties to refile any evidence that was filed as part of the original distribution tariff application which they intended to rely upon and is relevant to the issues under review by 2 p.m., June 29, 2012. ATCO Gas and Calgary were the only parties to submit evidence on June 29, 2012.

7. As part of the evidence Calgary filed with the Commission, Calgary also sought leave from the Commission to include evidence regarding the Oracle Human Resource Management System costs which had been struck from the record for the proceeding (Proceeding ID No. 969) leading to Decision 2011-450⁴ (leave application).

8. On August 2, 2012, the Commission released a ruling⁵ allowing the supplemental Oracle HRX evidence on the record of this proceeding. The Commission also established the following process schedule for the balance of the proceeding:

Process step	Date
Information requests to parties	August 23, 2012
Information responses from parties	September 6, 2012
ATCO Gas rebuttal evidence	September 20, 2012
Information requests on rebuttal evidence	October 4, 2012
Information responses on rebuttal evidence	October 18, 2012
Argument	November 1, 2012
Reply argument	November 15, 2012

9. On November 13, 2012, ATCO Gas requested a two-week extension for the filing of reply argument to December 6, 2012.⁶ The Commission approved the requested extension. On December 7, 2012, the CCA filed a letter⁷ stating that, due to scheduling conflicts, the CCA would be unable to submit its reply argument until December 10, 2012. The review panel considers the close of the record of this proceeding to be December 10, 2012.

10. In reaching the determinations contained within this decision, the review panel has considered all relevant materials comprising the record of this proceeding, including the evidence and 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 review panel's reasoning relating to a particular matter and should not be taken as an indication that it did not consider all relevant portions of the record with respect to that matter.

⁴ Decision 2011-450: ATCO Gas (a Division of ATCO Gas and Pipelines Ltd.), 2011-2012 General Rate Application Phase I, Application No. 1606822, Proceeding ID No. 969, December 5, 2011.

⁵ Exhibit 26.01.

⁶ Exhibit 47.01.

⁷ Exhibit 51.01.

2 Customer Information System enhancement program costs for 2011 and 2012

11. In Decision 2012-156, the review panel stated the following with respect to CIS enhancements:

48. ...the review panel considers it is unclear whether the hearing panel considered AG's response to AUC-AG-43(b) in coming to its conclusion that "paragraph 129 of the application does not justify the requested capital expenditure for this project." Given that AG's response to AUC-AG-43(b) could be relevant to the matter at issue, the review panel considers that this raises an error of law and a substantial doubt has been raised as to the correctness of the decision. Therefore, the review panel grants a review of the decision to deny AG's Customer Information System enhancement forecast costs.⁸

Views of the parties

12. In its argument ATCO Gas identified a number of additional sources of information regarding the CIS enhancements⁹ and stated that in prior proceedings, the Commission approved CIS enhancement forecasts without the support of a business case.¹⁰ ATCO Gas submitted that it does not often provide a business case for CIS software enhancement costs for the following reasons:

- CIS software enhancement forecasts generally relate to numerous small projects undertaken over the course of a year.
- It is extremely difficult to forecast specific enhancements that may be required over the course of the test period because the enhancements are often driven by changing circumstances and needs.
- Business cases for system enhancements are generally prepared at the time a specific enhancement requirement has been identified.¹¹

13. The UCA submitted that the response to AUC-AG-43(b) does not provide sufficient justification for the forecast costs requested by ATCO Gas. The UCA did note that the 2008-2009 CIS business case did reference that it is necessary to enhance CIS on an on-going basis.¹²

14. Calgary submitted that the project benefits associated with CIS enhancements were not quantified by ATCO Gas and therefore these costs should not be approved. Specifically, a number of the CIS projects for 2011-2012 were described as changes to functionality and required to streamline operational processes and create efficiencies. However, the value of these productivity benefits was not provided.¹³

⁸ Decision 2012-156, paragraph 48.

⁹ Exhibit 42.01, paragraph 4.

¹⁰ Ibid., paragraph 6.

¹¹ Exhibit 20.02, paragraph 12.

¹² Exhibit 43.02, paragraph 8.

¹³ Exhibit 44.01, paragraph 14.

Commission findings

15. The review panel accepts ATCO Gas's explanation that it is difficult to prepare a business case for these types of small projects. While the requirements set out in Decision 2001-96,¹⁴ that all major capital projects should include a detailed justification including demand, energy and supply information, a breakdown of the project cost, the options considered and their economics, and a discussion of the need for the project, are still in effect for the analysis of utility business cases, the review panel finds that a business case is not required for numerous small projects of this nature. The review panel agrees with ATCO Gas's submission on the difficulty of forecasting specific CIS enhancements prior to when they are required.

16. In this review and variance proceeding, ATCO Gas listed the portions of the record in the original proceeding (in addition to paragraph 129 and AUC-AG-43(b)) which dealt with the CIS enhancement expenditures, as follows:

- Application description - Table 2.1.1.8(a): section of the GRA application that described the CIS enhancements and provided the forecast amounts.
- Information requests AUC-AG-79(a) and CAL-AG-22: provided further detail of the costs and description of the proposed CIS enhancement projects.
- CCA-AG-19(a): provided historical forecast and actual costs for CIS enhancements.
- Rebuttal evidence (paragraphs 102-104): provided a summary of the information on the record regarding the proposed CIS enhancements.¹⁵

17. ATCO Gas's response to CAL-AG-22 summarizes the CIS enhancement projects planned for the test years.¹⁶

¹⁴ Decision 2001-96: ATCO Gas South 2001/2002 General Rate Application Phase I, Application No. 2000350, File No. 1307-1, December 12, 2001, page 29.

¹⁵ Exhibit 42.01, paragraph 4.

¹⁶ Exhibit 20.04, page 212.

Table 1. CIS enhancement projects planned for the test years

2011 enhancement projects	Cost	Project description
Usage, Meter Data Management and New Reporting Requirements	\$200,000	System changes to functionality to meet changing business needs
Calculated Measured Demand	\$350,000	To move the billing demand calculation into ATCO-CIS
Regulatory Requirements	\$200,000	System changes required to comply with regulatory requirements
Operating System/Heat Area Changes	\$100,000	System changes to automatic service point Heat Area and Operating Systems in ATCO- CIS
Operational System Improvements	\$200,000	Changes required for streamlining operational process and creating efficiencies by reducing manual intervention.
Total	\$1,050,000	
2012 enhancement projects	Cost	Project description
Usage, Meter Data Management and New Reporting Requirements	\$200,000	System changes to functionality to meet changing business needs
Regulatory Requirements	\$200,000	System changes required to comply with regulatory requirements
Operational System Improvements	\$225,000	Changes required for streamlining operational process and creating efficiencies by reducing manual intervention.
Total	\$625,000	

18. The review panel has reviewed all of this information and finds that ATCO Gas provided sufficient information to demonstrate that the applied for amounts are reasonable. For these reasons, the review panel approves the inclusion of the 2011 and 2012 CIS enhancement forecast costs of \$1,050,000 and \$625,000 in revenue requirement. The 2012 amount shall be reflected in the 2012 revenue requirement established for the purpose of determining performance-based regulation (PBR) going-in rates.

