



AUC

Alberta Utilities Commission

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

**Decision on Request for Review and Variance of
AUC Decision 2011-391
ATCO Utilities 2011 Pension Common Matters**

March 22, 2012

The Alberta Utilities Commission

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

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1 Introduction

1. On November 2, 2011, pursuant to Section 10 of the *Alberta Utilities Commission Act*, S.A. 2007, c.A-37.2 and Alberta Utilities Commission (AUC or Commission) Rule 016: *Review and Variance of Commission Decisions* (AUC Rule 016), ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.) filed a review and variance application (R&V Application) regarding AUC Decision 2011-391.¹ ATCO Utilities requested that the Commission vacate its directions to (i) set the cost of living adjustment (COLA) at 50 per cent of the Canada Consumer Price Index (CPI) up to the three per cent maximum, effective January 1, 2012 and (ii) reduce the COLA for special payments, effective January 1, 2013.

2. In response to review and variance requests, and as set out in AUC Rule 016, the Commission adopts a two step process. First, the Commission determines the preliminary question as to whether the decision in question should be reviewed and then, if the Commission finds that the decision should be reviewed, a proceeding on the merits of the arguments for a variance of the decision is initiated.

3. As part of its R&V Application, ATCO Utilities addressed both aspects of the two step review and variance process and proposed that this approach would expedite the process and allow the Commission to move directly to a consideration of the review and variance request on its full merits. Specifically, ATCO Utilities set out a detailed submission “to enable the AUC to positively answer the preliminary question of whether the matter should be reviewed and whether there was a reason to believe Decision 2011-391 should be rescinded or varied.”² On November 8, 2011, ATCO Utilities filed a request seeking an exemption from Section 8 of AUC Rule 016 stating that a fair determination of the review of Decision 2011-391 requires the Commission to have a full and complete understanding of the complex issues at hand; reducing the length of the R&V Application to comply with Section 8 of AUC Rule 016 would prejudice ATCO Utilities’ ability to explain the numerous relevant issues that are at play in the specific circumstances.

4. On November 10, 2011, the AUC issued Notice of Application and indicated that the Commission would combine the first and second steps in the review and variance process. The Commission accepted a combined application for the first and second steps because it considered that the evidence that the same evidence would be presented in both steps. However, the Commission indicated that while it combined the two steps from a process perspective, it would still, in accordance with Section 11 of AUC Rule 016, determine the preliminary question of

¹ 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.

² ATCO Utilities R&V Application at paragraph 3.

whether its decision should be reviewed as requested in the R&V Application before considering whether Decision 2011-391 should be varied. As well, the Commission granted an exemption from Section 8 of AUC Rule 016 and accepted the R&V Application as filed.

5. The Commission established a process schedule requiring interested parties to submit comments on the R&V Application by December 1, 2011. A submission was received from the Office of the Utilities Consumer Advocate (UCA). ATCO Utilities responded to the UCA's submission on December 22, 2011.

6. On December 28, 2011, the AUC received a late statement of intent to participate (SIP) from the Canadian Utilities Pensioners' Association (North) (CUPA) requesting to participate in this proceeding. CUPA asked the Commission to reconsider Decision 2011-391. CUPA submitted that it has a direct interest in the matters considered in Decision 2011-391 because it represents the interests of 1,400 pensioners, all former employees of the Canadian Utilities Limited (CUL) group of companies. No party objected to CUPA's SIP. While CUPA may have a direct interest in the matters related to Decision 2011-391, the Commission notes that CUPA did not participate in the original proceeding relating to Decision 2011-391 (Proceeding ID No. 999). The Commission expects that parties with a direct interest in a matter before the Commission will participate in the proceeding to consider that matter, rather than wait until a review and variance proceeding to participate. Nonetheless, given that CUPA may be directly and adversely impacted by the outcome of this proceeding and since no parties objected to CUPA's SIP, the Commission accepts CUPA's SIP and will consider it when assessing the R&V Application.

7. The Commission considers the close of the record of the proceeding to be December 28, 2011.

2 Views of the parties

2.1 ATCO Utilities' position

8. ATCO Utilities submitted three main grounds for their R&V Application, together with five aspects of Decision 2011-391 with which they took issue for purposes of the R&V Application. To summarize, ATCO Utilities' submission is that the Commission committed errors of fact and errors of law and/or jurisdiction by failing to comply with the following legal requirements and principles:

- ATCO Utilities are legally entitled to an opportunity to recover their prudently incurred costs; however, the Commission deprived ATCO Utilities from any opportunity to recover its prudently incurred pension costs;
- the Commission is legally obligated to set rates that are just and reasonable; however, the Commission's findings with respect to pension costs are such that the resultant rates are not just and reasonable; and
- The Commission's findings should be based on the evidentiary record of the proceeding; however, in Decision 2011-391, the Commission's findings are inconsistent with the evidence on the record of the proceeding.

9. Specifically, ATCO Utilities argued that there are five aspects of Decision 2011-391 that support ATCO Utilities' assertions that the above-noted legal requirements or principles have been violated. The parties' views on each of the five aspects are discussed below in subsections 2.1.1 to 2.2.5.

2.1.1 Pension Plan Administrator

10. In its R&V Application, ATCO Utilities stated:

The evidentiary record does not support a finding that the CUL Pension Plan Administrator has, at any time, acted imprudently in exercising its discretion in relation to setting past COLA levels, so as to warrant a reduction in the COLA amount that is recoverable from the ATCO Utilities' customers regarding obligations that have vested or will vest during a reasonable notice period required to enact go-forward changes to the current policy.³

11. In Decision 2010-189⁴, the Commission stated:

[R]atepayers 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.⁵

12. In ATCO Utilities' view, it has not been demonstrated on the record that the incremental costs of the annual COLA are unreasonable or imprudent, and denying these costs denies ATCO Utilities an opportunity to recover prudently incurred costs. ATCO Utilities argued that, in order for the Commission to conclude that a reduction in the COLA was appropriate, the Commission must have concluded that the CUL Pension Plan Administrator's actions and decisions were unreasonable or imprudent. The evidentiary record does not support a finding that the CUL Pension Plan Administrator has, at any time, acted imprudently in exercising its discretion in relation to setting past COLA levels, so as to warrant a reduction in the COLA amount that is recoverable from ATCO Utilities' customers regarding obligations that have vested or will vest during a reasonable notice period required to enact go-forward changes to the current policy. The COLA costs are set by the Pension Plan Administrator on a prudent and good faith basis, form part of the fair and reasonable costs incurred by ATCO Utilities, and hence should be eligible for recovery.

