



**ATCO Pipelines
Office of the Utilities Consumer Advocate**

Decision on Preliminary Question

**Applications for Review of Decision 22986-D01-2018
Compliance Application to Decision 22011-D01-2017
ATCO Pipelines 2017-2018 General Rate Application**

September 27, 2018

Alberta Utilities Commission

Decision 23539-D01-2018

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Contents

1	Decision	1
2	Introduction.....	2
3	Background	2
	3.1 ATCO Pipelines review application.....	2
	3.2 UCA review application.....	5
4	The Commission’s review process.....	6
5	Grounds for review and hearing panel findings	9
	5.1 ATCO Pipelines review application.....	9
	5.2 UCA review application.....	11
6	Review Panel Findings.....	14
	6.1 Section 4 (d) (i) grounds – Errors of fact, law or jurisdiction.....	14
	6.1.1 ATCO Pipelines review application	14
	6.1.2 UCA application	15
7	Decision	17

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1 Decision

1. In this decision, the Alberta Utilities Commission must decide whether to grant applications filed by ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. (ATCO Pipelines) and the Office of the Utilities Consumer Advocate (UCA), each of which requested a review and variance of Commission Decision 22986-D01-2018: Compliance application to Decision 22011-D01-2017, 2017-2018 General Rate Application, issued on March 13, 2018 (the Decision). The Decision addressed a compliance filing from ATCO Pipelines, in Proceeding 22986, in accordance with the findings and directions provided in Decision 22011-D01-2017,¹ in relation to ATCO Pipelines' 2017-2018 general rate application (the GRA Decision).

2. ATCO Pipelines' review application concerned findings in the Decision directing ATCO Pipelines to remove its 2016 weld re-inspection costs from its 2017 opening rate base and the forecast 2017 and 2018 weld re-inspection capital expenditures from its 2017-2018 revenue requirements.

3. The UCA's review application concerned findings in the Decision denying a request from the UCA to eliminate depreciation expense for a Supervisory Control and Data Acquisition (SCADA) asset account.

4. The Commission has decided to grant ATCO Pipelines' review application for the reasons discussed below. With respect to the UCA's review application, the Commission considers that the UCA has not met the test for review. However, the Commission has determined that a review, on its own motion, is warranted in relation to the issue of ATCO Pipelines' accumulated depreciation balances, as it relates to the findings of Decision 22011-D01-2017 and Decision 22986-D01-2018 for the reasons discussed below. The Commission considers that the issue in relation to ATCO Pipelines' accumulated depreciation balances can be considered in ATCO Pipelines' next general rate application proceeding, as set out further below.

¹ Decision 22011-D01-2017: ATCO Pipelines 2017-2018 General Rate Application (August 29, 2017).

2 Introduction

5. On May 7, 2018 and May 11, 2018, respectively, the Commission received applications from ATCO Pipelines (ATCO Pipelines review application) and the UCA (UCA review application) requesting a review and variance of the Decision. The review applications were filed pursuant to Section 10 of the *Alberta Utilities Commission Act* and Rule 016: *Review of Commission Decisions* (Rule 016). The Commission considered the review applications in a single proceeding and designated them as Proceeding 23539.

6. On May 7, 2018 and May 14, 2018, respectively, the Commission issued filing announcements for the ATCO Pipelines and the UCA review applications. By letter dated May 22, 2018, the Commission advised parties that pursuant to Rule 016, consideration of the review applications would follow a two-step process: first, the Commission would determine as a preliminary question, whether the Decision should be reviewed; and second, if the Commission granted an application for review, a hearing or other proceeding on the merits would be ordered to decide whether to confirm, rescind or vary the Decision.

7. The UCA and ATCO Pipelines filed submissions in response to each other's review applications and provided reply submissions in relation to their own applications.

8. In this decision, the Commission panel who authored the Decision will be referred to as the "hearing panel" and the Commission panel presently considering the review application will be referred to as the "review panel."

9. In reaching its determinations, the review panel has reviewed the pertinent portions of the Decision and relevant materials comprising the record of this proceeding and of proceedings 22986 and 22011. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the several records with respect to the matter.

3 Background

3.1 ATCO Pipelines review application

10. On May 3, 2016, ATCO Pipelines filed a self-disclosure letter with the AUC in which it outlined deficiencies with regards to radiographic inspections of ATCO Pipelines' prefabricated welds.² Once in receipt of the self-disclosure letter, the Commission requested additional information from ATCO Pipelines so the Commission might gain a better understanding of this issue.³

² Exhibit 22011-X0015, AUC letter – Process and schedule, paragraph 5.

