



ATCO Utilities

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

**2003-2007 Benchmarking and
ATCO I-Tek Placeholders True-Up**

March 8, 2010



ALBERTA UTILITIES COMMISSION

Decision 2010-102: ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.)

2003-2007 Benchmarking and ATCO I-Tek Placeholders True-Up

Application No. 1562012

Proceeding ID. 32

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Contents

1	INTRODUCTION.....	1
2	HISTORY	4
3	BACKGROUND	13
3.1	The Application – Procedural Steps.....	13
4	APPLICATION OVERVIEW	19
5	DISCUSSION OF ISSUES.....	23
5.1	Application of ATCO Inter-Affiliate Code of Conduct.....	23
5.1.1	Submissions of the Interveners	25
5.1.2	Submissions of ATCO	29
5.1.3	Commission Determination	35
5.2	True-Up Methodology and Present Value Adjustment.....	44
5.2.1	Submissions of the Interveners	47
5.2.2	Submissions of ATCO	50
5.2.3	Commission Determination	51
5.3	Interest.....	52
5.3.1	Submissions of the Interveners	52
5.3.2	Submissions of ATCO	53
5.3.3	Commission Determination	53
5.4	Non-Standard Clauses.....	54
5.4.1	CC&B Methodology.....	54
5.4.1.1	Submissions of the Interveners	54
5.4.1.2	Submissions of ATCO.....	54
5.4.1.3	Commission Determination	54
5.4.2	CC&B Personnel.....	55
5.4.2.1	Submissions of the Interveners	55
5.4.2.2	Submissions of ATCO.....	55
5.4.2.3	Commission Determination	55
5.5	New Services.....	56
5.5.1	Submissions of the Interveners	56
5.5.2	Submissions of ATCO	57
5.5.3	Commission Determination	57
6	DECISION SUMMARY	58
7	ORDER	59
	APPENDIX 1 – REGISTERED PARTICIPANTS.....	61
	APPENDIX 2 – ORAL HEARING – REGISTERED APPEARANCES	62
	APPENDIX 3 – SUMMARY OF COMMISSION DIRECTIONS	63
	APPENDIX 4 – ABBREVIATIONS	64
	APPENDIX 5 – EXHIBIT 145 REVISED TRUE-UP SUMMARY TABLES	66

List of Tables

Table 1.	Summary of IT and CC&B Placeholder Adjustments.....	22
Table 2.	Comparison of Placeholder Amounts and Benchmark values	26
Table 3.	Summary of the Impact of Applying the ATCO Code to each of the Affiliate Services which were the subject of the Benchmark.....	27
Table 4.	Updated Benchmarking Amounts	31
Table 5.	PV of ATCO Gas PP&E Reductions.....	46
Table 6.	PV of ATCO Pipelines PP&E Reductions	47
Table 7.	PV of ATCO Electric PP&E Reductions	47

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1 INTRODUCTION

1. On February 21, 2008 ATCO Gas, ATCO Pipelines¹ and ATCO Electric² acting collectively as the ATCO Utilities (ATCO or the ATCO Utilities), filed an application (Original Application) with the Alberta Utilities Commission (Commission or AUC) to true-up 2003-2007 revenue requirement placeholders³ for information technology (IT) services and customer care and billing (CC&B) services. The IT and CC&B services were provided to each of the three ATCO Utilities by two affiliated companies, ATCO I-Tek Inc. (ATCO I-Tek or I-Tek) and ATCO I-Tek Business Services Ltd. (ATCO ITBS or ITBS). ATCO I-Tek provided the IT services and ITBS provided the CC&B services.

2. The Original Application proposed a true-up of the placeholders on the basis of a price benchmarking report (Benchmark Report) prepared by Compass Management Consulting Limited (Compass) with respect to IT services and Utilipoint International Inc. (Utilipoint) with respect to CC&B services, (collectively, the Benchmarkers). A redacted version of the Benchmark Report was attached to the Original Application and was described as being the product of an extensive collaborative process between the Customer Group⁴ (CG), ATCO I-Tek and ATCO. The collaborative process was sanctioned by the Alberta Energy Utilities Board (Board or EUB) and was monitored by EUB observers.

3. The Original Application requested approval of the following matters:

- that “the Benchmarking report meets the Terms of Reference pursuant to the decisions and directives established by the AEUB;” and
- the ‘Increase/(Decrease) to Placeholders’ identified for each of ATCO Gas, ATCO Pipelines and ATCO Electric on pages 1 and 2 of Attachment A to the Application.

¹ ATCO Gas and ATCO Pipelines are each operating divisions of ATCO Gas and Pipelines Ltd.

² ATCO Electric Ltd.

³ Placeholders were established by the Alberta Energy and Utilities Board (EUB or Board) which was the predecessor to the Commission. Placeholders are intended as a temporary measure to include an approximate amount in revenue requirement in respect of a particular category of cost until such time as the final cost amount is determined through additional applications or Commission determinations. The 2003-2007 IT and CC&B placeholders in this Proceeding were established in respective GRAs/GTAs and subsequent decisions.

⁴ CG members per an April 23, 2008 letter includes: Alberta Association of Municipal Districts and Counties (AAMDC), Alberta Federation of REAs Ltd., Alberta Urban Municipalities Association, Consumers’ Coalition of Alberta, The City of Calgary, City of Edmonton, Federation of Gas Co-ops, First Nations (includes Treaty 8 First Nations of Alberta, Tall Cree Tribal Government, Maskwachis Cree, Sovereign Blackfoot Nation, Lesser Slave Lake Indian Regional Council Confederacy of Treaty 6 First Nations, Assembly of First Nations [Alberta], and Tsuu T’ina Nation), Public Institutional Consumers of Alberta and Office of the Utilities Consumer Advocate

ATCO indicated that Attachment A summarized the “True-Up” Tables and compared the Benchmark Report’s fair market value (FMV) with the current placeholder amounts by year for the 2003-2007 period.

4. The price benchmark report contains “True-Up” Tables which, as explained in the report, are designed as the mechanism for translating the results of the benchmark fair market price of the services provided by ATCO I-Tek Inc. and ATCO I-Tek Business Services Ltd. to the ATCO Utilities into a final “True-Up” of IT and CC&B placeholders for the years 2003 to 2007.⁵

5. The Benchmark Report attached to the Original Application had certain material redacted or omitted in order to protect its confidentiality. ATCO claimed that public disclosure of the unredacted information would cause certain parties undue financial loss and prejudice their positions in the marketplace.

6. The Original Application also attached an Evergreen Strategy document with recommendations from the Benchmarkers regarding IT and CC&B costs for subsequent years that were designed to:

- 1) Eliminate or at least minimize the challenges faced with benchmarking forecasts.
- 2) Enable ATCO to move forward with rates for 2008 and 2009.
- 3) Create a strategy for validating market rates going forward.

7. ATCO indicated that the Evergreen Strategy document was attached only for information purposes and would be dealt with in future proceeding(s)⁶ as the Original Application deals only with the 2003 to 2007 period.

8. On April 9, 2008,⁷ ATCO informed the Commission that the CG and ATCO had come to a comprehensive agreement that resolved all of the outstanding issues regarding the Original Application. ATCO attached an amended Attachment A from the Original Application which purported to reflect the agreement of the parties.

9. The Commission issued Notice of the Original Application on April 29, 2008.⁸ The Notice was distributed electronically to interveners and interested parties from a number of proceedings⁹ and was published on the Commission’s website. Parties who wished to participate in the proceeding (other than members of the CG who considered that their position was set out in the CG’s correspondence to date) had to file Statements of Intent to Participate (SIP) by no

⁵ Exhibit 2, ATCO Utilities Application for the True Up of Information Technology (IT) and Customer Care and Billing (CC&B) Placeholders Resulting from the Benchmarking of IT and CC&B Services from ATCO I-Tek Inc. and ATCO I-Tek Business Services Ltd., page 2.

⁶ ATCO Group, ATCO Utilities Evergreen Applications, Application No. 1577426, Proceeding ID. 77; and ATCO Electric Ltd., ATCO Gas, ATCO Pipelines 2010 Evergreen Proceeding for Provision of Information Technology and Customer Care and Billing Services Post 2009, Application No. 1605338, Proceeding ID. 240. Exhibit 6.

⁷ Exhibit 6.

⁸ Exhibit 10.

⁹ Application No. 1553052, Proceeding ID. 11 – ATCO Gas 2008-2009 General Rate Application Phase 1; Application No. 1527976, Proceeding ID. 13 – ATCO Pipelines 2008-2009 General Rate Application Phase 1; Application No. 1465142 – ATCO Pipelines 2006 Other Pipeline Delivery Deferral Accounts; Application No. 1500878 – ATCO Electric 2008 Distribution Tariff Phase II; and Application No. 1548626 – ATCO Electric 2008 Distribution Tariff Phase II Refiling.

later than May 7, 2008. In any SIPs filed, parties were requested to indicate their support or objection to the Original Application as well as whether or not they would seek access to the unredacted Benchmark Report on a confidential basis, if the Commission determined that it would accept the unredacted Benchmark Report on a confidential basis. If any further comments regarding the confidentiality request were submitted in the SIPs filed, ATCO and the CG were instructed to provide any reply comments by no later than May 14, 2008.

10. Two SIPs were submitted on May 7, 2008; one from The City of Calgary (Calgary)¹⁰ and one from the Office of the Utilities Consumer Advocate (the UCA).¹¹ No other members of the CG submitted SIPs. Following the filing of SIPs, Calgary and the UCA were the only members of the CG to further participate in the Proceeding.

11. On September 25, 2008 the Commission issued a letter directing ATCO to indicate how it proposed to reflect the true-up of placeholders in the amended Attachment A attached to ATCO's April 9, 2008 letter in opening property, plant and equipment (PP&E) balances and revenue requirements.

12. On October 3, 2008, ATCO submitted a Supplemental Filing¹² setting out how it proposed to reflect the true-up of the placeholders in the amended Attachment A in opening PP&E balances and revenue requirements. ATCO requested that the AUC approve:

- the resulting impact on revenue requirement for each of ATCO Gas, ATCO Pipelines and ATCO Electric as shown in the attached schedules;
- the present value payments to customers to allow the ATCO Utilities to retain its existing rate base derived from the actual I-Tek charges included in opening PP&E balances;
- the interest costs calculated on the outstanding amounts owed to/from customers in accordance with AUC Rule 023 [Rule 023: *Rules Respecting Payment of Interest* (Rule 023)]; and
- the refund/recovery proposals as outlined in each of ATCO Gas, ATCO Pipelines, and ATCO Electric schedules.¹³

13. The Commission will refer to ATCO's Original Application dated February 21, 2008 and the Supplemental Filing dated October 3, 2009 collectively as "the Application" in this proceeding. To summarize, ATCO requested that the Commission approve:

1. The Benchmark Report.
2. The increased/decreased placeholder amounts.
3. The approach to quantify the revenue requirement impacts, including the adjustments to PP&E, using the present value methodology.
4. The application of interest on revenue requirement amounts for ATCO Electric and ATCO Gas as per the Commission's Rule 023.

14. A public hearing was convened in Edmonton on December 1, 2009 before Commission members Mr. W. Grieve (Chair), Mr. B. Lyttle (Commissioner), and Ms. A. Michaud

¹⁰ Exhibit 11.

¹¹ Exhibit 12.

¹² Exhibits 23 and 24.

¹³ Exhibit 23

(Commissioner). The oral evidentiary part of the process was completed on December 3, 2009 followed by oral argument and oral reply argument on December 4, 2009. December 8, 2009 was the date of receipt of the last undertaking from the hearing. Accordingly, for the purposes of this Decision, the Commission considers the record to have closed on December 8, 2009.

2 HISTORY

15. The historical and procedural background to this Decision has been lengthy and complex, necessitating the presentation below of a certain amount of detail to assist the reader in understanding the chronology of events leading up to this Decision.

16. ATCO I-Tek was established in 1999 as an affiliated, non-regulated corporation to undertake all computer equipment ownership, servicing and IT development for the regulated ATCO Group companies.¹⁴ Effective January 1, 1999, the computer assets of ATCO Electric, ATCO Gas, and ATCO Pipelines were sold to ATCO I-Tek.¹⁵ In April, 1999 ATCO Electric, ATCO Gas and ATCO Pipelines each signed formal Master Service Agreements (Master Service Agreements or MSAs) with ATCO I-Tek (Original ATCO I-Tek Master Service Agreements) which delineated the service levels, volumes and price for the information technology services.¹⁶ The Original ATCO I-Tek Master Service Agreements had an initial term of five years, were renewable each three years thereafter¹⁷ and contained provisions that required the entities to conduct an annual price review.¹⁸

17. Also in 1999, ATCO Electric, ATCO Gas and ATCO Pipelines changed the manner in which customer care functions were performed by transferring these services to another non-regulated affiliated company in the ATCO Group of companies, ATCO Singlepoint Ltd. (ATCO Singlepoint), later named ITBS.¹⁹ The functions assigned to ATCO Singlepoint included maintaining customer information, preparing and issuing customer bills, processing customer payments, invoking collection procedures for accounts in arrears, responding to customer billing and service inquiries, and maintaining internal controls for each of these functions.²⁰ ATCO Electric, ATCO Gas and ATCO Pipelines each signed Master Service Agreements with ATCO Singlepoint (Original ATCO Singlepoint Master Service Agreements).

18. As part of the applications that were addressed initially through EUB Decision [2002-069](#), ATCO Electric, ATCO Gas and ATCO Pipelines requested, among other items, Board approval of the computer asset transfer to ATCO I-Tek and the Original ATCO I-Tek Master Service Agreements; Board approval of the Original ATCO Singlepoint Master Service Agreements; and Board approval of the ATCO I-Tek and ATCO Singlepoint charges included in the 2001/2002 revenue requirements of the three utilities.²¹

¹⁴ Decision 2002-069 – ATCO Group Affiliate Transactions and Code of Conduct Proceeding Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues (Application No. 1237673) (Released: July 26, 2002), page 39.

¹⁵ Decision 2002-069, page 40.

¹⁶ Decision 2002-069, page 40.

¹⁷ Decision 2002-069, page 50.

¹⁸ Decision 2002-069, page 60.

¹⁹ Decision 2002-069, page 52.

²⁰ Decision 2002-069, page 52.

²¹ Decision 2002-069, page 5.

19. Through a series of Decisions, namely 2002-095,²² 2002-096,²³ 2002-097,²⁴ 2002-111,²⁵ 2003-002,²⁶ and 2003-006,²⁷ the Board approved the sale of the computer assets to ATCO I-Tek effective January 1, 1999 and set out the approved ATCO I-Tek and ATCO Singlepoint costs to be included in the 2001/2002 revenue requirements of ATCO Electric, ATCO Gas and ATCO Pipelines.

20. In the initial decision regarding the ATCO I-Tek and ATCO Singlepoint arrangements, Decision 2002-069, the Board expressed concerns with respect to the price adjustment provisions of the Original ATCO I-Tek Master Service Agreements and the Original ATCO Singlepoint Master Service Agreements. The Board included the following directions in Decision 2002-069:

With respect to the future operation of the I-Tek MSA, the Board has continued misgivings with respect to the operation of the pricing mechanisms within the agreement. The Board directs ATCO, prior to any future material engagements of consultants to undertake a price review applicable to I-Tek and the regulated Utilities, to file terms of reference applicable to the engagements. Following participation of the parties, the Board will make a preliminary determination as to the reasonableness of those terms of reference to assist in providing a complete and useful record for future applications.²⁸

Similar concerns were expressed in relation to the pricing provisions of the Singlepoint MSA.²⁹

21. On August 1, 2002, less than a week after Decision 2002-069 was released, ATCO Electric Ltd. filed its 2003-2005 General Tariff Application.³⁰ This filing did not include any responses to Board Directions from Decision 2002-069. Subsequently, on December 2, 2002 ATCO Electric Ltd. refiled its 2003-2005 General Tariff Application. This refiled included responses to Board Directions from Decision 2002-069. Included as part of these responses was a letter dated October 25, 2002 with respect to not only ATCO Electric's 2003-2005 General Tariff Application but also to the 2003-2004 General Rate Application of ATCO Gas.³¹ Included in this letter was notification that revisions to the Original ATCO I-Tek Master Service Agreements had been made. Regarding the Board Directions from pages 52 and 67 of Decision 2002-069 as shown in the previous paragraph of this Decision, the response was as follows:

²² Decision 2002-095 – ATCO Electric Ltd. Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues Compliance Filing (Application No. 1278432) (Released: November 19, 2002).

²³ Decision 2002-096 – ATCO Pipelines South 2001/2002 General Rate Application, and Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues Compliance Filing (Application No. 1278433) (Released: November 19, 2002).

²⁴ Decision 2002-097 – ATCO Gas South 2001/2002 General Rate Application, Carbon Storage Transfer and Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues Compliance Filing (Application No. 1278564) (Released: November 19, 2002).

²⁵ Decision 2002-111 – ATCO Pipelines South 2001/2002 General Rate Application, and Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues Second Compliance Filing (Application No. 1284317) (Released: December 17, 2002).

²⁶ Decision 2003-002 – ATCO Electric Ltd. Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues Second Compliance Filing (Application No. 1286362) (Released: January 14, 2003).

²⁷ Decision 2003-006 – ATCO Gas South 2001/2002 General Rate Application, and Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues Second Compliance Filing (Application No. 1286129) (Released: January 21, 2003).

²⁸ Decision 2002-069, page 52.

²⁹ Decision 2002-069, page 67.

³⁰ Application No. 1275494.

³¹ Application No. 1275466.

Both ATCO Gas and ATCO Electric have included forecasts of I-Tek and Singlepoint (now referred to as I-Tek Business Services) charges in their applications.

.....

ATCO Gas and ATCO Electric believe that the amounts included in their forecasts are based on the Fair Market Value (FMV) of obtaining the IT services. The ATCO Utilities wish to proceed with the benchmarking of these contracts (as discussed below). The ATCO Utilities therefore propose that the forecast IT services in both applications be treated as placeholders for the purpose of maintaining the current schedules for these applications, and that the costs associated with affiliate transactions with I-Tek be treated as a separate module once the benchmarking study results are available.

Both ATCO Utilities have included forecasts of the I-Tek Business Services costs based on the MSA filed in the Affiliate application.

.....

...The ATCO Utilities therefore propose that the forecast billing and customer care services in both applications be treated as placeholders for the purpose of maintaining the current schedules for these applications, and that the costs associated with affiliate transactions with I-Tek Business Services be combined with the affiliate transaction with I-Tek (described above) as a separate module once the benchmarking study results are available.

The ATCO Utilities will approach intervenors to determine if it is possible to negotiate a settlement determining the terms of reference of the benchmarking studies, the choice of consultants, and the conduct of the review. If successful, a negotiated settlement on these issues will be filed with the Board for approval. If negotiations are unsuccessful, the ATCO Utilities will file the terms of reference applicable to the consultants to be engaged to determine FMV of these two affiliate contracts for Board approval.

22. By letter dated October 25, 2002³² ATCO Electric and ATCO Gas notified the Board that ATCO Singlepoint had changed its name to ATCO I-Tek Business Services Ltd. ATCO also advised that revisions to the Original ATCO I-Tek Master Service Agreements had been made. ATCO indicated that the amounts included in the forecasted revenue requirement were based on the FMV of obtaining the IT services. ATCO also indicated a desire to proceed to a benchmarking of these contracts. Finally, ATCO informed parties that they had initiated negotiations with ITBS to replace the existing contracts with new contracts which are more closely aligned with the expected industry re-structuring.

23. In a letter dated December 5, 2002³³ ATCO advised the Board that intervenors had been approached to enter into a collaborative process to develop the Terms of Reference for an ATCO I-Tek benchmarking study. The participants in the collaborative process requested that the Board formally approve the collaborative process. In a letter dated December 13, 2002, the Board approved the use of the collaborative process, and acknowledged that the eventual results of the benchmarking study would be considered in the context of the ATCO Gas 2003/2004

³² Application No. 1275466.

³³ Letter from Brian R. Bale, Controller, ATCO Electric, Collaborative Process to Develop Terms of Reference for an I-Tek Benchmarking Study, Application No. 1285881.

General Rate Application, the ATCO Electric 2003/2005 General Tariff Application, and other ATCO applications that may be impacted by those results. The Board established Application No. 1285881 for this collaborative process proceeding. By letter dated December 20, 2002, the Board notified parties that it would increase the scope of the collaborative process proceeding to include service levels.³⁴

24. On February 19, 2003, in connection with the ATCO Electric 2003-2005 General Tariff Application, the ATCO Gas 2003-2004 General Rate Application and the ATCO Pipelines 2003-2004 General Rate Application, Calgary requested directions from the Board to establish a single process to deal with the Information Technology Master Service Agreements dated September 27, 2002 (Renewal ATCO I-Tek Master Service Agreements), between ATCO I-Tek and each of ATCO Electric, ATCO Gas and ATCO Pipelines. Such a proceeding would deal with all matters relating to the agreements other than the FMV of pricing and service levels, which were being conducted in the collaborative process proceeding.

