



AUC

Alberta Utilities Commission

AltaGas Utilities Inc.

**Decision on Preliminary Question
Request for Review and Variance of
AUC Decision 2013-072: 2012 Performance-Based
Regulation Compliance Filings**

September 26, 2013

The Alberta Utilities Commission

Decision 2013-365: AltaGas Utilities Inc.

Decision on Request for Review and

Variance of Decision 2013-072:

2012 Performance-Based Regulation Compliance Filings

Application No. 1609567

Proceeding ID No. 2586

September 26, 2013

Published by

The Alberta Utilities Commission

Fifth Avenue Place, Fourth Floor, 425 First Street S.W.

Calgary, Alberta

T2P 3L8

Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

Contents

1	Introduction.....	1
2	Background	1
3	Review and variance: the legislative framework	3
4	Discussion of the grounds for review.....	4
	4.1 Y factor treatment for internal hearing costs.....	4
	4.2 Y factor treatment for pension costs	7
	4.3 2012 Natural Gas Settlement System Code return, depreciation, and interest	9
5	Order	11

1 Introduction

1. On May 3, 2013, the Alberta Utilities Commission (AUC or Commission) received an application from AltaGas Utilities Inc. (AltaGas) for review and variance of Decision [2013-072](#), 2012 Performance Based Regulation Compliance Filings¹ (the compliance filing decision) under Section 10 of the *Alberta Utilities Commission Act* and [Rule 016: Review and Variance of Commission Decisions](#) (Rule 016).

2. AltaGas sought a review of the compliance filing decision on the basis that the Commission failed to adjudicate the application before it and failed to meet its statutory obligations to provide AltaGas with a reasonable opportunity to recovery its prudently incurred costs and to earn a fair return under the *Gas Utilities Act*, RSA 2000 c. G-5 and the *Roles, Relationships, and Responsibilities Regulation*, AR 186/2003. The grounds contained in AltaGas’s review and variance application relate to the following three issues:

- the denial of Y factor treatment for AltaGas’s internal hearing costs
- the denial of Y factor treatment for its pension costs
- the denial of the full-year return, depreciation, and interest for its Natural Gas Settlement System Code (settlement system code) project.

3. For the purposes of this decision, the members of the Commission panel who authored Decision 2013-072 will be referred to as the “hearing panel,” and the Commission member presently considering the review and variance application is referred to as the “review panel.”

4. The Commission established a process schedule on June 4, 2013,² and advised interested parties that any comments on the review and variance request were to be filed by June 19, 2013. AltaGas’s reply comments were due on July 3, 2013. The Office of the Utilities Consumer Advocate (UCA) submitted comments on June 19, 2013. AltaGas submitted its reply comments on July 3, 2013.

5. The review panel considers the close of record for this proceeding to be July 3, 2013.

2 Background

6. On September 12, 2012, the Commission issued Decision [2012-237: Rate Regulation](#)

¹ Decision 2013-072: 2012 Performance Based Regulation Compliance Filings, Application No. 1608826, Proceeding ID No. 2130, March 4, 2013.

² Exhibit 1.01.

Initiative, Distribution Performance-Based Regulation (the PBR decision).³ The PBR decision approved PBR plans for five distribution companies, including AltaGas, for a five-year term commencing January 1, 2013. PBR replaces traditional cost-of-service regulation as the annual rate-setting mechanism for utility rates. The PBR framework provides a formula mechanism for the annual adjustment of rates independent of the underlying costs incurred by the companies. In general, the companies' rates are adjusted annually by means of an indexing mechanism that tracks the rate of inflation relevant to the prices of inputs the companies use, less an offset to reflect the productivity improvements the companies can be expected to achieve during the PBR plan period. There are certain adjustments that distribution companies can apply for treatment outside the indexing mechanism.