³ *Ibid.*

11. ATCO Pipelines filed its 2017-2018 general rate application (GRA) on September 22, 2016. As part of its GRA, ATCO Pipelines sought to incorporate into its 2017 and 2018 revenue requirements costs associated with a weld assessment and repair program (WARP)⁴ to re-inspect and replace any defective work.⁵

12. As noted in Decision 22011-D01-2017, on October 12, 2016, the Commission set out the process schedule for consideration of the GRA, and directed ATCO Pipelines to file additional information regarding the deficient radiographic inspections of prefabricated welds outlined in the self-disclosure letter.⁶ ATCO Pipelines filed all information on radiographic inspections of prefabricated welds on the record of the GRA proceeding as directed by the Commission shortly thereafter. The City of Calgary, the Consumers' Coalition of Alberta (CCA), the UCA and the Western Export Group actively intervened in the GRA.

13. In the GRA Decision, the Commission directed ATCO Pipelines to file a compliance filing in accordance with the findings and directions in that decision.⁷ In Direction 5 of the GRA Decision, the Commission deferred its decision on the WARP costs, and directed ATCO to file additional information in the compliance filing, as follows:

Given the level of uncertainty with regards to locations that need to be re-inspected, the Commission supports the need for additional status updates on the Weld Integrity expenditures and further evidence to decide whether a deferral account should be established if it is found to be the responsibility of ratepayers. Before rendering a decision regarding ATCO Pipelines' Weld Integrity Inspections and Replacements capital expenditures, ATCO Pipelines is directed to file the following information in its compliance filing to this decision:

- Status of any legal proceeding against third-party radiographic inspection companies.
- Confirm whether ATCO Pipelines' forecast 2016 capital expenditure has been included in ATCO Pipelines' 2017 opening rate base.
- Explain why these costs should be capitalized and not treated as an O&M expense.
- Explain why these costs should be the responsibility of ratepayers.

⁴ In the GRA, ATCO Pipelines referred to this program as the Weld Integrity Inspections and Replacements program.

⁵ Decision 22986-D01-2018: ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., Compliance Application to Decision 22011-D01-2017, 2017-2018 General Rate Application (March 13, 2018), paragraph 15.

⁶ Decision 22011-D01-2017, paragraphs 4, 30.

⁷ Decision 22011-D01-2017, paragraph 636.

- Whether the forecast weld integrity inspection should be subject to deferral account treatment.⁸

14. ATCO Pipelines filed an application requesting approval of its compliance filing to the GRA Decision on October 2, 2017. The CCA and the UCA participated in the compliance proceeding, and submitted IRs to ATCO Pipelines, and argument and reply argument on the WARP costs.

15. In the Decision, the hearing panel held that ATCO Pipelines must remove its 2016 re-inspection costs from its 2017 opening rate base and the forecast 2017 and 2018 re-inspection capital expenditures from its 2017-2018 revenue requirements. The hearing panel's findings are at paragraphs 47-49 of the Decision:

47. The Commission finds that ATCO Pipelines should have established some quality control measures to ensure that the work performed by its contractors, such as radiographic inspection companies and technicians, was being properly completed in accordance with all applicable standards. The Commission recognizes that the welds went through visual, radiography and hydrostatic testing, but greater oversight of the radiographic inspections/inspectors could have ensured a more reliable process and mitigated the risk of seven years of deficient inspections and welds being placed in service. The Commission does not find it is reasonable that this type of deficient work continued for seven years or more without being discovered. As submitted by the UCA, ATCO Pipelines need not be expected to "audit the auditors," but periodic review and monitoring should be expected. The fact that ATCO Pipelines explained that it is "Engaging in a third party review of weld inspection" as well as "Providing leading indicator feedback to welders" and "Enhancing the weld quality process and documentation" demonstrates that better processes could have been and should have been in place.

48. In the circumstances, the Commission finds that ratepayers should not bear the costs resulting from having to now re-inspect welds that were not properly inspected in the first instance. The Commission is not persuaded that inspection costs are properly recovered from customers. The costs of the original, deficient inspections have been, or are being, recovered through rates, and the Commission finds it would be unreasonable to permit ATCO Pipelines to recover re-inspection costs from customers when it has the ability to pursue (and is pursuing) through litigation those responsible for these costs (the involved radiographic inspection companies and technicians). The Commission finds that rather than approving ATCO Pipelines' proposal to recover the costs from customers, and then credit customers for any litigation proceeds obtained, ATCO Pipelines should recover the costs from the involved radiographic companies and technicians for its own account to the extent that it is able to do so.

⁸ Decision 22011-D01-2017, paragraph 106, Direction 5.

49. Based on the foregoing, ATCO Pipelines is directed to remove its 2016 re-inspection costs from its 2017 opening rate base and the forecast 2017 and 2018 re-inspection capital expenditures from its 2017-2018 revenue requirements. Similarly, ATCO Pipelines will not be expected to apply any potential proceeds from legal action against rate base. The Commission also concludes that customers should not bear the costs associated with this litigation and directs ATCO Pipelines to remove any of such costs from its revenue requirement. Given the finding by the Commission that 100 per cent of the re-inspection costs are to be removed from ATCO Pipelines' 2017 opening rate base and 2017-2018 revenue requirements, a determination on the proper accounting treatment of these costs is now rendered moot. [citations omitted]

16. In its application for review, ATCO Pipelines submitted that the hearing panel's findings on the WARP program represented an error of fact, law or jurisdiction, as described more fully in Section 5.1 below.