3 Oracle Human Resource Management System (Oracle HRMS or HRX)

19. In Decision 2012-156 the review panel made the following determination with respect to Oracle Human Resource Management System (Oracle HRMS or HRX):

65. The review panel notes that the AE business case was filed after cross-examination of the AG panel was completed and that Calgary explicitly indicated that it did not intend to cross examine on the AE business case. In addition, although the business case was not central to Calgary’s argument, the Commission relied on it to make its determination. The review panel considers these facts suggest that AG did not have a reason or the opportunity to place the business case into context (for example, by addressing its relevance or weight in argument or reply argument) and raises a substantial doubt as to the correctness of the decision. Therefore, the review panel grants a review of the hearing panel’s determination on AG’s Oracle Human Resource Management System costs.¹⁷

¹⁷ Decision 2012-156, paragraph 65.

Views of the parties

20. ATCO Gas submitted that ATCO Electric Ltd.'s (ATCO Electric) actual approved cost for Oracle HRMS of \$8.9 million was 24 per cent higher than the forecast amount of \$7.2 million upon which the hearing panel relied in approving ATCO Gas's costs for Oracle HRMS in Decision 2011-450.¹⁸ ATCO Gas further argued that if this 24 per cent cost overrun were applied to the amount of \$13.6 million approved in Decision 2011-450, ATCO Gas should have been allowed to include forecast HRX costs of up to \$16.9 million.¹⁹

21. On May 4, 2011, Stephens Consulting Ltd. (SCL), on behalf of Calgary, issued a request for proposal (RFP) requesting bids to provide an independent report on the Human Capital Management (HCM) proposals of ATCO Gas. HRchitect Inc. was the successful bidder and entered into an agreement with SCL to provide the report, along with oral testimony at the GRA hearing.²⁰ The HRchitect evidence on the Oracle HRX system was stricken from the record of the GRA proceeding by the hearing panel due to the fact that Calgary's supplemental evidence was intended be limited to the Talent Management System business case.²¹ In this variance proceeding, Calgary was permitted to file the HRchitect report on the record.²² The report contained an examination of the costs of the proposed Oracle HRX system and concluded:

The total cost for implementing the Oracle HRMS (core HR, Payroll, Benefits, Manager Self Service, Time & Labor) was forecasted to be \$16.1M. Implementation was actually completed in early 2010 for a total cost of \$15.1M. Add in approximately \$300k per year for 2011-2012 in requested enhancements, and the five year total (2008-2012) rises to \$15.7M. Add ongoing infrastructure support costs of \$3.67M for three years (2010-2012), and the grand total is \$19.4M. Given that this total cost is to support approximately 2,100 employees, the result is a five year cost of \$9,224 *per employee!* (sic) An examination of the cost breakdown table in the Business Case (ATCO Gas General Rate Application Filing 2011-2012, Page 21) helps explain why --- every cost line item is exorbitant, from almost \$1M spent on defining Business Requirements to \$1.3M in Infrastructure, to \$3.1M in Project Management Office (PMO) costs. The level of cost differential compared to the HRchitect Typical HRMS/Time & Labor scenario is striking when one realizes that the total five year cost is \$3.59M, or \$1,748 per employee – a mere 18.9% of the Oracle implementation.²³

22. ATCO Gas stated that the evidence provided by Mr. Hanscome, Calgary's expert and author of the HRchitect report, was flawed in a number areas:²⁴

Mr. Hanscome's evidence confirms that his estimates are based on Software as a Service ("SaaS") model, whereas ATCO Gas' implementation is based on a licensed hosted model. ATCO Gas provided a copy of the 2009/2010 Cedar Crestone survey in Attachment 2 of its Rebuttal evidence, which indicates that a SaaS deployment was only being used in 6% of the implementations in 2009. The survey also indicates that deployment models for HRMS other than licensed-on premise (the ATCO Gas model) were not being widely used by "best practice" organizations at that time, possibly

¹⁸ Exhibit 42.01, paragraph 15 and 16.

¹⁹ \$13.6 million x 1.24 = \$16.9 million.

²⁰ Proceeding ID No. 969, Exhibit 195.

²¹ Proceeding ID No. 969, Exhibit 187.01.

²² Exhibit 26.01.

²³ Exhibit 22.04, Section 6.2.

²⁴ Exhibit 42.01, paragraph 18 and 20.

because of potential issues associated with the growing pains related to those deployment models.

Mr. Hanscome also acknowledged that there were significant concerns with first generation SaaS application. He also noted that the ability to customize a SaaS deployment model is limited, to say nothing of the fact that companies (like ATCO Gas) may be more comfortable with HR data residing on internal servers.

It appears that Mr. Hanscome's assessment is based on a generic, high-level analysis - not specific to the requirements of ATCO Gas. Mr. Hanscome's report was not developed with the rigor that HRchitect indicates is typically used in these matters. Clearly what was filed by HRchitect was not a business case specific to the circumstances of ATCO Gas.

The derivation of the cost comparison by Calgary is based on a CedarCrestone Survey. While a survey can provide useful information, the CedarCrestone Survey does not contain a detailed description of the survey methodology with respect to sampling accuracy, breadth of the same group, etc. CedarCrestone, in fact, urges users of the survey to be cautious when using the results.

HRchitect's analysis relies on confidential studies from Nucleus ROI and Mercer, neither of which Calgary has provided. As a result, ATCO Gas has not been able to determine the basis or validity of the estimates relied upon by HRchitect.

ATCO Gas is unsure how HRchitect was able to make any claims without any knowledge or analysis with regard to how ATCO Gas managed Time and Labour related functions prior to the implementation of HRX. (footnotes omitted)

23. ATCO Gas stated that its business case on Oracle HRMS described all the issues ATCO Gas was experiencing from its 20 year-old legacy system, that it was proven technology, and that Oracle HRMS offered additional confidentiality of employee data. ATCO Gas submitted that the actual cost of \$14.4 million should be approved for inclusion in the rate base of ATCO Gas.

24. Calgary noted that in this variance proceeding the HRchitect evidence was made available to help the review panel refine and extend the approach used by the hearing panel in Decision 2011-450.²⁵

25. Calgary produced a table combining information from two IR responses to detail the cost breakdown and the difference in common implementation costs between ATCO Gas and ATCO Electric.²⁶

²⁵ Exhibit 44.01, paragraph 20.