7. The Commission established Y factor criteria as one avenue for recovery of costs outside the indexing mechanism. In the PBR decision, the Commission set out criteria for when a cost will be treated as a Y factor:

- 1) The costs must be attributable to events outside management's control.
- 2) The costs must be material. They must have a significant influence on the operation of the company otherwise the costs should be expensed or recognized as income, in the normal course of business.
- 3) The costs should not have a significant influence on the inflation factor in the PBR formulas.
- 4) The costs must be prudently incurred.
- 5) All costs must be of a recurring nature, and there must be the potential for a high level of variability in the annual financial impacts.⁴

8. If all the Y factor criteria are met, a company will be permitted to recover the costs associated with these items outside the indexing mechanism on a cost-of-service basis.

9. On March 4, 2013, the Commission issued Decision [2013-071](#)⁵ (the review and variance decision) denying a review and variance of the PBR decision at the preliminary question stage. In its decision, the Commission denied a review of both AltaGas's request for deferral account treatment for its internal hearing costs and a Y factor adjustment for the company's pension expenses for changes in actuarial valuations.

10. In Decision [2013-224](#)⁶ issued June 13, 2013 (the second review and variance decision), the Commission dismissed AltaGas's request for a review and variance of Decision 2013-071 for deferral account treatment for internal hearing costs and an adjustment for pension expenses. In its decision, the Commission found that the grounds raised by AltaGas in its second review and variance application were substantially the same as the grounds that were considered and addressed in Decision 2013-071.

11. In Decision 2013-072, the compliance filing decision, also issued on March 4, 2013, the

³ Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Application No. 1606029, Proceeding ID No. 566, September 12, 2012.

⁴ Ibid., paragraph 631.

⁵ Decision 2013-071: Rate Regulation Initiative, Distribution Performance-Based Regulation, Decision on Preliminary Question, Requests for Review and Variance of AUC Decision 2012-237, Application Nos. 1609018, 1609019, 1609024, 1609025, and 1609097, Proceeding ID No. 2240, March 4, 2013.

⁶ Decision 2013-224: AltaGas Utilities Inc., Decision on Request for Review and Variance of Decision 2013-071, Application No. 1609566, Proceeding ID No. 2585, June 13, 2013.

Commission dealt with the initial 2012 PBR compliance filings. In this decision most elements comprising the companies' 2013 PBR rates were finalized subject to a second compliance filing. The hearing panel denied Y factor treatment for the recovery of material adjustments in AltaGas's pension expenses, arising from changes in actuarial valuations.⁷ In respect to internal hearing costs, the hearing panel directed AltaGas to remove the 2013 Y factor adjustment for the company's portion of hearing costs, consistent with decisions 2012-237 and 2013-071.⁸

12. In the compliance filing decision, the hearing panel also determined that the mid-year convention applied to 2012 settlement system code project capital costs and stated:

...the Commission finds that AltaGas' going-in revenue adequately reflects the capital costs of the first phase of the NGSSC project. The Commission denies AltaGas' requested recovery of the applicable return, depreciation and tax related to one half of the NGSSC phase one capital expenditures from 2012. The Commission directs AltaGas to remove these amounts from its Y factor calculations.⁹

13. The hearing panel approved the 2012 full-year operating costs of the settlement system code project and recognized that these costs were a consequence of a Commission direction to implement the project. The Commission considered that the operating costs for the first phase of the project, in the interest of regulatory efficiency, should be addressed as a one-time adjustment to going-in revenue rather than dealing with the costs in an annual Y factor application.¹⁰ The hearing panel approved Y factor treatment for mid-year capital expenditures associated with the settlement system code project in 2013.

14. On July 19, 2013, the Commission issued Decision [2013-270](#)¹¹ for the 2012 PBR second compliance filings, which is not subject to this review and variance application.

3 Review and variance: the legislative framework

12. The Commission's authority to review its own decisions is found in Section 10 of the *Alberta Utilities Commission Act*, which reads in part as follows:

10(1) The Commission may in accordance with the rules made under subsection (2) review any decision or order made by it under this Act or any other enactment and after the review may confirm, rescind or vary the decision or order.