3.2 UCA review application

17. ATCO Pipelines retired a SCADA asset from utility service in 2001, which was not recorded in its financial records, leading to continuing depreciation of the asset until 2006 when the error was discovered. ATCO Pipelines issued a one-time \$1.584 million debit to accumulated depreciation and credit to depreciation expense on its books in 2012, to correct for the additional depreciation expense that had been collected from 2001-2006.

18. The UCA submitted that the justification for this credit is questionable, as ATCO Pipelines' accumulated depreciation for the SCADA account should have been in surplus in 2012 but was instead in balance. As a result, the UCA submitted that the existence of an accumulated depreciation deficit at the time of ATCO Pipelines' last depreciation study in 2015 is now materially affecting rates in the current test period. This information was not disclosed by ATCO Pipelines in its GRA nor provided subsequently in response to repeated requests from the UCA.

19. ATCO Pipelines acknowledged the occurrence of the one-time credit in an information response in the compliance proceeding, stating that customers received the benefit of the credit as a "refund" through depreciation expense. However, in reply argument, ATCO Pipelines stated:

The UCA is correct when it states that AP has not supported its claim that the refund was passed to customers by way of a reduction in depreciation expense in 2012. AP misspoke in initially making this statement. However, the converse is also true, that being, there is no evidence to suggest customers negotiated the 2012 revenue requirement including the error. It is purely a matter of accounting record accuracy.

AP's prior period adjustment ("adjustment" or "PPA") applied in 2012 to depreciation expense and accumulated depreciation appropriately corrected its Fixed Asset records upon discovery of the error. AP notes that the depreciation expense included in any test period's revenue requirement is based upon an

approved forecast, and does not necessarily equal actual expense. Rather, actual capital additions net of actual depreciation expense are subsequently incorporated into revenue requirement upon approval of opening rate base.⁹

20. In the Decision, the hearing panel denied the UCA's request to eliminate depreciation expense for the SCADA account. The hearing panel's findings are at paragraphs 63-64 of the Decision:

63. Although the Commission is prepared to accept ATCO Pipelines' explanation that the restated opening 2012 Account 496.05 balance was a result of a prior period adjustment of \$1,584,000 (debit) to accumulated depreciation, the Commission considers that ATCO Pipelines failed to adequately address this issue raised by the UCA. In particular, this issue was raised in the current proceeding and the last proceeding. The Commission considers that ATCO Pipelines' unresponsiveness did not meet the Commission's expectations with respect to record development nor did it contribute to an efficient and better understanding of the issues, all of which was discussed by the Commission in Decision 22011-D01-2017. However, ATCO Pipelines explained the cause of confusion in its reply argument, and apologized to the UCA and the Commission for what it indicated was an unintentional oversight.

64. The Commission finds that ATCO Pipelines has complied with Direction 20, and the UCA's request to eliminate depreciation expense for this account is denied. [citations omitted]

21. In its application for review, the UCA submitted that the hearing panel's findings on its request to eliminate depreciation expense for the SCADA account represented an error of law, as described more fully in Section 5.2 below.

4 The Commission's review process

22. The Commission's authority to review its own decisions is discretionary and is found in Section 10 of the *Alberta Utilities Commission Act*. That act authorizes the Commission to make rules governing its review process and the Commission established Rule 016 under that authority. Rule 016 sets out the process for considering an application for review. A person who is directly and adversely affected by a decision may file an application for review within 60 days of the issuance of the decision, pursuant to Section 3(3) of Rule 016. ATCO Pipelines and the UCA both filed their review applications within the required period.

23. The review process has two stages. In the first stage, a review panel must decide whether there are grounds to review the original decision. This is sometimes referred to as the "preliminary question." If the review panel decides that there are grounds to review the decision,

⁹ Exhibit 22986-X0023, ATCO Pipelines Reply Argument, paragraphs 39 - 40.

it proceeds to the second stage of the review process where the Commission holds a hearing or other proceeding to decide whether to confirm, vary, or rescind the original decision.

24. In this decision, the review panel has decided the preliminary question for the applications for review filed by the UCA and ATCO Pipelines.

25. Section 4(d) of Rule 016 requires an applicant to set out in its application the grounds it is relying on in support of its application for a review. These grounds may include:

- (i) an error of fact, law or jurisdiction made by the hearing panel;
- (ii) previously unavailable facts material to the original decision, which existed prior to the issuance of the original decision but were not previously placed in evidence or identified in the original proceeding and could not have been discovered at the time by the review applicant by exercising reasonable diligence;
- (iii) changed circumstances material to the original decision, which occurred since its issuance.

26. ATCO Pipelines and the UCA each submit that the Commission erred in fact, law and/or jurisdiction in their respective review applications.