²⁶ Ibid.

Table 2. ATCO Gas/ATCO Electric Oracle HRX Cost Breakdown

AUC-AG-07 (e) AG/AE HRX Project Cost Breakdown Updated using CAL-AG-07(b) Common Implementation Costs Allocation				
Source	CAL-AG-07(a)	AUC-AG-07(e)	AUC-AG-07(e)	AG Using CAL-AG-07(b) Allocations
Description	Cost Type	ATCO Gas (\$ million)	ATCO Electric (\$ million)	ATCO Gas (\$ million)
ATCO I-Tek labour	Common	\$6.80	\$4.20	\$6.14
ATCO I-Tek supplies	Common	\$3.80	\$2.40	\$3.51
Utility labour	Utility Specific	\$0.90	\$0.50	\$0.90
Utility supplies	Utility Specific	\$0.00	\$0.10	\$0.00
AFUDC	Utility Specific	\$0.40	\$0.20	\$0.40
Vendor supplies and licensing	Common	\$2.40	\$1.50	\$2.19
Total		\$14.30	\$8.90	\$13.14

Notes:
 1. CAL-AG-07(b) Common Implementation Cost Allocation was $2234/1528 = 1.462$
 2. Total for AG Using CAL-AG-07(b) Allocation Is Common Costs $(\$4.2 + \$2.4 + 1.5) \times 1.462 = 11.84$
 plus Utility Specific Costs $(0.9 + 0.0 + 0.4) = 1.3$ - Total is 13.14

26. Calgary further noted that ATCO Gas confirmed that the implementation of Oracle HRMS started in June 2007 and was complete in December 2009 for all ATCO companies, including ATCO Electric and ATCO Gas.²⁷

27. The issue of project budget overruns and timing of the request for project approval was also examined by Calgary. Calgary provided the following timeline to demonstrate the unnecessary cost difference in the cost of Oracle HRMS for ATCO Electric and ATCO Gas.

AE was the first ATCO utility to request approval (in its Nov 6, 2006 GTA) for HRX at an estimated capital cost of \$3.15 million. This AE HRX project was approved in Decision 2007-071 without the mention of the ATCO Corporate HRX project in the decision.

AE again requested approval in its July 4, 2008 GTA for HRX, at an updated estimate capital cost of \$7.18 million. The business case does not mention that the project costs have more than doubled since its previous request. This updated AE HRX project was approved in Decision 2009-087 and again without the mention of the Corporate HRX project in the decision.

AG was the last ATCO utility to request approval in its Proceeding 969 GRA application, for HRX at an estimated capital cost of \$16.1 million. The AG HRX project approval

²⁷ Exhibit 44.01, paragraph 22.

request was after implementation was completed, and had it been submitted in the AG 2008-2009 GRA (Proceeding 11) as it should have been, the Commission and Interveners would have experienced the doubling of AG HRX capital costs and reacted appropriately. In its evidence in this proceeding, AG advised that the final actual HRX project costs were \$8.9 million for AE and \$14.4 million for AG.²⁸

28. ATCO Gas responded in its reply that the costs for ATCO Electric exclude the costs allocated to the North of 60 utilities,²⁹ therefore it is not possible to perform the high level approximation provided by Calgary.

Commission findings

29. During the proceeding that led to Decision 2011-450, the original 2011-2012 GRA forecast amount of \$16.1 million for the Oracle HRX project was updated to the forecast cost of \$15.1 million. This amount was further refined in this review proceeding to the actual cost of \$14.4 million.³⁰ ATCO Gas's 2011-2012 GRA application was filed on December 3, 2010, effectively one full year after the implementation of Oracle HRX was completed. Given that the project implementation was completed in December 2009,³¹ the review panel is unclear on why the actual cost of \$14.4 million was not included in the original 2011-2012 GRA application.

30. The prospective nature of the regulatory framework was discussed in Decision 2008-113.³² ATCO Gas's prior general rates application for 2008 and 2009 to which the Commission referred in Decision 2006-004,³³ discussed the use of updated information in a prospective rate setting environment;

The Commission agrees with the Board's comments cited above, and continues to hold that an appropriate balance can be struck which allows for a utility to plan and budget according to its forecasts but that also provides the Commission with sufficient current information to enable it to assess the reasonableness of those forecasts. It is expected that a utility will put forth its best possible case in making an application for its revenue requirement. That best possible case should reflect information available to the utility that may reasonably form part of its Application and any updates thereto.

Given the reality that the Commission expects to receive the most up-to-date information during a proceeding and that AG and other utilities bring evidence of increasing costs during a proceeding as it becomes available, the Commission agrees with CG's submission that prospectivity effectively starts from the close of the proceeding, rather than at the time of the application. This is the practical consequence of having a proceeding that runs into the year for which a rate application is made and ensuring that the Commission has the best possible information before it in order to make a decision on that application.³⁴

²⁸ Ibid.

²⁹ Exhibit 48.01, paragraph 17.

³⁰ Exhibit 20.02, paragraph 34.

³¹ Exhibit 31.01, AUC-AG-7(b).

³² Decision 2008-113: ATCO Gas 2008-2009 General Rate Application Phase I, Application No. 1553052, Proceeding ID. 11, November 13, 2008.

³³ Decision 2006-004: ATCO Gas 2005-2007 General Rate Application Phase I, Application No. 1400690, January 27, 2006; and errata Decision 2006-014 dated February 24, 2006.

³⁴ Decision 2008-113, page 16.

31. While ATCO Gas would have preferred receiving the full original forecast amount in its revenue requirement, the Commission expects utilities to update their applications with the most up-to-date information, regardless of the directional deviation from the forecast. In the proceeding that led to Decision 2011-450, ATCO Gas revised its original forecast from \$16.1 million to \$15.1 million. In Decision 2011-450, the hearing panel approved the forecast of \$15.1 million with a ten per cent cost reduction (\$13.6 million). In this review and variance proceeding ATCO Gas submits that the review panel should allow the actual amount of \$14.4 million for the Oracle HRX system. This would represent an increase of \$800,000 from the amount approved by the hearing panel.³⁵

32. Under cost of service regulation, a utility's costs are reviewed on a prospective basis. Review and variance proceedings should not be used to update forecast costs to actual costs unless there is some compelling reason to do so. ATCO Gas did not provide such a reason. The review panel's duty in this review and variance proceeding is to determine whether the forecast amount awarded by the hearing panel should be revised. Review and variance proceedings should not amount to an opportunity to true-up forecasts to actuals, similar to the deferral account mechanism.

