AUC
Alberta Utilities Commission

AUC-Initiated Review Under the Reopener Provision of the 2018-2022 Performance-Based Regulation Plans for ATCO Electric and ATCO Gas

May 22, 2024

Alberta Utilities Commission
Decision 28300-D01-2024
AUC-Initiated Review Under the Reopener Provision of the 2018-2022 Performance-Based Regulation Plans for ATCO Electric and ATCO Gas
Proceeding 28300

May 22, 2024

Published by the:
Alberta Utilities Commission
Eau Claire Tower
1400, 600 Third Avenue S.W.
Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282 in Alberta)
1-833-511-4AUC (1-833-511-4282 outside Alberta)
Email: info@auc.ab.ca
Website: www.auc.ab.ca

Contents

List of tables

AUC-Initiated Review Under the Reopener Provision of the 2018-2022 Performance-Based Regulation Plans for ATCO Electric and ATCO Gas

Decision 28300-D01-2024
Proceeding 28300

1 Decision summary

1. In this decision, the Alberta Utilities Commission determines that it will reopen the 2018-2022 performance-based regulation (PBR) plans (PBR2) of ATCO Electric Ltd. (distribution) and ATCO Gas and Pipelines Ltd. (distribution), collectively referred to as the ATCO Utilities. Specifically, the Commission finds that the PBR2 plans of ATCO Electric and ATCO Gas did not operate as intended in each of 2021 and 2022. The result is rates that were not just and reasonable in those years because customers were required to pay rates (including the rates of return achieved by the ATCO Utilities that exceeded the approved return and the threshold for the reopener) without receiving the benefit of more efficient utility service. In other words, the operation of the plans was inconsistent with the incentives inherent in PBR, and electric distribution customers of ATCO Electric and natural gas distribution customers of ATCO Gas paid more than what was reasonably required for the provision of safe and reliable utility service. The Commission finds that this constitutes a problem with the operation of each of ATCO Electric's and ATCO Gas's PBR2 plans.

2. Accordingly, the Commission will proceed to the second phase, to determine the appropriate remedy to address the problem identified in this first phase reopener decision.

2 Introduction and procedural summary

3. ATCO Electric and ATCO Gas, together with the other electric and natural gas distribution utilities under the Commission's jurisdiction, are regulated under PBR. In Decision 2012-237,[1] the Commission implemented a PBR framework for the 2013-2017 term (PBR1). In Decision 20414-D01-2016 (Errata),[2] the Commission established PBR2 plans for each of the distribution utilities for the 2018-2022 term. Most recently, the Commission established PBR plans for the 2024-2028 term (PBR3) in Decision 27388-D01-2023.[3] For all of the PBR2 plans, an achieved return on equity[4] (ROE) that is 500 basis points above or below the approved ROE[5]

[1] Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Proceeding 566, Application 1606029-1, September 12, 2012.
[2] Decision 20414-D01-2016 (Errata): 2018-2022 Performance-Based Regulation Plans for Alberta Electric and Gas Distribution Utilities, Proceeding 20414, December 16, 2016, errata issued February 6, 2017.
[3] Decision 27388-D01-2023: 2024-2028 Performance-Based Regulation Plan for Alberta Electric and Gas Distribution Utilities, Proceeding 27388, October 4, 2023.
[4] The ROE reported in a utility's annual Rule 005: *Annual Reporting Requirements of Financial and Operational Results* filing or a subsequent ROE restatement filed as part of the annual PBR rate adjustment filing: Decision 20414-D01-2016 (Errata), paragraph 277.
[5] As determined by the Commission in a generic cost of capital proceeding: see Decision 20414-D01-2016 (Errata), paragraph 280.

in a single year, or 300 basis points above or below the approved ROE for two consecutive years, is sufficient to warrant consideration of a reopening and review of a PBR plan.[6]

4. On June 23, 2023, the Office of the Utilities Consumer Advocate (UCA) filed a letter[7] indicating that the 2021 and 2022 annual filings of both ATCO Electric and ATCO Gas showed that each utility's actual ROE exceeded the approved reopener thresholds for their PBR2 plans in those years. Specifically, as set out in the table below, both ATCO Electric and ATCO Gas exceeded the +/-300 basis point reopener threshold for 2021 and 2022, and the +/-500 basis point reopener threshold for 2022.