27. Section 6(3) of Rule 016 describes the circumstances in which the Commission may grant a review as follows:

6 (3) The Commission may grant an application for review of a decision, in whole or in part, where it determines, for an application for review pursuant to subsections 4(d)(i), or (iii), that the review applicant has demonstrated:

- (a) In the case of an application under subsection 4(d)(i), the existence of an error of fact, law or jurisdiction is either apparent on the face of the decision or otherwise exists on a balance of probabilities that could lead the Commission to materially vary or rescind the decision.
- (b) In the case of an application under subsections 4(d)(ii) or 4(d)(iii), respectively, the existence of:
 - (i) Previously unavailable facts material to the decision, which existed prior to the issuance of the decision in the original proceeding but were not previously placed in evidence or identified in the proceeding and could not have been discovered at the time by the review applicant by exercising reasonable diligence; or

- (ii) Changed circumstances material to the decision, which occurred since its issuance.

that could lead the Commission to materially vary or rescind the decision,

...

28. In Decision 2012-124,¹⁰ the Commission addressed the role of a review panel and the principles that guide its consideration of review applications:

- First, decisions of the Commission are intended to be final; the Commission's rules recognize that a review should only be granted in those limited circumstances described in Rule 016.
- Second, the review process is not intended to provide a second opportunity for parties with notice of the application to express concerns about the application that they chose not to raise in the original proceeding.
- Third, the review panel's task is not to retry the ... application based upon its own interpretation of the evidence nor is it to second guess the weight assigned by the hearing panel to various pieces of evidence. Findings of fact and inferences of fact made by the hearing panel are entitled to considerable deference, absent an obvious or palpable error.¹¹

29. In Decision 22166-D01-2016¹², the Commission provided additional guidance regarding the purpose of a review application:

30. The review process is not intended to provide a second opportunity for parties to reargue the issues in a proceeding, nor is it an opportunity to express concerns about a decision determining issues in a related proceeding.

30. Further, in Decision 22797-D01-2017¹³ the Commission stated:

42. [...] The review applicants repeated many of those same arguments in their respective review applications. A review application is not an opportunity to reargue or seek to bolster arguments previously made and rejected. In the absence of an error of fact, law or jurisdiction that could lead the Commission to materially vary or rescind the original decision, disagreement or dissatisfaction with the Commission's interpretation or agreeing with a dissenting view are not grounds for granting a review.

¹⁰ Decision 2012-124: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Decision on Request for Review and Variance of Decision 2011-436 Heartland Transmission Project, Proceeding 1592, Applications 1607924-1, 1607942-1, 1607994-1, 1608030-1, 1608033-1 (May 10, 2012).

¹¹ Decision 2012-124, paragraph 31.

¹² Decision 22166-D01-2016: Request for Review and Variance of Decision 21515-D01-2016, ATCO Pipelines' 2015-2016 Revenue Requirements Compliance Filing to Decision 3577-D01-2016 (April 5, 2017).

¹³ Decision 22797-D01-2017: Applications to review and vary Decision 21115-D01-2017 (December 11, 2017).

31. The Commission has endorsed these principles in many subsequent decisions and they have been applied by the review panel in its consideration of the review applications filed in this proceeding.

5 Grounds for review and hearing panel findings

5.1 ATCO Pipelines review application

32. In its application, ATCO Pipelines claimed that the hearing panel erred in directing ATCO Pipelines to remove its 2016 re-inspection costs from its 2017 opening rate base and the forecast 2017 and 2018 re-inspection capital expenditures from its 2017-2018 revenue requirements.

33. Specifically, ATCO Pipelines submitted that the Commission erred in fact, law or jurisdiction as follows:

- The hearing panel denied ATCO Pipelines an adequate opportunity to respond by way of evidence or an oral hearing to the positions being advanced by the interveners in argument, or that was in the knowledge or possession of the hearing panel, with respect to WARP costs. The UCA and CCA did not engage the issue of WARP costs in the GRA proceeding, and as a result the record in relation to the WARP costs was improperly created during the compliance filing. The hearing panel improperly used the compliance proceeding, the purpose of which is to determine compliance with directions from the GRA Decision, to instead reopen the GRA proceeding, re-engage interveners, and create a new, different record from that created in the GRA proceeding. The use of the compliance proceeding to fragment the GRA and develop an intervenor record on WARP costs caused ATCO Pipelines prejudice by denying its ability to know the case to be met and present its case accordingly.¹⁴
- By determining that the WARP costs were not prudently incurred on the basis that better processes “could have been and should have been in place”, the hearing panel unfairly imposed an expectation on AP that it establish the reasonableness of its past conduct in the absence of any evidence that AP did not act reasonably or prudently during the relevant period. No party proffered evidence on the reasonableness of a “periodic review and monitoring standard” and it appears that the hearing panel derived this standard from ATCO Pipelines’ evidence of its past practices. The hearing panel improperly ignored the fact that industry practices and procedures evolve over time, and imposing such an expectation on ATCO Pipelines amounts to applying today’s standards back in time. Further, it is against