13. Rule 016 addresses applications for review and variance. Section 3 reads in part as follows:

3(1) Subject to these rules, the Commission may review a decision on an application for review filed, within 60 days of the issuance of the decision, by a party to the decision, in a case where the applicant alleges that the decision contains an error of fact or law or jurisdiction.

⁷ Decision 2013-072, paragraph 111.

⁸ Decision 2013-072, paragraph 118.

⁹ Decision 2013-072, paragraph 130.

¹⁰ Decision 2013-072, paragraphs 132 and 133.

¹¹ Decision 2013-270: 2012 Performance-Based Regulation Second Compliance Filings, AltaGas Utilities Inc., ATCO Electric Ltd., ATCO Gas and Pipelines Ltd., EPCOR Distribution & Transmission Inc. and FortisAlberta Inc., Application No. 1609367, Proceeding ID No. 2477, July 19, 2013.

14. Rule 016 establishes a two part process for the consideration of applications for review and variance. First, Section 11 requires the review panel to answer the preliminary question of whether the decision should be reviewed. Section 12 describes the circumstances where the Commission shall grant a review, and reads in part as follows:

- 12** The Commission shall grant an application for review,
- (a) with respect to a review of a decision, other than a review under section 4(1), if the Commission determines that;
 - (i) in the case where the applicant has alleged an error of law or jurisdiction or an error of fact, in the Commission's opinion, the applicant has raised a substantial doubt as to the correctness of the decision, or,
 - (ii) in the case where the applicant has alleged new facts, a change in circumstances or facts not previously placed in evidence, in the Commission's opinion, the applicant has raised a reasonable possibility that new facts, a change in circumstances or facts not previously placed in evidence as the evidence was not known, as the case may be, could lead the Commission to materially vary or rescind the decision,

15. If the review panel answers the preliminary question by granting a review of a decision under Section 11, Section 13 requires the Commission to proceed to the second part of the process by issuing a notice of review and commencing a new proceeding where it will consider the merits of the application in deciding whether the decision should be upheld, varied or rescinded.

16. As noted above, Rule 016 indicates that a party may apply for a review and variance of a Commission decision within 60 days on the basis that the decision contains an error of fact, an error of law or an error of jurisdiction. The review and variance application was filed within the 60 day period.

17. In this decision, the review panel must determine the preliminary question of whether a review of Decision 2013-072 should be granted based on the grounds put forward by AltaGas.

18. In reaching its determinations set out within this decision, the review panel has considered all relevant materials comprising the record of this proceeding and the record of the PBR proceeding. Accordingly, references in this decision to specific parts of the record of either proceeding are intended to assist the reader in understanding the review panel's reasoning relating to a particular matter and should not be taken as an indication that the review panel did not consider all relevant portions of the record of this proceeding with respect to that matter.

4 Discussion of the grounds for review

4.1 Y factor treatment for internal hearing costs

18. AltaGas submitted the Commission failed to adjudicate on the merits of the application before it on whether AltaGas's internal hearing costs met the specific Y factor criteria.¹² The Y factor adjustment is intended to ensure that a utility has a reasonable opportunity to recover prudently incurred costs and a fair return, if circumstances beyond the control of the utility result

¹² AltaGas application, paragraph 4.

a material change in its expenses.¹³ A cost or expense that may ordinarily be supported by the PBR indexing mechanism does not negate the possibility of an expense qualifying for Y or Z factor treatment. The Commission failed to provide reasons for its decision relevant to the application for Y factor treatment of the company's portion of hearing costs.