Table 1. ATCO Electric and ATCO Gas 2021 and 2022 ROE results

	2021	2022
Approved ROE	8.50%	
ATCO Electric		
Actual ROE	12.85%	14.52%
Difference (basis points)	435	602
ATCO Gas		
Actual ROE	11.81%	14.39%
Difference (basis points)	331	589

5. On June 30, 2023, the Commission issued a notice of application[8] initiating a review under the reopener provision of the PBR2 plans for ATCO Electric and ATCO Gas in relation to their 2021 and 2022 financial results.

6. The Commission pre-registered each of the ATCO Utilities as participants, filed the UCA's correspondence on the record of this proceeding, and invited other interested parties to submit a statement of intent to participate (SIP) by July 14, 2023.[9]

7. The Commission received SIPs from the UCA, EPCOR Distribution & Transmission Inc., the Consumers' Coalition of Alberta (CCA), the Industrial Power Consumers Association of Alberta (IPCAA), Apex Utilities Inc. and The City of Calgary.[10] Calgary also filed supplemental submissions to its SIP requesting that the Commission place the onus and burden on the ATCO Utilities to demonstrate, with evidence, why their respective PBR2 plans should not be reopened and reviewed.[11] On July 17, 2023, FortisAlberta Inc. wrote to the Commission requesting permission to file a late SIP and to be registered to intervene in this proceeding.

8. On July 24, 2023, the Commission issued a ruling denying Fortis, EPCOR and Apex permission to participate in this proceeding, and determining that no party will bear the onus to demonstrate that there is a problem with the ATCO Utilities' PBR2 plans that cannot be resolved without reopening and reviewing the plans.[12]

6 Decision 20414-D01-2016 (Errata), paragraphs 262 and 280.
7 Exhibit 28300-X0006, UCA Correspondence Re. PBR Reopeners (June 23 2023) (B5293366x7AF53) (002), PDF pages 1-2.
8 Exhibit 28300-X0005, Notice of application - Reopener review of PBR2 plans for ATCO.
9 Exhibit 28300-X0005, Notice of application - Reopener review of PBR2 plans for ATCO.
10 Exhibits 28300-X0007 to 28300-X0012.
11 Exhibit 28300-X0013, Calgary Letter re Supplemental Submissions to SIP.
12 Exhibit 28300-X0014, AUC letter - Ruling on late SIP from Fortis, participation of Apex and EPCOR and Calgary submission.

9. On July 31, 2023, the Commission issued a process letter establishing a two-phase process.[13] In this first phase, the Commission considers whether "there is sufficient evidence that there is a problem that cannot be resolved without re-opening and reviewing the plan."[14] The Commission indicated that if it determined that reopening of ATCO Electric's or ATCO Gas's PBR2 plan is warranted, it would direct any necessary further process and set out the scope of the second phase. For reasons of regulatory efficiency, the Commission determined that it would also assess the ATCO Utilities' 2022 actual capital additions for prudence and finalize their 2023 opening rate bases in this proceeding.[15]

10. In the same letter, the Commission directed each of the ATCO Utilities to file an initial submission explaining the reasons for the achieved ROEs in each of 2021 and 2022 exceeding the approved ROE. The Commission specified that the initial submission should include, at a minimum, the following information:

- Excel versions of the ATCO Utilities' Rule 005 filings for 2021 and 2022.
- An analysis of items that contributed to the achieved ROEs exceeding the approved ROE in each of 2021 and 2022, for capital and operating and maintenance costs (e.g., productivity improvements implemented by the utility, externally driven factors affecting costs), with reference to the Rule 005 data. In addition, the analysis must identify any attributes of the PBR features that affect revenues that may have contributed to the achieved ROEs exceeding the allowed ROE in each of 2021 and 2022 (e.g., going-in rates, I-X adjustments, customer growth, Y factors, Z factors, K factors).
- Each event or group of events, described in detail, that the ATCO Utilities considered to have contributed to their achievement of ROEs that exceeded the reopener thresholds, and the financial effects associated with each such event or group of events on the achieved ROE.
- ROE normalization adjustments to account for any outstanding true-up amounts and unusual events that may have affected ATCO Utilities' earnings.