2.1.2 Table 1 in Decision 2011-391

13. In its R&V Application, ATCO Utilities stated:

³ R&V Application at paragraph 21.

⁴ Decision 2010-189: ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.), Pension Common Matters, Application No. 1605254, Proceeding ID No. 226, April 30, 2010.

⁵ Decision 2010-189 at paragraph 118.

The AUC's interpretation of Table 1, page 20 (which was relied upon to support the AUC's direction to reduce the COLA amount), is factually inaccurate.⁶

14. ATCO Utilities argued that the Commission's interpretation of Table 1 at page 20 of Decision 2011-391 that "the most frequent COLA provision for the comparator group set COLA in the 50 per cent to 60 per cent of CPI range with a majority using CPI in the 50 per cent to 75 per cent of CPI"⁷ is factually inaccurate and not supportable. ATCO Utilities submitted that only 33 per cent of the companies set COLA in the range of 60 per cent or less of CPI. As well, only one of the twelve companies set COLA at 50 per cent; only three companies set COLA at 60 per cent; and five of the companies set COLA at 75 per cent or higher. As well, seven of the comparators do not provide a COLA ceiling, and therefore the COLA provided by these plans could potentially, in a higher CPI environment, provide an amount that is higher than the amount paid out under CUL's COLA provision. There is no industry comparator with these COLA parameters and ATCO Utilities argue that such a restriction on the COLA for ATCO Utilities is not sustainable based on the evidence. Accordingly, ATCO Utilities argued that this finding is inconsistent with the evidence on the record of the proceeding and constitutes an error of fact.

2.1.3 Significance of the unfunded liability

15. In its R&V Application, ATCO Utilities stated:

The evidentiary record indicates that the existence of an unfunded liability is not the primary factor in setting COLA. However, in Decision 2011-391, the AUC focused on the existence of the current unfunded liability and excluded a consideration of other relevant factors.⁸

16. ATCO Utilities submitted that the evidentiary record indicates that the existence of an unfunded liability is not the primary factor in setting the COLA. However, ATCO argued, the Commission focused on this and excluded consideration of other relevant factors. Accordingly, ATCO Utilities argued that the Commission's focus on the unfunded liability is inconsistent with the evidentiary record.

2.1.4 Decision 2011-391 inconsistent with Decision 2010-189

17. In its R&V Application, ATCO Utilities stated:

The AUC's conclusion in Decision 2011-391 is inconsistent with its findings of fact in Decision 2010-189. In Decision 2010-189, the Commission stated that pensions must be evaluated in the context of the overall compensation being paid. In Decision 2011-391, however, the AUC entirely ignores its findings from Decision 2010-189 (without explanation) and the evidence on the current record; and instead focuses on the current unfunded liability situation.⁹

⁶ R&V Application at paragraph 21.

⁷ Decision 2011-391 at paragraph 86.

⁸ R&V Application at paragraph 21.

⁹ R&V Application at paragraph 21.

18. ATCO Utilities argued that, in Decision 2011-391, the Commission ignored its findings from Decision 2010-189 that pensions must be evaluated in the context of the overall compensation being paid and instead focused on the current unfunded liability situation. Specifically, in Decision 2010-189, the Commission stated “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.”¹⁰ However, in Decision 2011-391, the Commission failed to recognize COLA as part of the overall compensation available from a competitive employer. ATCO Utilities submitted that the AUC reversed its position from Decision 2010-189 when it stated “while ATCO Utilities asserted that a total overall compensation view was required before COLA should be adjusted, limited evidence was provided to support this assertion.” ATCO Utilities noted that no explanation was provided by the Commission to support the reversal of its position from Decision 2010-189. Instead, the Commission focused on the competitiveness of the Defined Benefit Plan (DB Plan) without any explanation for doing so. ATCO Utilities contend that the Commission committed an error of fact by ignoring or reversing its findings from Decision 2010-189.

2.1.5 Contribution holiday

19. In its R&V Application, ATCO Utilities stated:

The AUC’s conclusion that the annual COLA amount determined under the ATCO Utilities’ policy is not “a reasonable expense for inclusion in the revenue requirement for regulated utilities” is patently unreasonable in light of the extended contribution holiday (reduced rates) that ratepayers enjoyed from 1996 to 2009.¹¹

20. ATCO Utilities argued that now that the pension plan is in a deficit position, the savings that ratepayers experienced during the contribution holiday are no longer available and currently incurred expenses must be passed on, much like any other expense in the provision of utility service. To find (as the Commission did in Decision 2011-391) that when there is a surplus, ratepayers benefit from notionally lower rates, but when there is a deficit, only the ATCO Utilities should bear the costs of the inputs of production, reflects a lack of symmetry in the distribution of risks and rewards between ATCO Utilities and the ratepayers. Accordingly, ATCO Utilities argue that the Commission has deprived ATCO Utilities the opportunity to recover its prudently incurred pension costs and the resultant rates are neither just nor reasonable.

2.2 The UCA’s position

21. The UCA response to ATCO Utilities’ submission stated that ATCO Utilities has not raised a substantial doubt as to the correctness of Decision 2011-391. The UCA addressed each of the errors raised by ATCO Utilities as set out below.

2.2.1 Pension Plan Administrator

22. The UCA argued that the Commission made no decision on whether the Pension Plan Administrator acted in good faith or in bad faith. In fulfilling its statutory duty to determine just

¹⁰ Decision 2010-189 at paragraph 122.