19. The UCA stated the PBR decision considered Y factor treatment for hearing costs and ruled that management has a reasonable level of control over its internal hearing costs. In the UCA's view, the AltaGas current review and variance application is simply asking for another review on the same grounds as those dismissed in the review and variance of the PBR decision.¹⁴ Internal hearing costs cannot meet the Y factor criteria as they are within the control of management. The UCA concluded that AltaGas failed to raise a substantial doubt as to the correctness of the compliance filing decision and the Commission made no reviewable error in denying Y factor treatment for internal hearing costs.¹⁵

20. The UCA asserted that the compliance filing decision provides a full review of the submissions of both AltaGas and the UCA on the issue of internal hearing costs. The UCA referenced the Supreme Court of Canada's decision of *Newfoundland and Labrador Nurses Union*¹⁶ on the adequacy of reasons for tribunal decisions. The UCA stated that the conclusions reached by the Commission are "largely made in relation to conclusions reached in previous decisions (i.e. the PBR Decision and the R&V Decision), which are referenced, the need to repeat each factor leading to the decision is not necessary."¹⁷

21. AltaGas replied that the recovery of its internal hearing costs was an issue in both the PBR decision and the first review and variance decision; however, the issue in those proceedings was whether internal hearing costs should continue to be treated as part of the hearing cost deferral account. There is a distinct difference between determining whether internal hearing costs should be treated as part of the hearing cost deferral account and determining whether internal hearing costs meet the criteria established by the Commission for Y factor treatment.¹⁸ The exclusion of these costs from deferral account treatment when going-in rates were established for 2012 does not negate the possibility that the settlement system code project costs still qualify for Y factor treatment in 2013, or any subsequent year of PBR. AltaGas submitted that the Commission has failed to adjudicate on this matter in the PBR compliance filing, and the review and variance should be approved.¹⁹

Commission findings

22. The review panel does not agree with AltaGas that the treatment of internal hearing costs as a Y factor in 2013 is different than the denial of internal hearing costs in the PBR decision. In Decision 2012-237, the Commission stated in paragraphs 673 and 674:

All of the companies requested Y factor treatment for hearing costs presently collected through their hearing cost deferral accounts.⁸⁴³ The Commission considers that intervenor costs approved to be paid pursuant to AUC cost decisions are a result

¹³ AltaGas application, paragraph 6.

¹⁴ Exhibit 2.02, UCA submission, paragraph 20.

¹⁵ Exhibit 2.02, UCA submission, paragraph 28.

¹⁶ *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

¹⁷ Exhibit 2.02, UCA submission, paragraph 30.

¹⁸ Exhibit 3.01, AltaGas reply submission, paragraph 5.

¹⁹ Exhibit 3.01, AltaGas reply submission, paragraph 9.

of directions from the Commission, and therefore are eligible for collection through a Y factor adjustment. The Commission considers that management has a reasonable level of control over its internal hearing costs, and therefore the company portion of hearing costs will be subject to the I-X mechanism.

The company portion of the hearing costs that will be subject to the I-X mechanism will be the average awarded company hearing costs for the years 2009, 2010 and 2011. This amount will be included in going-in rates for the purpose of determining the rates for 2013 replacing the amounts presently included in the revenue requirement for 2012 for the hearing cost deferral account. Intervener costs will be treated as a flow-through Y factor account to be reconciled in the annual PBR rate adjustment filings.

843 Exhibit 98.02, ATCO Electric application, Section 6, paragraphs 152-155, page 6-16 to 6-17; Exhibit 99.01, ATCO Gas application, Section 2.5.1.2.1, paragraph 58, page 23; Exhibit 100.02, Fortis application, Section 6.1.3, paragraphs 95-96, pages 27-28; Exhibit 103.02, EPCOR application, Section 2.3.5, Table 2.3.5-1, page 51; Exhibit 110.01, AltaGas application, Section 7.1.1, paragraph 81, page 23.

23. The review panel also rejects AltaGas's submission that the hearing panel failed to consider AltaGas's request for internal hearing costs as a Y factor. Paragraphs 673 and 674 of the PBR decision reference the companies' request for Y factor treatment of internal hearing costs that were collected through deferral accounts. The hearing panel considered the Y factor criteria and found that internal hearing costs did not meet the first criteria for Y factor treatment that the costs must be attributable to events outside management's control. The hearing panel determined that internal hearing costs were subject to the I-X mechanism instead of treating these costs as a Y factor. In the review and variance decision, the Commission upheld the PBR decision in respect to internal hearing costs.