11. The Commission also directed the ATCO Utilities to provide the following information for the 2022 prudence review:

- 2022 actual costs broken up into the groupings used in the ATCO Utilities' PBR3 rebasing applications.
- Updated historical data by including the 2021 and 2022 actuals into the historical data filed in the PBR3 rebasing proceedings and identify and explain any trends.
- An explanation of the differences between the 2022 forecasts submitted in each of the ATCO Utilities' PBR3 rebasing proceedings and their 2022 actuals. This explanation

13 Exhibit 28300-X0017, AUC letter - Directions on procedure, paragraph 6.
14 Decision 2012-237, paragraph 758.
15 Exhibit 28300-X0017, AUC letter - Directions on procedure, paragraph 7. The Commission also noted that while it will examine the 2021 actual costs as part of the historical trends analysis to inform the 2021-2022 reopener review and 2022 prudence review, it will not reassess the prudence of the 2021 actual costs in this proceeding, paragraph 8.

must compare the differences at the rebasing grouping level. As part of the explanation, please provide the following:

- If the 2022 actuals are less than the 2022 forecast, a comprehensive explanation of whether this was due to costs deferred to later years, to project savings, or to another cause.
- Quantification of the differences and explanations for the reasons and main drivers of the variances. [footnotes removed][16]

12. The Commission established a process[17] for this proceeding that included submissions from the ATCO Utilities and interveners, information requests (IRs) to and responses from the ATCO Utilities, IRs to and responses from the interveners, a rebuttal submission from the ATCO Utilities, an oral hearing, and oral argument and reply.

13. The main process steps, as amended throughout the course of the proceeding, are set out below:

Process step	**Due date**
Submission from the ATCO Utilities	September 22, 2023
IRs to the ATCO Utilities	October 16, 2023
IR responses from the ATCO Utilities	October 30, 2023
Deadline to file any motions arising from the ATCO Utilities' IR responses	November 2, 2023
Submissions from the interveners	November 16, 2023
IRs to the interveners	December 4, 2023
IR responses from the interveners	December 18, 2023
Rebuttal submission from the ATCO Utilities	January 10, 2024
Oral hearing	January 31 – February 2, 2024
Oral argument and reply	February 21 – February 22, 2024

Source: Exhibits 28300-X0019 and 28300-X0213.

14. ATCO Electric and ATCO Gas were represented by the same counsel and provided combined evidence and argument in this proceeding. They also sat a combined witness panel, and, in certain cases, an ATCO Electric or ATCO Gas witness answered questions on behalf of both utilities.[18] As in their evidence and argument, in certain contexts it is appropriate in this decision to refer to the ATCO Utilities collectively. However, they are independent entities with PBR2 plans that recognize their unique circumstances, and the Commission considered whether a reopener was warranted separately for each of them.

15. The Commission considers the record for this proceeding closed on February 22, 2024, at the conclusion of oral argument and reply argument.

[16] Exhibit 28300-X0017, AUC letter – Directions on procedure, paragraph 14.
[17] Exhibit 28300-X0017, AUC letter – Directions on procedure, paragraph 12.
[18] For example, a witness for one utility would answer a question posed to both ATCO Utilities and witnesses for the other ATCO utility would respond only if they had something to add to that answer.

3 The Commission's approach to determining whether a reopener is warranted

16. Every generation of PBR for Alberta utilities has included a reopener provision as a safeguard against unexpected results.[19] The reopener provision in the PBR2 plans was largely unchanged from the provision in the PBR1 plans.[20] Specifically, among other triggers,[21] the Commission stated that an achieved ROE that is 500 basis points above or below the approved ROE in a single year, or 300 basis points above or below the approved ROE for two consecutive years, is sufficient to warrant consideration of a reopening and review of a PBR plan.[22]

17. In Decision 2012-237, the Commission described the reopener provision as follows:

> 727. A re-opener is commonly included in a PBR plan in order to address specific problems with the design or operation of a PBR plan that may arise or come to light as the term of the PBR plan unfolds, and which may have a material impact on either the company or its customers which cannot be addressed through other features of the plan.…
>
> …
>
> 757. The Commission does not consider that a re-opening of the PBR plans should be automatic….
>
> 758. … the Commission finds that any party, including the Commission on its own motion, should be permitted to bring an application to re-open and review a PBR plan if there is sufficient evidence that there is a problem that cannot be resolved without re-opening and reviewing the plan. The Commission will consider applications to re-open and review a PBR plan and make a determination on the merits of the application as to whether a re-opening of the plan is warranted. In order to ensure fairness to all parties, parties are directed to notify the Commission of all events that they consider signal the need for a re-opener as soon as possible after they have been identified….