¹¹ R&V Application at paragraph 21.

and reasonable rates, the Commission is not necessarily required to determine whether a utility or an administrator acted in good faith or in bad faith. The argument advanced by ATCO Utilities implies that, if there is no finding of bad faith or if actions were done in good faith, the Commission is obliged to find that all costs and expenses resulting from such actions are prudent and reasonable. Such a position is unsupportable at law.

2.2.2 Table 1 in Decision 2011-391

23. In Table 1 in Decision 2011-391, six of the twelve referenced companies pay out CPI less than 100%. In the UCA's view, the table supports the decision to allow recovery of the costs related to a fraction of 100% of CPI.

2.2.3 Significance of the unfunded liability

24. The UCA argued that a significant unfunded liability is both relevant and fundamentally necessary for the Commission to consider in order to determine just and reasonable rates and the prudence of the applied-for costs. To assert the contrary is to argue the Commission's statutory duties and obligations have somehow been delegated to a utility's pension plan administrator. The UCA also submitted that it was unable to find where the Commission agreed with ATCO Utilities that a surplus or unfunded liability was not a primary factor in establishing COLA. Recitation of the parties' position in a Decision is not the same as acknowledging the correctness of that party's position. A significant unfunded liability should be considered by the Commission in order to determine just and reasonable rates and the prudence of the applied-for costs.

2.2.4 Decision 2011-391 inconsistent with Decision 2010-189

25. The UCA submitted:

Decision 2011-391 is entirely consistent with the Decision 2010-189. In Decision 2010-189, the Commission expressed the view that although it could understand how an administrative practice for setting COLA could evolve given prior surpluses, "the COLA provisions of the Pension Plan are clear and strict adherence to such practices is not required by the wording of the Pension Plan [Decision 2010-189 at paragraph 116]." As such, the Commission directed "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 [Decision 2010-189 at paragraph 119]."

[...]

The Commission also specifically advised that for 2011 and future years, the Commission would investigate the possibility of adjusting COLA as a mechanism in prudently managing utility pension expenses. In doing so, the Commission directed ATCO Utilities to prepare the within 2011 Pension Common Matters application and address the use of discretion

with respect to COLA in the context of related compensation and retention issues.¹²

26. In Decision 2010-189, the Commission was clear that it would review the possibility of adjusting the COLA as a mechanism in prudently managing utility pension expenses. The Commission further gave specific directions on what issues it would consider. As such, the UCA argued, Decision 2011-391 is consistent with Decision 2010-189 and is the determination of matters and issues that the Commission specifically advised it wanted addressed.

2.2.5 Contribution holiday

27. Finally, the UCA argued that, while there may have been past surpluses that have allowed funding holidays, this does not relieve ATCO Utilities from taking steps to prudently manage the pension plan today.

2.3 The CUPA's position

28. CUPA requested that the Commission reverse Decision 2011-391 for the following reasons:

- Decision 2011-391 creates an unreasonable incentive for ATCO Utilities to reduce its COLA by refusing to allow ATCO Utilities to include the full cost of non-employee contributions into the calculations of forecast revenue requirement;
- It is unfair, unreasonable and unjust to not allow ATCO Utilities to manage the COLA as in the past; and
- Compensation is not an area in which the Commission can arbitrarily adjust revenue requirement forecasts.

3 Commission Decision 2011-391

29. Decision 2010-189 and the related compliance filing Decision 2010-553 were the genesis of the 2011 pension application and Decision 2011-391. During the proceeding related to Decision 2010-189, the UCA proposed a reduction in the COLA in order to reduce the funding requirements over the 15 year unfunded liability period. In response to this, in Decision 2010-189, the Commission addressed the following:

- The Commission considered that a change to the ATCO Utilities' long standing administrative practice of granting a COLA equivalent to 100 percent of the increase in the CPI, up to the three percent cap, represents a possible means of mitigating a significant portion of the projected Pension Plan deficit. 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.¹³

¹² Exhibit 8.01 UCA Submission at paragraphs 35 and 38.

¹³ Decision 2010-189 at paragraph 118.

- The Commission directed 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, or may wish to take the position that ATCO Utilities' shareholder will absorb any incremental costs of the nature described above associated with continued adherence to its current administrative practices with respect to the annual COLA.¹⁴
- The Commission noted the revised position of the UCA regarding the recommended level of COLA and the corresponding changes that result. While the Commission did 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 Commission found that 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. However, the evidence provided by both ATCO Utilities and interveners in this proceeding was insufficient for the Commission to draw conclusions on the significance of the COLA provisions to the compensation and retention policies of ATCO Utilities. The evidence was also insufficient to draw conclusions with respect to the prudent exercise of discretion under a COLA provision. For these reasons, the Commission did not make any reductions to the pension amounts to be included in ATCO Utilities revenue requirement in 2010 as a result of adjusting the forecasted COLA.¹⁵
- However, since the application dealt only with 2010 revenue requirement amounts, the Commission indicated that, for 2011 and future years, the Commission would like to investigate the possibility of adjusting COLA as a mechanism in prudently managing utility pension expense and directed ATCO Utilities to prepare a 2011 Pension Common Matters application by December 15, 2010. The Commission indicated that this application will specifically address the use of discretion with respect to the COLA provision in determining the 2011 pension expense to be included in revenue requirement in the context of related compensation and retention issues.¹⁶
- The Commission directed ATCO Utilities, as part of its 2011 application, to address certain matters; specifically ATCO Utilities was directed to provide an analysis of what factors should be considered on a generic basis by a utility plan administrator when exercising discretion under COLA provisions in its DB or combined DB and DC Pension Plan. ATCO Utilities was directed to specifically address, in this analysis, situations where either a surplus or an unfunded liability exists or may be created through the exercise of the COLA discretion, and to

¹⁴ Decision 2010-189 at paragraph 120.

¹⁵ Decision 2010-189 at paragraph 122.

¹⁶ Decision 2010-189 at paragraph 123.

include any additional factors unique to ATCO Utilities that would require consideration in the exercise of that discretion.¹⁷

30. On December 15, 2010, ATCO Utilities filed its 2011 Pension Common Matters application with the Commission and the Commission commenced the proceeding for Decision 2011-391. On September 27, 2011, the Commission issued Decision 2011-391.