24. In the compliance filing decision the hearing panel directed AltaGas to remove the 2013 Y factor adjustment related to the company's portion of regulatory hearing costs. The Commission's denial of the inclusion of hearing costs as a Y factor is found at paragraph 118 of Decision 2013-072:

Consistent with the findings in Decision 2012-237 and Decision 2013-071, the Commission directs AltaGas to remove the 2013 Y factor adjustment related to the company portion of regulatory hearing costs and make any corresponding 2012 going-in revenue adjustment, such that the Y factor treatment proposed by AltaGas is eliminated and the amounts are subject to I-X indexing. As set out in paragraph 674 of Decision 2012-237, the company portion of the hearing costs that will be subject to the I-X mechanism will be the average awarded company hearing costs for the years 2009, 2010 and 2011.

25. The hearing panel provided its findings on the Y factor recovery for internal hearing costs based on the evidence presented in the compliance filing proceeding. The review panel agrees with the UCA that the submissions of AltaGas and the UCA were considered in the compliance filing decision on the issue of internal hearing costs. The hearing panel explained that the basis for its decision to remove the 2013 Y factor adjustment was consistent with paragraph 673 of the PBR decision and Decision 2013-071 for internal hearing costs and confirmed that these costs were subject to I-X indexing.

26. The review panel is not persuaded that AltaGas has demonstrated a substantial doubt as to the correctness of Decision 2013-072 in respect to the denial of Y factor treatment for internal

hearing costs. AltaGas's review and variance request for Y factor treatment of its internal hearing costs is denied.

4.2 Y factor treatment for pension costs

27. AltaGas submitted that the Commission failed to assess the merits of the application before it on whether the pension adjustment met the Y factor criteria established in Decision 2012-237. The PBR application related to the implementation of a deferral account mechanism to address changes in pension expenses over the PBR period. AltaGas asserted that in the PBR compliance filing decision, the Commission failed to assess whether the pension expense for the 2013 period qualified for Y factor treatment under the criteria²⁰ and, further failed to provide reasons.

28. The UCA indicated that AltaGas's submission was the same as its position in the review and variance application of the PBR decision. The PBR decision expressly denied a deferral account for defined benefit pension costs. The UCA submitted that the review and variance decision resulted in a dismissal of AltaGas's allegations that the "change is material, driven by third parties, are prudently incurred, have the potential to recur and contain a high degree of variability."²¹ Decision 2013-224 reiterated the value of certainty in decision making and dismissed AltaGas's second review and variance application.

29. The UCA, in referencing the PBR decision, stated that the Commission agreed with the UCA that current service pension costs are no different from other compensation costs. Pension costs are not outside of the control of management. The use of the accrual method instead of the cash method should reduce the variability in pension costs. If variability of costs for the accrual method is greater than the cash method, the solution would be for AltaGas to convert from the accrual method to the cash method.²² The UCA said that the hearing panel made no reviewable error in denying Y factor treatment for pension expenses in the compliance filing decision.²³

30. The compliance filing decision provides a full review of the submissions of both AltaGas and the UCA on the issue of Y factor recovery for pension expenses. The UCA referenced the Supreme Court of Canada's decision of *Newfoundland and Labrador Nurses Union*²⁴ on the adequacy of reasons for tribunal decisions. The UCA stated that the conclusions reached by the Commission are "largely made in relation to conclusions reached in previous decisions (i.e. the PBR Decision and the R&V Decision), which are referenced, the need to repeat each factor leading to the decision is not necessary."²⁵

31. AltaGas replied that an adjustment for pension costs was an issue in both the PBR decision and the first review and variance decision but the issue in those proceedings was whether the pension adjustment should continue to be treated as a stand-alone deferral account. There is a distinct difference between determining whether the pension adjustment should be treated as part of a stand-alone deferral account and determining whether the pension adjustment meets the criteria established by the Commission for Y factor treatment.²⁶ AltaGas maintained

²⁰ AltaGas application, paragraph 4.