18. A full understanding of the purpose of a reopener provision and the relevant considerations in determining whether a reopening is warranted can only be achieved by examining its role in the context of PBR more generally.

3.1 PBR framework

19. The Commission has a statutory mandate to set just and reasonable rates for utilities under its jurisdiction,[23] and in doing so it must balance the interests of consumers with the interests of utilities.[24] Historically, the Commission has discharged its rate-setting responsibilities using two forms of regulation: traditional cost-of-service (COS) regulation and, more recently,

---

19 Decision 2009-035: ENMAX Power Corporation, 2007-2016 Formula Based Ratemaking, Proceeding 12, Application 1550487, March 25, 2009, paragraphs 256-257; Decision 2012-237, paragraph 727; Decision 20414-D01-2016 (Errata), paragraph 729; Decision 27388-D01-2023, paragraphs 376-377. Formula-based ratemaking is a form of PBR.

20 In Decision 20414-D01-2016 (Errata), the Commission addressed the calculation of the ROE for reopener purposes. All other reopener considerations remained unchanged and were outside of the scope of the decision: see paragraphs 3, 279.

21 Decision 2012-237, as outlined in Section 8, other triggers are material misrepresentation, substantial change in circumstances, default supply obligations, and material change in a service area or the number of customers.

22 Decision 20414-D01-2016 (Errata), paragraphs 262 and 280.

23 *Electric Utilities Act*, Section 121(2)(a); *Gas Utilities Act*, sections 36(a) and 45(1).

24 *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2015 SCC 45, paragraph 7.

PBR for distribution utilities. In prior decisions setting out PBR plans, the Commission discussed at length the workings and incentive properties of PBR and COS regimes.[25]

20. In short, under COS regulation, the Commission reviews a utility's forecast costs and approves rates that provide the utility with a reasonable opportunity to recover those costs that it has determined to be reasonable. This includes approval of a fair rate of return that the Commission establishes through its cost-of-capital proceedings. While the utilities may earn above or below the approved rate of return during the period for which forecasts are approved, any cost reductions achieved are passed on to customers in subsequent rate proceedings, which generally happen every two years. Because of this, it is generally known that under COS regulation there is little incentive for utilities to innovate and engage in long-term cost-cutting behaviours.

21. The *Electric Utilities Act* and the *Gas Utilities Act* provide the legislative basis for setting just and reasonable rates through PBR. For instance, Section 120 of the *Electric Utilities Act* specifies that "[a] tariff may provide … for incentives for efficiencies that result in cost savings or other benefits that can be shared in an equitable manner between the owner of the electric utility and customers."[26] Section 45(1) of the *Gas Utilities Act* empowers the Commission to "fix or approve just and reasonable rates … that are intended to result in cost savings or other benefits to be allocated between the owner of the gas utility and its customers, or that are otherwise in the public interest."

22. The Commission discussed these and other related provisions of the governing legislation and their relationship with PBR in Decision 2012-237:

> 786. … the Commission finds that Section 45(1)(a) of the *Gas Utilities Act* and Section 120(2)(d) of the *Electric Utilities Act* allow for the approval of rates and tariffs that result in cost savings and other benefits to be allocated between utilities and their customers. Further, Section 5(h) of the *Electric Utilities Act* states that one of the purposes of the Act is "to provide for a framework so that the Alberta electric industry can, where necessary, be effectively regulated in a manner that minimizes the cost of regulation and provides incentives for efficiency." Section [120](2)(d) of the *Electric Utilities Act* specifically refers to incentives for efficiencies and allows the Commission to include incentives for efficiencies that result in cost savings or other benefits, which is consistent with PBR. In addition, Section 121(3) of the *Electric Utilities Act* provides that "(a) tariff that provides incentives for efficiency is not unjust or unreasonable simply because it provides those incentives."[27]