31. In Decision 2011-391, the Commission directed that the COLA amounts included in the annual pension costs of each of the ATCO Utilities for regulatory purposes for 2012 onwards be based on 50 per cent of Canada's annual CPI to a maximum of three per cent. As well, the Commission directed that the reduced COLA level be reflected for regulatory purposes in calculating the special payments allocated to ATCO Utilities commencing January 1, 2013. In Decision 2011-391, the Commission addressed the following:

- The Commission noted that, in an information response¹⁸, ATCO Utilities submitted:

Preliminary work conducted by Mercer indicates that the going-concern results of Plan 1 [DB Plan] as of December 31, 2010, has a higher funded shortfall than forecast compared to December 31, 2009. [...] Based on Alberta pension regulation, the funding shortfall was amortized over a 15 year period, as such, the \$157 million shortfall as of December 31, 2009, was expected to improve to approximately \$140 million by December 31, 2010. Mercer's preliminary estimate indicates that the shortfall as of December 31, 2010 is larger than \$140 million but smaller than \$157 million. For example, using a figure of \$154 million for the shortfall increases special payments by approximately \$1 million per year.¹⁹

- The Commission observed that both 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. In Decision 2010-189, the Commission considered the discretion available to the pension administrator in setting the annual COLA amount as one of the tools available to assist with addressing the current DB unfunded liability.²⁰
- The Commission determined, based on Table 1 from the Mercer report²¹, that:

Some members of the comparator group set COLA at a two per cent minimum with any increase above that being done on an ad hoc basis while others tied COLA to CPI with a range from 50 per cent to 100 per cent of CPI [...]. The most frequent COLA provision for the comparator group set COLA in the 50 per cent to 60 per cent of CPI range with the majority using CPI in the 50 per cent to 75 per cent of CPI range.

¹⁷ Decision 2010-189 at paragraph 123.

¹⁸ Decision 2011-391 at paragraph 78.

¹⁹ Proceeding ID. 999, Exhibit 18.01, Information Response AUC-AU-10.

²⁰ Decision 2011-391 at paragraphs 79 and 82.

²¹ Proceeding ID. 999, Exhibit 1.00, application, Attachment 1, Mercer Report, Analysis of Current Service Cost for Entities Comparable in Size to the ATCO Utilities, page 13.

[...]

The evidence does not support a finding that ATCO Utilities' practice of awarding in each and every year an annual COLA award of 100 per cent of CPI up to three per cent is an acceptable standard practice when this practice is examined in light of the COLA provisions of the comparator group identified in the Mercer report.

- The Commission made a determination as to what is reasonable to include as the pension cost amounts for regulatory purposes which are components of revenue requirements or capital amounts, for each of the ATCO Utilities, based on the evidence before it.²²
- The Commission did not make a determination as to what is the appropriate COLA for CUL to use based on its fiduciary or contractual obligations or as a result of other legal obligations it may have as a result of a course of conduct and prior practice with DB Plan beneficiaries. CUL may continue its past administrative practice of granting the maximum allowable COLA under the terms of the DB Plan to DB Plan beneficiaries, however, any excess over the allowed amount for COLA allocated to ATCO Utilities above 50 per cent of Canada CPI up to a maximum of three per cent shall not be the responsibility of the ratepayers.²³
- The Commission indicated that it would reconsider this direction when ATCO Utilities filed its next DB Plan funding valuation submission. The Commission would 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.²⁴

4 Test for review application

32. The Commission's authority to review a decision is found in Section 10 of the *Alberta Utilities Commission Act*. AUC Rule 016 establishes the procedures and tests to be applied on a review application. Section 11 of AUC Rule 016 requires the Commission to consider whether the impugned decision shall be reviewed as requested.

33. Under Section 12(i) of AUC Rule 016, the Commission shall grant an application for review, if the Commission determines that, in the case where the applicant has alleged an error of law or jurisdiction or an error of fact, in the Commission's opinion the applicant has raised a substantial doubt as to the correctness of the decision.

34. Under Section 13 of AUC Rule 016, if this threshold or preliminary test for granting the application for review is met, the Commission is to hold a new hearing or other proceeding in accordance with its rules of practice.

²² Decision 2011-391 at paragraph 103.

²³ Decision 2011-391 at paragraph 103.

²⁴ Decision 2011-391 at paragraph 104.

35. At the request of ATCO Utilities, the Commission combined both the first and second steps in the review and variance process. While the Commission combined the steps, the Commission was clear in the Notice of Application issued November 10, 2011 that it would still determine the preliminary question of whether Decision 2011-391 should be reviewed.

36. For the reasons that follow, the Commission finds that ATCO Utilities has not demonstrated a substantial doubt as to the correctness of Decision 2011-391 in respect of its finding, for the purposes of ATCO Utilities' revenue requirements, to (i) set the COLA at 50% of CPI up to the three percent maximum, effective January 1, 2012 and (ii) reduce COLA for special payments, effective January 1, 2013. Accordingly, the Commission denies ATCO Utilities' request for a first stage review and variance of Decision 2011-391 and therefore has not addressed ATCO Utilities' request for a second stage review and variance of Decision 2011-391.

5 Commission findings

37. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including submissions provided by each party. Accordingly, any reference in this decision to specific parts of the record is 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.

5.1 Pension Plan Administrator

38. In Decision 2010-189, the Commission stated:

[R]atepayers 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.²⁵

39. In its R&V Application and response submission, ATCO Utilities submitted that, in order to conclude that a reduction in COLA was warranted, the Commission must have concluded that the Pension Plan Administrator's actions and decisions were unreasonable or imprudent.