¹⁴ Exhibit 23539-X0001, ATCO Pipelines R&V Application, paragraphs 16-29.

the public interest to create an environment that penalizes companies for not having developed such practices sooner.¹⁵

- The hearing panel arbitrarily denied 100 per cent of the WARP costs in the absence of evidence on the record, in conflict with the standard of “periodic review and monitoring” that the hearing panel determined should be expected of ATCO Pipelines in respect of weld re-inspections. There is no evidence as to what interval of review would be prudent, and anything short of an “inspect the inspector” standard would involve a time lag rather than detect deficient work immediately. A 100 per cent denial of costs assumes immediate detection of deficient work which is contrary to the “periodic review” standard the Commission deemed prudent.¹⁶
- By denying 100 per cent of the WARP costs but allowing ATCO Pipelines to recover any potential proceeding from legal action relating to the deficient inspections to the benefit of shareholders, the hearing panel fettered its ratemaking jurisdiction by delegating the determination of the prudence of the WARP costs to the courts. It is not relevant to the Commission’s mandate that ATCO Pipelines may have an alternate method of recovering those costs, and by placing reliance on the litigation in this matter, the hearing panel improperly delegated the Commission’s ratemaking jurisdiction.¹⁷

34. The UCA argued in response that ATCO Pipelines had not met the requirements for a review by demonstrating an error of law, fact or jurisdiction. The UCA’s arguments are summarized as follows:

- ATCO Pipelines ignores the Commission’s public interest mandate, which allowed it to fully test and probe ATCO Pipelines’ application. The hearing panel acted within its mandate in requiring ATCO Pipelines to file additional evidence through the compliance proceeding.
- Rather than denying it procedural fairness, the compliance proceeding provided ATCO Pipelines with an additional opportunity to support its case, and ATCO Pipelines failed to discharge its burden of proof.
- The fact that interveners file argument on an issue after the close of evidence does not give a utility an opportunity to file new evidence or seek an oral hearing.¹⁸

¹⁵ *Ibid*, paragraphs 30-35.

¹⁶ *Ibid*, paragraphs 36-37.

¹⁷ *Ibid*, paragraphs 38-40.

¹⁸ Exhibit 23539-X0013, UCA Submission regarding AP Application, paragraphs 7-33.

- ATCO Pipelines has not established that it was denied procedural fairness by a hearing panel determining that its past actions were imprudent absent contrary evidence. ATCO Pipelines failed to discharge its burden of proof, and there is no applicable “presumption of prudence” which would require contrary evidence in order for the Commission to make findings of imprudent conduct on the part of the utility. The Commission is free to accept or reject evidence presented by parties, and is entitled to use its expertise to arrive at different conclusions than the parties. In any event, the hearing panel’s denial of 100 per cent of the WARP costs was not arbitrary, but was based on at least in part the basis that litigation is an alternative avenue for it to recover these costs, meaning this alleged ground for review does not independently give rise to a reversible error.¹⁹
- The Commission may consider alternate means of recovery, such as insurance proceeds or litigation, in determining whether a utility should be able to recover losses from customers. Any finding by the courts is an assessment of damages, not ratemaking, and as such is not a delegation of ratemaking power.²⁰

35. ATCO Pipelines provided a response to the UCA’s submissions, reiterating some of its original arguments in answer to the UCA’s submissions.²¹ ATCO Pipelines submitted that it has not ignored the Commission’s public interest mandate and also does not dispute its burden of proof, but that the proceeding unfolded in a procedurally unfair manner. ATCO Pipelines submitted that the lack of participation from the interveners in the GRA proceeding on this issue was a significant signal to ATCO Pipelines, and the Commission, as to the validity of those costs. ATCO Pipelines submitted that this was a factor it considered in deciding not to request an oral hearing or supplement the record with additional evidence. ATCO Pipelines argued that the hearing panel’s actions in the compliance proceeding amounted to an invitation to the interveners to engage on the issue, which resulted in a compliance proceeding record that differed significantly from the record of the original proceeding, to the prejudice of ATCO Pipelines.

36. In Section 6.1.1 below, the review panel will consider the grounds raised by ATCO Pipelines as summarized above.

5.2 UCA review application

37. In its application, the UCA claimed that the hearing panel erred in denying its request to eliminate the depreciation expense relating to the SCADA account. The UCA requested that the review panel find that the hearing panel committed an error of law and the Commission should deny recovery of the depreciation expense relating to the SCADA account over the current test period or, in the alternative, the issue should be:

¹⁹ *Ibid*, paragraphs 34-43.

²⁰ *Ibid*, paragraphs 44-48.

²¹ Exhibit 23539-X0016, AP Reply Submission to UCA Comments.

- reconsidered as part of ATCO Pipelines' next rate application, in the interests of efficiency; or
- remitted to consideration at first instance, with a brief evidentiary phase providing the UCA with a procedurally fair process to address ATCO Pipelines' case.