25. By letter dated April 25, 2003, the Board advised parties that a preliminary proceeding (MSA Module) would be conducted to deal with the Renewal ATCO I-Tek Master Service Agreements, prior to proceeding further with the benchmarking aspect of the collaborative process proceeding. The process of the MSA Module was related solely to IT matters and did not deal with CC&B services. The scope of the MSA Module was to:

- compare the Renewal ATCO I-Tek Master Service Agreements with the Original ATCO I-Tek Master Service Agreements;
- consider the appropriateness of the terms and conditions of the Renewal ATCO I-Tek Master Service Agreements; and
- clarify what matters were to be addressed by the Board in the MSA Module; and
- include a review of service levels.³⁵

26. In [Decision 2003-040](#)³⁶ the Board established a code to govern relationships and transactions between regulated and non-regulated affiliates within the ATCO Group of Companies. This code was named the ATCO Group Inter-Affiliate Code of Conduct (Code). The Code was intended to supplement legislated code of conduct regulations³⁷ which focus on retail affiliate matters.

27. The Board issued [Decision 2003-073](#) to address the Renewal ATCO I-Tek Master Service Agreements. The Renewal ATCO I-Tek Master Service Agreements effectively extended the term of the Original ATCO I-Tek Master Service Agreements from five years starting January 1, 1999 to five years starting January 1, 2002.³⁸ The Board directed that certain changes be made to the agreements. In addition the Board made the following findings:

³⁴ Decision 2003-073 – ATCO Electric, ATCO Gas, and ATCO Pipelines (the ATCO Utilities) ATCO I-Tek Information Technology Master Services Agreement (MSA Module) (Application No. 1285881) (Released: September 26, 2003), page 3.

³⁵ Decision 2003-073, pages 1 and 2.

³⁶ Decision 2003-040 – ATCO Group Affiliate Transactions and Code of Conduct Proceeding Part B: Code of Conduct (Application No. 1237673) (Released: May 22, 2003).

³⁷ Alberta Regulation 160/2003, Electric Utilities Act, Code of Conduct Regulation; Alberta Regulation 183/2003, Gas Utilities Act, Code of Conduct Regulation

³⁸ Decision 2003-073, page 9.

The Board believes the matters to be addressed in this Decision will require a consideration of substantial differences between the Original MSA and the Renewal MSA, certain alleged non-standard provisions that may not be appropriate, and whether or not the provisions of the Renewal MSA are, individually and collectively, reasonable and prudent from the perspective of a public utility, and whether or not the Renewal MSA can and should be benchmarked.³⁹

The Board considers that it would assist all parties and the Board if the terms of reference explicitly required the benchmarker to identify which elements of the Renewal MSA it found to be non-standard or unusual, to explain how these non-standard components compare to industry norms, to clearly provide a value for any appropriate price discount or adjustment arising from each non-standard clause, and to comment on its ability to provide a confident estimate of such discount or adjustment.⁴⁰

The Board expects the benchmarker's report would include its supporting documentation for adjustments to prices relating to various components of the agreement. In particular, the Board expects that the adjustments would be itemized, and that the benchmarker would disclose the degree of confidence relating to specific adjustments (i.e. the number of data points relied upon, etc.). The Board also expects the benchmarker to disclose the degree of confidence for any price ranges developed and used in the process of determining the FMV of ATCO I-Tek services. Inclusion of these various elements in the benchmarker's report would greatly enhance the transparency, and hopefully the confidence of stakeholders, in the benchmarking exercise.⁴¹

The Board is hopeful that subject to a satisfactory Compliance Filing, ATCO and the interveners will now be able to arrive at terms of reference for the benchmarking study that are acceptable to all parties, and that can be submitted to the Board for approval as originally required by Decision 2002-069.⁴²

28. The compliance filings were submitted by ATCO Electric, ATCO Gas and ATCO Pipelines on October 31, 2003. A status report filed by ATCO indicated that a draft Terms of Reference document and draft Request for Proposal document were circulated for discussion with respect to the ATCO I-Tek benchmarking study, and that a plan and associated timeline was proposed with respect to the collaborative process.⁴³

29. The Board issued Decision [2004-026](#) to address the compliance filings. ATCO Electric, ATCO Gas and ATCO Pipelines were directed to submit a second compliance filing by April 30, 2004. The Board also expressed concerns about the efficiency of the process regarding the various outsourcing arrangements with ATCO I-Tek as shown below:

The Board is very concerned with the efficiency and effectiveness of the process by which the various outsourcing arrangements with ATCO I-Tek have transpired. The Board is not ordinarily interested in being involved in the affairs of the utilities under its jurisdiction to the level or degree demonstrated in this Decision and in Decision 2003-073. Furthermore, the present regulatory schedule makes such involvement problematic.

³⁹ Decision 2003-073, page 14.

⁴⁰ Decision 2003-073, page 42.

⁴¹ Decision 2003-073, page 42.

⁴² Decision 2003-073, page 45.

⁴³ Decision 2004-026 – ATCO Electric, ATCO Gas, and ATCO Pipelines (the ATCO Utilities) Compliance Filings Pursuant to Decision 2003-073 – ATCO I-Tek Master Services Agreement Module (Application Nos. 1319530 and 1319698) (Released: March 12, 2004) page 2.

The Board is becoming increasingly concerned with the time and effort expended with respect to the ATCO I-Tek contractual arrangements and the benchmarking processes. It is incumbent on all parties to ensure they use the Board's processes efficiently and that they participate with the objective of contributing to a better understanding of the issues before the Board.⁴⁴

With the additional guidance from the Board set out in this Decision, the Board remains hopeful that the ATCO Utilities and the interveners alike will redouble their efforts at structuring appropriate terms of reference for the contemplated benchmarking study and that terms of reference can be submitted to the Board for consideration within 3 months of the date of this Decision. The Board further anticipates that the benchmarking process can be completed shortly following the Board's review of the terms of reference with an application submitted expeditiously thereafter for approval of the benchmarking study and the related cost placeholders from the GRA/GTA proceedings.⁴⁵

30. The second compliance filings were submitted by ATCO Electric, ATCO Gas and ATCO Pipelines on April 30, 2004. The Board issued Decision [2004-055](#)⁴⁶ to address the second compliance filings.

31. On May 7, 2004⁴⁷ ATCO submitted a proposed ATCO I-Tek Information Technology Benchmarking Terms of Reference document as well as a Request for Proposal document to the Board. These documents were submitted on behalf of the ATCO I-Tek Collaborative Process Committee.⁴⁸ The ATCO I-Tek Collaborative Process Committee requested approval of the ATCO I-Tek Information Technology Benchmarking Terms of Reference and indicated that the Request for Proposal document was for the Board's information. The Board issued Decision [2004-057](#)⁴⁹ to address this request.

32. Included in Decision 2004-057 was some additional information regarding the ATCO I-Tek Collaborative Process Committee's efforts as follows:

The Committee submitted that the efforts to develop Terms of Reference and RFP documents were fruitful and that it was now turning its attention to developing similar Terms of Reference and RFP documents for the Customer Care and Billing (CC&B) Master Services Agreements (MSAs). The Committee agreed to wait until completion of Terms of Reference and RFP documents for the CC&B MSAs before issuing the IT RFP. The Committee's plan was to issue the RFP for both the IT and CC&B Benchmarking studies together.⁵⁰

⁴⁴ Decision 2004-026, page 14.

⁴⁵ Decision 2004-026, page 14.

⁴⁶ Decision 2004-055 – ATCO Electric, ATCO Gas, and ATCO Pipelines (the ATCO Utilities) Second Compliance Filings Pursuant to Decisions 2003-073 & 2004-026 – ATCO I-Tek Master Services Agreement Module (Application Nos. 1319530 and 1319698) (Released: July 13, 2004).

⁴⁷ Decision 2004-055, page 2.

⁴⁸ The Committee members as listed in Appendix 1 of Decision 2004-057 were: Brian Bale, Bob Bruggeman, Bill Follett, Jim Graves, Dan Macnamara, Greg Matwichuk, Robert Spencer, Jim Stephens, and Barry Temple. Laurie Bayda was listed as the Board's observer.

⁴⁹ Decision 2004-057 – ATCO Electric, ATCO Gas, and ATCO Pipelines (the ATCO Utilities) Benchmarking Terms of Reference Pursuant to Decisions 2003-073 & 2004-026 – ATCO I-Tek Master Services Agreement Module (Application No. 1347599) (Released: July 13, 2004).

⁵⁰ Decision 2004-057, page 1.

33. In approving the ATCO I-Tek Information Technology Benchmarking Terms of Reference in Decision 2004-057, the Board noted that the Terms of Reference were not finalized, but were subject to the outstanding matters.

34. On May 2, 2005, ATCO applied to the Board for approval of certain Customer Care and Billing Master Services Agreements, approval of certain Information Technology Renewal Master Services Agreements, and approval of an extension to the period covered by the benchmarking project.⁵¹ The Board established Application No. 1398892 for this proceeding.

35. In response to Application No. 1398892, the Board received comments from Calgary and the Alberta Urban Municipalities Association (AUMA). Calgary indicated that it had been an integral participant in the collaborative process proceeding which resulted in the agreements filed with the application and accordingly it supported the application. The AUMA indicated that it represented the FIRM Customers⁵² (electric utility customers) and the North Core Customers⁵³ (gas utility customers) on the ATCO I-Tek Collaborative Process Committee (CPC)⁵⁴ in negotiating the revisions to the agreements filed with the application. The AUMA indicated that the FIRM Customers and North Core customers supported the application and it understood that the Office of the Utilities Consumer Advocate also supported the application.⁵⁵

36. The CPC requested approval of the following:

- An April 29, 2005 letter agreement between ATCO I-Tek Business Services Ltd. and ATCO Gas and ATCO Electric Ltd. clarifying the ATCO-CIS License Agreement dated effective as of December 1, 1998.
- Statements of work for the period January 1, 2003 to May 31, 2004 related to the Customer Care and Billing Master Service Agreements effective January 1, 1999 (the Original ATCO Singlepoint Master Service Agreements).
- Customer Care and Billing Master Service Agreements effective June 1, 2004 between ATCO I-Tek Business Services Ltd. and ATCO Electric and ATCO Gas.
- Statements of work related to the Customer Care and Billing Master Service Agreements effective June 1, 2004.
- Statements of work for the period June 1, 2004 to September 30, 2004 that are in addition to those covered in the Customer Care and Billing Master Service Agreements effective June 1, 2004.
- Amending agreements to the Customer Care and Billing Master Service Agreements dated April 29, 2005.

⁵¹ Order U2005-376 – ATCO Electric Ltd., ATCO Gas and ATCO Pipelines Master Services Agreements and Benchmark Extension (Application No. 1398892) (Released: October 7, 2005), page 1.

⁵² As included in footnote 1 of Order U2005-376 “FIRM Customers are comprised of AUMA, Alberta Irrigation Projects Association (AIPA), the Alberta Association of Municipal Districts and Counties (AAMD&C), the Consumer’s Coalition of Alberta (CCA), the Alberta Federation of REA’s Ltd. (AFREA’s) and the Public Institutional Consumers of Alberta (PICA).”

⁵³ As included in footnote 2 of Order U2005-376 “North Core Customers are comprised of PICA, AAMD&C, AUMA, CCA, Canadian Forest Products & Ainsworth Lumber Co. Ltd., the City of Edmonton, Federation of Alberta Gas Co-ops Ltd, Gas Alberta Inc. and Aboriginal Communities.”

⁵⁴ As included in footnote 3 of Order U2005-376 “Interested parties represented on the CPC included AAMD&C, AFREA’s, AIPA, CCA, PICA, Municipal Interveners, the Federation of Alberta Gas Co-ops Ltd, Gas Alberta Inc, Aboriginal Communities, Canadian Forest Products, Industrial Power Consumers and Cogenerators Association of Alberta, Calgary, the City of Edmonton, Board observers and ATCO.”

⁵⁵ Order U2005-376, page 1.

- Information Technology Renewal Master Service Agreements dated effective January 1, 2005 which were attached as Appendix 3 of the application. These included Information Technology Renewal Master Service Agreements for each of ATCO Electric, ATCO Gas and ATCO Pipelines.
- Extension of the period covered by the benchmarking from 2003 and 2004 to cover the years 2005 and 2006 for both the CC&B component and IT component.⁵⁶

37. The CPC submitted that Board approval was required before the committee could finalize the Customer Care and Billing Terms of Reference and the Customer Care and Billing Request for Proposal and added that the approved Customer Care and Billing Master Service Agreements would be used as the foundation for benchmarking.⁵⁷ ATCO indicated that the Information Technology Master Service Agreements approved in Decision 2004-055 were effective January 1, 2002 with a term expiring December 31, 2006.⁵⁸ With respect to the Information Technology Renewal Master Service Agreements, approval of which was being requested in the application, the initial term was effective January 1, 2005 and would expire on December 31, 2009.⁵⁹ The CPC added that the Information Technology Renewal Master Service Agreements would form part of the benchmarking and must be approved by the Board prior to the benchmarking.⁶⁰ Upon approval of the Information Technology Renewal Master Service Agreements, the ATCO CPC indicated that it would ask the Board to amend the ATCO I-Tek Information Technology Benchmarking Terms of Reference approved in Decision 2004-057 so that it incorporated the Information Technology Renewal Master Service Agreements and the extension of the period covered by the benchmarking.

38. In Order [U2005-376](#) the Board addressed the requests made in Application No. 1398892. The Board's approvals however were subject to any required changes that may be necessary as the result of the sale by ATCO of the retail gas and electric business to Direct Energy Regulated Services. The Board's approval did not include approval of forecast volumes contained in the IT Renewals MSAs. The Board also approved the request to amend the IT Terms of Reference approved in Decision 2004-057 to include the IT Renewal MSAs for the years 2005 and 2006 and expand the period covered by the yet to be developed CC&B TOR to include 2005 and 2006.

39. On July 14, 2006, ATCO applied to the Board on behalf of the ATCO I-Tek Collaborative Process Committee for approval of the Terms of Reference for the benchmarking of Customer Care and Billing Services. The Board established Application Nos. 1454339 and 1470351 for this proceeding. The ATCO I-Tek Collaborative Process Committee also requested that the Board approve an extension to the period covered by the benchmarking to include 2007 for both the Information Technology and Customer Care and Billing Services.⁶¹ No parties who intervened opposed the application.⁶²

40. The Board issued Order U2006-216 to address the requests made in Application Nos. 1454339 and 1470351. Included in Order U2006-216 was the following information:

⁵⁶ Order U2005-376, pages 2, 3, 4 and 5.

⁵⁷ Order U2005-376, page 2.

⁵⁸ Order U2005-376, page 4.

⁵⁹ Order U2005-376, page 4.

⁶⁰ Order U2005-376, page 4.

⁶¹ Order [U2006-216](#) – ATCO Electric Ltd., ATCO Gas and ATCO Pipelines Master Services Agreements and Benchmark Extension (Application Nos. 1454339 and 1470351) (Released: August 31, 2006), page 1.

⁶² Order U2006-216, pages 1 and 2.

The benchmark of CC&B Services will cover the prices of ITBS services to ATCO for three periods:

- From January 1, 2003 to May 31, 2004 when ATCO performed the gas and electricity regulated retail functions.
- From May 31, 2004 to September 30, 2004, the regulated retail transition period immediately after ATCO's regulated retail functions were transferred to Direct Energy.
- From October 1, 2004 through 2007, the period in which ATCO provides only distribution service for gas and electric customers.⁶³

The CPC indicated that, upon approval by the Board of both the TOR for CC&B services, and the extension to 2007, the following tasks will be required to be completed before the actual benchmarking exercise can commence:

- 1) Submission by the CPC and subsequent approval of the Board of an updated IT TOR based on a Board approved CC&B TOR.
- 2) Submission of a CC&B RFP document by the CPC to the EUB for information purposes.
- 3) Submission of a recommended benchmarking consultant(s) to the EUB for approval.⁶⁴

41. The Board's approvals in Order U2006-216 included the following:

Therefore, the Board accepts the use of the 2003 and 2004 volumes provided in Application No. 1454339 as set out in the Application and that the CC&B TOR is in compliance with Decisions 2005-037 and 2005-039.

Accordingly, the Board approves the TOR for the benchmarking of CC&B from ITBS in Attachment 1 of this Order.

Accordingly, the Board approves 2003 to 2007 as the period to be covered by the benchmarking for both the IT and CC&B MSAs.

The Board notes that the CPC is proposing to submit for approval by the Board, an updated IT TOR based upon the CC&B TOR the Board has approved in this Order.⁶⁵

42. By letter dated April 13, 2007, ATCO applied to the Board on behalf of the CPC for approval of the following matters associated with the collaborative benchmarking process:

1. Approval of Compass Management Consulting Limited as the recommended consultant to conduct benchmarking of the Information Technology and Customer Care and Billing Services which the ATCO Utilities receive from ATCO I-Tek Business Services Ltd.; and approval of UtiliPoint International Inc. to provide benchmarking assistance to Compass Management Consulting Limited in connection with the Customer Care and Billing Services benchmarking.
2. Approval of the Information Technology and Customer Care and Billing Services benchmarking contracts.

⁶³ Order U2006-216, page 2.

⁶⁴ Order U2006-216, page 4.

⁶⁵ Order U2006-216, page 5.

3. Approval of the total costs of the Information Technology and Customer Care and Billing Services benchmarking contracts of \$1,765,000 plus disbursements and Goods and Services Tax.
 4. The allocation of the above-noted costs to the affected utilities.
 5. Confirmation that there would be a process for the recovery of all reasonable costs incurred by the ATCO I-Tek Collaborative Process Committee associated with the Information Technology and Customer Care and Billing Services benchmarking projects at the completion of the projects.⁶⁶
43. The Board approved the application in Order [U2007-111](#) released on April 23, 2007.

3 BACKGROUND

3.1 The Application – Procedural Steps

44. On February 21, 2008, ATCO filed the Original Application that is the primary subject of this Decision. As described in Section 1, Introduction, the Original Application proposed a true-up of the IT and CC&B placeholders on the basis of the Benchmark Report. The Benchmark Report was described as being the product of an extensive collaborative process between the CG and ATCO. ATCO indicated that the CG, ATCO and ATCO I-Tek had all signed off on the Benchmark Report agreeing that “[t]he report satisfies and meets the Terms of Reference established pursuant to the Commission’s decision and directives”⁶⁷

45. In reviewing the Benchmark Report submitted as Attachment B of the Original Application, the Commission observed two sign-off pages. The first sign-off page is on page 87 of Attachment B and is entitled “Appendix 3 – Project Charter Sign-off.” Included on this page is the following: “[t]his section is for the signatures denoting formal acceptance of the *AEUB Sanctioned Collaborative Process Committee Benchmarking of IT and Customer Care & Billing Services from ATCO I-Tek*. This Project Charter is agreed to and accepted by this 5th day of October 2007.” The following signatures were included on the page:

- Brian Bale, ATCO Utilities;
- Bobbi Lambright, ATCO I-Tek;
- Greg Matwichuk, Customer Group;
- Jon Brock, UtiliPoint; and
- Bill Fowler, Compass

46. The second sign-off page is on page 101 of Attachment B and is entitled “Price Benchmark Report Sign-off.” Included on this page is the following: “The parties below, by their signatures, confirm that this Price Benchmark report satisfies and meets the Terms of Reference established pursuant to the Commission’s decisions and directives noted therein subject to the limitations described in the Project Charter and those others arising thereafter as described elsewhere in this report. The parties further agreed “that such confirmation and acknowledgement by the Customer Group and ATCO Utilities shall in no way prevent or limit

⁶⁶ Order U2007-111 – ATCO Electric Ltd., ATCO Gas and ATCO Pipelines Application for Approval of the Contracts, Cost and Allocation of the Costs Associated with the Benchmarking of Information Technology and Customer Care and Billing Services (Application No. 1509540) (Released: April 23, 2007), page 1.

⁶⁷ Exhibit 2, cover letter, page 2 of 3.

such parties' rights to make further submissions to the AUC in subsequent proceedings." The same parties that had signed the Project Charter Sign-off page signed this page.

47. In the Original Application ATCO requested approval of the following:

- that "the Benchmarking report meets the Terms of Reference pursuant to the decisions and directives established by the AEUB;" and
- "the 'Increase/(Decrease) to Placeholders' identified for each of ATCO Gas, ATCO Pipelines and ATCO Electric on pages 1 and 2 of Attachment A" to the Application.

48. On March 6, 2008, the CG submitted a letter⁶⁸ in which it indicated that while it supported the requested approval of the Benchmark Report as meeting the Terms of Reference pursuant to the decisions and directives established by the EUB, the CG did not support the request that the AUC approve the "Increase / (Decrease) to Placeholders" identified for each company on pages 1 and 2 of Attachment A to the Application.

