



ATCO Pipelines

Decision on Preliminary Question

Application for Review of Decision 23537-D01-2018 (Errata)
Compliance Application to Decision 22986-D01-2018

December 13, 2018

Alberta Utilities Commission

Decision 23953-D01-2018

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1 Decision

1. In this decision, the Alberta Utilities Commission considers whether to grant an application (the review application) filed by ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. (ATCO Pipelines), requesting a review and variance of Commission Decision 23537-D01-2018 (Errata)¹ issued on August 29, 2018 (the Decision).

2. The review application concerned the Commission's disallowance in the Decision of all incremental weld repair costs associated with ATCO Pipelines' weld assessment and repair program (WARP).

3. The Commission grants the review application for the reasons discussed below.

2 Introduction and Background

4. To provide context for the discussion that follows, a brief review of the background leading up to Decision 23537-D01-2018 (Errata) is set out below.

5. On May 3, 2016, ATCO Pipelines filed a self-disclosure letter with the Commission in which it outlined deficiencies concerning radiographic inspections of ATCO Pipelines' prefabricated welds. On receipt of the self-disclosure letter, the Commission requested additional information from ATCO Pipelines to gain a better understanding of the issue.

6. 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 the WARP; more specifically, the costs to re-inspect a number of prefabricated welds and repair any defective work. The additional information concerning the WARP requested earlier was filed on the record of the GRA, at the Commission's direction.

7. In Decision 22011-D01-2017² (the GRA Decision), the Commission deferred its decision on the WARP costs and directed ATCO Pipelines to file additional information in a compliance filing, as follows:

¹ Decision 23537-D01-2018 (Errata): ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., Compliance Application II to Decision 22986-D01-2018, 2017-2018 General Rate Application Compliance Application (August 29, 2018).

² Decision 22011-D01-2017: ATCO Pipelines 2017-2018 General Rate Application (August 29, 2017).

106. 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.
- Whether the forecast weld integrity inspection should be subject to deferral account treatment.

8. ATCO Pipelines requested approval of its compliance filing to the GRA Decision in an application filed on October 2, 2017.

9. In Decision 22986-D01-2018³ (the First Compliance Decision), the Commission denied 100 per cent of the WARP re-inspection costs and directed ATCO Pipelines to remove the 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 Commission further held that additional information was required before a conclusion could be reached on the reasonableness of ATCO Pipelines' repair costs. The Commission directed ATCO Pipelines to provide additional information with respect to the WARP repair costs in a further compliance filing.

10. ATCO Pipelines filed new information with respect to its WARP repair costs in Proceeding 23537, which resulted in the Decision. In the Decision, the Commission stated:

29. In Decision 22986-D01-2018, the Commission found:

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

³ Decision 22986-D01-2018: ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., Compliance Application to Decision 22011-D01-20178, 2017-2018 General Rate Application (March 13, 2018).

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.

30. Consistent with the Commission's finding on re-inspection costs, the Commission considers that ratepayers should not be responsible for any incremental repair costs arising from the improper inspections. The Commission has reviewed ATCO Pipelines' regulatory schedules included in response to AP-AUC-2018AUG08-001(c) and is satisfied that these schedules only include the forecast capital costs for repairs or rework that would have been performed in shop had the original inspections been performed properly. The Commission finds that these revised regulatory schedules result in ratepayers only bearing the prudently incurred repair costs referenced in Table 2 above that would have been completed in shop had the original inspections been properly performed and had disclosed the necessary repair(s) at that time.

...

32. Consistent with the Commission's comments in paragraph 12 of this decision with respect to the removal of actual 2016 re-inspection costs in the amount of \$1.972 million from its opening 2016 rate base at the time of ATCO Pipelines' next GRA, the Commission expects ATCO Pipelines will similarly remove actual incremental 2016 weld repair costs in the amount of \$2.883 million from its opening rate base at the time of its next GRA. [footnotes omitted]

11. In an application filed on May 7, 2018, ATCO Pipelines requested a review and variance of the Commission's disallowance of the WARP re-inspection costs in the First Compliance Decision. On September 27, 2018, the Commission issued Decision 23539-D01-2018⁴ (the WARP Re-inspection Costs R&V Decision), in which it granted the first stage of ATCO Pipelines' review application. In granting the review application, the Commission concluded:

48. ... 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. ...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.

12. In the WARP Re-inspection Costs R&V Decision, the Commission indicated that it would issue process and scope directions for the second stage of the review process in due course.

13. ATCO Pipelines, thereafter, filed its application for review of the Commission's denial of 100 per cent of the incremental WARP repair costs in the Decision.

⁴ Decision 23539-D01-2018: ATCO Pipelines and 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).

14. The review application requested a review and variance of the Decision, pursuant to Section 10 of the *Alberta Utilities Commission Act* and Rule 016: *Review of Commission Decisions* (Rule 016). ATCO Pipelines submitted that the review application should be granted on the same grounds and for the same reasons as the Commission granted a first stage review of the First Compliance Decision (in the WARP Re-inspection Costs R&V Decision). In the interests of regulatory efficiency, ATCO Pipelines requested that:

- (i) the Commission recognize, without further process, that the error found in the First Compliance Decision concerning disallowance of weld re-inspection costs, applies equally to the Decision concerning the disallowance of weld repair costs; and
- (ii) the Commission include the Decision and the weld repair costs in the second stage of the review process to be established in relation to the review granted in the WARP Re-inspection Costs R&V Decision.