40. In its R&V Application, ATCO Utilities stated:

[T]he Pension Plan Administrator's policy is built on a foundation of year-after-year of prudent and "good faith" decision-making. Thus, the ATCO Utilities submit that it cannot now be said that the policy resulting from these past decisions is now "imprudent", based on some retroactive

²⁵ Decision 2010-189 at paragraph 118.

redetermination (so as to warrant a disallowance, as the AUC has done in Decision 2011-391).²⁶

This statement introduces two issues: retroactive redetermination of ATCO Utilities pension costs and the prudence of the pension plan administrator.

41. In Decision 2011-391, the Commission's findings relate to forecasts for the test years of 2011 and 2012, and therefore retroactive redetermination is not an issue.

42. A review of Decision 2011-391 demonstrates no finding about whether the actions of the pension plan administrator were unreasonable or imprudent. Further, in the view of the Commission, there is no need for such a finding. In Decision 2011-391, the Commission was not making an assessment about the actions of the Pension Plan Administrator in past periods but rather was determining the pension expense to be included in ATCO Utilities' revenue requirements for a future period (test years 2011 and 2012) and therefore what would be a reasonable expense.

43. The Commission did not make any findings regarding the actions of the Pension Plan Administrator. In Decision 2011-391, the Commission assessed the decision of ATCO Utilities to include COLA awards of 100 per cent of CPI up to a maximum of three per cent in revenue requirement, given the current circumstances. The Commission was clear "that CUL may continue its past administrative practice of granting the maximum allowable COLA under the terms of the DB Plan to DB Plan beneficiaries"²⁷, but only the approved amount would be considered prudent for inclusion in revenue requirement. This finding was based on the circumstances at the time of the application, with the Commission recognizing that circumstances may change; stating in Decision 2011-391 that:

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.²⁸

44. The Commission finds that this is consistent with the record of the proceeding.

45. For these reasons, the Commission finds that ATCO Utilities have failed to satisfy this ground for a first stage review and variance of Decision 2011-391.

5.2 Table 1

46. The Commission has reviewed Table 1 at page 20 of Decision 2011-391 and does not consider that the Commission's assessment of the table was unreasonable in the context of the decision. For ease of reference, the Commission has reproduced Table 1:

²⁶ R&V Application at paragraph 25.

²⁷ Decision 2011-391 at paragraph 103.

²⁸ Decision 2011-391 at paragraph 104.

Table 1. Summary of COLA provisions from Mercer report²⁹

Company	Plan Type	COLA %	COLA for Non Retirees
A	DB	100% of CPI, 8% max	100% of CPI, 8% max
B	DB	66.7% of CPI	66.7% of CPI
C	DB	60% of CPI (ad hoc target)	None
D	DB	75% of CPI, 5% max	75% of CPI, 5% max
E	Closed DB Open DC	2% per year min (ad hoc above)	2% per year
F	DB	100% of CPI	100% of CPI
G	Closed DB Open DC	60% of CPI	60% of CPI
H (Canadian Utilities)	Closed DB, Open DC	100% of CPI, 3% max	None
I	Closed DB Open DC	2% per year min (ad hoc above)	2% per year
J	DB or DC	100% of CPI, 6% max	None
K	DB	60% of CPI	60% of CPI
L	DB or DC	50% of CPI	None

47. To summarize, Table 1 provides the following information:

Table 2. Summary of Table 1 in Decision 2011-391

COLA %	Number of Companies that Award COLA %
100% of CPI	1
100% of CPI, 8% max	1
100% of CPI, 6% max	1
100% of CPI, 3% max	1 (Canadian Utilities Limited)
75% of CPI, 5 % max	1
66.7% of CPI	1
60% of CPI	3
50% of CPI	1
2% per year min	2

²⁹ Proceeding ID. No. 999, Exhibit 1.00, application, Attachment 1, Mercer Report, Analysis of Current Service Cost for Entities Comparable in Size to the ATCO Utilities, page 13.

48. Given the general and summarized nature of the table, the information provided by ATCO Utilities was open to interpretation, particularly when the COLA ceiling is taken into account. Much of what can be concluded from the table would be influenced by how high or how low CPI was in any given year, if the analysis was intended to determine whether CUL was more or less generous in its COLA provision to retirees overall as compared to other companies represented in the table, and whether as a consequence ATCO Utilities' COLA provision was or was not within a reasonable range. In a low CPI environment, the existence and level of COLA ceilings can be less relevant, depending on the level of the ceiling in relation to CPI. At the time of Decision 2011-391, the record indicated a low CPI environment for the three preceding years as evidenced by an information response provided by ATCO Utilities during the proceeding for Decision 2011-391 (AUC-AU-16).³⁰

49. Based on Table 1 and the summary table provided above, there are four companies that award COLA in the 50 to 60 per cent of CPI range. There are also six companies, the majority if CUL is excluded from the analysis, in the 50 to 75 per cent range for CPI. In Decision 2011-391, the Commission made the following findings with respect to its interpretation of Table 1: "the most frequent COLA provision for the comparator group set COLA in the 50 per cent to 60 per cent range with the majority using CPI in the 50 per cent to 75 per cent of CPI range."³¹ The finding that the majority use CPI in the 50 per cent to 75 per cent of CPI range is supported by the summary table above, which demonstrates that six companies of the 11 comparators (with CUL excluded) fall in this range. The finding that "the most frequent COLA provision for the comparator group set COLA in the 50 to 60 per cent range"³², depends on the groupings used.

50. ATCO Utilities' argument that, because seven of the comparators do not provide a COLA ceiling and therefore, in a higher CPI environment could provide an amount that is higher than the amount paid out under CUL's COLA provision, is not persuasive in a low CPI environment. The Commission's findings regarding Table 1 were based on the current circumstances which reflect a low CPI environment.

51. As well, when evaluating Table 1, the Commission stated that the reasonableness of the COLA provision must be evaluated in the circumstances applicable when ATCO Utilities applies to include pension expense in revenue requirement. In other words, Table 1 also needed to be evaluated in the context of the significant unfunded liability. Specifically, the Commission stated:

The reasonableness of the COLA amount must be evaluated in the circumstances applicable at the time that ATCO Utilities apply to include a pension expense in revenue requirement. The current circumstances in respect of the existing pension cost placeholders include a significant unfunded liability that requires ratepayers to fund an allocated share of special payments.³³

52. The Commission notes that in Decision 2010-189 and as discussed in section 3 above, the Commission expressed concern about the unfunded liability and requested that, in the next

³⁰ Proceeding ID. No. 999, Exhibit 18.01, AUC-AU-16.