49. On April 9, 2008,⁶⁹ ATCO informed the Commission that the CG and ATCO had come to a comprehensive agreement that resolved all of the outstanding issues regarding the Application. ATCO added that the CG now fully supported the ATCO Utilities request that the AUC approve the "Increase/(Decrease) to Placeholders" identified for each of ATCO Gas, ATCO Pipelines, and ATCO Electric on pages 1 and 2 as part of the amended Attachment A that was included with the April 9, 2008 submission. ATCO indicated that the agreement was conditional upon the following:

- 1) that the agreed upon resolution be accepted as a "package deal" and
- 2) that the Commission accept the filing of the unredacted Benchmark Report with the Commission, subject to a prior direction that such unredacted version of the Benchmark Report will be kept confidential.

50. ATCO clarified that upon completion of the two steps indicated above, the Commission would have two versions of the Benchmark Report, those being the redacted version initially filed and the confidential full unredacted version. ATCO requested that the Commission confirm that the AUC would receive the unredacted version of the Benchmark Report on a confidential basis otherwise the agreement reached with the CG concerning the amended Attachment A would be null and void.

51. On April 11, 2008, the CG submitted a letter⁷⁰ in which it indicated:

Based on the arrangements noted above and, as described in the Supplementary Filings, notably that the matter is being brought forward by ATCO as a package deal, the CG concurs with and supports the information provided in the revised Attachment A filed by the ATCO Utilities. The CG submits that the information reflects the use of the Fair Market Value prices or values to carry out the True Up calculations for the 2003-2007 period and further agrees that such calculations are correct.

For clarity however, notwithstanding the foregoing, the CG reserves its rights in any Future ATCO Proceedings to make submissions in respect of the compliance by any of the ATCO

⁶⁸ Exhibit 7.

⁶⁹ Exhibit 6.

⁷⁰ Exhibit 8.

Utilities with the provisions of Article 4 Transfer Pricing of the ATCO Utilities Interaffiliate Code of Conduct established under Decision 2003-040.

52. In a letter dated April 23, 2008 the CG confirmed that all members had consented to the sign off of the Benchmark Report and the matters raised in the April 11, 2008 letter.
53. The Commission issued Notice of the Application on April 29, 2008.
54. Only Calgary and the UCA filed SIPs in the Proceeding. No other member of the CG participated in the Proceeding following the issuance of the Notice.
55. In a letter dated June 25, 2008,⁷¹ the Commission issued its ruling on the confidentiality request made by ATCO with respect to the unredacted Benchmark Report. The Commission accepted that the information in the unredacted Benchmark Report should be filed with the Commission and that it should be extended confidential treatment. On June 27, 2008,⁷² ATCO confirmed that the unredacted Benchmark Report had been sent to Commission counsel.
56. On September 25, 2008 the Commission issued a letter directing ATCO to indicate how it proposes to reflect the true-up of placeholders in the amended Attachment A attached to ATCO's April 9, 2008 letter in opening PP&E balances and revenue requirements.
57. On October 3, 2008, ATCO filed a supplemental filing with the Commission in response to the AUC letter of September 25, 2008. The filing was intended to outline how each of the ATCO utilities proposed to reflect the true-up of placeholders in the amended Attachment A and the proposed recovery/repayment to customers of these amounts. ATCO requested that the AUC approve:
- the resulting impact on revenue requirement for each of ATCO Gas, ATCO Pipelines and ATCO Electric as shown in the attached schedules;
 - the present value payments to customers to allow the ATCO Utilities to retain its existing rate base derived from the actual I-Tek charges included in opening PP&E balances;
 - the interest costs calculated on the outstanding amounts owed to/from customers in accordance with AUC Rule 023; and
 - the refund/recovery proposals as outlined in each of ATCO Gas, ATCO Pipelines and ATCO Electric schedules.⁷³
58. In response to the supplemental information and comments thereon received from parties, the Commission issued a letter dated October 24, 2008.⁷⁴ The Commission indicated that the Proceeding consisted of four distinct matters:
- (a) Approval of the Benchmark Report.
 - (b) Consideration of whether the adjustments to the placeholders set out in the amended Attachment A to the Original Application adjust the placeholders to the fair market value for the services provided from 2003-2007.

⁷¹ Exhibit 13.

⁷² Exhibit 14.

⁷³ Exhibit 23.

⁷⁴ Exhibit 27.

- (c) Whether the true-up of the ATCO Utilities' revenue requirements and opening balances should be determined based on the adjustments to the placeholders set out in the amended Attachment A or based on some other level of adjustment as interveners suggest.
- (d) What are the appropriate methods to true-up the ATCO Utilities' revenue requirements and opening balances and what are the amounts to be collected/refunded to customers to reflect those true-ups?

59. With respect to issues (c) and (d) certain interveners indicated that a further adjustment to the amended Attachment A may be required to address the principles contained in ATCO Group Inter-Affiliate Code of Conduct. In order to deal with these concerns the Commission set out a full process to deal with issues (c) and (d). The Commission added that it appeared that no further process was required with respect to issues (a) and (b).

60. On December 5, 2008, Calgary filed a motion⁷⁵ to compel full and adequate responses in respect of responses to certain information requests filed by ATCO. This was followed by a request from Calgary dated December 8, 2008,⁷⁶ in which it sought leave to permit the filing of supplemental information requests and suspend the date for the filing of intervenor evidence and further process steps pending disposition of its motion filed on December 5, 2008. The Commission established a process by letter dated December 9, 2008,⁷⁷ to deal with Calgary's motion.

61. The Commission issued its Ruling on the motion in a letter dated December 29, 2008.⁷⁸ The Commission directed ATCO to file complete responses to a number of information requests and the Commission also set out a revised process schedule for the remainder of the Proceeding.

62. ATCO submitted additional information responses on the scheduled deadline date of January 26, 2009.⁷⁹

63. On February 18, 2009 Calgary filed its written evidence,⁸⁰ made a refiling on February 19, 2009,⁸¹ and filed a revised schedule on February 23, 2009.⁸²

64. ATCO filed a letter dated March 5, 2009⁸³ indicating that it intended to file expert rebuttal evidence in order to address certain of the matters raised by Calgary in its evidence. ATCO indicated its preference to engage Compass/Utilipoint to provide the expert rebuttal evidence required and requested the permission of the AUC to do so.

⁷⁵ Exhibit 36.

⁷⁶ Exhibit 38.

⁷⁷ Exhibit 39.

⁷⁸ Exhibit 42.

⁷⁹ Exhibit 49.

⁸⁰ Exhibit 50.

⁸¹ Exhibit 51.

⁸² Exhibit 52.

⁸³ Exhibit 55.

65. Following receipt of comments on ATCO's request regarding the use of Compass/Utilipoint to provide rebuttal evidence, the Commission issued a Ruling granting the request on March 30, 2009.⁸⁴

66. On May 1, 2009 ATCO submitted its rebuttal evidence⁸⁵ as scheduled. Upon review of the rebuttal evidence, the Commission issued a letter dated May 7, 2009⁸⁶ in which it requested clarification on the position taken by ATCO with respect to the negotiated settlement referred to in ATCO's submission dated April 9, 2008.⁸⁷ In this same letter, the Commission also set out deadlines for Calgary to comment on any clarification information submitted by ATCO, and for ATCO to reply to any comments submitted by Calgary.

67. The Commission issued a letter dated August 14, 2009⁸⁸ in which it found no basis for a negotiated settlement agreement among the parties. The Commission noted Calgary's position that its agreement to the amended Attachment A to the Original Application was without prejudice to the ability of the CG to pursue its concerns with respect to the Transfer Pricing provisions of the ATCO Inter-affiliate Code of Conduct (the Code). The Commission observed:

It appears to the Commission that the ATCO Utilities were of the understanding that the Negotiated Settlement amounted to a package deal arrangement on all matters relating to the benchmarked services for the years 2003-2007. To achieve this settlement, the ATCO Utilities were prepared to reduce the benchmarked amounts by \$2 million as reflected in the Revised Attachment A. In light of Calgary's position that it wishes to pursue approximately \$27 million in additional potential reductions, the ATCO Utilities submit that Calgary has repudiated the Negotiated Settlement and therefore the required conditions for support of the Negotiated Settlement by the ATCO Utilities have not been satisfied.

68. The Commission found that, in light of the fact that there was no written negotiated settlement, "there has been no *consensus ad idem* or a 'meeting of minds' on the fundamentals of what was agreed to and on the commitments made by each party" and that "this matter must now proceed on the basis that no agreement has been reached on any point." The Commission added that it will continue the Proceeding based on the Original Application as amended by the rebuttal evidence.

69. In the letter of August 14, 2009, the Commission indicated that it was prepared to allow interveners the right to review and, if necessary, file evidence and submissions regarding the Original Application as amended by the rebuttal evidence. However, before permitting this, the Commission considered that it may be more efficient for the parties to file argument and reply argument on the main premise of Calgary, namely whether or not compliance with Article 4 Transfer Pricing provisions of the Code may require ATCO to obtain services from an affiliate at prices that are something other than the fair market value of those services (the Code of Conduct Issue). The Commission accordingly established a procedural schedule for the filing of argument and reply with respect to the Code of Conduct Issue.

⁸⁴ Exhibit 65.

⁸⁵ Exhibit 67.

⁸⁶ Exhibit 68.

⁸⁷ Exhibit 6.

⁸⁸ Exhibit 72.

70. On August 19, 2009, Calgary submitted a letter⁸⁹ in which it requested that the Commission rescind its direction to proceed with argument on the Code of Conduct Issue in order to allow it to have the opportunity to cross examine the ATCO witnesses on the Code of Conduct Issue at an oral hearing. Further, Calgary also filed a motion⁹⁰ to strike portions of the ATCO rebuttal evidence.

71. Having received submissions from the parties, in a letter dated September 4, 2009,⁹¹ the Commission denied the Calgary motion to strike portions of the ATCO rebuttal evidence. In the same letter, the Commission addressed the Code of Conduct Issue request made by Calgary. The Commission allowed Calgary the opportunity to cross examine the ATCO witnesses on the Code of Conduct Issue at an oral hearing. Accordingly, the Commission terminated the written process regarding the Code of Conduct Issue that had been included in the Commission's letter of August 14, 2009. The Commission indicated that an oral hearing would be held on September 15-17, 2009.

72. On September 8, 2009, Calgary submitted a letter⁹² in which it requested that the Commission reschedule the oral hearing as the proposed hearing dates of September 15, 16 and 17 would cause hardship and prejudice to Calgary and other interveners. ATCO and the UCA submitted comments on September 8, 2009⁹³ and September 9, 2009,⁹⁴ respectively, regarding Calgary's request.

73. On September 10, 2009, Calgary filed a further motion⁹⁵ that included a number of requests, more specifically regarding access to the full unredacted Benchmark Report that had been delivered to the Commission⁹⁶ and that Calgary be permitted to amend its evidence as may be necessary to respond to the matters arising from the Original Application as amended by the rebuttal evidence and the review of the full unredacted Benchmark Report.

74. On September 11, 2009,⁹⁷ the Commission adjourned the oral hearing until December 1-4, 2009 to permit time to deal with the Calgary motion.

75. Following receipt of submissions from parties, in a letter dated September 23, 2009,⁹⁸ the Commission granted the relief requested by Calgary in its September 10, 2009 motion for access to the unredacted version of the Benchmark Report and approved Calgary's request to file additional evidence. The Commission also provided other interveners access to the unredacted Benchmark Report, with all parties gaining access being required to sign a confidentiality agreement. The Commission outlined the filing requirements associated with the confidential material that was redacted in the original copy of the Benchmark Report filed with the Original Application.

⁸⁹ Exhibit 73.

⁹⁰ Exhibit 74.

⁹¹ Exhibit 83.

⁹² Exhibit 84.

⁹³ Exhibit 85.

⁹⁴ Exhibit 86.

⁹⁵ Exhibit 87.

⁹⁶ Exhibit 14.

⁹⁷ Exhibit 88.

⁹⁸ Exhibit 91.

76. Executed confidentiality agreements were submitted by Calgary on September 30, 2009⁹⁹ and October 21, 2009.¹⁰⁰ ATCO submitted executed confidentiality agreements on October 2, 2009,¹⁰¹ October 9, 2009,¹⁰² and November 30, 2009.¹⁰³ The UCA submitted executed confidentiality agreements on September 30, 2009¹⁰⁴ and November 23, 2009.¹⁰⁵

77. Calgary submitted additional evidence on October 19, 2009¹⁰⁶ which was revised on November 10, 2009.¹⁰⁷ A redacted version of the evidence was filed on October 21, 2009.¹⁰⁸

78. A public hearing was held from December 1-3, 2009, followed by oral argument and oral reply argument on December 4, 2009.

4 APPLICATION OVERVIEW

79. The following overview was included in the executive summary of the Benchmark Report:

Compass and UtiliPoint analyzed and benchmarked all of the IT and CC&B services provided by I-Tek to the ATCO Utilities (Gas, Electric, and Pipeline) over the period of 2003 to 2007. Compass led the overall engagement as well as the benchmark of IT Services. UtiliPoint led the benchmark of CC&B Services.

IT Services were governed by a separate but identical MSA for each Utility (ATCO Gas, ATCO Electric, and ATCO Pipelines). A renewal MSA was entered into by each Utility and I-Tek in 2005. The renewal MSAs were similar, but not identical, to the original MSAs.

Similar to IT, CC&B Services were governed by separate but similar MSAs for each Utility (ATCO Gas and ATCO Electric). Also similar is the fact that two distinct MSAs (original and renewal) govern the benchmark period from 2003 to 2007. The CC&B benchmark also had to consider the impact of the transition of ATCO's retail business to Direct Energy in 2004.

The overall results of the benchmark indicated that: I-Tek pricing is higher than Fair Market Value (FMV). A review of the individual rates show a mixture of lower I-Tek pricing in some areas and an opportunity to reduce to FMV in other areas.

I-Tek pricing structure for Call Center Services (price per agent per hour) is significantly different than any found in the market. The most common market pricing structures (price per call, price per call minute, price per active account) all render lower overall cost for Call Center Services.

⁹⁹ Exhibit 95.

¹⁰⁰ Exhibit 101.

¹⁰¹ Exhibit 98.

¹⁰² Exhibit 99.

¹⁰³ Exhibit 122.

¹⁰⁴ Exhibit 97.

¹⁰⁵ Exhibit 106.

¹⁰⁶ Exhibit 100.

¹⁰⁷ Exhibit 104.

¹⁰⁸ Exhibit 102.

In analyzing the MSAs, neither Compass nor UtiliPoint found sufficient evidence of non-standard clauses to justify a change to the overall FMV. This was also the case for evaluating penalty provisions and gain sharing agreements.

In terms of the benefits of a single provider versus two providers (one for IT Services and one for CC&B Services), Compass and UtiliPoint believe that the volume of services required by ATCO are not sufficient to be efficiently served by multiple providers. We also believe that the additional cost incurred by ATCO in managing multiple providers would exceed any potential benefit of a multiple sourcing strategy.

Compass does believe that service provider pricing associated with delivering the IT services similar to those in the IT MSA would reflect a risk premium equivalent to one percent (1%) of the total contract value in the event that ATCO were to source the CC&B services to one provider and the IT services to a second provider.¹⁰⁹

80. ATCO submitted that the Benchmark Report established FMV for the services provided by ATCO I-Tek and ITBS to the ATCO Utilities over the period 2003–2007, which resulted in an aggregate reduction of \$22.0 million to initially-requested GRA/GTA revenue requirement amounts. To the extent that the Benchmark Report determined that charges for ATCO I-Tek or ITBS services included in the applied for revenue requirement for each of the ATCO Utilities was greater than FMV, the ATCO Utilities adjusted revenue requirement to reflect a reduction in the applied for charges to the FMV. To the extent that charges for ATCO I-Tek or ITBS included in the applied for revenue requirement for each of the ATCO Utilities was less than FMV, the ATCO Utilities adjusted revenue requirement to reflect an increase in the applied for charges up to the FMV.

81. The first objective of the Benchmark Report was to:

Render an opinion as to whether the IT services at the specified volumes and service levels set out in the I-Tek MSAs are individually priced at FMV taking into consideration the Terms and Conditions of each Master Service Agreement.¹¹⁰

This objective is repeated at page 58 of the Benchmark Report with respect to CC&B services.

82. The Benchmarkers conducted their analysis and benchmark of IT and CC&B services in two major phases. The initial phase focused on benchmarking the scope, volume, and quality of IT and CC&B services provided by ATCO I-Tek and ITBS to the ATCO Utilities during each year of the MSAs. The Benchmarkers described the methodology employed in conducting the first phase of the benchmarking in the following way:

In conducting this price benchmark, Compass and UtiliPoint have developed a Fair Market Value for the scope of services provided by I-Tek to the Utilities. The Fair Market Value is calculated as the average of a set of “Reference Group” comparators providing similar services with similar economies of scale. Material differences between the scope of services provided by I-Tek and those of the Reference Group are stated and adjusted for, as are material differences in environmental complexity, workload, and service loads.¹¹¹

¹⁰⁹ Exhibit 2, Application, Attachment B, Price Benchmark Report, Executive Summary, pages 3-4.

¹¹⁰ Exhibit 2, redacted Benchmark Report, page 50.

¹¹¹ Exhibit 2, redacted Benchmark Report, page 15.

83. The second phase of the Benchmarkers' analysis involved translating the FMV benchmark results into the line items defined in the "True-Up" worksheets developed by the CPC.¹¹² This activity was required to fulfill the above objective of determining whether the IT and CC&B services at the specified volumes and service levels set out in the MSAs are individually priced at FMV.

84. In order to avoid a future complex and administratively difficult process of adjusting capital items in rate base over the related asset lives, ATCO proposed a present value (PV) methodology to allow ATCO to avoid adjusting opening PP&E balances for the related changes in placeholder amounts while adjusting for the financial impact to customers that would occur if rate base was adjusted to the FMV determined in the Benchmark Report. ATCO has reflected reductions to O&M in accordance with the FMV determinations of the Benchmark Report.

85. When the existing placeholders for ATCO Gas, ATCO Electric, and ATCO Pipelines are compared to the FMV determinations in the Benchmark Report ATCO indicated that an aggregate true-up increase for the ATCO Utilities of \$15.83 million is required.¹¹³

86. A summary of IT and CC&B Placeholder Adjustments resulting from the Benchmark Report are shown in the following Table.

¹¹² Exhibit 2, redacted Benchmark Report, pages 27 and 28.

¹¹³ Exhibit 145.

Table 1. Summary of IT and CC&B Placeholder Adjustments¹¹⁴

AEUB Sanctioned Collaborative Process Committee Benchmarking of IT and Customer Care & Billing Services From ATCO I-Tek Summary of IT and CC&B Placeholder Adjustments (\$000s)				
True-Up of IT and CC&B Placeholders				
	O&M	Direct Capital	Other Capital	Total
ATCO Gas				
2003	3960	3274	0	7234
2004	7041	6524	0	13565
2005	5888	-1163	-150	4575
2006	4701	-672	-230	3800
2007	1712	-1115	-330	266
Total	23302	6848	-710	29440
ATCO Electric				
2003	-1908	68	59	-1781
2004	-2022	3540	-469	1049
2005	-2779	-30	-380	-3189
2006	-3677	4	-583	-4256
2007	-3963	-441	-716	-5120
Total	-14349	3141	-2089	-13297
ATCO Pipelines				
2003	-248	0	0	-248
2004	-65	0	0	-65
2005	0	0	0	0
2006	0	0	0	0
2007	0	0	0	0
Total	-313	0	0	-313
ATCO Utilities				
2003	1804	3342	59	5205
2004	4954	10064	-469	14549
2005	3109	-1193	-530	1386
2006	1024	-668	-813	-456
2007	-2251	-1556	-1046	-4854
Total	8640	9989	-2799	15830

87. Exhibit 137.03 provided the adjustments to the placeholders, the adjustments to revenue requirement, present value of PP&E rate base reductions and the overall impact to revenue requirements and amounts owing to/from customers on an aggregate basis per utility, north and south for ATCO Electric, ATCO Gas, and ATCO Pipelines and transmission and distribution for ATCO Electric at December 31, 2009.

¹¹⁴ Exhibit 145.

88. ATCO submitted that [Exhibit 145](#) Attachment A contains the revised “True-Up” Summary Tables which should be used as the mechanism for translating the results of the benchmark fair market price of the services provided by ATCO I-Tek and ITBS to ATCO into a final “True-Up” of IT and CC&B placeholders for the years 2003 to 2007 for each of ATCO Electric, ATCO Gas and ATCO Pipelines.

5 DISCUSSION OF ISSUES

89. In reaching the determinations set out in this Decision, the Commission has considered the record of this proceeding, including the Argument and Reply 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 other relevant portions of the record with respect to that matter.

90. While certain written evidence, oral testimony and argument was provided by parties on a confidential basis, the Commission has determined that it is unnecessary for the purposes of this Decision to make specific references to such confidential information.

91. Interveners raised several issues of concern regarding the Application, specifically:

1. whether further adjustment to placeholders are required, having regard for the transfer pricing provisions under the Code;
2. whether ATCO’s present value approach is the proper way to deal with adjustments to rate base opening balances;
3. whether interest should be paid on balances owed or owing;
4. how the benchmarking processes should treat new services not previously benchmarked; and
5. a determination with respect to certain MSA non-standard clauses.