²¹ Exhibit 2.02, UCA submission, paragraph 17.

²² Exhibit 2.02, UCA submission, paragraphs 21 and 22.

²³ Exhibit 2.02, UCA submission, paragraph 23.

²⁴ *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62.

²⁵ Exhibit 2.02, UCA submission, paragraph 30.

²⁶ Exhibit 3.01, AltaGas reply submission, paragraph 5

that the exclusion of these costs from deferral account treatment when going-in rates were established for 2012 does not negate the possibility that these costs still qualify for Y factor treatment in 2013, or any subsequent year of PBR and that the hearing panel failed to adjudicate on this matter in the PBR compliance filing.²⁷

Commission findings

32. In the PBR decision the Commission denied the creation of a pension deferral account for AltaGas based on the rationale that current service pension costs were no different than other compensation costs.²⁸ The Commission stated, “In the event of a material change to a company’s special payment obligations (either positively or negatively), a Z factor application would be available to address this change.”²⁹

33. The review panel does not agree with the submission that the hearing panel has failed to consider AltaGas’s request for Y factor treatment for pension costs. The Commission denied the creation of a deferral account under section 7.4 “Y factor”, specifically section 7.4.2.4.5, of the PBR decision. The review and variance decision denied AltaGas’s request to allow for recovery of adjustments to pension funding through a Y factor. In paragraphs 111 and 112 of the compliance filing decision, the hearing panel confirmed the denial of the Y factor request for material adjustments in pension expenses:

The Commission is not persuaded by AltaGas’ argument and considers that there is no material distinction between the pension issue as put forward by AltaGas in its PBR application for the purposes of inclusion in the I-X mechanism (as ordered in Decision 2012-237) and the present Y factor request. In Decision 2013-071, dealing with the companies’ PBR R&V applications, the Commission denied AltaGas’ request to allow for Y factor treatment for the recovery of material adjustments in its pension expense, arising from changes in actuarial valuations.

Therefore, AltaGas is directed to remove the 2013 Y factor impact related to the defined benefits pension plan costs and make any corresponding 2012 going-in revenue adjustment, such that the Y factor treatment proposed by AltaGas is eliminated. Any defined benefits pension funding amounts included in the 2012 revenue will be subject to I-X indexing.³⁰ (footnotes removed)

34. The hearing panel provided its findings on the Y factor recovery for pension costs based on the evidence presented in the compliance filing proceeding. The review panel agrees with the UCA that the submissions of AltaGas and the UCA were considered in the compliance filing decision in respect to the Y factor recovery of pension costs. AltaGas’s and the UCA’s arguments summarized in paragraphs 107 to 110 of the compliance filing decision were considered by the hearing panel. In paragraphs 111 and 112 the hearing panel explained that the basis for the denial of Y factor treatment was consistent with the inclusion of pension costs in the I-X mechanism in the PBR decision, and the denial of Y factor treatment for pension costs arising from changes in actuarial valuations in the review and variance decision.

²⁷ Exhibit 3.01, AltaGas reply submission, paragraph 9.

²⁸ Decision 2012-237, paragraph 694.

²⁹ Decision 2012-237, paragraph 696.

³⁰ Decision 2013-072, paragraphs 111 and 112.

35. The review panel is not persuaded that AltaGas has demonstrated a substantial doubt as to the correctness of Decision 2013-072 in respect to the denial of Y factor treatment for pension costs. AltaGas's review and variance request for Y factor treatment of pension costs is denied.