33. In Decision 2012-156, the review panel approved a review and variance of the hearing panel's determination on ATCO Gas's Oracle HRX costs based on the fact that ATCO Gas did not have the opportunity to place ATCO Electric's business case into context. In this review proceeding, ATCO Gas provided very little information that was directed to placing ATCO Electric's business case into context. As a result, in AUC-AG-07(d), the review panel asked ATCO Gas to fully explain why there was such a large difference in the cost of the project for ATCO Electric (\$8.9 million), compared to the cost of the project for ATCO Gas (\$14.4 million). ATCO Gas stated:

Each company was allocated their share of the common implementation costs based on the number of employees in their organization. ATCO Gas received 32% of the common implementation costs and ATCO Electric received 22% of the common implementation costs. In addition, each company had its own internal costs for the project related to meeting the specific requirements of each utility.

34. The review panel does not consider this information to be sufficient. Conversely, the review panel found additional information provided by Calgary in this review and variance proceeding, specifically the breakdown of common implementation costs for ATCO I-Tek and vendor fees, that was helpful in its determinations on this matter. In Table 2 above, Calgary provided an analysis which effectively compared the costs based solely on the number of employees in ATCO Gas and ATCO Electric. This analysis escalates the common implementation costs charged to ATCO Gas by a ratio of 1.462.³⁶ ATCO Gas asserted that Calgary's approximation was done at a high level because the costs for ATCO Electric excluded the costs allocated to the North of 60 utilities. However, the review panel observes that in an IR response, ATCO Gas confirmed that each company was allocated its share of the common implementation costs based on the number of employees in each organization.³⁷

³⁵ \$15.1 million x 90 per cent = \$13.6 million - \$14.4 million = (\$800,000).

³⁶ AG employee count divided by AE employee count (2234/1528=1.462).

³⁷ Exhibit 31.01, AUC-AG-7(b).

35. Using the employee ratio of 1.462, Calgary calculated a revised total of \$13.14 million for the cost of the project to ATCO Gas. This amount is \$460,000 below the amount awarded by the hearing panel in Decision 2011-450. Because the Oracle HRX project was implemented by both utilities at roughly the same time and employee numbers were the driver of common cost allocations and because ATCO Gas used employee numbers to allocate common costs, using the employee ratio of 1.462 to escalate the costs for ATCO Gas is reasonable for the purpose of considering whether a variance of the original decision is warranted. Using this approach, the forecast costs of the project to be allocated to ATCO Gas would have been \$13.14 million, compared to the \$13.6 million allowed by the hearing panel. Therefore, the review panel finds that there is no sufficient justification to warrant overturning the hearing panel's decision to lower the original forecast amount of \$15.1 million by 10 per cent to \$13.6 million. The review panel confirms the hearing panel's finding in Decision 2011-450 and approves a ten per cent reduction of the \$15.1 million forecast for Oracle HRX to \$13.6 million.

4 NEB/NGTL hearing matters

36. In Decision 2012-156 the review panel made the following determination with respect to the costs for ATCO Gas's participation in NEB/NGTL hearings:

74. ...the hearing panel's subsequent finding that "no rationale was provided" does not address any of the items raised in AG's response to AUC-AG-83, namely, the complexities of NGTL rate design, AG's lack of familiarity with NGTL rate design, and the "additional cost risks associated with the export deliveries and costs on the TransCanada Mainline that may have an effect on costs incurred by Alberta customers". Because AG's response to AUC-AG-83 may be relevant to the matter at issue, the review panel considers that this raises an error of law and a substantial doubt has been raised as to the correctness of the decision. The review panel grants a review of the decision to deny AG's request to recover \$300,000 in forecast costs for participation in NEB NGTL hearings.³⁸

Views of the parties

37. ATCO Gas is participating in the TransCanada Mainline Restructuring Proceeding (RH-003-2011) before the NEB. ATCO Gas noted in its argument, that there are cost risks associated with the export deliveries and costs on the TransCanada mainline, which could have an effect on the rates charged to ATCO Gas. Further, ATCO Gas is uncertain how active other Alberta interveners, such as the UCA, planned to be in the TransCanada Mainline Restructuring proceeding (RH-003-2011).³⁹

38. ATCO Gas further clarified that it was seeking recovery of costs in excess of those applicable under AUC Rule 022: *Rules on Intervener Costs* (AUC Rule 022). In information response AUC-AG-2(c), ATCO Gas stated:

The average (weighted) consultant hourly rate is approximately \$470. The average (weighted) legal counsel hourly rate is approximately \$635. These rates are based on the costs incurred to date.

³⁸ Decision 2012-156, paragraph 74.

³⁹ Exhibit 42.01, paragraph 26.

ATCO Gas is not seeking recovery of these costs under an AUC cost claim process, to which Rule 022 applies (although ATCO Gas notes that even under Rule 022, parties have the right to seek recovery of costs in excess of the Commission's scale of costs as outlined in Rule 022). ATCO Gas is entitled by Alberta Regulation 186/2003 (section 4(3)) to recovery of its prudent costs incurred in the provision of distribution utility service. The reasonableness of the costs that ATCO Gas is requesting be approved for inclusion in its revenue requirement forecasts for 2011 and 2012 is supported by ATCO Gas' required participation (to represent the interests of its customers) in an extremely complex proceeding of significant duration.⁴⁰

39. ATCO Gas updated its forecast costs for participation in the NEB proceedings to \$128,000 and \$172,000 for 2011 and 2012 respectively, which continue to amount to the \$300,000 total originally forecast. ATCO Gas requested that the 2013 PBR going-in rates be adjusted to reflect the additional amount for 2012.⁴¹

40. No interveners filed evidence, argument or reply argument on this issue.

Commission findings

41. In its submissions, ATCO Gas relied on Section 4(3) of the *Roles, Relationships and Responsibilities Regulation*, AR 186/2003, to support its recovery of costs for participation in the NEB/NGTL hearings. Section 4(3) of the *Roles, Relationships and Responsibilities Regulation* states the following:

A gas distributor is entitled to recover in its tariffs the prudent costs as determined by the Commission that are incurred by the gas distributor to meet the requirements of subsection (1).

42. Subsection (1) of the *Roles, Relationships and Responsibilities Regulation* lists the required functions of a gas distributor. It is important to note that participation in a regulatory proceeding or litigation on behalf of the gas distributor is not one of the items specified in subsection (1).

43. Nevertheless, the review panel considers the following requirements set out in Section 4(1) of the *Roles, Relationships and Responsibilities Regulation* to be relevant in this circumstance:

4(1) A gas distributor must do the following:

- (b) make decisions about building, upgrading and improving the gas distribution system for the purpose of providing safe, reliable and economic delivery of gas to customers in the service area served by the gas distribution system;
- (c) arrange for adequate upstream transmission capacity for the purpose of clause (b);

44. ATCO Gas's appearance before the NEB TransCanada Mainline Restructuring Proceeding is part of ATCO Gas's duty to arrange for adequate upstream transmission capacity,

⁴⁰ Exhibit 31.01, AUC-AG-02(b) and (c).