5.1 Application of ATCO Inter-Affiliate Code of Conduct

92. Decision 2003-040¹¹⁵ established the Code with respect to relationships and transactions between regulated and non-regulated affiliates within the ATCO Group of Companies. Some of the most relevant portions of the Code for the purposes of this Decision are set out below:

1.1 Purpose and Objectives of the Code

Objectives of Code

While the overall purpose of the Code is to establish standards and parameters which prohibit inappropriate Affiliate conduct, preferences or advantages, which may adversely impact the customers of regulated businesses, this purpose reflects several important underlying objectives, including:

- (a) creating a clearly defined set of rules designed to enhance inter-affiliate transparency, fairness and senior management accountability with respect to inter-affiliate interactions impacting regulated businesses;

¹¹⁵ Decision 2003-040 – ATCO Group, Affiliate Transactions and Code of Conduct Proceeding, Part B: Code of Conduct (Application No. 1237673) (Released May 22, 2003), Appendix 5.

- (b) providing an environment in which inter-affiliate economies and efficiencies can legitimately occur for the mutual advantage of both a Utility's customers and its shareholders;

2.1 Definitions

n) **"Fair Market Value"** means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.

o) **"For Profit Affiliate Service"** means any service, provided on a for-profit basis:

- 1) by a Utility to a Non-Utility Affiliate, other than a Utility Service; or
- 2) by a Non-Utility Affiliate to a Utility.

4 TRANSFER PRICING

4.1 For Profit Affiliate Services

Where a Utility determines it is prudent in operating its Utility business to do so, it may obtain For Profit Affiliate Services from an Affiliate or provide For Profit Affiliate Services to an Affiliate.

If a Utility intends to outsource to an Affiliate a service it presently provides for itself, the Utility shall, in addition to any other analysis it may require to demonstrate the prudence of a For Profit Affiliate Services arrangement, undertake a net present value analysis appropriate to the life cycle or operating cycle of the services involved.

Each Utility shall periodically review the prudence of continuing For Profit Affiliate Services arrangements.

4.2 Pricing For Profit Affiliate Services

4.2.1 Utility Acquires For Profit Affiliate Service

When a Utility acquires For Profit Affiliate Services it shall pay no more than the Fair Market Value of such services. The onus is on the Utility to demonstrate that the For Profit Affiliate Services have been acquired at a price that is no more than the Fair Market Value of such services.

4.5 Determination of Fair Market Value

In demonstrating that Fair Market Value was paid or received pursuant to a For Profit Affiliate Service arrangement or a transaction contemplated by sections 4.1, 4.2 and 4.4 hereof, the Utility, subject to any prior or contrary direction by the EUB, may utilize any method to determine Fair Market Value that it believes appropriate in the circumstances. These methods may include, without limitation: competitive tendering, competitive quotes, bench-marking studies, catalogue pricing, replacement cost comparisons or recent market transactions. The Utility shall bear the onus of demonstrating that the methodology or methodologies utilized in determining the Fair Market Value of the subject goods or services was appropriate in the circumstances.

93. In Decision 2002-069¹¹⁶ the Board did not accept the Original ATCO I-Tek Master Service Agreement and the Original ATCO Singlepoint (ITBS) Master Service Agreement pricing mechanisms for the services being acquired by the ATCO Utilities. The Board directed the ATCO Utilities to undertake a price review. The Board, in previous Decisions, allowed placeholders to be set in respect of affiliate transactions pending its Decision on these matters.

94. ATCO subsequently engaged in the collaborative process that led to and included the benchmarking exercise in order to determine the FMV of I-Tek and ITBS For Profit Affiliate service charges to meet the Code requirements. ATCO utilized the Benchmark Report as the method to adjust the For Profit Affiliate Services that have been acquired from I-Tek and ITBS to a price that was no more than the FMV of such services, in accordance with section 4.2.1 of the Code. ATCO submitted that the Benchmark Report established FMV for these services provided by I-Tek and ITBS to ATCO during the period 2003 to 2007, which resulted in an aggregate reduction of \$22.0 million to initially-requested GRA/GTA amounts which reflected contract pricing under the ATCO I-Tek Master Service Agreement and the ITBS Master Service Agreements.

95. In discussing the Benchmark Report it is necessary to observe the considerable confusion and debate in the Proceeding with respect to terminology used in the Benchmark Report, the written evidence and in the testimony of all parties. In particular, IT and CC&B “services” were alternatively described in reference to the true-up worksheet line item level of the Benchmark Report, the Master Service Agreement billing unit line level, in a collective sense when referencing a group of related line items being the “service tower” level, and to the IT and CC&B Master Service Agreement contract level. In addition, where individual service towers were not separately available in the marketplace, services were discussed in terms of combined or linked services.

5.1.1 Submissions of the Interveners

96. Calgary compared ATCO’s placeholder amounts with benchmark values determined by the Benchmarkers in the Benchmark Report, applied an adjustment that it considered to be necessary under the Code and estimated that the operating and maintenance (O&M) and capital amounts for the benchmark years would be \$9.0 million lower than placeholder amounts as shown in column “E” in the table below.

¹¹⁶ Decision 2002-069, page 52 (Direction 11).

Table 2. Comparison of Placeholder Amounts and Benchmark values

	Benchmark Values (Approved Volume and Dollars @ Benchmark Rates)	ATCO Code Applied to Benchmark	Benchmark Values less ATCO Code Applied to Benchmark	Placeholder Amounts plus ATCO Adjustments as per ATCO May 1/09 Rebuttal Att A (not in Placeholder)	Placeholder Amounts less ATCO Adjustments less Benchmark Values	Benchmark Values Minus Placeholder Amounts minus ATCO Adjustments
	\$ Millions					
	A	B	C=A-B	D	E=B-D	F=A-D
ATCO Gas IT	96.60	82.00	14.60	86.00	(4.00)	10.60
ATCO Electric IT	76.00	73.00	3.00	77.70	(4.70)	(1.70)
ATCO Pipelines IT	8.70	8.50	0.20	9.00	(0.50)	(0.30)
ATCO Utilities IT	181.30	163.50	17.80	172.70	(9.20)	8.60
ATCO Gas CC&B	148.90	142.70	6.20	128.40	14.30	20.50
ATCO Electric CC&B	46.60	43.70	2.90	57.80	(14.10)	(11.20)
ATCO Utilities CC&B	195.50	186.40	9.10	186.20	0.20	9.30
ATCO Utilities IT and CC&B	<u>376.80</u>	<u>349.90</u>	<u>26.90</u>	<u>358.90</u>	<u>(9.00)</u>	<u>17.90</u>

Reference: Exhibit 100 (amended Tables 3 and 4, revising Tables 3 and 4 on pages 9 and 21 to Exhibit 51)

97. Calgary agreed with ATCO that the overall amounts applied for in ATCO's GRAs and GTAs¹¹⁷ (which were based on the I-Tek and ITBS rates under the respective Master Service Agreements) were \$22 million higher than the overall FMV results derived from the Benchmark Report and agree that this warranted an overall revenue requirement reduction of approximately \$22 million. However, Calgary argued that an additional reduction of \$26.9 million was required because the Code required that the lower of the line item prices shown in the Benchmark Report and the line item prices shown in the MSAs should be used to make adjustments to revenue requirements. In other words, the values shown in the Benchmark Values Column in the Benchmark Report should be compared to the actual billings of ATCO I-Tek and ITBS to the ATCO Utilities (ATCO Code GRA column) in order to comply with the Code. This is illustrated in the following Table:

¹¹⁷ GRA refers to general rate applications of AG or AP; GTA refers to general tariff applications of AE.

Table 3. Summary of the Impact of Applying the ATCO Code to each of the Affiliate Services which were the subject of the Benchmark

	GRA Amounts (Approved Volumes and Dollars @ I-Tek Rates)	Benchmark Values (Approved Volumes and Dollars @ Benchmark Rates)	GRA Less Benchmark (Impact of Difference Between I-Tek Rates & Benchmark Rates)	ATCO Code GRA	True-Up GRA minus ATCO Code GRA
\$ Millions					
ATCO Gas IT	100.3	96.6	3.7	82.0	14.6
ATCO Electric IT	83.9	76.0	7.9	73.0	3.0
ATCO Pipelines IT (2 yr)	9.9	8.7	1.2	8.5	0.2
ATCO Utilities IT	194.1	181.3	12.8	163.5	17.8
ATCO Gas CC&B	148.5	148.9	(0.4)	142.7	6.2
ATCO Electric CC&B	56.2	46.6	9.6	43.7	2.9
ATCO Utilities CC&B	204.70	195.50	9.20	186.4	9.1
ATCO Utilities IT and CC&B	<u>398.8</u>	<u>376.8</u>	<u>22.0</u>	<u>349.9</u>	<u>26.9</u>

Reference: Exhibit 51, Table 1, page 3 and Table 5, page 39.

98. Calgary submitted that the Code was relevant to the true-up in respect of transfer pricing and, more specifically, transfer pricing in the case where ATCO purchases For Profit Affiliate Services from an unregulated for profit affiliate. Calgary considered that the price for inter-affiliate services could be lower than FMV given that the Code states that ATCO shall pay “no more than FMV” in respect of For Profit Affiliate Services. Therefore, Calgary submitted that the cost allowed to be incurred for utility revenue requirement purposes for such services could be less than FMV.

99. Calgary referred to the following passage from Decision 2003-040:

The Board has previously noted its view that it is appropriate for affiliate transactions to occur in situations where customers are not harmed by those transactions, and moreover, where the choice of purchasing goods or services from the affiliate is prudent. In order that customers are not harmed by affiliate transactions, it is necessary to ensure that these transactions occur at a reasonable price, that the reasonableness of that price can be clearly determined, and that the price paid **is less than** what it would have cost for the

utility to either provide the goods or services itself or have them procured from a third party, all else being equal.¹¹⁸ (emphasis added by Calgary)

100. Calgary submitted that the above passage from Decision 2003-040 applied to the present situation should be:

...interpreted to be the lesser of FMV and the cost it would take for the utility to provide similar services itself or have them procured from an arm's length third party. For the purposes of this evidence and related analysis, Calgary has used the rates and amounts paid to I-Tek and ITBS as cost.¹¹⁹

101. On this basis, Calgary submitted that the transfer pricing provisions of the Code required that the benchmark value determined under the Benchmark Report for a service should be compared to the price otherwise paid by each of ATCO Gas, ATCO Pipelines and ATCO Electric under the MSAs. The utility revenue requirement should reflect the lower of the price actually paid under the MSAs and the benchmark value for the service determined under the Benchmark Report.

102. Calgary submitted that it had not taken any position that suggested that any FMV estimate, whether on a service line item basis or in respect of the benchmark or the contracts as a whole, should be adjusted, nor had Calgary conducted any prudence review of the expenditures of ATCO in these matters. Calgary indicated that its evidence does not suggest that the IT and CC&B services could have been purchased in the marketplace between 2003 and 2007 for some \$26.9 million less than what ATCO forecasted it would pay in its GRAs and GTAs or what it, in fact, did pay. Calgary submitted that what its evidence on the Code adjustment did was to determine that adjustments to placeholders, in addition to those proposed by ATCO would be required if the Code was applied to the benchmarking process.

103. Calgary submitted that the primary purpose and objectives of the Code are sufficiently clear and can be summarized as follows:

- The Code exists to protect ratepaying customers from the potential abuses and harm that may exist or arise between regulated utilities and their non-regulated affiliates.¹²⁰

104. Calgary also noted that:

- a code of conduct should not be so restrictive as to preclude economically efficient transactions, so long as rate payers are not harmed by the transactions.¹²¹
- the benefits of an economically efficient marketplace should not exclusively flow to shareholders.¹²²

105. Calgary argued that to the extent that ATCO I-Tek or ATCO ITBS prices were lower than the FMV as determined by the Benchmark Report, that the benefit of these economic efficiencies should not exclusively flow to its shareholders by recalibrating the price to FMV after the fact, which was contrary to the Code's express purpose and intent.

¹¹⁸ Exhibit 51.02, Corrected City of Calgary's Evidence, Decision 2003-040, page 75.

¹¹⁹ Exhibit 51, Calgary Written Evidence, pages 15-16.

¹²⁰ Transcript Volume 4, page 986, lines 13-19.

¹²¹ Decision 2003-040, page 36.

¹²² Decision 2003-040, page 36.

106. Calgary submitted that the language of the Benchmark Report confirms that the Benchmarkers were hired to render an opinion as to whether or not the IT and CC&B services, at the specified volumes and service levels set out in the MSAs, are individually priced at FMV, taking into consideration the terms and conditions of each MSA.

107. Calgary stated that the Terms of Reference were developed by the CPC. Calgary noted that the cross-examination of ATCO expert witnesses, Mr. Fowler and Mr. Brock, indicated that when they were responding to the RFP for the benchmark work, developing the project charter, or otherwise dealing with benchmarking matters, they did not go back to the CPC and say ‘we can’t do this job,’ or ‘we will not do this job, because services at the line item level and what we are being asked to do in respect of those services - to estimate prices at that level, those services are not generally available in the marketplace.’ Calgary asserted that these witnesses specifically confirmed that so-called volume sheets were provided to them at multiple points in the benchmarking process, and that indeed these volume sheets formed the basis for their own true-up worksheets. Calgary thus argued that both the volume sheets and the true-up worksheets of the Benchmarkers had services down to the line item level. Calgary submitted that the basis and understanding for which the benchmark requirements were to be fulfilled and carried out were with respect to services at specified volumes and individually priced.

108. The UCA and Calgary both agreed that the Code should consider FMV on a line item basis and noted that Decision 2008-100¹²³ and Decision 2009-176¹²⁴ have dealt with this issue and concluded that a determination of the reasonableness of inter-affiliate service costs on the aggregate basis was not the proper approach.¹²⁵ The UCA submitted that ATCO’s position was contrary to the Commission findings in those Decisions and that ATCO’s package-of-services approach had previously been addressed by the Commission and found to impede its ability to determine the necessity and reasonability of inter-affiliate pricing.

5.1.2 Submissions of ATCO

109. ATCO submitted that the Benchmark Report established FMV for the services provided by I-Tek and ITBS to ATCO over the period 2003-2007 and reflected what the services overall could be acquired for in the marketplace. ATCO further submitted that its application of the Benchmark Report was in compliance with the requirements of the Code. This resulted in an aggregate reduction of \$22.0 million from initially-requested GRA and GTA amounts. ATCO argued that Calgary had misinterpreted the Code requirements in suggesting that there should be an additional \$26.9 million reduction.

110. ATCO disagreed with Calgary’s assertions that the Application missed applying the transfer pricing test in the Code. ATCO submitted that the position advanced by Calgary was inconsistent with the application of the transfer pricing provision of the Code to inter-affiliate transactions. ATCO also submitted that Calgary ignored the fundamentals that underpin the whole Code and that the Code does not require the cost comparisons suggested by Calgary.¹²⁶ Accordingly, further adjustments to the subject transactions recommended by Calgary were not required.

¹²³ Decision 2008-100 – ATCO Electric Ltd. Stand Alone Study (Application No. 1562230, Proceeding ID. 18) (Released: October 21, 2008).

¹²⁴ Decision 2009-176 – AltaGas Utilities Inc. 2008-2009 General Rate Application Phase I (Application No. 1579247, Proceeding ID. 88) (Released: October 29, 2009).

¹²⁵ Decision 2008-100, page 6 and Decision 2009-176, page 63.

¹²⁶ Exhibit 67, Rebuttal Evidence, page 1.

111. ATCO asserted that the line-by-line billing unit schedule analysis presented by Calgary did not refer to services which are actually available in the marketplace and which ATCO could purchase from a third party provider.¹²⁷

112. Referencing sections 4.1 and 4.2.1 of the Code, ATCO submitted that the issue being addressed was the aggregate acquisition of IT and CC&B services provided by I-Tek and ITBS and not some sub-set of the components that make up overall services being provided.¹²⁸ ATCO considered that a utility must demonstrate that it was not paying more than FMV for those services and asserted that the Code does not require affiliate transactions to occur at less than FMV and does not require an affiliate to provide services at cost.

113. ATCO submitted that Calgary sought to distort the Code requirements, and the Transfer Pricing provisions included therein, to achieve a wholly unjustified and unwarranted result for ATCO by dissecting the actual services that have been contracted. ATCO referenced Decision 2003-040, Decision 2002-069, and the Code as not supporting the positions being advanced by Calgary. ATCO contended that Calgary ignored key portions of Decision 2003-040 and incorrectly concluded that the wording of the Code supported pricing some affiliate services at a level lower than FMV. ATCO further submitted that Decision 2003-040 provided for a utility to obtain goods or services from a non-regulated affiliate at a FMV price, which was at a price higher than the non-regulated affiliate's cost, provided that the cost was less than what the utility could provide itself.¹²⁹

¹²⁷ Exhibit 67, Rebuttal Evidence, page 2.

¹²⁸ Exhibit 67, Rebuttal Evidence, page 2.

¹²⁹ ATCO Rebuttal Evidence, page 4 and 5, paragraph 18, referencing Decision 2003-040, pages 76-77.

114. ATCO updated adjustments to placeholder amounts as follows:

Table 4. Updated Benchmarking Amounts

Benchmarking of IT and Customer Care & Billing Services from ATCO I-Tek Amounts Owed/(Owing) at December 31, 2009 (\$ Millions)										
	Revenue Requirement					PV of Future PP&E Reductions				Amounts Owed from (Owed to) Customers
	O&M	AP ⁽¹⁾ (2005- 2007)	Direct Capital	Other Capital	Total	Direct Capital	Other Capital	Total	Interest	
ATCO Gas										
North ⁽²⁾	12.2		(1.5)	0.1	10.8					
South ⁽²⁾	11.1		(0.8)	0.1	10.4					
Total AG	23.3	N/A	(2.3)	0.2	21.2	(5.6)	(1.1)	(6.7)	5.1	19.6
ATCO Electric										
Transmission	(0.8)		-	-	(0.8)					
Distribution	(13.6)		(0.5)	(0.1)	(14.2)					
Total AE	(14.4)	N/A	(0.5)	(0.1)	(15.0)	(0.8)	(2.4)	(3.2)	(2.9)	(21.1)
ATCO Pipelines										
North	(0.2)	(0.2)	-	0.1	(0.3)					
South	(0.1)	(0.1)	-	0.1	(0.1)					
Total AP	(0.3)	(0.3)	-	0.2	(0.4)	(0.7)	(1.0)	(1.7)	-	(2.1)
ATCO Utilities	8.6	(0.3)	(2.8)	0.3	5.8	(7.1)	(4.4)	(11.6)	2.2	(3.6)

Exhibit 137 as adjusted for DFSS error in True-Up Tables (Transcript, Volume 4, page 944, lines 14 and 15).

(1) ATCO Pipelines Revenue Requirement Impact of 2004 O&M True-Up.

(2) O&M amounts adjusted for DFSS error in True-Up Tables (Exhibit 123 as adjusted by Exhibit 145).

115. ATCO amended balances for the true-up of IT and CC&B placeholders are attached to this Decision as [Appendix 5](#).

116. ATCO also submitted that Calgary was avoiding the fact that the Code was the driver of the full benchmarking exercise. The Code provided the context for the entire benchmarking process, notwithstanding the fact that it arose out of the ATCO affiliate transaction proceedings. The benchmarking exercise could trace its beginnings to Decision 2002-069, which was acknowledged by the Calgary witness as the starting point of the whole exercise.¹³⁰

117. ATCO submitted that it is simply not credible to suggest that this exhaustive benchmarking exercise was completed in the overall context of the Code requirements, yet somehow everyone was oblivious that the requirements would have to be met at the end of the day and that a completely new and additional process would be needed to see if the Code

¹³⁰ Transcript Volume 2, page 582.

requirements were met. At all times, the end result determination of FMV, as established in the Benchmark Report, was intended to and did meet the Code requirements.

118. ATCO submitted that the Commission should reject the fundamental premise underpinning Calgary's entire position regarding the requested adjustments to the Benchmark Report's FMV determinations. Calgary's requested disallowance was not supported by the express language of the Code. It was also not supported by what happens in the marketplace, the expert evidence of Compass/UtiliPoint, nor by the way the Commission itself has consistently interpreted and applied all of the codes of conduct that have been established.

119. ATCO noted that in Decision 2002-069 the Board did not accept the MSA amounts for the services being acquired by ATCO from I-Tek. Rather, the Board established placeholders until a FMV determination of pricing could be provided. ATCO subsequently engaged in this collaborative process that led to and included the benchmarking exercise in order to determine the FMV amounts to meet the Code requirements.

120. ATCO submitted that it was also instructive to look at the definition of FMV in section 2.1 n) of the Code which refers to FMV as a price reached in an open and unrestricted market. As such, by definition, if a price cannot be established in an open and unrestricted market, it is not FMV as that term was defined in the Code. This Code definition also refers to the FMV as "the price reached" in that open and unrestricted market.