4.3 2012 Natural Gas Settlement System Code return, depreciation, and interest

36. AltaGas stated that the compliance filing decision results in different regulatory treatment for the same asset in different time periods and "that there is no statutory, regulatory or accounting precedent justifying or warranting the exclusion of all or any portion of a prior year's return, depreciation and interest."³¹ AltaGas submitted that in denying the recovery of the full year return, depreciation and interest applicable to the 2012 investment for the settlement system code project the AUC had denied the company a reasonable opportunity to recover all of its prudent incurred costs and earn a fair return on its investment under the *Gas Utilities Act*, RSA 2000 c. G-5, and the *Roles, Relationships and Responsibilities Regulation*, AR 186/2003.

37. AltaGas indicated that the compliance filing decision results in the investment related to the settlement system code project being given different regulatory treatment in different time periods. The Commission notes that the treatment of capital assets is also issue that will be considered in the capital tracker proceeding, as detailed in the Commission's issues list.

38. The UCA commented that the Commission properly upheld the use of the mid-year convention for rate base calculations at paragraph 102 of the PBR decision³² and paragraph 94 of the review and variance of the PBR decision.³³ The UCA said that the Commission did not err in applying the I-X mechanism to the mid-year rate base and "the mid-year convention allows for capital related costs to be accounted for uniformly over the entire year."³⁴ The UCA submitted that the settlement system code project costs are given the same treatment as other capital costs year-over-year through the consistent application of the mid-year convention.

39. AltaGas commented that the settlement system code project was required under AUC [Rule 021: Settlement System Code Rules](#) and [Rule 028: Natural Gas Settlement System Code](#) (Rule 028). In response to the UCA's submission that the application of the mid-year convention was fully litigated in the PBR decision and the review and variance decision, AltaGas stated it is not disputing the application of the mid-year convention, but whether it should be applied and maintained for every year of new investment when the project is essentially part of a single project or program approved for Y factor treatment.

40. AltaGas argued that the Commission erred in disallowing the incremental return, depreciation, and interest applicable to the 2012 investment in the system settlement code project because the capital costs applicable to the system settlement code project must be treated in the same manner as capital tracker costs. AltaGas stated that:

...ordinary regulatory practice would utilize the mid-year investment for the first year of investment, adding the incremental amount into the rate base calculation in the subsequent year. This is the approach proposed by AUI in relation to the NGSSC and is

³¹ AltaGas application, paragraph 10.

³² Decision 2012-237, page 22.

³³ Decision 2013-071, page 21.

³⁴ Exhibit 2.02, UCA submissions, paragraph 37.

also the same one proposed by each of the utilities in the current Capital Tracker proceeding [ID 2131].³⁵

41. AltaGas stated that the magnitude of the 2012 capital addition with respect to the system settlement code project is significant for the second half of 2012, and the costs for both 2012 and 2013 should attract Y factor treatment.

Commission findings

42. For regulatory purposes, the Commission determined in Decision 2012-311 that there were two distinct phases of the settlement system code project.³⁶ Phase one of the settlement system code project was required for compliance with Rule 028, and to provide AltaGas and retailers with settlement information. The Commission accepted AltaGas's projected in-service date of December 14, 2012 for the completion of phase one and approved the inclusion of phase one settlement system code project costs in 2012 rate base.³⁷

43. The purpose of phase two of the settlement system code project was to provide a web portal for automated retailer account balancing and to monitor functionality. Phase two of the settlement system code project was not forecast to be completed until 2013. Since phase two settlement system code costs were also a result of Commission directions pursuant to Rule 028, the Commission advised that AltaGas may choose to apply in a future annual PBR rate adjustment filing for recovery of phase two settlement system code project costs as a Y factor adjustment to its PBR plan.³⁸

44. In Decision 2013-072, the hearing panel approved Y factor treatment for phase two capital costs.³⁹

45. In Decision 2013-072 the hearing panel also determined that the capital costs of the first phase of the settlement system code project were reflected in the 2012 PBR going-in revenue using the mid-year convention. The hearing panel concluded that AltaGas's going-in revenue adequately reflected the capital costs, and denied the full-year recovery of the phase one settlement system code capital expenditures in 2012.⁴⁰