⁴¹ Exhibit 42.01, paragraph 30.

which includes arranging for economic delivery of it, in accordance with sections 4(1)(b) and (c) of the *Roles, Relationships and Responsibilities Regulation*.

45. For these reasons, ATCO Gas is entitled to recover these costs. The review panel grants ATCO Gas's request for the inclusion of \$128,000 and \$172,000 in revenue requirement for 2011 and 2012 respectively. The 2012 amount of \$172,000 shall be included in the revenue requirement calculation of ATCO Gas's PBR going-in rates.

46. ATCO Gas's costs to participate in the TransCanada Mainline Restructuring Proceeding before the NEB are not the same as the costs to participate in an AUC proceeding. Specifically, the review panel considers it is a business decision to attend a regulatory hearing before another regulator in order to minimize the costs of transmission service to the utility. As such, Section 21 of the *Alberta Utilities Commission Act* does not apply and nothing in this decision establishes a precedent with respect to any applications for costs by ATCO Gas in AUC proceedings.

5 Late payment penalty (LPP)

47. In Decision 2012-156, the review panel made the following determination with respect to the costs for the LPP settlement:

89. ...the review panel finds that this information constitutes a new fact that was not previously placed in evidence in accordance with Section 12(a)(ii) of Rule 016. Specifically, it is AG's submission that the findings in Decision 2011-450 regarding AG's inaction after the issuance of the *Garland No. 1* decision were incorrect in light of the information regarding the EUB [Alberta Energy and Utilities Board or board] and Decision 2000-16. Given that this information may be relevant to the matter at issue, the review panel considers that this raises an error of law and a substantial doubt has been raised as to the correctness of the decision. Therefore, the review panel grants a review of the decision to deny AG's request to recover the settlement amount for the late payment penalty.

90. AG also submitted that the hearing panel incorrectly assessed the prudence of these costs. Because the review panel has granted a second stage review and variance of this matter, the review panel finds that it would be premature to address this issue. The review panel considers that this discussion can happen at the second stage review and variance when parties have furnished all the evidence and material that is necessary to support their position.⁴²

Views of the parties

48. ATCO Gas submitted that the relevant issue before the Commission is whether the LPP settlement costs were prudently incurred. Following the release of the *Garland No. 1* decision, ATCO Gas informed the EUB of its intentions to change its late payment penalty practices and procedures and indicated that it would make further changes if the EUB considered them necessary. In its 2008-2009 GRA, ATCO Gas notified the Commission that it was addressing a claim with regard to its LPP and that it intended to charge any legal fees and associated payments to the claim to the Reserve for Injuries and Damages. Further, ATCO Gas submitted that the settlement agreement was sensible and made on the basis of sound judgment because it

⁴² Decision 2012-156, paragraphs 89 and 90.

eliminated any risk of a larger liability as well as the substantial internal and external costs associated with further litigating the issue.⁴³

49. ATCO Gas outlined the methods it employed to limit the costs associated with the LPP claim, including filing a motion to dismiss the action, evidence, written argument and oral submissions to avoid class action status, and to limit the scope of the issues.⁴⁴ ATCO Gas noted that the Enbridge settlement cost of \$25 million after the *Garland No. 1* decision, and the initial settlement offer from Hobsbawn to ATCO Gas of \$31.8 million were both significantly greater than the actual settlement amount of \$1.9 million.⁴⁵ Further, a fully litigated process may have required ATCO Gas to produce historical billing information which could have cost approximately \$1 million for each year of data produced. External legal counsel and expert fees were avoided due to the settlement.⁴⁶ By coming to a settlement agreement, ATCO Gas was able to avoid significant costs.

50. ATCO Gas submitted that in previous years customers benefited from the LPP revenue as it was credited to the revenue requirement and that it was not aware of any Canadian regulator that had disallowed the recovery of LPP settlement costs from utility customers. ATCO Gas added that there has never been a finding of guilt by any court of law and that the settlement of litigation does not infer guilt or that the LPP was contrary to law.

51. The UCA countered that in Decision 2000-16⁴⁷ the EUB approved the LPP based on the representations of ATCO Gas's predecessor (Canadian Western Natural Gas Ltd. (CWNG)) that its LPP did not violate the *Criminal Code*. The UCA submitted that if ATCO Gas were unsure about this, as evidenced by the fact it paid out the LPP settlement, ATCO Gas, or its predecessor, should not have made those representations to the EUB. The UCA stated that it is ATCO Gas's responsibility to comply with the law and that ATCO Gas should have known that if it did not comply with the law it could have to answer to customers who were harmed.⁴⁸

52. The CCA submitted that the findings of the original panel in Decision 2011-450 do not merit review and variance. Specifically, the CCA stated:

It is AG's responsibility to ensure its rates and charges are in accordance with laws of Alberta and Canada and further the same rates and charges comply with previous regulatory decisions. If the rates and charges are not lawful, it should be AG who bears the risk of noncompliance; not customers.⁴⁹

Commission findings

53. Given its relevance to the issue, and that new information was provided in this review and variance proceeding, a review of the regulatory and legal history of the LPP is warranted.

⁴³ Exhibit 20.02 at pages 18-22.

⁴⁴ Exhibit 20.02, paragraph 58-68.

⁴⁵ Exhibit 42.01, page 15.

⁴⁶ Ibid, page 16.

⁴⁷ Decision 2000-16: Canadian Western Natural Gas Company Limited, 1998 General Rate Application Phase II, Application No. 980413, File No. 1303-3, June 13, 2000.

⁴⁸ Exhibit 43.02, paragraphs 11 and 12.

⁴⁹ Exhibit 45.01, paragraph 12.