121. ATCO noted that section 4.2.1 of the Code, deals with a situation where a utility acquires For Profit Affiliate Services. ATCO noted that the first sentence of that section 4.2.1 reads "[w]hen a Utility acquires For Profit Affiliate Services, it shall pay no more than the Fair Market Value of such services."

122. ATCO submitted that the consultants for Calgary agreed that if a utility acquires services at FMV, it meets the requirements of the Code as noted in the excerpt from the transcript below:

0620

01 Q Mr. Keough: If an affiliate transaction is priced at fair

02 market value, would you agree it meets the

03 requirements of the Code of Conduct?

04 A MR. MATWICHUK: I guess it would depend

05 on --

06 Q Not more than. I said "at."

07 A MR. JOHNSON: And that's what the

08 Commission approved in 2002-069 with respect to

09 Frontec and ATCO Travel where they found that

10 it was at fair market value.

11 Q So is the answer to my question "yes"?

12 A MR. JOHNSON: Depending on how you

13 define "transaction." But because the code

14 uses the term "service," if the service was

15 acquired at fair market value, then my

16 understanding of the code would be the utility

17 would then satisfy the requirement of the Code,

18 and it would be a prudent amount.¹³¹

¹³¹ Transcript Volume 2, page 620.

123. ATCO submitted that expert witnesses from Compass/UtiliPoint indicated that they benchmarked at the tower and overall contract levels, that benchmarking cannot occur at the line item or billing unit level because these items were not available in the marketplace, hence a FMV simply could not be determined for these items. By definition under the Code, they were not services. The rebuttal evidence filed by Compass and UtiliPoint was clear on these points. ATCO noted that during the hearing the benchmarking experts made it clear in both the RFP response and during the benchmarking process that they did not benchmark at the line level.¹³²

124. ATCO noted that in Decision 2002-069, the Board rejected the argument of interveners that suggested that the pricing of services for non-regulated affiliates should be the lower of FMV or cost, but instead approved using FMV to set the pricing of affiliate transactions in order to be fair to both utilities and ratepayers.¹³³

125. ATCO also noted that in Decision 2003-040,¹³⁴ the Board confirmed that it was fair and appropriate for the services to be provided to the regulated utilities at FMV, notwithstanding that the cost to the non-regulated entity was less than FMV. The Board understood that it would be unfair to require the unregulated affiliate to provide the subject services at less than FMV simply because the non-utility affiliate experienced lower costs.

126. ATCO submitted that Calgary's response to information request AU-CAL-2(b) confirmed that the subject services could not be obtained in the marketplace from a third party provider for an aggregate price that is some \$26.9 million less than the FMV reflected in the benchmark values determined in the Benchmark Report. ATCO argued that the fact was, no party would offer the services being acquired or that were acquired by ATCO at such a reduced price and such a result would not comply with the Code. ATCO considered that this acknowledgement confirmed that Calgary's suggestion was punitive in nature and wholly inconsistent with the objectives of the Code, which includes a goal of being fair to both ATCO and ratepayers. ATCO further stated that customers were not harmed if payment for the services rendered is at FMV, as is the case in the True-Up, as FMV reflects what the cost to ratepayers would be if the services were acquired from a third party provider in the marketplace.¹³⁵

127. ATCO submitted that the placeholder values were determined in the various ATCO utilities' GRAs and GTAs. The whole true-up process uses the GRA/GTA-approved placeholder numbers as one component of the equation that must be performed to complete the true-up process. The only other number in the true-up equation was FMV as determined by the Benchmark Report. These FMV numbers are subtracted from/added to GTA/GRA numbers or values to complete the true-up process, with the difference between the two numbers being the adjustment amount when compared to the original placeholders. ATCO referred to this as the "plug and play"¹³⁶ approach to determining the required adjustment to the placeholders.

128. ATCO submitted that the evidence, specifically of the expert witnesses from Compass and UtiliPoint, demonstrated that the services provided to ATCO under the I-Tek MSAs were

¹³² Transcript Volume 1, page 218.

¹³³ Decision 2002-069, pages 22 and 23.

¹³⁴ Decision 2003-040, pages 76-77.

¹³⁵ ATCO Rebuttal Evidence, page 6, paragraph 20.

¹³⁶ Transcript Volume 1, page 231.

simply not available in the marketplace on a line-by-line basis.¹³⁷ Individual line items, or billing units, did not represent services (as that term was defined in the Code) that were available in the marketplace.¹³⁸ As noted above, ATCO submitted that Compass and UtiliPoint did not benchmark at the line level. The allocation or translation of the line item level by the Benchmarkers was done solely in order to meet the requirements of the CPC, which had developed the true-up sheets initially.¹³⁹ ATCO also submitted that the expert witnesses from Compass/UtiliPoint also indicated in their rebuttal evidence that using an approach such as that advanced by Calgary would yield a result that was below FMV and, therefore, inconsistent with the benchmarking process.¹⁴⁰

129. ATCO argued that the Board or Commission had never approached the determination of FMV by attempting to dissect the subject services and prices put to them on a line-by-line basis. ATCO also argued that the Commission had consistently and appropriately examined the overall prices for the services that were being examined. Specifically, in Decision 2003-106,¹⁴¹ the Board stated that “[h]owever, in the Board’s view it is the overall cost to customers, not the cost of individual customer care services that should be considered when assessing fair market value.”¹⁴²

130. ATCO submitted that its arguments applied equally to the tower or service level, and that approach would be equally inappropriate and lead directly to the same punitive treatment as the line-by-line analysis.¹⁴³ ATCO argued that when the Commission had dealt with FMV issues and the Code, it had looked to the overall price of the services being offered. ATCO submitted that it had not been able to find a single decision where the Commission sought to dissect the subject services into components and apply the lesser of FMV or cost at such component level. To the contrary, the Commission had consistently acknowledged that it was the overall cost that matters.¹⁴⁴

131. ATCO submitted that the Compass/UtiliPoint witnesses indicated that while these towers or services could be benchmarked individually, they were often not available in the marketplace on other than a bundled basis.¹⁴⁵ This was particularly true at the volume levels considered here.¹⁴⁶ It was also particularly true that certain of the services or towers, which contain low margins, would simply not have been attractive in the marketplace at the volumes available from ATCO.¹⁴⁷ ATCO submitted that a valid tower-by-tower pricing comparison was not even available. This was not benchmarked. As such, ATCO submitted it would be entirely inappropriate and inconsistent to use combined IT and CC&B volumes to get the best price available and then segregate these on a tower basis for purposes of assessing FMV.¹⁴⁸

¹³⁷ Transcript Volume 4, page 910.

¹³⁸ Transcript Volume 4, page 910.

¹³⁹ Transcript Volume 4, page 910, lines 1-12.

¹⁴⁰ Transcript, Volume 4, page 911, lines 19-24.

¹⁴¹ Decision 2003-106: Direct Energy Regulated Services Electric Regulated Rate Tariff and Gas Default Rate Tariff (Application No. 1302109) (Released: December 18, 2003).

¹⁴² Decision 2003-106, page 86.

¹⁴³ Transcript Volume 4, page 923, lines 1-3.

¹⁴⁴ Transcript Volume 4, page 923, lines 13-23.

¹⁴⁵ Transcript Volume 4, page 924.

¹⁴⁶ Transcript Volume 4, page 924.

¹⁴⁷ Transcript Volume 4, page 924, lines 1-12.

¹⁴⁸ Transcript Volume 4, page 929, lines 7-15.

5.1.3 Commission Determination

132. The principal issue in this proceeding is how the overall costs to be allowed in revenue requirement by the Commission for the IT and CC&B services acquired by the ATCO Utilities from its unregulated affiliates ATCO I-Tek and ITBS from 2003 to 2007 should be determined. The ATCO Utilities received approval from the EUB to acquire the services from unregulated affiliates in 2002. It was not necessary in this Proceeding therefore, to re-examine the requirements of the Code with respect to the prudence of the ATCO Utilities in outsourcing IT and CC&B services to unregulated affiliates. In approving the respective Master Service Agreements between ATCO I-Tek and ITBS and each of the ATCO Utilities, however, the EUB had not accepted the prices these affiliates proposed to charge the ATCO Utilities. Placeholders for the charges were established and the ATCO Utilities were required to demonstrate that they would pay no more than the fair market value for the services provided by the affiliates.

133. Section 4.5 of the Code states that a utility may choose any method to determine FMV and ATCO chose to use a benchmarking approach, one of the approaches listed as acceptable to the Board in section 4.5 of the Code. ATCO engaged in the collaborative process discussed above in order to carry out the benchmarking exercise. The purpose of the benchmarking exercise was to determine the FMV of the services provided by I-Tek and ITBS to the ATCO Utilities for the period 2003 to 2007. The FMV results of the benchmarking exercise were to be compared to the costs the ATCO Utilities would have incurred for the IT and CC&B services under the Master Services Agreements with I-Tek and ITBS followed by an exercise to adjust and finalize the placeholders.

134. Section 4.2.1 of the Code states that the onus is on ATCO “to demonstrate that the For Profit Affiliate Services have been charged at a price that is no more than the Fair Market Value of such services.” The practical effect of this Code requirement is, if the costs to the ATCO Utilities resulting from applying FMV determined by the benchmarking exercise were higher than the costs resulting from application of the Master Services Agreements, the Master Services Agreements would be used to determine the allowed IT and CC&B costs for 2003 to 2007. If the costs to the ATCO Utilities resulting from applying the FMV determined by the benchmarking exercise were lower than the costs resulting from application of the Master Services Agreements, the benchmarking results would be used to determine the allowed IT and CC&B costs for 2003 to 2007. This interpretation of the Code was urged upon the Commission by the ATCO witnesses¹⁴⁹ and agreed to by counsel for ATCO.¹⁵⁰ Neither of the interveners took issue with this interpretation.

135. However, parties did not agree on the process by which the benchmarking results should be compared to the MSA and then used in adjusting and finalizing the placeholder amounts. The Master Services Agreements include many line item prices. The True-Up Worksheets developed by the CPC were used as the mechanism by which the Benchmarking translated the FMV benchmark results into line items for purposes of determining the required revenue requirement adjustments for each utility. Each of these line item prices was referred to as a FMV price. When the overall cost of services determined by multiplying the line item prices in the MSA by the approved volumes for each line item is compared to the overall cost of services determined by multiplying the line item prices in the benchmarking study by the approved volumes for each

¹⁴⁹ Transcript Volume 2, pages 435-438.

¹⁵⁰ Transcript Volume 4, page 1146.

line item, the result is that the overall benchmarking cost result is \$22 million less than the overall MSA cost result. This is the approach urged on the Commission by ATCO.

136. Calgary, supported by the UCA, argued that a proper application of the Code requires a comparison of each line item in the Benchmark Report to each line item in the MSAs and whichever line item number is lower is the one the Commission should use to determine the allowed IT and CC&B costs for the ATCO Utilities. Using this approach, the lower of the two line item prices multiplied by the agreed volumes would lead to the allowed IT and CC&B costs for the ATCO Utilities being reduced by an additional \$26.9 million to the \$22 million argued by ATCO. In other words, under the Calgary approach, the ATCO Utilities would be permitted to recover, in 2003 to 2007 rates, costs for IT and CC&B services that are \$48.9 million (\$22 million plus 26.9 million) less than the overall MSA amount.

137. The Commission acknowledges that the benchmarking exercise was undertaken for the purposes of complying with the Code and that the parties have all accepted the results of the Benchmark Report subject to the provisos expressed in the Price Benchmark Report Sign-Off.¹⁵¹

138. The Commission observes that the Calgary position with respect to the proper application of Code to the Benchmark Report appeared to develop subsequent to the execution of the Price Benchmark Report Sign-Off on February 14, 2008 as can be seen in the following exchange between the Calgary witnesses and Commission Counsel:

Q Sir, would it have been a simple matter to
03 indicate in the language in the signoff that
04 there were reservations about how this
05 benchmarking report should be used and what
06 purpose it should be put to?
07 A MR. MATWICHUK: Yes, and I think at that
08 stage we hadn't resolved, in our minds, how the
09 Code of Conduct test would work.
10 Q But it was a concern to you?
11 A MR. MATWICHUK: It was a concern.
12 Q And the first time that this concern was
13 actually voiced to the ATCO Utilities was in
14 the ATCO Gas GRA?
15 A MR. MATWICHUK: That's my recollection.
16 It may have been earlier, but that's my
17 recollection.
18 Q So that was quite a time after the signoff; is
19 that correct?
20 A MR. MATWICHUK: No, I don't believe so.
21 I will just check that.
22 Mr. McNulty, I'm reminded
23 that we filed our -- the Calgary evidence that
24 was filed in the ATCO Gas proceeding was filed
25 in early April, so it was a month, month and a

¹⁵¹ Exhibit 2, Benchmark Report, page 101.

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01 half, maybe a little longer after the signoff.
02 Q So am I to understand, then, within a month to
03 month and a half, this concern that you had at
04 the time of the signing developed into an
05 actual action plan to actually address a code
06 issue; is that right? What you've told me at
07 the time of the signing, you weren't quite sure
08 how to handle this. Within a month to month
09 and a half, you determined how you were going
10 to do it?

11 A MR. MATWICHUK: The City of Calgary
12 wanted to address it in the ATCO Gas
13 proceeding, yes, and developed evidence for
14 that.

15 Q So the determination of what to do with this
16 code issue didn't happen until after the
17 signoff; is that right?

18 A MR. MATWICHUK: That's correct, sir.

19 Q It happened within the month to month and a
20 half following; is that fair?

21 A MR. MATWICHUK: Yes, generally speaking.

22 Q So, sir, I take it, then, it's also fair for me
23 to say that at the time that the benchmarking
24 report was signed by you on behalf of the
25 Customer Group, that the formulation of a Code

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01 of Conduct objection to the benchmarking, to
02 using the benchmarking report to determine the
03 fair market value or to use it in coming up
04 with the revenue requirement numbers to replace
05 existing placeholders, that was not a concern
06 of the Customer Group as a whole; it was an
07 embryonic concern of The City of Calgary?

08 A MR. MATWICHUK: I think, sir, that the
09 Customer Group was aware of the contents of the
10 signoff of the benchmark report, and the
11 embryonic nature, as you put it, was solely
12 Calgary's.

13 Q So, sir, what do you think the views of the
14 Customer Group were -- since as you mentioned
15 you indicated Calgary was leading the charge,
16 what do you think the intention of the Customer
17 Group was with respect to how the benchmarking
18 report would be used after the signoff?

19 A MR. MATWICHUK: Well, I guess we were in
20 the position, as the Customer Group at the
21 time, sir, waiting to see how ATCO would file
22 to use the fair market values from the
23 benchmark report, use the benchmark results,
24 and translate that into revenue requirement, so
25 that was the position of the -- of the CG at

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01 the time, was waiting so see how ATCO would
02 file.¹⁵²

139. Given the nature of a collaborative benchmarking exercise, namely a joint endeavor to determine fair market value of IT and CC&B services acquired by the ATCO Utilities in an effort to improve regulatory process, timing and cost efficiencies, the Commission has significant concern with respect to the timing and the nature of how Calgary's issues with the Benchmark Report in light of the Code arose. In particular these concerns are with respect to timing of the disclosure of these issues to ATCO and to the Commission and the extent to which these concerns were or were not shared by all members of the customer negotiating group. Nevertheless, Calgary's submissions, supported by the UCA, do raise important matters requiring consideration by the Commission.

140. At issue in this Proceeding is how the results of the Benchmark Report should be interpreted and applied in order to comply with the Code. In this respect, the Commission agrees with all of the parties that section 4.2.1 of the Code requires that the ATCO utilities pay the lower of the benchmarked FMV and what the utilities are paying under the Master Services Agreements with its for profit affiliates. For the reasons provided below, the Commission considers that this Code requirement is satisfied if the aggregate amounts included in revenue requirements for the ATCO Utilities for IT and CC&B services on a combined basis for the 2003-2007 period is lower than or equal to the FMV of those services.

141. Fair market value is defined in the Code as follows:

2.1 Definitions

n) **"Fair Market Value"** means the price reached in an open and unrestricted market between informed and prudent parties, acting at arms length and under no compulsion to act.

142. In the Commission's view the only prices set out in the Benchmark Report that can be used for the purposes of the Code are prices that were benchmarked and those prices must be for services at volumes that can be acquired in the market.

143. In this case, even though the Benchmarkers labeled line item prices as "fair market value" prices, it is clear from the record of this proceeding that the benchmarking did not occur at the line item level. This is demonstrated by the following exchange amongst Mr. Fowler and Mr. Brock, expert witnesses representing the Benchmarkers, and counsel for Calgary:

22 A MR. FOWLER: Well, the way the
23 benchmark was conducted, we took the aggregate
24 actual volumes that were being delivered to the
25 ATCO Utilities and from that developed the fair
0120
01 market value. So that was one step. The
02 second step was to translate that to the
03 true-up worksheet.
04 Q But in the course of that first step, the fair

¹⁵² Transcript Volume 2, pages 639-642.

05 market value, sir, my question was, Did you not
06 establish fair market value estimates or
07 determination for some 300 services in respect
08 of IT for each utility for each year and some
09 150 services provided on the CC&B side with
10 respect to ATCO Electric and ATCO Gas?
11 A MR. BROCK: On the CC&B side, no.
12 No, we did not.
13 Q How many, sir? How many, Mr. Brock?
14 A MR. BROCK: How many?
15 Q Yes, how many fair market prices did you
16 estimate?
17 A MR. BROCK: Subject to check, I'd
18 have to go back and look at the various areas.
19 I would estimate less than ten, mainly because
20 you cannot fair market value benchmark at a
21 line item level. We fair market benchmarked at
22 an area level.¹⁵³

144. This was further clarified in the following exchange between Mr. Fowler, expert for Compass and Commission Counsel:

I have questions to deal
20 with this later on, but since we're touching on
21 a topic now, Mr. Fowler or Mr. Brock, perhaps I
22 could ask you to clarify for me, when we look
23 at each of the line items in the benchmarking
24 report, they are notionally assigned a fair
25 market value, correct, gentlemen?
0321
01 A MR. FOWLER: That's correct. When we
02 did the benchmark, we benchmarked -- we built
03 the fair market value around a tower or
04 service, and then we allocated that fair market
05 value to the appropriate line items in the
06 true-up worksheet. So what that represents is
07 pretty much a very rationalized pricing at each
08 line item.
0322
01 Q I want to be clear about what you're saying,
02 sir.
03 A MR. FOWLER: Yeah. So in the fixed
04 area, where you've got actually volumes times a
05 rate, those -- we did the benchmark based on
06 the actuals and came up with a fair market
07 value for that entire suite of services or
08 area, the tower, if you will, and then we
09 allocated that on a unit basis back to various
10 line items in the true-up worksheet.
11 So each of those rates
12 reflect the fair market value for that

¹⁵³ Transcript Volume 1, pages 119-120.

13 particular line item, but it's based on the
14 aggregate services that were delivered around
15 the tower.

.....

16 Q So that's where I'm going. But initially I
17 would like to ask you, sir, Are you -- when you
18 look at the individual line items, are you
19 suggesting that the fair market value of that
20 line item is -- has been benchmarked for that
21 line item?

22 A MR. FOWLER: No, we can't benchmark
23 for an individual line item.¹⁵⁴

145. It is also clear that the parties engaged in the CPC knew that the benchmarking had not occurred at the line item level as demonstrated by the following exchange between the Calgary witness panel and Commission Counsel:

03 Q And, sir, you were aware that each line item
04 had not been separately benchmarked, correct?

05 A MR. MATWICHUK: We were aware that it
06 could be not separately benchmarked, but they
07 were ascribed a fair market value.

08 Q What was your understanding of what was
09 benchmarked?

10 A MR. MATWICHUK: Our understanding was
11 that the service towers were benchmarked and
12 then there were, as you heard, allocated in
13 some manner down to the fair market value items
14 at the service line item level.¹⁵⁵

146. As noted in the quotations above, the benchmarking occurred at the tower level not at the line item level. Given that the benchmarking was not carried out at the line item level, reliance on the line item "fair market value" prices in the Benchmark Report alone would not be sufficient to assess whether the ATCO Utilities paid no more than FMV for affiliate services as required by section 4.2.1 and 4.5 of the Code (which is the section that requires a Utility to demonstrate FMV). Accordingly, no reliance can be placed on the Benchmark Report's True-Up Worksheet line level allocations in demonstrating FMV pricing for the comparison purposes required by the Code.

147. Further, the Code's definition of FMV requires consideration of whether the price can be reached in an open and unrestricted market. It follows that when conducting a price benchmarking of services, those services must be available in an open and unrestricted market if the exercise is to result in a relevant FMV price determination for those services. The above quotations from the transcript demonstrate that services could not be separately purchased in the market at the line item level.

¹⁵⁴ Transcript Volume 1, pages 320-323.

¹⁵⁵ Transcript Volume 2, page 650.

148. Given the above considerations, it would be improper to compare the line item level FMV price allocations provided in the Benchmark Report's True-Up Worksheets to the line level prices set out in the MSAs for purposes of assessing compliance with the Code.