³¹ Decision 2011-391 at paragraph 86.

³² Decision 2011-391 at paragraph 86.

³³ Decision 2011-391 at paragraph 87.

proceeding, ATCO Utilities address how it was going to manage this issue. Specifically the Commission directed ATCO Utilities to prepare a 2011 Pension Common Matters application which addressed the possibility of adjusting COLA as a mechanism in prudently managing utility pension expense and to provide the following analysis:

[W]hat factors should be considered on a generic basis by a utility plan administrator when exercising discretion under COLA provisions in its DB or combined DB or DC Pension Plan. This analysis should specifically address situations where either a surplus or an unfunded liability exists or may be created through the exercise of the COLA discretion. Include any additional factors unique to the ATCO Utilities that would require consideration in the exercise of that discretion.³⁴

53. In information response AUC-AU-1(a), in the proceeding leading up to Decision 2011-391, ATCO Utilities provided the 2009 Actuarial Report which indicated that the DB Plan had an unfunded liability of \$157.1 million, which would require annual special payments of \$16.4 million (including payments of \$2.6 million in respect of DB Plan members in non-regulated affiliated companies) until December 31, 2024,³⁵ indicating a large burden to customers for a number of years, if the unfunded liability was not addressed in some manner. Further in information response AUC-AU-16, ATCO Utilities estimated that a one per cent reduction of the COLA amount starting in 2011 (from 2.25 per cent to 1.25 per cent) would result in reducing the pension deficit by \$51 million, and reduce the special payment amount by \$5.4 million.³⁶ Annual revenue requirements for each of 2011 and 2012 would be reduced by \$2.8 million for ATCO Gas, \$2.1 million for ATCO Electric, and \$0.5 million for ATCO Pipelines. A one per cent reduction would set the COLA at approximately 55 per cent of the CPI assumption used in the 2009 Actuarial Report.³⁷ As noted in Decision 2011-391 and discussed in section 5.3 below, ATCO Utilities provided limited information to persuade the Commission that other factors, such as competitiveness of compensation and employee retention, were of more importance than the unfunded liability given the increased rates that would result from special payments when considering whether to adjust the COLA.³⁸

54. The Commission is of the view that the findings in Decision 2011-391 regarding Table 1 are consistent with the record of the proceeding and, therefore those findings do not constitute an error of fact.

55. For these reasons, the Commission finds that ATCO Utilities have failed to satisfy this ground for a first stage review and variance of Decision 2011-391.

5.3 Significance of the unfunded liability

56. In its R&V Application and response submission, ATCO Utilities asserted that the Commission focused on the existence of an unfunded liability and excluded consideration of other factors when setting COLA.

³⁴ Decision 2010-189 at paragraph 123.

³⁵ Proceeding ID. No. 999, Exhibit 12.01, response to AUC-AU-1(a), Attachment 3, page 2 of 6.

³⁶ Proceeding ID. No. 999, Exhibit 18.01, information response AUC-AU-16(b).

³⁷ Decision 2011-391 at paragraph 84.

³⁸ Decision 2011-391 at paragraph 91.

57. While the Commission focused on the unfunded liability in determining the level of the COLA, a review of Decision 2011-391 demonstrates that the Commission considered both the competitiveness of the DB Plan and employment retention and their relevance when determining the level of the COLA but did not accept the positions or the evidence provided by ATCO Utilities.³⁹ Specifically the Commission stated:

With respect to the competitiveness of the DB Plan, the Mercer report calculated the total 2010 annual pension expense based on each of the comparator companies' pension plans. ATCO Utilities submitted that the Mercer report had shown that ATCO Utilities' 2010 current service costs were below the median for the comparator group based on the combined DB Plan and DC Plan current service costs, calculated using ATCO Utilities' employee demographics. The UCA's evidence observed that when only the DB Plan information is compared, ATCO Utilities was ranked third out of the 12 comparator companies with regard to the current service costs being compared and therefore above the median for the comparator group based on the DB Plan.

The Commission accepts the UCA position 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.

[...] The Commission also agrees with the UCA position wherein it disagreed with ATCO Utilities that DB Plan employees might choose to terminate their employment if CUL decided to actually change its administrative practice and not absorb any portion of COLA that ATCO Utilities would not otherwise be allowed to charge to ratepayers. The UCA argued that there was a very high increment in the value of pension entitlements if a DB Plan member were to remain employed relative to the pension value the member would receive if the member were to terminate employment prior to retirement because of the backend loading of benefits from the DB Plan design. The Commission agrees with the UCA that this provides a strong financial incentive for members to continue employment with ATCO Utilities regardless of the administrative practice used for setting COLA for the DB Plan.

For these reasons the Commission does not accept ATCO Utilities' position that a change in COLA would detrimentally and materially impact both the competitiveness of ATCO Utilities' position in the employment marketplace and its ability to attract and retain employees. While ATCO Utilities asserted that a total overall compensation view was required before COLA should be adjusted, limited evidence was provided to support this assertion.⁴⁰

³⁹ See paragraphs 86-91 of Decision 2011-391.

⁴⁰ Decision 2011-391 at paragraphs 88- 91.

58. Having accepted the submissions of the UCA, the Commission also accepted the UCA's recommendation that a reasonable COLA level for 2011 and subsequent years that could be supported by the December 31, 2009 actuarial valuation would be to set COLA at 50 per cent of increases in CPI to a maximum annual COLA increase of three per cent.⁴¹

59. Both 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.⁴² As such, it was reasonable for the Commission to focus on the current and ongoing impact on pension costs that would result if the unfunded liability was not considered when setting COLA.