38. The arguments presented in the UCA's review application with respect to the alleged error are summarized as follows:

- By allowing ATCO Pipelines to recover excess depreciation expense arising from the 2012 SCADA account credit, without requiring it to first demonstrate the prudence of the depreciation expense, the hearing panel reversed the burden of proof and failed to ensure just and reasonable rates. ATCO Pipelines manufactured the current excess depreciation expense through an accounting entry, and if customers did not get the benefit of the credit in rates in 2012, customers are now paying ATCO Pipelines a second time for the SCADA asset that was retired in 2001. In the Decision, it does not appear that the hearing panel turned its mind to the issue of whether, in light of the new information provided by ATCO Pipelines in reply argument, ATCO Pipelines had justified the increased depreciation expense in the test period. The focus in the hearing panel's reasons is on whether ATCO Pipelines provided the information directed, rather than whether the new disclosure justified the depreciation expense.
- In the alternative, by accepting ATCO Pipeline's explanation, which arose only in reply argument, the Commission denied the UCA procedural fairness. At the close of the evidentiary phase of the compliance filing, the record indicated that ATCO Pipelines had made the 2012 adjustment, but that ratepayers were not prejudiced by this adjustment since the \$1.584 million was "refunded" to them. In reply argument, ATCO Pipelines acknowledged that it had not supported this claim, and that it misspoke. The record substantially changed as a result of reply argument, which denied the UCA a reasonable opportunity to know the case before it and respond to ATCO Pipelines' new evidence. The hearing panel's reasons were clear that it relied on the statements made in ATCO Pipelines' reply argument.

39. In response, ATCO Pipelines stated that the UCA's belief that the \$1.584 million SCADA correction in 2012 has led to the deficit in the SCADA accumulated depreciation balance is incorrect.

40. ATCO Pipelines explained that while customers did not receive a "cash" refund as a result of the SCADA correction, it was more than offset by the Communications Equipment re-class adjustment. There were two adjustments in the record of transactions for the SCADA account and the Communication Equipment account, the net impact of which increased ATCO

Pipelines’ period depreciation expense rather than reducing it, which caused no harm to customers:

- a. The SCADA correction in the amount of \$1.584 million, which was transacted as follows:

DR Accumulated Depreciation	\$1.584	
CR Depreciation Expense		\$1.584

- b. The Communication Equipment “re-class” adjustment in the amount of \$1.640 million, which was transacted as follows:

DR Depreciation Expense	\$1.640	
CR Accumulated Depreciation		\$1.640 ²²

41. ATCO Pipelines stated that the impact of the above described corrections on depreciation expense, both being transacted in 2012, is as follows:

Depreciation Expense		
Debit	Credit	
	1.584	a. SCADA correction
1.640		b. Communications re-class adjustment
0.056		Net Impact on Depreciation Expense ²³

42. ATCO Pipelines confirmed that the \$1.584 million SCADA account correction to accumulated depreciation has not led to the requested increase in depreciation expense. Instead, SCADA assets with a historical cost of \$3.669 million originally installed in 2009 were retired in 2015 (a six year life compared to estimated eight year life for the property group). This retirement, in combination with the approved amortization of reserve differences mechanism, is the cause for the increase in depreciation expense.

43. In reply, the UCA stated that ATCO Pipelines provided new arguments contradicting its prior positions and evidence but did not raise a credible challenge to the UCA’s concerns regarding the SCADA account. The UCA submitted:

- ATCO Pipelines provided an incomplete explanation that only plausibly explains a fraction of the current SCADA account deficit. A \$3.669 million asset with an eight-year expected life that is retired after six years would only lead to an approximately \$0.9 million accumulated depreciation deficit, whereas the SCADA account currently has a \$2.3 million deficit, leaving \$1.4 million missing from the explanation provided.
- ATCO Pipelines inappropriately bootstrapped its 2012 SCADA account adjustment to an unrelated, irrelevant transaction to argue customers are not

²² Exhibit 23539-X0011, AP Comments on UCA R&V, paragraph 3.

²³ *Ibid.*

harmful. The Communications Equipment re-class in 2012 arose from a transfer of communications equipment to ATCO Gas, while the SCADA adjustment was an accounting maneuver by ATCO Pipelines, with no connection between the two.

- ATCO Pipelines' responses reflect yet another change to its position, which only strengthens the UCA's case that ATCO Pipelines has failed to discharge its onus. The argument that the Communications Equipment re-class affected depreciation expense is contradicted by its evidence in the compliance proceeding, in which ATCO Pipelines stated that this was a transaction between two accumulated depreciation accounts which would have no effect on depreciation expense.

44. In section 6.1.2, the review panel considers the grounds raised by the UCA.

6 Review Panel Findings

6.1 Section 4 (d) (i) grounds – Errors of fact, law or jurisdiction

6.1.1 ATCO Pipelines review application

Absence of an evidentiary foundation

45. As explained in section 5.1, ATCO Pipelines advanced a number of arguments in support of its review application. For the reasons that follow, the Commission has decided to grant the review application on the basis that the evidentiary foundation for certain of the hearing panel's material findings of fact is not apparent on the face of the Decision.