149. It is clear that the benchmarking was done at the service tower level. Testimony in this Proceeding demonstrated, however, that full reliance should not be placed on the FMV determinations at the tower level in adjusting the ATCO Utilities placeholders. While benchmarking was at the service tower level, the Benchmarkers were instructed to do their benchmarking analysis on the basis of combined utility volumes and on combined IT and CC&B volumes. This was done to achieve the benefits of lower price from the combined volumes.¹⁵⁶ The Compass approach to the benchmarking exercise was described in the Benchmark Report as follows:

Compass conducted its analysis and benchmark of IT services in two major phases. The initial phase focused on benchmarking the scope, volume, and quality of IT services provided by I-Tek to the Utilities during each year of the agreement. Consistent with paragraph 3.2.2 of the Terms of Reference for IT services, Compass sized the comparators for mainframe processing and application development and maintenance based on the combined volumes provided under both the IT and CC&B MSAs.¹⁵⁷

150. The Commission also heard testimony that not all service towers were separately available in the marketplace. Some towers would only be offered by a service provider in conjunction with other towers.¹⁵⁸ The impact of combining volumes and the grouping of service towers to an understanding of the benchmark results was discussed in the following exchange between Mr. Bale on behalf of the ATCO Utilities and Commission Counsel:

11 Q So, sir, is that what the bottom-line message
 12 is in terms of the ATCO application to us
 13 today, that the Commission should be looking at
 14 the ATCO I-Tek CC&B and ATCO I-Tek IT services
 15 as a package and that all the services rolled
 16 up together, as long as they, on a fair market
 17 value basis, for all the services collectively,
 18 that that is a proper way to look at the
 19 services and how to update the placeholders and
 20 update revenue requirement?
 21 A MR. BALE: Well, that is in fact how
 22 they were benchmarked, and that's what the
 23 terms of reference required, is for them to be
 24 looked at together overall. That was a
 25 specific requirement in there. That's how the
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 01 exercise was undertaken, and consistency would
 02 say that's how this all should be looked at.¹⁵⁹

¹⁵⁶ Exhibit 67.07, Rebuttal Testimony of Jon Brock, pages 5-6.

¹⁵⁷ Exhibit 2, Benchmark Report page 27. Note: UtiliPoint confirmed at page 28 that it had "...conducted its analysis and benchmark of CC&B services in largely the same fashion as Compass."

¹⁵⁸ Transcript Volume 1, pages 368-269.

¹⁵⁹ Transcript Volume 2, pages 455-456.

151. This view was shared by the benchmarking experts as expressed in the following exchange with Commission Counsel:

24 Q Mr. Fowler and Mr. Brock, is that consistent
 25 with what you have done and determined, looking
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 01 at the ATCO services; you have looked at it on
 02 a wholistic basis, looking at all the services,
 03 and you have determined, looking at all the
 04 services together, to come up with an answer to
 05 pay for all those services collectively at fair
 06 market value, if the aggregate is above the
 07 fair market value in total, and less than fair
 08 market value, if the aggregate was less than
 09 fair market value?
 10 A MR. BROCK: That is what we have done
 11 on the CC&B side, and that is what we do in the
 12 industry as well.
 13 Q Thank you, sir.
 14 Mr. Fowler?
 15 A MR. FOWLER: Yes, that's correct. I
 16 agree.¹⁶⁰

152. It is apparent from the above evidence that employing the line item “fair market value” allocations or the individual benchmarked service tower FMV prices would not be in compliance with the requirements of the Code that the benchmarked services be available in the market at those volumes. Only the results of the Benchmark Report taken at the aggregate level, for all MSAs and for both IT and CC&B, meets both tests of the definition of FMV. It is only at this level that a benchmarked FMV determination has been made of services available in the marketplace. The benchmark was undertaken at the aggregate level and the services at the aggregate level would be available in the market.

153. In addition, while arguing for the adoption of the line by line approach to employing results of the benchmarking study, Calgary agreed that the Benchmark Report reflected FMV for the services, subject to the proviso under which it signed-off on the Benchmark Report. In the Commission’s view, it is inconsistent with the purpose of the Code to suggest that the aggregate cost to the utility of the services it acquires from an affiliate should be reduced for revenue requirement purposes to an amount less than the aggregate FMV of those services unless the parties have expressly contracted for the services on that basis or the services are available competitively in the market.

154. Calgary and the UCA argued that Decision 2008-100 and Decision 2009-176 had provided that a determination of the reasonableness of inter-affiliate service costs on an aggregate basis is not the proper approach. The Commission has considered the Decisions cited by Calgary and the UCA. The subject of those Decisions was the allocation of shared services costs. The issue in this Proceeding is not related to shared services costs but, rather, to pricing for services acquired from a for profit affiliate. The criteria to be considered by the Commission

¹⁶⁰ Transcript Volume 2, pages 448-449. See also Transcript Volume 2, pages 457-459 and Transcript Volume 1 at pages 344-345.

for shared services are set out in section 3.3.4 of the Code.¹⁶¹ The Decisions to which Calgary and the UCA referred would have similarly been subject to the criteria set out in section 3.3.4 of the Code.

155. Further, the Commission finds that its approach in this Proceeding is consistent with the approach taken by the Board in past considerations of similar issues. In Decision 2005-105¹⁶² the Board stated:

With respect to future guidance, the Board considers it appropriate to provide some elaboration on its views in Decision 2003-106 with respect to a unit cost analysis versus an overall cost per customer analysis. An excerpt from Decision 2003-106 is shown below:

With respect to the unit costs of the customer care services set out in the MS Agreement, the Board notes the position of interveners such as the Consumer Group that the base billing charge and the call centre cost per call appear to be higher than fair market value. The Board notes that the base billing charge of \$2.20/customer/month is approximately 14% above the high end of the range identified by Dr. Chwalowski.

However, in the Board's view it is the overall cost to customers, not the cost of individual customer care services, that should be considered when assessing fair market value.

While the Board indicated that it was the overall cost to customers, not the cost of individual customer care services, that should be considered when assessing FMV, it was not the Board's intention to limit or dictate the approach or methodology to be used in the benchmarking study, nor was it the Board's intention to dictate the measure(s) to report in the study findings. The Board was not indicating that a unit cost analysis approach should not be done but rather if such analysis was done, it was important to aggregate the results in some manner to understand the overall cost impact of the various customer care service components.

The Board agrees with DERS that under the pricing structure in the MSA, it is the unit pricing, applied to activity or usage, which determines the overall cost to customers. The Board also agrees that it is important to focus on the total or overall cost to customers resulting from the application of unit pricing to activity because the resultant cost per customer for any individual service may be higher or lower than the benchmark value due to the pricing structure inherent in the individual agreements.¹⁶³

156. The Commission agrees with the Board.

¹⁶¹ Decision 2003-040, Appendix 5:

3.3.4 Shared Services Permitted

Where a Utility determines it is prudent in operating its Utility business to do so, it may obtain Shared Services from, or provide Shared Services to, an Affiliate. Utilities shall periodically review the prudence of continuing Shared Services arrangements with a view to making any necessary adjustments to ensure that each of the Utilities and its Affiliates bears its proportionate share of costs.

¹⁶² Decision 2005-105 – Direct Energy Regulated Services Benchmarking Study of Customer Care Services (Application No. 1361950) (Released: September 13, 2005).

¹⁶³ Decision 2005-105, pages 17-18.

157. Therefore, the Commission is satisfied that the Benchmark Report meets the Terms of Reference as previously approved by the Board and that it has determined a FMV for IT and CC&B services at a level that is available in the market. The Commission considers that the FMV reductions to the Master Service Agreements as proposed by ATCO to be applied to IT and CC&B pricing are reasonable and consistent with the Code.

158. The origin of this Proceeding ultimately traces back to 1999 as outlined in Section 2 of this Decision. All parties expressed frustration and concern with the extraordinarily complex and protracted nature of this Proceeding and various related proceedings, including the multi-year collaborative benchmarking exercise that was followed. The Commission is also concerned, in light of the fact that collaborative processes are agreed to by the Commission in order to improve the efficiency of the regulatory process and, more particularly, the administrative law principle that decisions must be fair to both the utility and to ratepayers and that fairness requires a timely determination of matters impacting rates. If a collaborative benchmarking process is to be employed in the future in respect of any affiliate for profit service arrangement, the Commission will require that parties participating in the process explicitly agree to the following matters in order to minimize some of the difficulties encountered in the present proceeding:

1. Timing of steps from start of process to filing of a final application with the Commission including project management techniques to maintain schedule
2. Terms of Reference for the Benchmark Engagement;
3. Scope and Objectives of the Benchmark Report;
4. Qualifications of the Benchmarking;
5. Relative comparator groups;
6. Definition of fair market value(FMV);
7. The level at which the benchmark will be conducted: line item, tower level, contract level, multi-contract level and whether it is to be conducted on a single utility or multi-utility basis;
8. Interpretation of the Code, specifically Transfer Pricing;
9. The use of, and access to, confidential information;
10. If Benchmark Report findings are binding on all parties;
11. Approach to reconcile the benchmark results with placeholders or revenue requirement ; and
12. Treatment of interest.

5.2 True-Up Methodology and Present Value Adjustment

159. ATCO proposed a present value (PV) methodology to deal with the true-up required by this proceeding so that the considerable accounting adjustments after 2007 could be avoided. The proposed approach would allow the ATCO Utilities to keep unchanged the existing direct capital and other capital amounts that had been approved for the rate bases of the ATCO Utilities for the 2003-2007 period. These amounts were based on the prices I-Tek and ITBS had actually been charging during the period. As a result, the rate bases would remain at a higher level than what it would be if the adjustments were made. This, in turn would mean that customers would be paying higher rates in the future than they would be paying if the correct adjustments were made to reflect the determinations of the Benchmark Report. ATCO proposed to keep customers whole by providing customers with a one time credit to each utility equal to the present value of the financial impact of not adjusting the rate base to the FMV determined in the Benchmark

Report. ATCO has reflected reductions to O&M to reflect the FMV determinations of the Benchmark Report.

160. ATCO submitted that its PV approach was necessary to be in keeping with the requirements of audited financial statements and income tax filings which reflect books of account that are done at the time on an actual basis with actual property, plant and equipment balances. The PV approach would also avoid the administrative effort and complexity involved with making rate base adjustments to reflect the Benchmark Report FMV determinations, adjustments that would be required annually until the assets were fully depreciated. Mr. Bale described these issues in response to a question from counsel for the UCA:

03 So what you're going to
04 have is a situation where you're going to have
05 to have essentially two sets of books: You're
06 going to have to have the books that are there
07 for accounting purposes, which recognize the
08 actual cost, and then you're going to have to
09 have the regulatory -- a different number for
10 regulatory purposes.

11 And that adjustment will
12 have to be made continually, and that
13 reconciliation between actuals will have to be
14 done continuously until the items have
15 depreciated.

16 Now, there's a number of
17 issues related to that. You have to -- there's
18 over a hundred property, plant, and equipment
19 accounts that you have to look after that show
20 these differences and have to be administrated
21 differently. You have to keep track of the
22 accumulated depreciation and depreciation
23 expense differently than what you would be
24 doing for accounting purposes.

25 You have to look after the tax related to that differently, the
02 capital cost allowance, because for tax
03 purposes, it's going to be based on actual; it
04 isn't going to be based on the separate amount.
05 So you have to make sure that you've got a
06 process in place to look at this exception and
07 you're going through it and making sure that
08 it's continuously done and done properly for
09 all those years.

10 And then you have to make
11 sure that when we do filings for the Commission
12 that this adjustment is made.

13 And also as we go through
14 revenue requirements and all these years and
15 bring it up, interveners and others will be
16 looking and have to expend effort to make sure
17 that this difference has been properly
18 accounted for for all these years as well.

19 Q Mr. Bale, doesn't ATCO Gas have to restate

20 their financial statements or amend them when
 21 they have tax rulings come down after the test
 22 years close or have decisions from the
 23 regulator come down which require amendments?
 24 Doesn't that require the restatement of this
 25 financial data?

0099

01 A MR. BALE: Often when that
 02 happens -- well, when that happens, the
 03 adjustments are for accounting purposes and
 04 regulatory purposes are one and the same,
 05 because we've done some estimates. But in this
 06 particular case, you have to remember, we have
 07 physically paid these dollars, and these are in
 08 fact our actual costs.
 09 If what we've actually
 10 paid, if that is not allowed or able to be put
 11 in for revenue requirement purposes, we have a
 12 fundamental difference.¹⁶⁴

161. ATCO submitted that keeping track of the numerous adjustments otherwise required to be made in future years would be impractical and would result in significant administrative burden not only for ATCO but also for the Commission and interveners. ATCO submitted that its proposal was no more than a pragmatic approach that avoids extensive administrative effort on an annual basis for many years and removes the need to update numerous accounts on a yearly basis, absent the one-time adjustments.

162. ATCO determined the amount of the credit due to customers by calculating a return on rate base, depreciation and income effects in respect of the capital adjustments. ATCO estimated the return, depreciation and income tax effects until the capital was essentially fully depreciated at the end of a forty-year period. ATCO calculated the PV of the sum of return, depreciation and income tax impacts using a weighted average cost of capital. The credit was calculated as \$11.6 million, as shown in the following Tables.

Table 5. PV of ATCO Gas PP&E Reductions

	ATCO Gas ¹⁶⁵	
	North	South
	\$000s	
PV of Future 2003 - 2007 PP&E Reductions - Direct Capital	(782)	(504)
PV of Future 2005 - 2007 PP&E Reductions - Direct Capital	(1,966)	(2,398)
PV of Future 2005 - 2007 PP&E Reductions - Other Capital	(609)	(449)
	(3,357)	(3,351)

¹⁶⁴ Transcript Volume 1, pages 97-99.

¹⁶⁵ Exhibit 49.01, CAL-AU-27, Appendix A, page 1 of 17.

Table 6. PV of ATCO Pipelines PP&E Reductions

	ATCO Pipelines ¹⁶⁶	
	North	South
	\$000s	
PV of Future PP&E Reductions - Direct Capital	(337)	(337)
PV of Future PP&E Reductions - Indirect Capital	(612)	(408)
	(949)	(745)

Table 7. PV of ATCO Electric PP&E Reductions

	ATCO Electric ¹⁶⁷	
	Transmission	Distribution
	\$000s	
PV of Future 2003 - 2004 PP&E Reductions - Direct Capital	(22)	(422)
PV of Future 2005 - 2006 PP&E Reductions - Direct Capital	(9)	(42)
PV of Future 2007 PP&E Reductions - Direct Capital	(14)	(319)
PV of Future 2003-2004 PP&E Reductions - Other Capital	(195)	(303)
PV of Future 2005-2006 PP&E Reductions - Other Capital	(446)	(630)
PV of Future 2007 PP&E Reductions - Other Capital	(322)	(473)
	(1,008)	(2,189)

163. ATCO requested one-time adjustments to customers determined by the PV calculations, which allowed the retention of opening PP&E amounts based on actual I-Tek charges and provided the financial impact to customers of adjusting rate base to the FMV determined in the Benchmark Report.¹⁶⁸ ATCO proposed to incorporate the 2008 opening rate base adjustment for ATCO Gas into the Application as ATCO Gas' 2008 opening PP&E was approved in Decision 2008-113.¹⁶⁹ ¹⁷⁰ With respect to ATCO Electric, as the impact of the changes to 2003-2007 placeholders on opening rate base for all years was calculated, ATCO suggested that no further adjustments to other ATCO Electric rate applications were necessary.¹⁷¹ With respect to ATCO Pipelines, opening 2008 PP&E balances were adjusted based on actual expenditures for 2005-2008.¹⁷²

5.2.1 Submissions of the Interveners

164. Calgary disagreed with ATCO's proposed PV approach. Calgary submitted that if the benchmark results were applied correctly, future customers of the ATCO Utilities would see a reduction in the ownership costs (depreciation, return and income tax) related to IT and CC& B charges from I-Tek and ITBS instead of a perpetuation of incorrect and excessive costs proposed by ATCO. ATCO's proposal would leave the applicable capital accounts (property, plant & equipment) unadjusted for the 2003-2007 benchmark period and for future years.

165. Calgary maintained that the opening balances for 2008 PP&E for each of ATCO Gas, ATCO Pipelines and ATCO Electric:

¹⁶⁶ Exhibit 67.04, ATCO Utilities Rebuttal Evidence, Attachment 2, Schedule 1.

¹⁶⁷ Exhibit 34.01, CAL-AU-1 (I), Schedule 2, pages 1 and 2.

¹⁶⁸ Exhibit 23.01, Supplemental Filing, page 3 of 5.

¹⁶⁹ Decision 2008-113 – ATCO Gas 2008-2009 General Rate Application Phase I (Application No. 1553052, Proceeding ID. 11) (Released: November 13, 2008).

¹⁷⁰ Exhibit 34.01, UCA-AU-1(c).

¹⁷¹ Exhibit 23.01, page 4 of 5.

¹⁷² Exhibit 67.01, paragraph 39, page 10.

- a) should be derived from capital expenditures using actual volumes and benchmark prices (for Fixed items) and Benchmark Values (for Variable items), and
- b) expenditures incurred during the benchmark years, once determined, should be subject to the ATCO Code test, regardless of whether or not there were GRAs or placeholders covering the benchmark years.

166. Calgary submitted that, under the methodology used by ATCO, opening balances for 2008 PP&E were excessive and recommended the following in respect of determining opening PP&E balances:

- a) restate all actual capital and other capital for each of the benchmark years using Benchmark rates (Fixed items) and dollar values (Variable items) approved in this proceeding;
- b) for New Services where there are actual volumes and variable amounts were not subject to the benchmark exercise, and to determine, appropriate rates and volumes through the use of proxies (with the onus on ATCO to demonstrate that no more than FMV is paid for any service provided by a non-regulated affiliate);
- c) implement the Code requirements; and
- d) adjust the 2008 opening PP&E to reflect the above and the appropriate depreciation rates.¹⁷³

167. Calgary submitted that ATCO's request that ATCO Pipelines opening 2008 PP&E amounts be based on actual I-Tek and ITBS charges was not appropriate as the request violates the accepted regulatory approach to determining opening PP&E together with the purpose of the Benchmark. Calgary noted that the Benchmark values were different than I-Tek and ITBS rates and that the Benchmark values, applied in conjunction with the Code, would determine the appropriate values. Calgary further submitted that to properly determine the appropriate cumulative opening PP&E, and to follow regulatory principles and the purpose of undertaking the Benchmark, the actual capital amounts for 2003-2007 should be determined as follows:

- a) Fixed – actual volumes x Benchmark Values;
- b) Variable – actual dollar amounts at the Benchmark Values; and
- c) both of resulting fixed and variable amounts in i) and ii) would be assessed against the Code and reduced further.

168. Calgary submitted that ATCO's proposal for an adjustment of amounts for ATCO Electric in 2008 based on Benchmark values is not appropriate as there is another proceeding¹⁷⁴ to address 2008 and subsequent adjustments. Calgary therefore recommended that any adjustments to AE's balances be determined through that proceeding.

169. Calgary further maintained that the ATCO PV approach should be rejected because it:

¹⁷³ Exhibit 51.02, Corrected City of Calgary Evidence, page 34.

¹⁷⁴ Application No. 1577426, Proceeding ID 77, ATCO Utilities Evergreen Applications.

- a) does not appear to be based on any accounting requirements or other precedents;
- b) would cause intergenerational equity in the years 2008 and beyond, in that savings arising from the benchmarking that would otherwise occur in the years 2008 through 2047 would be applied in either 2008 or 2009;
- c) violated the matching principle in that it attempts to amend rates and revenue in 2008 (the year of the refund) for cost reductions arising in years well after 2009 (and as far out as 2047); and
- d) does not achieve intended results of the benchmarking exercise as the outcome produces a net zero sum to customers and shareholders, with the effect that the net long-term impact will be as if the Benchmark did not take place.

170. Calgary submitted that the Commission should focus on the merits of ATCO's proposal to keep the rate base accounts at actual costs versus the Calgary proposal to use actual volumes but multiply them by the applicable FMV estimate determined by the Benchmarkers as adjusted for the Code. Calgary was not looking to adjust any FMV estimates or to review any prudence issues with respect to the volumes applicable in the proceeding. Calgary argued that this matter involves determining what numbers should be used for the purposes of determining the opening rate base balances.

171. Calgary noted that the PV of the revenue requirement impacts of this overcharge was \$11.6 million. ATCO's approach of using one-time adjustments was that \$11.6 million payments to current customers will be collected from future customers, assuming the same return and depreciation, and that income taxes remain the same over the next 40 years.

172. Calgary considered that if the benchmark estimates for the capital items were applicable, up to \$13 million would be carried in the opening balances for 2008 that should have been reduced based upon the benchmark. Calgary noted that, from Table 7 of the Calgary evidence, it was not able to estimate the capital impacts of the Code because the CC&B volumes were not available at the time that the table was prepared.

173. Calgary disagreed with ATCO's claims that there would be administrative effort and complexity involved with making the adjustments to rate base as suggested by Calgary.