54. Section 347 of the *Criminal Code* came into effect on April 1, 1981.⁵⁰ Beginning in 1982, ATCO Gas included within its terms and conditions of service approved by the Commission's predecessors, a provision requiring customers who do not pay their monthly bill by the due date to pay a late payment penalty of five per cent of the unpaid charges.⁵¹ On October 30, 1998, the *Garland No. 1* decision was issued. On January 29, 1999, the EUB issued a letter seeking advice on the appropriate modifications if any, that could be made to the approved late payment penalty provision for Northwestern Utilities Limited (NUL)⁵² to ensure that the LPP did not constitute interest at a criminal rate contrary to Section 347 of the *Criminal Code*. On February 19, 1999, NUL provided a response letter that included an analysis of *Garland No. 1*, and indicated that NUL intended to revise its statement of account to show a single due date and state that the amount shown must be paid in full by the due date. NUL did not propose to revise the amount of the late payment penalty unless directed by the board.⁵³ This issue was again raised in CWNG's 1998 Phase II proceeding. In response to an information request from the CCA, CWNG provided the February 19, 1999 letter to demonstrate why it thought its late payment penalty complied with the *Criminal Code*.⁵⁴ On June 13, 2000, the EUB issued Decision 2000-16 and made the following finding:

As a result of a recent Supreme Court of Canada decision concerning a utility company resident in Ontario, the matter of charges for interest and penalties on late payments was examined by the Board in respect of all Alberta utilities subject to its jurisdiction. The Board was advised that the Company has adjusted the format of its customer bills in recognition of concerns raised by the Supreme Court decision. The Board therefore is not persuaded that any further adjustment is required to the Company's late payment penalty provisions.⁵⁵

55. On June 28, 2002, ATCO Gas sent correspondence to the board requesting approval to change the method by which the LPP was calculated and applied to customer accounts effective January 1, 2003. On July 8, 2002, the board responded indicating that the matter should be dealt with in the context of ATCO Gas's 2003-2004 GRA application when filed.⁵⁶

56. On February 28, 2001, Don Hobsbawn, on his own behalf and of all other members of a class having claims against ATCO Gas (the plaintiff), filed a statement of claim in the Alberta Court of Queen's Bench. The statement of claim sought re-payment of all LPP made since 1982, or, in the alternative, a declaration of the court that all late payment penalties paid since 1982 should be reassessed at five per cent annual interest and restitution of any over-payments made to the class members. On June 5, 2007, ATCO Gas brought an unsuccessful court application to strike the action for long delay. On October 25, 2007, ATCO Gas served the plaintiff with a settlement offer that consisted of a payment to Mr. Hobsbawn in the amount of \$750 and legal costs not to exceed \$250,000. This settlement offer was declined by the plaintiff.

⁵⁰ *Garland No. 1* decision, paragraph 23.

⁵¹ Application, Volume 2-1, Decision 2008-113, Other Commission Direction, PDF page 88.

⁵² After restructuring of Canadian Western Natural Gas Company (CWNG) and Northwestern Utilities Limited (NUL) on January 1, 2001, Northwestern Utilities Limited was amalgamated into ATCO Gas and Pipelines Ltd. (AGPL) (formerly CWNG).

⁵³ Exhibit 12, Attachment A.

⁵⁴ Exhibit 12, Attachment A.

⁵⁵ Decision 2000-16 at page 102.

⁵⁶ Exhibit 20.02 at paragraph 57.

57. On July 25, 2008, ATCO Gas received a settlement offer from the plaintiff in the amount of \$31.8 million, which ATCO Gas declined. On March 31, 2009, the Court of Queen's Bench issued an order that limited the claims in the statement of claim to the period from November 1, 1998 to May 1, 2004, inclusive. The order also directed that a trial be held to determine whether the LPPs paid between November 1, 1998 and May 1, 2004 contravened Section 347 of the *Criminal Code* and, if so, for what period of time. The order indicated that the Court had deferred its ruling on the plaintiff's request to certify the action as a class action, pending the final determination of the trial on the issues. On July 17, 2009, the plaintiff and ATCO Gas filed a settlement agreement with the Court of Queen's Bench. On July 20, 2009, the Court of Queen's Bench issued an order certifying the action as a class action for the purposes of the settlement agreement. The order defined the class as those who had been customers of ATCO Gas and who had paid one or more LPPs to ATCO Gas at any time prior to May 4, 2004.⁵⁷

In its 2008/2009 GRA, AG notified the Commission that it was addressing a claim with regard to its LPP and that it intended to charge any legal fees and associated payments to the claim to the Reserve for Injuries and Damages.

58. In this instance, the LPP settlement costs can be viewed as a forecast operating expense of the utility. It is irrelevant that settlement costs were actually paid because the 2011-2012 GRA proceeding was the first time ATCO Gas had put them before the Commission for recovery from customers.

ATCO Gas sought recovery of the settlement costs from the LPP litigation at the first practical opportunity – namely, the 2011/2012 GRA.⁵⁸

59. The review panel finds the letter dated February 19, 1999 from ATCO Gas to the EUB informing the board of ATCO Gas's compliance with the *Garland No. 1* decision⁵⁹ to be particularly helpful. In this letter, ATCO Gas detailed its understanding of *Garland No. 1* and how it related to ATCO Gas's own practices and procedures regarding the late payment penalty:

NUL is of the view that its current practices and procedures do not give rise to the ambiguity which arose in *Garland v. Consumers Gas* and that there is no arrangement for "the advancing of credit". The account is payable on the due date specified. There is no "option" to pay after the due date. Any failure to pay on the due date is a default and gives rise to an immediate right of action and, in due course, the right to cut off service. However, given the significance attached by the Supreme Court to provisions made for amounts payable after the due date, NUL proposes to revise the form of its customer statements of account and the applicable terms and conditions so that there is no doubt that the due date is a firm deadline and that there is no option.

It is proposed that the statement of account will show a single due date and state that the amount shown must be paid in full by the due date. Further, it will be stated that it is a default not to pay the account by the due date and that legal action for recovery of the amount due can be commenced immediately after the due date should payment in full not be made. Further, any late payment penalty will be only added to the next bill as a balance forward and will not be shown on, or added to, the current bill, to eliminate *any* indication that there might be an option to pay late and thereby obtain credit. NUL will

⁵⁷ See Exhibit 31.01, AUC-AG-03 – Attachment and Exhibit 20.02.

⁵⁸ Exhibit 42.01, page 15.

⁵⁹ Exhibit 20.04, page 676.

also ensure that customers are warned that late payment is a default and is not acceptable to NUL. Modifications might also be made to the Regulations, quoted above, to emphasize these same features.

NUL did consider revisions to the amount of the late payment penalty. However, Interest calculated from and after the due date at any rate under 60 per cent per annum (annualized) would not produce the revenues which have in the past been derived from this practice and which have been forecast. NUL is prepared to modify its practices so as to provide that the imposition of a rate of interest so calculated that it would in no circumstance exceed the criminal rate of interest should the Board so direct. However, that would result in a reduction of the revenue forecast and, hence, necessitate an increase to cover that shortfall.⁶⁰

60. As outlined above, the board approved this approach in Decision 2000-16. This information was not filed on the record of the proceeding leading to Decision 2011-450 and was not before the hearing panel in that proceeding.