60. In Decision 2011-391, the Commission stated:

In reaching the determinations set out within this decision, the Commission 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 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.⁴³

61. The Commission is not required to make a finding on every point relating to its decision but rather only those of central importance to its decision. In *Stelco Inc. v. British Steel Canada Inc.*, the Federal Court held that

[i]t cannot be inferred from the fact that the reasons do not discuss a factor on which the Tribunal heard evidence that it must therefore have failed to consider it. A tribunal that is subject to a duty to give reasons [...], must, of course, provide adequate reasons, but this does not mean that it must deal with every issue raised before it. Rather, it must explain its conclusion on those issues that are of central importance to the decision.⁴⁴ (emphasis added)

62. In *Service Employees International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, the Supreme Court of Canada stated "a decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion."⁴⁵ The Supreme Court of Canada recently reaffirmed its position on this matter, citing the aforementioned case.⁴⁶ For these reasons, the Commission made no error when it focused on the unfunded liability in its reasons to Decision 2011-391.

⁴¹ Decision 2011-391 at paragraphs 72 and 92.

⁴² Decision 2011-391 at paragraph 79.

⁴³ Decision 2011-391 at paragraph 6.

⁴⁴ *Stelco Inc. v. British Steel Canada Inc.*, [2000] F.C.J. No. 286 at para. 24.

⁴⁵ *Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382 at p. 391.

⁴⁶ *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasure Board)*, [2011] S.C.J. No. 62.

63. The Commission finds that Decision 2011-391 is consistent with the record of the proceeding for Decision 2011-391 and that Decision 2011-391 considered factors other than the unfunded liability when setting the COLA, with the Commission accepting the submissions of the UCA.

64. For these reasons, the Commission finds that ATCO Utilities have failed to satisfy this ground for a first stage review and variance of Decision 2011-391.

5.4 Decision 2011-391 inconsistent with Decision 2010-189

65. In Decision 2010-189, the Commission gave specific directions on what the 2011 Pension Common Matters application should address and gave ATCO Utilities a list of items to address, including the following:

[...]

(d) Provide an analysis of what factors should be considered on a generic basis by a utility plan administrator when exercising discretion under COLA provisions in its DB or combined DB and DC Pension Plan. This analysis should specifically address situations where either a surplus or an unfunded liability exists or may be created through the exercise of the COLA discretion. Include any additional factors unique to the ATCO Utilities that would require consideration in the exercise of that discretion.

(e) Describe the significance of the COLA provision to the competitiveness and employee retention objectives of the ATCO Utilities compensation and benefits package for DB Plan employees.⁴⁷

66. With respect to the assertion by ATCO Utilities that, in Decision 2011-391, the Commission failed to recognize COLA as part of the overall compensation available from a competitive employer, the Commission considers that its findings in section 5.3 are equally applicable here. Specifically, the Commission does not have to make an explicit finding on each aspect that leads to its conclusion.

67. As well, in Decision 2011-391, the Commission considered compensation but did not accept the position asserted by ATCO Utilities based on the limited information provided and instead accepted the submissions of the UCA. In Decision 2011-391, the Commission stated:

The UCA argued that there was a very high increment in the value of pension entitlements if a DB Plan member were to remain employed relative to the pension value the member would receive if the member were to terminate employment prior to retirement because of the backend loading of benefits from the DB Plan design. The Commission agrees with the UCA that this provides a strong financial incentive for members to continue employment with ATCO Utilities regardless of the administrative practice used for setting COLA for the DB Plan.

⁴⁷ Decision 2010-189 at paragraph 123.

For these reasons the Commission does not accept ATCO Utilities' position that a change in COLA would detrimentally and materially impact both the competitiveness of ATCO Utilities' position in the employment marketplace and its ability to attract and retain employees. While ATCO Utilities asserted that a total overall compensation view was required before COLA should be adjusted, limited evidence was provided to support this assertion.⁴⁸

68. A review of the record of the proceeding for Decision 2011-391 confirms that limited information was provided by ATCO Utilities with respect to the role of COLA in the DB Plan in regard to overall compensation. In the proceeding for Decision 2011-391, ATCO Utilities submitted that reducing COLA would require an increase or addition of another component of overall compensation to stay near the median of the relevant comparator markets.⁴⁹ However, ATCO Utilities provided no supporting detailed information regarding overall compensation and how it would have to adjust compensation in order to remain near the median. In the proceeding for Decision 2011-391, ATCO Utilities had the onus of demonstrating to the Commission that its costs were reasonable and required for the provision of utility service. While the Commission directed that the 2011 Pension Common Matters application should address compensation and ATCO Utilities argued that total compensation must be considered, it provided limited evidence to support its position that a reduction in COLA would negatively impact overall compensation.

69. The Commission does not consider that the findings in Decision 2011-391 are inconsistent with its findings from Decision 2010-189. In Decision 2010-189, the Commission indicated that it would investigate the possibility of adjusting COLA as a mechanism to prudently manage utility pension expense.⁵⁰ In Decision 2011-391, it was open to the Commission to consider all of the factors and weigh them based on the submissions of the parties. The Commission finds that Decision 2011-391 is consistent with the record of the proceeding for Decision 2011-391 and the Commission's findings in Decision 2010-189.

70. For these reasons, the Commission finds that ATCO Utilities have failed to satisfy this ground for a first stage review and variance of Decision 2011-391.

5.5 Contribution holiday

71. During the years of the pension contribution holiday, ATCO Utilities did not make contributions and therefore had no pension costs to include in utility revenue requirements. Beginning in 2010, ATCO Utilities was required to make pension contributions and the amounts approved for regulatory purposes would be included in the utility revenue requirements.

72. The determination of the COLA in the ATCO Utilities' pension plan is discretionary and consideration should be given to the financial position of the pension plan. In its R&V Application, ATCO Utilities submitted:

The material savings passed on to ratepayers over a 14 year period was due to the nature of the Pension Plan, in that it allowed surplus funds to be used to reduce the employer costs of providing pension benefits in both the DB Plan and the DC

⁴⁸ Decision 2011-391 at paragraphs 90 and 91.