46. ATCO Pipelines submitted that no party to the original proceeding proffered evidence on the periodic review and monitoring expectation articulated by the hearing panel, and that the hearing panel's expectation that ATCO Pipelines should have been periodically reviewing and monitoring weld inspections appeared to be based on interveners' argument and the practices ATCO Pipelines developed after becoming aware of the deficient radiographic weld inspections. With respect to its actions taken prior to becoming aware of the deficient inspections, ATCO Pipelines submitted that it has provided evidence supporting the reasonableness of its actions, unrefuted by evidence from other parties. ATCO Pipelines further submitted that no evidence was on the record as to what such a periodic review and monitoring standard entails, nor any evidence as to what interval of review would be prudent.

47. The hearing panel made a number of factual findings in respect of the actions of ATCO Pipelines prior to it becoming aware of the deficient inspections. Specifically, these findings are:

- ATCO Pipelines should have established some quality control measures to ensure that the work performed by its contractors, such as radiographic inspection companies and technicians, was being properly completed in accordance with all applicable standards;
- greater oversight of the radiographic inspections/inspectors could have ensured a more reliable process and mitigated the risk of seven years of deficient inspections and welds being placed in service; and

- periodic review and monitoring of the radiographic weld inspections should be expected.²⁴

48. It is clear to the review panel that the hearing panel's findings above were material to its resulting conclusion to disallow 100 per cent of the WARP re-inspection costs and its determination that 100 per cent of the re-inspection costs should be removed from ATCO Pipelines' 2017 opening rate base and 2017-2018 revenue requirements.²⁵ In so doing, the hearing panel erred in largely relying on argument put forth by interveners based on the actions taken by ATCO Pipelines subsequent to the discovery of the deficient weld inspections, as the basis for what actions ATCO Pipelines should have taken prior to discovering the deficiencies.

49. In view of the foregoing, the review panel concludes that ATCO Pipelines has demonstrated that an error of fact, law or jurisdiction is apparent on the face of the decision. The review panel is further satisfied that recognition of this error (misplaced reliance on evidence in argument and actions taken by ATCO Pipelines subsequent to the discovery of the deficient inspections) could lead the Commission to materially vary or rescind the Decision as it relates to the WARP re-inspection costs. Accordingly, ATCO Pipelines' request for a review is allowed.

50. In view of the above, the review panel considers it unnecessary to address any of ATCO Pipelines' other grounds for review.

6.1.2 UCA application

51. The Commission considers that the hearing panel did not err in law, as alleged by the UCA, by accepting ATCO Pipelines' response to Direction 20, which provided "ATCO Pipelines' explanation that the restated opening 2012 Account 496.05 balance was a result of a prior period adjustment of \$1,584,000 (debit) to accumulated depreciation."²⁶ Nor is the Commission persuaded that accepting ATCO Pipelines' further explanation, provided in response to information requests and in reply argument in the compliance proceeding, denied the UCA the level of procedural fairness it was entitled to in the circumstances.

52. Before detailing the reasons for the above findings, it is important to observe that the Commission accepted ATCO Pipelines' evidence with respect to its accumulated depreciation balances in the GRA Decision:

393. The Commission considers that the continuity schedule provided by ATCO Pipelines provides a clear illustration of the transactions in the accumulated depreciation account; specifically, the retirement transactions in the years 2014 (\$0.269 million) and 2015 (\$3.669 million) which led to the debit balance of approximately \$0.341 million at the end of 2015. Further, with respect to the UCA's concerns, the Commission observes that it may be precisely the retirements in the amounts of \$0.269 million in 2014 and \$3.669 million in 2015 that have not been included in the analysis conducted by the UCA.

394. Much of the argument and reply argument of the UCA and ATCO Pipelines centred on aspects related to changes in the amortization of reserve differences

²⁴ Decision 22986-D01-2018, paragraph 47.

²⁵ Decision 22986-D01-2018, paragraphs 43, 47-49.

²⁶ Decision 22986-D01-2018, paragraph 63.

amount. The Commission does not find this germane to the nature of the transactions being recorded that have led to the debit accumulated depreciation balance that concerns the UCA.

The UCA did not apply to review the GRA Decision.

53. Although the UCA applied for review of the Decision, it identified no specific error in the hearing panel's conclusion that ATCO Pipelines had complied with Direction 20, which was the subject of the compliance proceeding in relation to the depreciation issue. Rather, much of the UCA's argument appeared to indirectly seek review of the GRA decision. The UCA offered extensive reasons as to why ATCO Pipelines should be denied recovery of the claimed depreciation expense and why the hearing panel erred in failing to consider and rely on the information provided by ATCO Pipelines in response to the UCA's review application in support of such a denial. The review panel therefore considers that the UCA has not demonstrated an error of law in relation to the hearing panel's decision to accept that ATCO Pipelines complied with Direction 20 of the GRA Decision.