61. In its submissions, ATCO Gas argued that in considering whether to approve the LPP settlement costs, the Commission should consider whether the costs incurred were prudent. In Decision 2001-110,⁶¹ the board established the following test for prudence at page 10:

In summary, a utility will be found prudent if it exercises good judgment and makes decisions which are reasonable at the time they are made, based on information the owner of the utility knew or ought to have known at the time the decision was made. In making decisions, a utility must take into account the best interests of its customers, while still being entitled to a fair return.

62. The review panel notes that in Ontario Energy Board (OEB) Decision EB-2007-0731, the OEB approved the recovery of approximately \$25 million dollars related to a settlement of the Garland claim by Enbridge Gas. In determining whether Enbridge Gas could recover its settlement costs, the OEB framed the issue as follows: are the “costs recoverable from ratepayers because the utility acted prudently in the circumstances?”⁶² The OEB, in reaching its determinations, found that:

Enbridge could have proposed a different approach to deal with its LPP, but that would be a conclusion reached by the application of hindsight – and hindsight cannot be applied to assess whether these costs are prudent. The Board finds that Enbridge did not act imprudently in not seeking to change the LPP earlier than it did.

The Board concludes that the costs were prudently incurred.⁶³

63. It is the utility’s responsibility to ensure that its rates, as well as its terms and conditions of service, comply with all legal requirements. The review panel acknowledges that ATCO Gas

⁶⁰ Ibid., page 677.

⁶¹ Decision 2001-110: GCRR Methodology Proceeding And Gas Rate Unbundling Proceeding, Part B-1: Deferred Gas Account Reconciliation For ATCO Gas, Application No. 2001040, File No. 5680-1, December 13, 2001.

⁶² Ontario Energy Board Decision, EB-2007-0731, Enbridge Gas Distribution Inc. for an Order or Orders Approving the balance in the 2007 Class Action Suit Deferral Account and Disposition of that Balance, February 4, 2008 at page 9.

⁶³ EB-2007-0731 at page 11.

did respond to the *Garland No. 1* decision. It reviewed its late payment calculation and informed the board of its findings. The board accepted ATCO Gas's proposal as filed. The review panel considers that ATCO Gas's actions were consistent with its responsibilities.

64. Having reviewed the court documents in relation to the Hobsbawn litigation/settlement, the review panel finds that ATCO Gas prudently managed the Hobsbawn litigation/settlement. Further, a settlement is not an admission of guilt or wrong-doing. Settlements are often used to avoid the cost and resources associated with litigation. The review panel finds that entering into a settlement agreement in this case was a prudent course of action, because the cost and time of a fully litigated class action suit could have been higher than what was agreed upon in the settlement agreement.

65. The review panel finds that the LPP settlement amount of \$1,862,000 plus carrying costs in accordance with AUC [Rule 023: Rules Respecting Payment of Interest](#) shall be recovered from ATCO Gas's customers as a one-time payment.

6 Calgary office lease

66. In Decision 2012-156, the review panel stated the following regarding the Calgary Office Lease:

99. The review panel considers that it is unclear whether the hearing panel was aware that AG's existing rental rate was \$16.00 per square foot in reaching the determination that the existing lease rate should be used. Because this may be relevant to the matter at issue, the review panel finds that this raises an error of fact and a substantial doubt has been raised as to the correctness of the decision. Therefore, the review panel grants a review of the hearing panel's determinations on the Calgary office lease.⁶⁴

Views of the parties

67. ATCO Gas submitted two reports in its evidence⁶⁵ which analyzed various office space options for ATCO Gas within the City of Calgary. ATCO Gas noted that its landlord, an unregulated affiliate of ATCO Gas, 1446925 Alberta Ltd,⁶⁶ agreed in advance to be bound by a third-party market appraisal in order to establish a lease rate effective October 1, 2011. The market appraisal established a rate of \$20.00 per square foot.⁶⁷ Given that the actual rate for the lease was established, ATCO Gas submitted that the previous lease rate of \$16 per square foot that it had been paying since October 2002 was now irrelevant to the Commission's consideration of the lease rate.⁶⁸

68. The UCA stated that the issue for which a review was granted is not whether it is appropriate to substitute an actual lease rate of \$20 per square foot for the Calgary office lease. And further, that the substitution of actual costs paid to an affiliate which were established

⁶⁴ Decision 2012-156, paragraph 99.

⁶⁵ Exhibit 20.03, attachment 13 and 14.

⁶⁶ Exhibit 41.01, AUC-AG-11(a).

⁶⁷ Exhibit 42.02, paragraph 37.

⁶⁸ Ibid., paragraph 39.

subsequent to a hearing is an attempt at retroactive rate-making.⁶⁹ The UCA summarized its position as follows:

The UCA submits that it is a misuse of the Commission's review and variance power to try to vary a decision that was based on evidence provided in a proceeding on a forecast basis, by selective reference to one actual number established after the close of a proceeding. To adopt such an approach could open the floodgates to innumerable review and variance proceedings each time a forecast (whether for debt costs, vacancy rates, volumes, or any of a host of other issues determined on a forecast basis) is proven to be inaccurate once the actual is known.⁷⁰

69. Calgary noted that this was not the first time ATCO Gas had entered into an agreement with an affiliate with respect to office space rent and purported to suggest that the entering into an agreement with an affiliate in some way determined an appropriate lease rate. In a decision from the Court of Appeal, which dismissed an application for leave to appeal from Canadian Western Natural Gas Company Limited regarding the office rental rate, the Court of Appeal stated:

The issue before the Board at the first hearing was to fix a just and reasonable gas rates and to that end to decide upon the costs of operation of the applicant, including the cost of head office operations. The lease was relevant only as some evidence on that issue. The lease was not negotiated at arm's length: the landlord is the parent company to the applicant. The lease alone therefore was not a reliable indicator.⁷¹

70. Calgary further submitted;

Whether the rate approved was \$14.95 (sic) escalated by 3% (15.40) or \$16.00, or some other higher or lower rate, the issue was and is whether prudent management would wait until virtually all its negotiating power was eliminated before entering into lease negotiations. The approximately \$0.60 per square foot potential difference is irrelevant to the main matter at issue in 2011-450, that of the prudence of the ATCO management's decision.⁷²

Commission findings

71. In Decision 2011-450, the hearing panel made the following findings:

767. ... The Commission notes that AG's rental rate during 2009 was \$14.50 per square foot which is mid-range for Class B buildings for that year.

[...]

769. AG is directed in the compliance filing to this decision to include in its revenue requirement a rental rate for 2011 of \$14.50. For 2012, rent should be forecast based on \$14.50 per square foot increased by a three per cent inflation factor.⁷³

⁶⁹ Exhibit 50.02, paragraphs 15 and 16.

⁷⁰ Ibid., paragraph 17.

⁷¹ Ibid., page 174.