46. The review panel notes that the issue of whether capital costs incurred in 2012 for capital projects that did not continue into 2013, which would have otherwise satisfied the capital tracker criteria, qualify for treatment outside the I-X mechanism has been raised in the 2013 PBR capital trackers proceeding, Proceeding ID No. 2131. In a May 15, 2013 letter, the AUC disseminated the final issues list in that proceeding. Issue 4 of the issues list states:

4. Capital trackers arising from 2012.

Should the Commission consider for possible capital tracker treatment in 2013, capital costs incurred in 2012 in respect of unique company projects that did not

³⁵ Exhibit 3.01, AltaGas reply submissions, paragraph 13.

³⁶ Decision 2012-311 (Errata): AltaGas Utilities Inc. 2010-2012 General Rate Application – Phase I Compliance Filing Pursuant to Decision 2012-091, Application No. 1608512, Proceeding ID No. 1921, December 5, 2012.

³⁷ Decision 2012-311, paragraphs 166 to 171.

³⁸ Decision 2012-311, paragraph 172.

³⁹ Decision 2013-072, paragraphs 133 and 136.

⁴⁰ Decision 2013-072, paragraphs 129 and 130.

continue into 2013 and which would have satisfied the capital tracker criteria (e.g., EPCOR's Poundmaker project)?⁴¹ (footnotes removed)

47. The May 15, 2013 issues list in Proceeding ID No. 2131 was developed after Decision 2013-072 was issued. AltaGas argued in its application for review and variance that the treatment of the settlement system code costs for 2012 would be subject the same approach as the capital trackers costs proposed by the companies in the capital tracker proceeding.

48. As referenced above, the settlement system code project costs were incurred as a result of the Commission's directions pursuant to Rule 028, and phase one of the project was completed in 2012. Given that the issue of whether capital costs incurred in 2012 for projects that did not continue into 2013 which would have otherwise satisfied the capital tracker criteria, is concurrently being decided in the capital trackers proceeding as set out in Issue 4, the review panel agrees with AltaGas that the Commission should review whether a similar approach should be considered for the full-year recovery of return, depreciation, and interest for capital costs associated with phase one of settlement system code project. The consideration of Issue 4 in the capital trackers proceeding is a change in circumstances that was not known at the time the record was closed for the PBR compliance filing proceeding resulting in Decision 2013-072. The review panel finds that a reasonable possibility has been raised that Issue 4 constitutes a new circumstance that was not previously placed in evidence on the compliance filing proceeding in accordance with Section 12(a)(ii) of Rule 016.

49. For the above reasons, the review panel grants AltaGas's application for a review and variance of Decision 2013-072 on the issue of recovery of the 2012 full-year return, depreciation and interest for phase one of the settlement system code project. The review panel directs AltaGas to include in its discussion of the merits of its Phase II review and variance application:

- the resulting impact of the Commission's decision on Issue 4 in the capital trackers proceeding on AltaGas's Phase II review and variance application; and
- the proposed recovery of the applied-for full year return, depreciation and interest for the first phase of the settlement system code project, if the Phase II review and variance is granted.

50. The Commission will issue a notice for the Phase II review and variance in due course after PBR 2013 capital trackers decision in Proceeding ID No. 2131 is released.

5 Order

51. It is hereby ordered that:

- (1) AltaGas's application for a review and variance of Decision 2013-072 on the issues of Y factor treatment for its internal hearing costs is denied.
- (2) AltaGas's application for a review and variance of Decision 2013-072 on the issues of Y factor treatment for its pension costs is denied.

⁴¹ Proceeding ID No. 2131, Exhibit 147.01, AUC letter – capital tracker proceeding final issues list and procedural schedule, May 15, 2013.

(3) AltaGas's application for a review and variance of Decision 2013-072 on the recovery of the 2012 full-year return, depreciation and interest for its phase one of the Natural Gas Settlement System Code project is granted.

Dated on September 26, 2013.

The Alberta Utilities Commission

(original signed by)

Tudor Beattie, QC
Commission Member