54. The UCA has also failed to demonstrate that the hearing panel erred in failing to turn its mind to the issue of whether, in light of the new information provided by ATCO Pipelines in reply argument, ATCO Pipelines had justified the depreciation expense in the test period. This argument is not supported by a plain reading of the Decision. In particular, the hearing panel stated "...the Commission is prepared to accept ATCO Pipelines' explanation that the restated opening 2012 Account 496.05 balance was a result of a prior period adjustment of \$1,584,000 (debit) to accumulated depreciation" and that ATCO Pipelines had "explained the cause of confusion in its reply argument."²⁷

55. The hearing panel is also not satisfied that the UCA was denied procedural fairness, as alleged. In the specific circumstances of the compliance proceeding where the depreciation adjustment was a central issue, the review panel is of the view that if the UCA considered that further process was required following its review of ATCO Pipelines' information request responses and reply argument, it could have made such a request; it did not.

56. While the review panel is not convinced that the UCA has demonstrated an error on the part of the hearing panel, the review panel is nonetheless satisfied, for the reasons that follow, that a Commission-initiated review of the issue of ATCO Pipelines' accumulated depreciation balances, as it relates to the findings of Decision 22011-D01-2017 and Decision 22986-D01-2018, is warranted.

57. Section 2 of Rule 016 provides that the Commission "may review a decision, in whole or in part, on its own motion at any time."

58. ATCO Pipelines provided additional information and further variance explanations in its response to the UCA review application in this proceeding, with respect to its accounting transactions within the SCADA and Communication Equipment accounts. In its explanation, ATCO Pipelines stated that the deficit in the SCADA accumulated depreciation balance alleged

²⁷ Decision 22986-D01-201, paragraph 63

by the UCA was more than offset by the Communications Equipment re-class adjustment. This explanation appears to be new information that may be inconsistent with information provided by ATCO Pipelines in Proceeding 22986. This new or different information raises concerns with respect to whether ATCO Pipelines has properly accounted for the additional depreciation expense from 2001-2006 and the explanations provided by ATCO Pipelines in relation to the same.

59. The review panel considers that the information provided by ATCO Pipelines in its response to the UCA's review application constitutes previously unavailable material facts, which existed prior to the issuance of the decision in the original proceeding but which were not previously placed in evidence or identified in that proceeding or in the compliance proceeding. The review panel further considers that the new information disclosed in this review proceeding could lead the Commission to materially vary its findings in Decision 22011-D01-2017 or Decision 22986-D01-2018, or both, with respect to accepting that ATCO Pipelines has properly accounted for and reflected the retirement transactions in its accumulated depreciation account.

60. The review panel considers that this Commission-initiated review, including any necessary adjustments identified as a result of the review, can be considered and addressed in ATCO Pipelines' next GRA proceeding. The Commission notes that ATCO Pipelines filed its 2019-2020 GRA on July 30, 2018 and that the UCA registered as an intervener in the proceeding established to consider this application.²⁸

61. The review panel directs ATCO Pipelines to provide a complete reconciliation of the information on this issue provided in Proceeding 22011, Proceeding 22986 and this review proceeding in its 2019-2020 GRA. The Commission may determine what further process, if any, is reasonable and necessary in that proceeding to address the Commission-initiated review of ATCO Pipelines' accumulated depreciation account balances.

7 Decision

62. In answering the preliminary question on the ATCO Pipelines review application, the review panel finds that ATCO Pipelines has demonstrated an error that is apparent on the face of the Decision and could lead the Commission to materially vary or rescind the Decision. Accordingly, ATCO Pipelines has satisfied the requirements for a review of Decision 22986-D01-2017: Compliance Application to Decision 22011-D01-2017, 2017-2018 General Rate Application, and its application for a review of the findings in paragraphs 47-49 is allowed.

63. Having met the first stage of the review and variance application in respect of ATCO Pipelines' application, the Commission will issue process and scope directions for the second stage of the review process for that proceeding in due course.

64. In answering the preliminary question on the UCA's application, the review panel finds that the UCA has not demonstrated that an error is apparent on the face of the Decision, or exists

²⁸ Proceeding 23739, ATCO Pipelines 2019-2020 GRA.

on a balance of probabilities, that could lead the Commission to materially vary or rescind the Decision. However, the Commission initiates its own review of ATCO Pipelines' depreciation account balances. The Commission directs that the matter of reviewing ATCO Pipelines' depreciation account balances and any adjustment to ATCO Pipelines' depreciation expense will be considered in the proceeding established to consider ATCO Pipelines' 2019-2020 GRA.

Dated on September 27, 2018.

Alberta Utilities Commission

(original signed by)

Mark Kolesar
Chair

(original signed by)

Henry van Egteren
Commission Member

(original signed by)

Carolyn Hutniak
Commission Member