⁷² Exhibit 44.01, paragraph 36.

⁷³ Decision 2011-450, paragraphs 767 and 769.

72. In its R&V Application, ATCO Gas submitted that the hearing panel made an error of fact when it found that ATCO Gas was paying \$14.50 per square foot for its Calgary office lease, because ATCO Gas's prior lease rate was \$16.00 per square foot. On this basis, the review panel granted a review and variance of this issue as it was unclear whether the hearing panel was aware that ATCO Gas's existing rental rate was \$16.00 per square foot.

73. In its submissions following the release of Decision 2012-156, ATCO Gas submitted that the \$16 per square foot lease rate is irrelevant and that the finalized lease rate of \$20 per square foot should be used. It appears to the review panel, that ATCO Gas had requested the establishment of a deferral account for its rental rate in its original 2011-2012 GRA application. The establishment of a deferral account was denied by the hearing panel in Decision 2011-450.⁷⁴ Further, a review and variance on the issue of a deferral account by the review panel for the Calgary office lease was not granted in Decision 2012-156. As stated above, the review panel's duty in this review and variance proceeding is to determine whether the forecast amount awarded by the hearing panel should be revised. Review and variance proceedings should not amount to an opportunity to true-up forecasts to actuals, similar to the mechanism of a deferral account. To allow the actual \$20 per square foot requested by ATCO Gas in this review and variance proceeding would amount to the same treatment that would be given in a deferral account. In the variance portion of this review and variance proceeding, the review panel learned that the real estate company with which ATCO Gas was negotiating is a company affiliated with ATCO Gas. In these circumstances, deferral account treatment is completely unjustified and would create perverse incentives for both ATCO Gas and the affiliated company.

74. In Decision 2011-450, the hearing panel made the following finding:

766. The Commission considers that a lease or lease extension should have been negotiated well before the expiry of the lease term. The record indicates that leases are typically negotiated one to two years in advance of expiry. Failure to do this limits AG's options and hence impacts its ability to negotiate leasing arrangements. In these circumstances, the Commission does not consider that a deferral account is warranted. Further the Commission does not consider that the actual rate should be accepted as the basis for the revenue requirement.⁷⁵

75. The market report used by ATCO Gas and the affiliated real estate company to set the lease rate was dated August 30, 2011 or effectively one-month before the expiration of the lease. As the hearing panel observed, it is unlikely that a business operating at arm's length with an unaffiliated landlord would agree to be bound by a rental report released within a month of the lease expiring.

76. Given the findings of the hearing panel, and the date upon which the lease rate was finally established, the review panel considers the \$16 per square foot lease rate actually paid by ATCO Gas at the time of the application to be relevant for establishing the forecast lease rate in this case.

77. For these reasons, the review panel finds that the \$16 per square foot rate should be included in the calculation of the revenue requirement for ATCO Gas. The review panel directs ATCO Gas to adjust its rental rate for inclusion in revenue requirement for the test years 2011

⁷⁴ Decision 2011-450, paragraph 1042.

⁷⁵ Decision 2011-450, paragraph 766.

and 2012 to \$16 per square foot. The 2012 PBR going-in rates will include the \$16 per square foot rate for the duration of the PBR term.

Dated on February 22, 2013.

The Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair

(original signed by)

Tudor Beattie, QC
Commission Member

(original signed by)

Anne Michaud
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
ATCO Gas (AG) L. Smith K. Beattie D. Wilson D. Cook E. Guhl L. Fink A. Green
AltaGas Utilities Inc. (AUI) N. J. McKenzie
Climate Change Central (C3) L. Estep L. Sveinson
The City of Calgary (Calgary) D. Evanchuk M. Rowe H. Johnson
Consumers' Coalition of Alberta (CCA) J. A. Wachowich J. A. Jodoin
Direct Energy Marketing Limited (DEML) S. Puddicombe N. Black
Lawson Lundell Barristers & Solicitors J. Christian
Office of the Utilities Consumer Advocate (UCA) T. Marriott K. Kellgren R. Daw G. Rock S. Radway

The Alberta Utilities Commission

Commission Panel

W. Grieve, QC, Chair

T. Beattie, QC, Commission Member

A. Michaud, Commission Member

Commission Staff

S. Ramdin (Commission counsel)

B. Whyte

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. The review panel has reviewed all of this information and finds that ATCO Gas provided sufficient information to demonstrate that the applied for amounts are reasonable. For these reasons, the review panel approves the inclusion of the 2011 and 2012 CIS enhancement forecast costs of \$1,050,000 and \$625,000 in revenue requirement. The 2012 amount shall be reflected in the 2012 revenue requirement established for the purpose of determining performance-based regulation (PBR) going-in rates. Paragraph 18
2. Using the employee ratio of 1.462, Calgary calculated a revised total of \$13.14 million for the cost of the project to ATCO Gas. This amount is \$460,000 below the amount awarded by the hearing panel in Decision 2011-450. Because the Oracle HRX project was implemented by both utilities at roughly the same time and employee numbers were the driver of common cost allocations and because ATCO Gas used employee numbers to allocate common costs, using the employee ratio of 1.462 to escalate the costs for ATCO Gas is reasonable for the purpose of considering whether a variance of the original decision is warranted. Using this approach, the forecast costs of the project to be allocated to ATCO Gas would have been \$13.14 million, compared to the \$13.6 million allowed by the hearing panel. Therefore, the review panel finds that there is no sufficient justification to warrant overturning the hearing panel's decision to lower the original forecast amount of \$15.1 million by 10 per cent to \$13.6 million. The review panel confirms the hearing panel's finding in Decision 2011-450 and approves a ten per cent reduction of the \$15.1 million forecast for Oracle HRX to \$13.6 million..... Paragraph 35
3. For these reasons, ATCO Gas is entitled to recover these costs. The review panel grants ATCO Gas's request for the inclusion of \$128,000 and \$172,000 in revenue requirement for 2011 and 2012 respectively. The 2012 amount of \$172,000 shall be included in the revenue requirement calculation of ATCO Gas's PBR going-in rates. Paragraph 45
4. The review panel finds that the LPP settlement amount of \$1,862,000 plus carrying costs in accordance with AUC Rule 023: *Rules Respecting Payment of Interest* shall be recovered from ATCO Gas's customers as a one-time payment..... Paragraph 65
5. For these reasons, the review panel finds that the \$16 per square foot rate should be included in the calculation of the revenue requirement for ATCO Gas. The review panel directs ATCO Gas to adjust its rental rate for inclusion in revenue requirement for the test years 2011 and 2012 to \$16 per square foot. The 2012 PBR going-in rates will include the \$16 per square foot rate for the duration of the PBR term..... Paragraph 77