174. Calgary argued that ATCO has regularly performed these kinds of one-time adjustments to its regulatory accounts and the situation was no different with its PV proposal. Calgary understood that what was proposed to be carried in the accounts were amounts that were found by the Benchmarkers to be too high and accordingly are in breach of the Code.

175. In a prudence review, Calgary argued that there was sometimes the requirement for utilities to have to reduce booked rate base amounts if the capital expenditures incurred between hearings, and not otherwise forecasted, were found in a subsequent hearing to be excessive.

176. The UCA supported Calgary's position that the 2008 opening balances to PP&E should be based on actual volumes and benchmark prices and should also be subject to the Code. The

ATCO PV proposal would result in 2008 opening balances for all three utilities being excessive.¹⁷⁵

177. The UCA agreed with Calgary that the ATCO PV proposal would result in customers paying higher rates for the next 40 years than they should be.

178. The UCA questioned the relevance of the booked deferred taxes example used by ATCO as justification for the use of the PV approach for PP&E. The UCA submitted, as a matter of principle, that the 2008 opening balances of PP&E for each of ATCO Gas, ATCO Electric, and ATCO Pipelines should be adjusted to reflect the actual volumes and benchmarking prices, including the application of the Code. The UCA considered that these adjustments would ensure that future customers receive the benefit of the reduced capital charges resulting from the Benchmarking study while maintaining the integrity of the property records of the utilities.

5.2.2 Submissions of ATCO

179. ATCO disagreed with Calgary that ATCO Electric's amounts were proposed to be adjusted in 2008 based on the Benchmark values. ATCO asserted that the Application did not adjust amounts in 2008 for O&M or capital, as these amounts would be true-up in the Evergreen Application. ATCO further asserted that ATCO Electric's adjustment in 2008 was just to true-up its 2008 approved revenue requirement from ATCO Electric's 2007-2008 GTA application for the impact of adjustments to opening 2008 PP&E balances, resulting from adjustments to 2003-2007 capital placeholders and their impact on opening 2008 rate base. ATCO noted that ATCO Electric calculated the impact from the changes to 2003-2007 placeholders on opening rate base for all years for which it had approved revenue requirements and used a PV approach to account for the years subsequent to its last approved revenue requirement.

180. ATCO argued that the result of its proposal was that shareholders and customers would be indifferent. ATCO disagreed with Calgary that ATCO's proposed methodology for a PV approach did not appear to be based on any requirements or precedent. ATCO noted that a PV approach was approved in Decision 2003-071¹⁷⁶ for ATCO Electric and that the ATCO Utilities have developed this approach in order to deal with this matter in an efficient and fair fashion. ATCO noted that the PV approach was used, for example, to deal with the loss of benefits associated with booked deferred taxes.

181. ATCO disagreed with Calgary's assertion that ATCO's proposed methodology using a PV approach would cause intergenerational inequity in the years 2008 and beyond. ATCO considered that the impact on revenue requirement would not materially affect customer rates in the years beyond 2007 and determined that the impact on revenue requirement ranges from

- a) 0.265% (in 2009) to 0.002% (in 2047) in relation to ATCO Gas' approved 2009 revenue requirement,
- b) 0.048% (in 2009) to 0.013% (in 2047) in relation to ATCO Pipeline's approved 2009 revenue requirement, and

¹⁷⁵ Transcript Volume 4, page 1069, lines 16-20; Exhibit 51.02, Corrected City of Calgary Evidence, page 22, line 23.

¹⁷⁶ Decision 2003-071 – ATCO Electric Ltd., 2003-2004 General Tariff Application, Rate Case Deferrals Application, 2001 Deferral Application (Application Nos. 1275494, 1275539, and 1275540) (Released October 2, 2003).

- c) 0.101% (in 2009) to 0.002% (in 2047) in relation to ATCO Electric's approved 2008 revenue requirement.¹⁷⁷

182. ATCO disagreed with Calgary's assertion that opening PP&E balances under ATCO's methodology were excessive and should be reduced. The ATCO Utilities submitted that the subject transactions meet Code requirements and that Calgary's methodology was therefore inappropriate and would unfairly penalize ATCO.

183. ATCO asserted that they did not benefit from the PV approach. ATCO noted that an estimate of the benchmarking impact was included in ATCO Electric's 2007 audited financial statements. ATCO also noted that the PP&E balances included in ATCO Electric's 2007 financial statements were not reduced or written down for the impact of the benchmarking process since carrying value did not exceed the total cash flows expected from its use and eventual disposition. Accordingly, the ATCO Utilities submitted that PP&E matters had been dealt in with in conformity with generally accepted accounting principles.¹⁷⁸

184. ATCO Utilities argued that any adjustment that was purportedly based on an interpretation and application of the Code should be rejected and therefore, the Benchmark values should be used for determining 2008 opening PP&E adjustments using the PV approach.

5.2.3 Commission Determination

185. The Commission has considered the concerns of Calgary and the UCA with respect to ATCO's proposed PV approach in lieu of restating all actual capital and other capital for each of the benchmark years using Benchmark rates (Fixed items) and dollar values (Variable items) approved in this Proceeding and adjusting 2008 opening PP&E balances. All parties agreed that the benefits of the Benchmarking process will extend over future periods. The Commission has also considered the reasons for the proposed approach advanced by ATCO, including the concerns with respect to future administrative burdens that would arise absent the Commission's approval of the PV approach.

186. The Commission recognizes that the use of PV analyses per se is acknowledged as a method to determine the current value of benefits or costs that could be expected to occur over a period in the future and that previous use of this method for that purpose in other situations has been accepted for regulatory purposes.¹⁷⁹ The Commission therefore does not agree that the use of the PV approach should be automatically precluded. In each situation in which a PV approach to address a rate adjustment arises, an assessment of the benefits and concerns of using the PV approach, including the fairness of the approach to the utility, present ratepayers, and future ratepayers, must be made in the circumstances of the particular situation.

187. The Commission notes that the one-time credit adjustments proposed by ATCO are \$6.7 million for ATCO Gas, \$1.7 million for ATCO Pipelines and \$3.2 million for ATCO Electric (aggregate \$11.6 million). The Commission also notes ATCO's explanations for use of the PV method and that it has calculated the respective impacts on revenue requirements for each of ATCO Gas, ATCO Pipelines, and ATCO Electric to be less than one percent over the PV

¹⁷⁷ Exhibit 76, ATCO Rebuttal Evidence, page 12.

¹⁷⁸ Exhibit 34.01, CAL-AU-22, page 2 of 2.

¹⁷⁹ Decision 2003-071 – ATCO Electric Ltd., 2003-2004 General Tariff Application, Rate Case Deferrals Application, 2001 Deferral Application (Application Nos. 1275494, 1275539, and 1275540) (Released: October 2, 2003).

periods involved. Specifically, the range of impacts on revenue requirement was estimated by ATCO as follows:

- 0.265% (in 2009) to 0.002% (in 2047) in relation to ATCO Gas' approved 2009 revenue requirement,
- 0.048% (in 2009) to 0.013% (in 2047) in relation to ATCO Pipelines' approved 2009 revenue requirement, and
- 0.101% (in 2009) to 0.002% (in 2047) in relation to ATCO Electric's approved 2008 revenue requirement.

188. The Commission agrees with ATCO that its PV approach will not have a material impact on customers now or in the future. The Commission also agrees with ATCO that the proposed PV approach is practical and expedient under the circumstances. Balancing the materiality of ratepayer impact over time and the practicalities of dealing with the matter in the present circumstances, the Commission will accept ATCO's use of the PV approach in determining the benefits associated with each of ATCO Gas', ATCO Pipelines' and ATCO Electric's direct and indirect capital arising from the Benchmarking process and which will be refunded to its respective customers. Accordingly, the Commission will not require that 2008 opening balances for the impacted ATCO capital accounts be adjusted for the respective amounts determined for PV purposes for the period 2003-2007.

5.3 Interest

189. ATCO requested approval of the interest costs calculated on the outstanding amounts owed to/from customers in accordance with AUC Rule 023. ATCO has calculated the aggregate amount of interest owed from customers for the 2003-2007 period to be approximately \$2.1 million.¹⁸⁰

5.3.1 Submissions of the Interveners

190. Calgary submitted that interest should not be charged to customers for true-up adjustments. Calgary further submitted that the AUC's proposal for interest does not meet the criteria required under AUC Rule 023: *Rules Respecting Payment of Interest* (Rule 023).

191. Calgary submitted that Rule 023 indicates that a Utility may request the payment of interest on adjustments of utility company rates, tolls or charges or other costs administered within the Commission's jurisdiction. As such, the payment by customers of interest to the utility is not a requirement, nor is it automatic.

192. Calgary further asserted that the Commission has a set of criteria for interest payments. One criterion essentially states that the adjustment must be **the greater of**, + or - \$1,000,000, or + or - 3 percent, of the revenue from rates being revised. Calgary submitted that it would appear that none of ATCO Gas, ATCO Electric or ATCO Pipelines met that criterion for any of the years 2003 through 2007. Therefore, on the basis of Rule 023, no interest would be applicable to the amounts applied for by ATCO in this Proceeding.

¹⁸⁰ Exhibit 137.

5.3.2 Submissions of ATCO

193. ATCO included a request in the Application for an interest component with respect to the collection of the adjustments during the Benchmark Years. Further, ATCO suggests that the application of interest for collection is supported by the AUC's Rule 023.¹⁸¹

194. ATCO submitted that a review of the revenue requirements of ATCO Gas and ATCO Electric and the amounts that are outstanding to be collected or paid, the 3 percent threshold required by Rule 023 is satisfied over the benchmark period.

195. ATCO submitted that it has properly applied Rule 023 and that the Commission should accept this proposal and authorize the payment or charging of interest as appropriate.

196. ATCO also noted that its proposal is consistent across the different circumstances of each of the ATCO utilities. As a result, interest is not being sought for ATCO Pipelines, as it did not meet the 3 percent threshold required by Rule 023.

197. ATCO disagreed with Calgary that interest charges for interest on the true-up were not proper. ATCO submitted that the amounts at issue were material and have been outstanding for the period 2003-2007. ATCO considered that as several years have been taken to finalize these matters, ATCO should not be prejudiced by being denied the ability to apply interest to the outstanding balances, which would ignore the time value of money and result in the collection of less than the agreed upon FMV prices for the services provided to them. Consequently, ATCO considered that the AUC's Rule 023 applied in the circumstances and that any threshold amount set out in Rule 023 was not an absolute requirement.

5.3.3 Commission Determination

198. Section 3(2)(c) of Rule 023 states:

3(2) The Commission shall, when considering a request received under subsection 3(1) of these rules, consider the following:

- (c) for general utility rates, the minimum amount of the forecast aggregate change in revenue shall ordinarily be the greater of $\pm\$1,000,000$ or $\pm 3\%$ of the revenue from the rates being revised which may be tailored where unusual circumstances or conditions preclude its use or where acceptable procedures already exist;

199. The Rule allows the Commission to tailor the minimum thresholds in unusual circumstances. While the Commission concurs with Calgary that the adjustments to placeholders resulting from the Application do not meet the minimum threshold requirements if assessed on an individual year basis with respect to the eligibility for interest, the Commission is of the view that this Proceeding presents unusual circumstances. The Commission is adjusting, in 2010, rates that were billed and collected as far back as 2003. In the Commission's view, it would be unreasonable not to recognize the time value of money associated with outstanding amounts for the period of 2003-2007 when making a decision on the issues in 2010. The Commission therefore approves ATCO's interest rate calculation as determined in the Proceeding based on the Bank of Canada Rate plus 1.5 percent for ATCO Gas and ATCO Electric. Approval of interest was not sought for ATCO Pipelines and none is granted.

¹⁸¹ ATCO Utilities Supplementary Application, October 3, 2008, pages 2 and 3 of 5.

5.4 Non-Standard Clauses

200. On May 1, 2009, the ATCO Utilities filed its Rebuttal Evidence which included an amendment to its Application, in particular with respect to the true-up of CC&B placeholders. This evidence contained information from the unredacted Benchmark Report with respect to the existence of certain non-standard clauses in the ATCO Utilities MSAs relating to a certain CC&B methodology used and the hourly rates of certain ITBS personnel. These issues were referred to as the “Untested Issues” and were addressed in the confidential portion of the Proceeding. As a result, evidence and argument relating to non-standard clauses and the subject hourly rates were subject to a confidential process.

201. Upon review of submissions regarding this confidential portion of the Proceeding, the Commission is satisfied that Untested Issues can be addressed in a sufficient manner within this Decision without the need to specifically refer to confidential materials.

5.4.1 CC&B Methodology

5.4.1.1 Submissions of the Interveners

202. Calgary argued that the contested CC&B methodology employed by ITBS was atypical to the comparator group used in the benchmarking. As a result, Calgary submitted, the application of the methodology produced significantly higher prices over the five-year term under review meriting a further reduction beyond the \$22 million aggregate reduction to FMV identified by the Benchmark Report.

5.4.1.2 Submissions of ATCO

203. ATCO submitted that the benchmarking process included several process steps to normalize the comparator group to the I-Tek and ITBS MSAs as was required by the agreed-upon and Commission-approved terms of reference. Having made these adjustments, the benchmarker was able to benchmark this item and determine a FMV, as it was required to do. ATCO submitted that as a result of these adjustments already made by the benchmarkers, and the determination of FMV, no further adjustment is required for the existence of any non-standard clause. A further adjustment as sought by Calgary would result in a double adjustment, hence a price below FMV.

204. ATCO submitted that neither Compass nor UtiliPoint found sufficient evidence of non-standard clauses to justify a change to overall FMV, and that this was also the case for evaluating penalty provisions in gain-sharing agreements.¹⁸² The Benchmarker never intended that ATCO be punished for the existence of a pricing methodology that was reflected in the MSAs.

5.4.1.3 Commission Determination

205. With respect to the particular CC&B methodology forming part of the Untested Issues, the Commission considers that no further adjustment is required based on the FMV determinations in the Benchmark Report. The Commission is satisfied with the conclusions reached by Compass/UtiliPoint that there was not sufficient evidence to justify a change to overall FMV due to non-standard clauses, as was also the case for evaluating penalty provisions in gain-sharing agreements.¹⁸³

¹⁸² Redacted Benchmark Report, page 4.

¹⁸³ Redacted Benchmark Report, page 4.

206. In addition, the Commission recognizes that a further reduction to the aggregate FMV of CC&B services would result in a determination below FMV which is unwarranted on the basis of the record.

207. The Commission also notes that Calgary, as a member of the CG, confirmed and acknowledged by its Project Charter Sign-Off and by its Price Benchmark Report Sign-Off respectively, the following:

- formal acceptance of the *AEUB Sanctioned Collaborative Process Committee Benchmarking of IT and Customer Care & Billing Services from ATCO I-Tek*.
- the Price Benchmark report satisfied and met the Terms of Reference established pursuant to the Commission's decisions and directives noted therein subject to the limitations described in the Project Charter and those others arising thereafter as described elsewhere in this report. The parties further agree that such confirmation and acknowledgement by the Customer Group and ATCO Utilities shall in no way prevent or limit such parties' rights to make further submissions to the AUC in subsequent proceedings.¹⁸⁴

208. While noting the proviso that execution of the Price Benchmark Report Sign-off "in no way prevent or limit such parties' rights to make further submissions to the AUC in subsequent proceedings," had Calgary or the CG been concerned that Untested Issues raised significant concerns with the fundamental nature of the Benchmark Report, namely to establish the FMV of IT and CC&B services, the Commission would have expected that the sign-off would not have occurred or, at a minimum, include a specific reservation or qualification in the Price Benchmark Report Sign-off so as not to give the wrong impression to parties and to the Commission. No such concern or issue was included.

5.4.2 CC&B Personnel

5.4.2.1 Submissions of the Interveners

209. Calgary noted that the True-Up Tables included an hourly rate for certain ITBS personnel for providing a particular service despite the fact that the Benchmark Report indicated that the Reference Group analysis had determined a FMV value of \$0 for this service. Accordingly, Calgary submitted that the True-Up Tables needed to be reduced to reflect the FMV determination of \$0.

5.4.2.2 Submissions of ATCO

210. ATCO submitted that the Benchmarker intended that a FMV of zero be attached to the CC&B personnel charges which were part of the Untested Issues and the fact that this was not done appears to have been an oversight on behalf of the whole CPC. Therefore, ATCO agreed to update the placeholder adjustments accordingly.

5.4.2.3 Commission Determination

211. The Commission notes that although the Benchmarker indicated that it intended that a FMV of zero be attached to the hourly rate for the applicable CC&B personnel, it mistakenly included a charge in the true-up worksheets for the total period 2003 to 2007. ATCO agreed

¹⁸⁴ Exhibit 2 Attachment B, Price Benchmark Report, Appendix 3, Project Charter Sign-Off and Price Benchmark Report Sign-Off, pages 87 and 101.

with Calgary that a reduction to the placeholder adjustments is required. Based on a review of the updated schedules filed by ATCO in its confidential Rebuttal Evidence, the Commission is satisfied that ATCO has applied this reduction to the placeholders.

5.5 New Services

5.5.1 Submissions of the Interveners

212. Calgary submitted that the Application references certain services (New Services) for which there are actual fixed unit volumes and actual variable dollars but there are no corresponding previously approved forecast fixed unit volumes or previously approved forecast variable dollars. Calgary suggested that there are no benchmark values for these New Services to use in the true-up process because the Benchmark Report was based on services for which there were approved fixed unit volumes and variable dollars.¹⁸⁵

213. Calgary described the implications regarding New Services as follows:

- First, the ATCO Code requires ATCO to discharge its onus to demonstrate that it has paid no more than FMV for any service provided by a non-regulated affiliate, which, for New Services, ATCO has not discharged its onus.
- Second, for amounts that determine customer rates to be included in costs, parties and the Commission must have a method of determining an appropriate value associated with the units and dollars related to New Services.¹⁸⁶

Calgary considered that the Benchmark Report neither provided the necessary data for the New Services nor any measure, on the record of these proceedings such as an amended I-Tek MSA, to estimate the FMV.

214. Calgary disagreed with ATCO's assertion that the actual IT and CC&B amounts incurred by ATCO in respect of these New Services were subject to testing and review in each of the utility's respective GRA/GTAs and was not part of the scope of this Proceeding. Calgary submitted that these fixed unit rates and variable dollar amounts were specifically not approved, but moved to this Proceeding and that the rates and dollars associated with the New Services have neither been tested in a GRA nor subject to being benchmarked. However, Calgary considered that it would not be a prudent course of action to undertake a further benchmark of New Services but, nonetheless, they should be dealt with in this Proceeding.

215. To deal with New Services, Calgary proposed a method by which a reasonable proxy for New Services could be determined.

216. Calgary also maintained that ATCO also introduced new items for CC&B capital dollars at the bottom of the total IT actual volumes and actual dollars columns in the AG/AE IT 2003-2007 worksheets. Calgary submitted that these new items were not presented in worksheets to the Benchmark Consultant.¹⁸⁷

¹⁸⁵ Exhibit 51, Calgary Written Evidence, page 34.

¹⁸⁶ Exhibit 51, Calgary Written Evidence, page 35.

¹⁸⁷ Exhibit 51, Calgary Written Evidence, page 44.

5.5.2 Submissions of ATCO

217. ATCO disagreed with Calgary that it had introduced new service items. ATCO submitted that the schedules in CAL-AU-27 identified billing items that had new descriptions relative to the Benchmark True-Up Tables and advised that the majority of these items were revised descriptions for existing services. ATCO agreed with Calgary that the materiality of these New Services does not warrant further benchmarking activity.

218. ATCO submitted that it took new service items into account in determining the adjustments required to opening PP&E for all three utilities. ATCO described the methodology used by them:

- a) apply the overall True-Up FMV adjustment percentage for a given year (as determined in the True-Up) to the actual expenditures shown in CAL-AU-27, and
- b) apply this FMV adjustment to all actual expenditures, to determine the adjustment to capital items and ultimately PP&E, which resulted in all actual capital expenditures being adjusted by the same percentage, on an overall basis, as the adjustment to the True-Up amounts.¹⁸⁸

219. ATCO disagreed with the line by line adjustment proposed by Calgary and asserted that the approach it had taken was consistent with the Benchmark FMV results, was simpler than the Calgary approach, and ultimately was not materially different in terms of the end result. ATCO noted that its methodology results in an increased Capital and Other Capital of \$1.81 million over the five-year period, as compared to the amount of \$2.01 million determined using Calgary's proxy methodology, and considered that the difference between the amounts was immaterial.¹⁸⁹

220. ATCO disagreed with Calgary that it had introduced new items for CC&B capital dollars on worksheets in CAL-AU-27 that were not presented to the Benchmark Consultant. ATCO advised that the additional CC&B capital dollars identified by Calgary were not additional dollars and that in the schedules originally sent to the Benchmark Consultant, CC&B capital dollars were presented as follows:

- 2003/04 actual data – ITBS worksheets reflected combined CC&B O&M and capital dollars, and
- 2005/06/07 forecast data – CC&B capital dollars were included within the IT worksheets.