⁴⁹ Proceeding ID. No. 999, ATCO Utilities Rebuttal Evidence, Ex. 28.02 at page 8.

⁵⁰ Decision 2010-189 at paragraph 123.

Plan. The ratepayers greatly benefit from this particular funding feature. Indeed, as noted in Decision 2010-189 (para. 11), ATCO Utilities' ratepayers received a benefit as a result of the contribution holiday in the amount of over \$320 million.⁵¹

73. While ratepayers may have received a benefit, there is nothing to indicate the extent to which the benefit came from overpayment from previous generations of ratepayers, economic circumstances or from management of the pension plan by CUL. What is important is that in previous years ATCO Utilities did not incur any pension costs for inclusion in its revenue requirement. As well, the Commission notes its findings from Decision 2011-391, specifically: "the reasonableness of the COLA amount must be evaluated in the circumstances applicable at the time that ATCO Utilities apply to include pension expense in revenue requirement."⁵² As discussed earlier in sections 3 and 5.2 of this decision, the Commission alerted ATCO Utilities in Decision 2010-189 that the level of unfunded liability and how ATCO Utilities intended to manage the unfunded liability, were important issues before the Commission and that ATCO Utilities must address them in its 2011 Pension Common Matters application. ATCO Utilities did not adequately address the unfunded liability in the 2011 proceeding, leading to the foregoing view of the Commission in Decision 2011-391 that the reasonableness of the COLA amount by ATCO Utilities at that time was not demonstrated.

74. In Decision 2011-391, the Commission indicated that the direction to reduce COLA would be reviewed on an ongoing basis, stating:

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 pensions 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.⁵³

75. While there may have been past surpluses that have allowed contribution holidays, the Commission is still required to consider what costs are reasonable for the provision of utility service with respect to the pension plan and what can be recovered in ATCO Utilities' revenue requirements for the test years.

76. The Commission is not persuaded by ATCO Utilities that the COLA amount determined in Decision 2011-391 is unreasonable in light of the extended contribution holiday from 1996 to 2009.

⁵¹ ATCO Utilities R&V Application at paragraph 53.

⁵² Decision 2011-391 at paragraph 87.

⁵³ Decision 2011-391 at paragraph 104.

77. For these reasons, the Commission finds that ATCO Utilities have failed to satisfy this ground for a first stage review and variance of Decision 2011-391.

5.6 CUPA

78. The Commission considers that the issues raised by CUPA in its SIP are addressed in the previous sections and do not demonstrate a substantial doubt as to the correctness of Decision 2011-391.

79. The Commission does not accept CUPA's assertions that Decision 2011-391 creates an incentive for the COLA to be reduced nor is it a unilateral adjustment to the terms of the pension plan. In Decision 2011-391, the Commission was clear that CUL could award the full COLA level based on the current administrative practice but for regulatory purposes only 50 per cent of Canada CPI up to a maximum of three per cent of COLA could be included in ATCO Utilities' revenue requirements.⁵⁴ CUL and the Pension Plan Administrator still retain control over the Pension Plan. For the reasons discussed in previous sections, the Commission finds that this is just and reasonable.

80. The Commission also does not accept the position that it arbitrarily adjusted revenue requirement forecasts when it adjusted the amount of COLA recoverable in rates. As outlined in the DB Plan, the amount of COLA is a discretionary determination as set out in sections 6.9(a) and 6.12(a) of the DB 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 CUL]

Section 6.12(a)

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 CUL]⁵⁵

81. Based on the discretionary nature of COLA, in Decision 2010-189, the Commission was clear that it would examine whether an unfunded liability could be addressed through the exercise of discretion in awarding COLA. As such, in Decision 2010-189, the Commission directed ATCO Utilities to prepare a 2011 Pension Common Matters application which would specifically address the use of discretion with respect to the COLA provision in determining the 2011 pension expense to be included in revenue requirement in the context of related compensation and retention issues.⁵⁶ ATCO Utilities and its pensioners had ample notice that

⁵⁴ Decision 2011-391 at paragraph 103.

⁵⁵ Decision 2011-391 at paragraph 41.

⁵⁶ Decision 2010-189 at paragraph 123.

COLA may be adjusted and therefore there was nothing arbitrary about the Commission's findings.

6 Decision

82. For all of the foregoing reasons, the Commission finds that the errors raised by ATCO Utilities for a review of Decision 2011-391 do not demonstrate a substantial doubt as to the correctness of Decision 2011-391 in respect of its finding, for the purposes of ATCO Utilities' revenue requirements, to (i) set the cost of living adjustment (COLA) at 50% of Canada Consumer Price Index (CPI) up to the three percent maximum, effective January 1, 2012 and (ii) reduce COLA for special payments, effective January 1, 2013.

83. As discussed in Decision 2011-391 and in sections 3 and 5 of this decision, the decision to reduce COLA would be reviewed on an ongoing basis. The Commission will review all of the relevant circumstances, at the time of filing of the next valuation submission, and determine whether, for the purposes of revenue requirement, the COLA allowed for revenue requirement purposes should be increased or decreased. Should ATCO Utilities require an increase to the COLA at that time, it should be prepared to fully justify its proposed level of COLA and why the proposed amount to be included in revenue requirement is just and reasonable.

84. The Commission denies ATCO Utilities' request for a first stage review and variance of Decision 2011-391 and therefore has not addressed ATCO Utilities' request for a second stage review and variance of Decision 2011-391.

Dated on March 22, 2012.

The Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Vice-Chair

(original signed by)

Mark Kolesar
Commission Member

(original signed by)

Kay Holgate
Commission Member

APPENDIX 1 – PROCEEDING PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative
ATCO Utilities L. Keough B. Jones D. Wilson
Office of the Utilities Consumer Advocate R. McCreary R. Bell
Canadian Utilities Pensioners Association (North) K. Hiebert

Alberta Utilities Commission Commission Panel C. Dahl Rees, Vice-Chair M. Kolesar, Commission Member K. Holgate, Commission Member Commission Staff S. Ramdin (Commission Counsel) D. Cherniwchan B. Whyte
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