3 Procedural summary

15. On October 4, 2018, the Commission issued a filing announcement for the review application. By letter dated October 11, 2018, the Commission established a process schedule that invited interested parties to submit a statement of intent to participate (SIP) in the proceeding by October 17, 2018 and to provide submissions or comments on the request by ATCO Pipelines by October 24, 2018. No SIPs were received.

16. On October 18, 2018, ATCO Pipelines filed further correspondence noting that no SIPs had been filed.⁵ ATCO Pipelines requested that the Commission proceed directly to determine the preliminary issue of whether a review should be granted and that any second stage review should be included in the second stage process to be established in relation to the review of the First Compliance Decision.

17. In this decision, the Commission panel that authored the Decision will be referred to as the “hearing panel” and the Commission panel considering the review application will be referred to as the “review panel.”

18. 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 23537, 22986, 22011 and 23539. Accordingly, references in this decision to specific parts of the records 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.

4 The Commission’s review process

19. 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

⁵ Exhibit 23953-X0005.

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 filed its review application within the required period.

20. The review process typically 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, 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.

21. In this decision, the review panel has decided the preliminary question for the review application.

22. Section 4(d) of Rule 016 requires an applicant to set out the grounds it is relying on in support of its application for a review. These grounds may include an error of fact, law or jurisdiction made by the hearing panel (subsection 4(d)(i)). ATCO Pipelines’ review application alleges such errors.

23. Section 6(3) of Rule 016 describes the circumstances in which the Commission may grant a review. These circumstances include the following:

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.

...

24. In Decision 2012-124,⁶ the Commission addressed the role of a review panel and described the principles that guide its consideration of the review applications before it:

- 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

⁶ 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 14, 2012).

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.⁷

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

5 Grounds for review

26. ATCO Pipelines submitted that the review application should be granted on the same grounds and for the same reasons as the Commission granted the first stage of ATCO Pipelines' review application in the WARP Re-inspection Costs R&V Decision. That is, the error found by the Commission in the WARP Re-inspection R&V Decision applies equally to the disallowed weld repair costs and the Decision. ATCO Pipelines adopted the grounds raised in its review application concerning the weld re-inspection costs in Proceeding 23539 "with the exception that any references to "re-inspection" should be replaced with references to "repair." It argued that the Commission's disallowance of weld repair costs associated with the improper inspections is arbitrary and counter to the Commission's stated "periodic review and monitoring" standard.

6 Review Panel Findings

27. For the reasons that follow, the review panel is satisfied that ATCO Pipelines has demonstrated an error of fact, law or jurisdiction that is apparent on the face of the Decision that could lead the Commission to materially vary or rescind the Decision.

28. It is apparent from paragraphs 29, 30 and 32 of the Decision, cited above, that the hearing panel's finding that "ratepayers should not be responsible for any incremental repair costs arising from the improper inspections" and its direction that ATCO Pipelines was to remove incremental weld repair costs from its opening rate base at the time of its next GRA, were premised on the Commission's disallowance of re-inspection costs in the First Compliance Decision. At paragraph 30 of the Decision, the hearing panel stated:

30. Consistent with the Commission's finding on re-inspection costs, the Commission considers that ratepayers should not be responsible for any incremental repair costs arising from the improper inspections.

29. However, the Commission has since granted a review of the First Compliance Decision (in the WARP Re-inspection Costs R&V Decision) on the grounds of an error of fact, law or jurisdiction apparent on the face of the decision that could lead the Commission to materially vary or rescind that decision (misplaced reliance on intervener argument as the basis for what actions ATCO Pipelines should have taken prior to discovering the deficiencies).

30. As the Decision is expressly premised upon findings that are now subject to review, the hearing panel is satisfied that the Decision should be reviewed as well and finds an error of fact,

⁷ Decision 2012-124, paragraph 31.

law or jurisdiction is apparent on the face of the Decision that could lead the Commission to materially vary or rescind the Decision.

31. The review panel agrees with ATCO Pipelines' submission that, for the purposes of regulatory efficiency, the stage 2 review process to be initiated as a result of this decision, in relation to the WARP repair costs, should be combined with the stage 2 review process contemplated in the WARP Re-inspection Costs R&V Decision concerning WARP re-inspection costs.

7 Decision

32. In answering the preliminary question on the ATCO Pipelines' review application, the review panel finds that ATCO Pipelines has demonstrated that an error of fact, law or jurisdiction exists on the face of the Decision that could lead the Commission to materially vary or rescind the Decision. Accordingly, ATCO Pipelines has satisfied the requirements for a review of Decision 23537-D01-2018 (Errata).

33. The second stage review processes for each of the Decision and the First Compliance Decision will be conjoined in the interests of regulatory efficiency. The Commission will issue process and scope directions for the combined second stage review process in due course.

Dated on December 13, 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