221. ATCO submitted that the schedules sent to the Benchmark and in CAL-AU-27 are distinct analyses based on different assumptions and the differences between them do not in any way represent the introduction of new items for CC&B capital.

5.5.3 Commission Determination

222. The Commission accepts ATCO's explanation with respect to the renaming of certain billing items and notes that Calgary agreed to accept ATCO's explanation and methodology for dealing with the total amounts identified as constituting new, as opposed to renamed, services. During questioning by Commission Counsel, Calgary did not object to the adoption of ATCO's

¹⁸⁸ Exhibit 67, Rebuttal Evidence, page 14.

¹⁸⁹ Exhibit 67, Rebuttal Evidence, page 14.

proposed method to deal with these items that were not benchmarked. This is demonstrated by the following exchange:

In paragraphs 59 through 62, ATCO explains how
 05 they dealt with new services, first by
 06 indicating that what Calgary referred to as new
 07 services were in part existing services and
 08 that they had just been given a new name.
 09 Where there were actually new services, not
 10 renamed services, they have come up with a
 11 benchmark value for them by applying the
 12 overall true-up value market value adjustment
 13 percentage for a given year.
 14 This results in an
 15 increase in capital and other capital of
 16 \$1.81 million over five years using the ATCO
 17 method, and comparing that to Calgary's method
 18 is 2.01 million. ATCO goes on to state that
 19 the difference between the two methodologies is
 20 not material. Do you agree with that, sir?
 21 A MR. MATWICHUK: I agree that there's a
 22 difference, sir.
 23 Q And do you agree that it's immaterial which
 24 methodology is used?
 25 A MR. MATWICHUK: Well, again, I think it's a definition of materiality, and so
 I'm not
 02 sure that --
 03 Q Would Calgary object to the Commission adopting
 04 the ATCO-proposed methodology and accepting
 05 their explanation?
 06 A MR. STEPHENS: No.¹⁹⁰

223. The Commission also accepts ATCO's explanation and methodology used in accounting for the New Services. No further adjustments to the Property, Plant and Equipment accounts are necessary to reflect actual expenditures for the New Services.

6 DECISION SUMMARY

224. In summary, the Commission accepts the Benchmark Report as filed as meeting the Terms of Reference pursuant to the directions and directives of the EUB. The Commission also approves subject to the direction in paragraph 225:

- the increase/decreased placeholder amounts for each of ATCO Gas, ATCO Pipelines and ATCO Electric for 2003-2007 as identified in the True-Up Summary Tables in Exhibit 145, being an update of amended Attachment A;
- the approach to quantify the revenue requirement impacts, including the adjustments to PP&E, using the present value methodology; and

¹⁹⁰ Transcript Volume 3, pages 786-787.

- interest on revenue requirement amounts for ATCO Electric and ATCO Gas as per Rule 023.

225. ATCO is directed to file a compliance filing by March 25, 2010, that confirms that Exhibit 145 contains the correct placeholder adjustments by utility (ATCO Gas, ATCO Electric, and ATCO Pipelines), the interest amount to be applied by ATCO Electric and ATCO Gas, and reconcile any differences, including differences between direct capital and other capital amounts set out on Table 1 and Table 4, which may exist. In the compliance filing ATCO shall indicate the processes and timing by which each of the ATCO Utilities will implement the necessary collection/credit rate rider applications.

7 ORDER

226. IT IS HEREBY ORDERED THAT:

- (1) The 2003-2007 Benchmarking and ATCO I-Tek Placeholders True-Up Application of ATCO Gas, ATCO Pipelines and ATCO Electric is approved in accordance with the determinations set out in this Decision.

Dated March 8, 2010.

ALBERTA UTILITIES COMMISSION

(original signed by)

Willie Grieve
Chair

(original signed by)

Bill Lyttle
Commissioner

(original signed by)

Anne Michaud
Commissioner

APPENDIX 1 – REGISTERED PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative
ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric) L. G. Keough R.B. Williams Bennett Jones LLP
The City of Calgary (Calgary) D. I. Evanchuk N. T. Mather McLennan Ross LLP
Office of the Utilities Consumer Advocate (UCA) C. R. McCreary Reynolds Mirth Richards & Farmer LLP
The Consumers Group (See Footnote 4)

APPENDIX 2 – ORAL HEARING – REGISTERED APPEARANCES

Name of Organization (Abbreviation) Counsel or Representative	Witnesses
Name of Organization (Abbreviation) Counsel or Representative	Witnesses
ATCO Utilities L. G. Keough, Counsel R. B. Williams, Counsel Bennett Jones LLP	B. R. Bale G. M. Schmidt J. T. Brock, Utilipoint International, Inc. J.W. Fowler, Compass Management Consulting, Ltd.
The City of Calgary (Calgary) D. I. Evanchuk, Counsel N. T. Mather, Counsel McLennan Ross LLP	H. W. Johnson, C.A., Stephen Johnson Chartered Accountants M. G. Matwichuk, C.A. Stephen Johnson Chartered Accountants J. G. Stephens
Office of the Utilities Consumer Advocate (UCA) T. A. Shipley, Counsel Reynolds Mirth Richards & Farmer LLP	

Alberta Utilities Commission Commission Panel W. Grieve, Chair B. Lytle, Commissioner A. Michaud, Commissioner Commission Staff B. McNulty (Commission Counsel) B. Ploof R. Armstrong. P. Eng. M. McJannet D. Weir, C.A.
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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) ATCO is directed to file a compliance filing by March 25, 2010, that confirms that Exhibit 145 contains the correct placeholder adjustments by utility (ATCO Gas, ATCO Electric, and ATCO Pipelines), the interest amount to be applied by ATCO Electric and ATCO Gas, and reconcile any differences, including differences between direct capital and other capital amounts set out on Table 1 and Table 4, which may exist. In the compliance filing ATCO shall indicate the processes and timing by which each of the ATCO Utilities will implement the necessary collection/credit rate rider applications.
..... Paragraph 225

APPENDIX 4 – ABBREVIATIONS

Abbreviation	Name in Full
AAMDC	Alberta Association of Municipal Districts and Counties
AE	ATCO Electric Ltd.
AFREA	Alberta Federation of REAs Ltd.
AG	ATCO Gas
AP	ATCO Pipelines
ATCO	the ATCO Utilities (collectively AE, AP, and AG)
ATCO ITBS or ITBS	ATCO I-Tek Business Services Ltd.
ATCO I-Tek or I-Tek	ATCO I-Tek Inc.
AUMA	Alberta Urban Municipalities Association
Benchmark Report	Compass Management Consulting Limited Price Benchmark Report
Board, EUB or AEUB	Alberta Energy Utilities Board
Calgary	The City of Calgary
CC&B	Customer Care and Billing
CCA	Consumers' Coalition of Alberta
CG	Customer Group
CIS	Customer Information System
Code	ATCO Group Inter-Affiliate Code of Conduct
Commission or AUC	Alberta Utilities Commission
Compass	Compass Management Consulting Limited
CPC	The Collaborative Process Committee
FMV	Fair market value
GRA	General Rate Application
GTA	General Tariff Application
IP	Intellectual Property
IR	Information Requests
IT	Information Technology
MSA	Master Service Agreement
O & M	Operating and Maintenance
PICA	Public Institutional Consumers of Alberta
PP&E	Property, Plant and Equipment
PV	Present Value
R & V	Review and Variance
RFP	Request for Proposal
Singlepoint	ATCO Singlepoint Ltd.
SIP	Statement of Intent to Participate

Abbreviation	Name in Full
TOR	Terms of Reference
UCA	The Office of the Utilities Consumer Advocate
Utilipoint	UtiliPoint International, Inc

APPENDIX 5 – EXHIBIT 145 REVISED TRUE-UP SUMMARY TABLES

[\(return to text first instance\)](#)

[\(return to text second instance\)](#)



Appendix 5 - Exhibit
145 Revised True Up

(consists of 3 pages)

AEUB Sanctioned Collaborative Process Committee
Benchmarking of IT and Customer Care & Billing Services from ATCO I-Tek
True Up of IT Placeholders (\$000s)

Exhibit 145.00 ATCO Gas-32
Amended Attachment A
Page 1

ATCO Gas

Per Benchmark Report True Up Tables:
Attachment B "True Up Tables" - page 78 of 152
Attachment B "True Up Tables" - page 82 of 152
Attachment B "True Up Tables" - page 86 of 152

Add: DFSS error in True Up Tables

Amounts Not Subject to True Up:
XP Conversion Costs - Decision 2003-072 pg 201
Capitalized Indirects for 2003 & 2004 (Note 1)
Xerox (Note 1)
Total amounts not subject to True Up

Amounts to Replace Placeholders

Placeholders (see Attachment A Page 3):

North

South

Total

Increase/(Decrease) to Placeholders

	2003				2004				2005				2006				2007			
	O&M	Capital	Other Capital	Total	O&M	Capital	Other Capital	Total	O&M	Capital	Other Capital	Total	O&M	Capital	Other Capital	Total	O&M	Capital	Other Capital	Total
Per Benchmark Report True Up Tables:	11,364	5,621	491	17,476	10,819	8,244	697	19,760	16,157	5,435	1,352	22,944	13,957	2,613	1,361	17,932	11,718	3,072	1,342	16,131
Add: DFSS error in True Up Tables	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	794	-	-	794
<u>Amounts Not Subject to True Up:</u>																				
XP Conversion Costs - Decision 2003-072 pg 201	811	-	-	811	506	-	-	506	506	-	-	506	-	-	-	-	-	-	-	-
Capitalized Indirects for 2003 & 2004 (Note 1)	-	-	95	94	-	-	252	252	-	-	-	-	-	-	-	-	-	-	-	-
Xerox (Note 1)	-	-	396	396	-	-	445	445	-	-	-	-	-	-	-	-	-	-	-	-
Total amounts not subject to True Up	811	-	491	1,301	506	-	697	1,203	506	-	-	506	-	-	-	-	-	-	-	-
Amounts to Replace Placeholders	10,553	5,621	-	16,175	10,313	8,244	-	18,557	15,651	5,435	1,352	22,438	13,957	2,613	1,361	17,932	12,512	3,072	1,342	16,925
Placeholders (see Attachment A Page 3):																				
North	4,832	1,771	-	6,603	4,643	953	-	5,596	6,418	3,299	816	10,533	6,371	1,643	873	8,887	6,553	2,094	923	9,570
South	5,193	1,835	-	7,028	4,939	1,024	-	5,963	6,532	3,299	686	10,517	6,468	1,642	718	8,828	6,623	2,093	749	9,465
Total	10,025	3,606	-	13,631	9,582	1,977	-	11,559	12,950	6,598	1,502	21,050	12,839	3,285	1,591	17,715	13,176	4,187	1,672	19,035
Increase/(Decrease) to Placeholders	528	2,015	-	2,544	731	6,267	-	6,998	2,701	(1,163)	(150)	1,388	1,118	(672)	(230)	217	(664)	(1,115)	(330)	(2,110)

ATCO Electric

Per Benchmark Report True Up Tables:
Attachment B "True Up Tables" - page 106 of 152
Attachment B "True Up Tables" - page 110 of 152
Attachment B "True Up Tables" - page 114 of 152

Amounts Not Subject to True Up:
XP Conversion Costs - Sec. 10.6 Decision 2003-071

2003/2004 CC&B Capital (included in ITBS True-up tables) (Note 2)

Amounts to Replace Placeholders

Placeholders (see Attachment A Page 3):

Transmission

Distribution

Total

Increase/(Decrease) to Placeholders

Per Benchmark Report True Up Tables:	7,732	2,520	1,924	12,177	7,138	5,575	2,126	14,839	7,193	2,027	2,329	11,549	6,461	7,868	2,120	16,448	6,456	10,903	3,606	20,964
<u>Amounts Not Subject to True Up:</u>																				
XP Conversion Costs - Sec. 10.6 Decision 2003-071	409	249	52	709	320	7	143	469	297	-	110	407	-	-	-	-	-	-	-	-
<u>2003/2004 CC&B Capital (included in ITBS True-up tables) (Note 2)</u>	-	886	-	886	-	637	-	637	-	-	-	-	-	-	-	-	-	-	-	-
Amounts to Replace Placeholders	7,323	3,157	1,872	12,354	6,818	6,205	1,983	15,007	6,896	2,027	2,219	11,142	6,461	7,868	2,120	16,448	6,456	10,903	3,606	20,964
Placeholders (see Attachment A Page 3):																				
Transmission	1,997	158	711	2,866	2,060	139	956	3,155	2,256	319	1,075	3,650	2,424	90	1,121	3,635	2,311	1,714	1,822	5,847
Distribution	4,244	2,931	1,102	8,277	4,483	2,526	1,496	8,505	5,533	1,738	1,524	8,795	5,723	7,774	1,582	15,079	5,667	9,630	2,500	17,797
Total	6,241	3,089	1,813	11,143	6,543	2,665	2,452	11,660	7,789	2,057	2,599	12,445	8,147	7,864	2,703	18,714	7,978	11,344	4,322	23,644
Increase/(Decrease) to Placeholders	1,082	68	59	1,211	275	3,540	(469)	3,347	(893)	(30)	(380)	(1,303)	(1,686)	4	(583)	(2,266)	(1,522)	(441)	(716)	(2,680)

ATCO Pipelines

Per Benchmark Report True Up Tables:
Attachment B "True Up Tables" - page 139 of 152
Attachment B "True Up Tables" - page 144 of 152
Attachment B "True Up Tables" - page 149 of 152

Add: Service Xerox error in True Up Tables

Amounts Not Subject to True Up:

XP Costs (Capital) (Note 3)

Capital Costs (Note 3)

2005-2007 Amounts (Note 3)

Total amounts not subject to True Up

Amounts to Replace Placeholders

Placeholders (see Attachment A Page 3):

North

South

Total

Increase/(Decrease) to Placeholders

Per Benchmark Report True Up Tables:	2,151	1,261	-	3,411	2,566	2,700	-	5,266	2,586	2,817	-	5,403	2,401	2,942	-	5,343	2,275	3,081	-	5,355
Add: Service Xerox error in True Up Tables	13	4	-	17	17	5	-	22	-	-	-	-	-	-	-	-	-	-	-	-
<u>Amounts Not Subject to True Up:</u>																				
XP Costs (Capital) (Note 3)	-	369	-	369	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Capital Costs (Note 3)	-	896	-	892	-	2,705	-	2,700	-	-	-	-	-	-	-	-	-	-	-	-
2005-2007 Amounts (Note 3)	-	-	-	-	-	-	-	-	2,586	2,817	-	5,403	2,401	2,942	-	5,343	2,275	3,081	-	5,355
Total amounts not subject to True Up	-	1,265	-	1,261	-	2,705	-	2,700	2,586	2,817	-	5,403	2,401	2,942	-	5,343	2,275	3,081	-	5,355
Amounts to Replace Placeholders	2,164	-	-	2,167	2,583	-	-	2,588	-	-	-	-	-	-	-	-	-	-	-	-
Placeholders (see Attachment A Page 3):																				
North	1,458	-	-	1,458	1,598	-	-	1,598	-	-	-	-	-	-	-	-	-	-	-	-
South	954	-	-	954	1,050	-	-	1,050	-	-	-	-	-	-	-	-	-	-	-	-
Total	2,412	-	-	2,412	2,648	-	-	2,648	-	-	-	-	-	-	-	-	-	-	-	-
Increase/(Decrease) to Placeholders	(248)	-	-	(245)	(65)	-	-	(60)	-	-	-	-	-	-	-	-	-	-	-	-

IT True Up

**AEUB Sanctioned Collaborative Process Committee
Benchmarking of IT and Customer Care & Billing Services from ATCO I-Tek
True Up of CC&B Placeholders (\$000s)**

Exhibit 145.00 ATCO Gas -32
Amended Attachment A
Page 2

2003 Total	2004 Total	2005 Total	2006 Total	2007 Total
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ATCO Gas

Per Benchmark Report True Up Tables- Attachment B "True Up Tables"
page 21 of 152

	40,618	35,982	23,149	24,725	24,397
O&M	38,433	34,799	23,149	24,725	24,397
Capital - Attachment A, page 2(b)	2,185	1,183	-	-	-
Total	40,618	35,982	23,149	24,725	24,397

Placeholders (see Attachment A Page 3):

O&M:					
North	17,493	14,239	10,037	10,631	11,072
South	17,493	14,239	9,925	10,511	10,949
Total	34,986	28,478	19,962	21,142	22,021
Capital:					
North	463	463	-	-	-
South	463	463	-	-	-
Total	926	926	-	-	-

Billing Services Personnel Adjustment - O&M

(15)	(11)	-	-	-
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Increase/(Decrease) to Placeholders

O&M	3,432	6,310	3,187	3,583	2,376
Capital	1,259	257	-	-	-
Total	4,691	6,567	3,187	3,583	2,376

ATCO Electric

Per Benchmark Report True Up Tables - Attachment B "True Up Tables"
page 30 of 152

	12,460	11,379	7,457	7,700	7,627
O&M	12,460	11,379	7,457	7,700	7,627
Less 2003/2004 CC&B Capital (included in IT True-up) (Note 2)	(886)	(637)	-	-	-
Net O&M	11,574	10,742	7,457	7,700	7,627

Placeholders (see Attachment A Page 3):

O&M:					
RRO	5,135	2,437	-	-	-
Wires	9,287	10,547	9,224	9,569	10,068
Total	14,422	12,984	9,224	9,569	10,068

Billing Services Personnel Adjustment - O&M

(142)	(55)	(119)	(122)	-
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Increase/(Decrease) to Placeholders - O&M

CC&B True Up

(2,990)	(2,297)	(1,886)	(1,991)	(2,441)
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Exhibit 145.00 ATCO Gas-32
Amended Attachment A
Page 3

AEUB Sanctioned Collaborative Process Committee
Benchmarking of IT and Customer Care & Billing Services From ATCO I-Tek
Summary of IT and CC&B Placeholder Adjustments (\$000s)

	True Up of IT Placeholders				True Up of CC&B Placeholders				True Up of IT and CC&B Placeholders			
	O&M	Direct Capital	Other Capital	Total	O&M	Direct Capital	Other Capital	Total	O&M	Direct Capital	Other Capital	Total
ATCO Gas												
2003	528	2,015	-	2,543	3,432	1,259	-	4,691	3,960	3,274	-	7,234
2004	731	6,267	-	6,998	6,310	257	-	6,567	7,041	6,524	-	13,565
2005	2,701	(1,163)	(150)	1,388	3,187	-	-	3,187	5,888	(1,163)	(150)	4,575
2006	1,118	(672)	(230)	217	3,583	-	-	3,583	4,701	(672)	(230)	3,800
2007	(664)	(1,115)	(330)	(2,110)	2,376	-	-	2,376	1,712	(1,115)	(330)	266
Total	4,414	5,332	(710)	9,036	18,888	1,516	-	20,404	23,302	6,848	(710)	29,440
ATCO Electric												
2003	1,082	68	59	1,209	(2,990)	-	-	(2,990)	(1,908)	68	59	(1,781)
2004	275	3,540	(469)	3,346	(2,297)	-	-	(2,297)	(2,022)	3,540	(469)	1,049
2005	(893)	(30)	(380)	(1,303)	(1,886)	-	-	(1,886)	(2,779)	(30)	(380)	(3,189)
2006	(1,686)	4	(583)	(2,265)	(1,991)	-	-	(1,991)	(3,677)	4	(583)	(4,256)
2007	(1,522)	(441)	(716)	(2,679)	(2,441)	-	-	(2,441)	(3,963)	(441)	(716)	(5,120)
Total	(2,744)	3,141	(2,089)	(1,692)	(11,605)	-	-	(11,605)	(14,349)	3,141	(2,089)	(13,297)
ATCO Pipelines												
2003	(248)	-	-	(248)	-	-	-	-	(248)	-	-	(248)
2004	(65)	-	-	(65)	-	-	-	-	(65)	-	-	(65)
2005	-	-	-	-	-	-	-	-	-	-	-	-
2006	-	-	-	-	-	-	-	-	-	-	-	-
2007	-	-	-	-	-	-	-	-	-	-	-	-
Total	(313)	-	-	(313)	-	-	-	-	(313)	-	-	(313)
ATCO Utilities												
2003	1,362	2,083	59	3,504	442	1,259	-	1,701	1,804	3,342	59	5,205
2004	941	9,807	(469)	10,279	4,013	257	-	4,270	4,954	10,064	(469)	14,549
2005	1,808	(1,193)	(530)	85	1,301	-	-	1,301	3,109	(1,193)	(530)	1,386
2006	(568)	(668)	(813)	(2,048)	1,592	-	-	1,592	1,024	(668)	(813)	(456)
2007	(2,186)	(1,556)	(1,046)	(4,789)	(65)	-	-	(65)	(2,251)	(1,556)	(1,046)	(4,854)
Total	1,357	8,473	(2,799)	7,031	7,283	1,516	-	8,799	8,640	9,989	(2,799)	15,830

IT and CC True Ups