23. PBR plans are intended to create incentives for regulated utilities to seek out ways to continue to deliver safe and reliable utility service at a lower cost by adopting more efficient business practices. If utilities are successful, they retain the increased profits generated by those cost reductions over a longer period than they would under COS regulation. In Alberta, the Commission has generally established five-year PBR terms.[28] At the same time, the cost savings

[25] For example, see Decision 27388-D01-2023, Section 2.1.
[26] Section 120(2)(d).
[27] Decision 2012-237, PDF page 179.
[28] Decision 2012-237, paragraphs 17 and 22; Decision 27388-D01-2023, paragraph 14.

or other benefits must be allocated between the utilities and their customers. As previously explained by the Commission:

> 71. … The PBR plans are designed to provide the companies with incentives to pursue productivity improvements and to lower costs. These incentives may result in higher returns for a company, which the company is allowed to keep for a certain period of time. While the company is pursuing higher returns induced by productivity improvements and lower costs, the customers benefit from rate increases being limited by the PBR formula. Ultimately, customers will share in the benefits received from productivity improvements and lower costs achieved by the company during rebasing. In addition, in accordance with the provisions of the PBR plans approved in Decision 2012-237, if a company's return exceeds the specified threshold amount, the plan may be reopened.[29]

24. In this way, PBR may be seen as a bargain between the utilities and customers. If a utility is able to improve its efficiency and lower costs while maintaining safe and reliable service, it is entitled to retain the increased profits that result from those achieved efficiencies over the course of the PBR term. For the customers, some portion of the rates that they pay (including any returns in excess of the approved return) may be retained as profit by the utility during the PBR term if the utility is able to achieve greater efficiencies in its business. In the long term, as the utility becomes increasingly efficient at providing safe and reliable service at the same or better levels, the customers will receive the benefit of lower rates under PBR than would be expected under COS regulation.[30] Importantly, the PBR construct is premised on the achievement by the utility of efficiencies in a similar way that a competitive business would be incented to lower its production costs so that it can offer the same or a similar or better product or service at a lower overall cost in order to achieve higher profits.

25. Unlike under COS regulation, during the operation of a PBR plan the Commission does not exercise extensive regulatory oversight with respect to a utility's operations, deployment of capital and costs to provide service. Instead, PBR provides a proxy for the workings of a competitive market and focuses on prices (i.e., utility rates) and quality of service, while reducing the number of regulatory filings to permit the utilities to focus their efforts on managing, and ideally driving down, their costs over a PBR term.[31] However, as discussed in the next section, the Commission maintains the ability to conduct a detailed review of a utility's costs and revenues, including when a reopener provision is triggered.[32]

26. It is important to keep in mind the legislated framework within which PBR plans sit. Despite measures taken by the Commission to reduce regulatory burden over time and its intention to exercise limited oversight during the regular operation of a PBR plan, the Commission is still required under PBR, as it is in all of its rate-setting exercises, to ensure that

---

29 Decision 26356-D01-2021: Evaluation of Performance-Based Regulation in Alberta, Proceeding 26356, June 30, 2021, PDF page 22, paragraph 71, quoting Decision 20414-D01-2016 (Errata), Appendix 4, PDF pages 106-107, paragraph 13.

30 This is because PBR provides different incentives than those associated with COS regulation. For an in-depth discussion of the different incentive properties of PBR and COS regimes, see Decision 2012-237, PDF pages 9-14, sections 1.1 and 1.2, and Decision 27388-D01-2023, PDF pages 8-11, Section 2.1.

31 See Decision 27388-D01-2023, paragraph 11.

32 The Commission exercises a general supervision over all electric and gas utilities and their owners: see for example *Electric Utilities Act*, Part 9; *Gas Utilities Act*, Part 2.

the rate or tariff ultimately recovered by the utility and paid by end-use customers is just and reasonable.

27. In setting a PBR plan, the Commission prospectively determines the parameters that will satisfy the PBR principles[33] and result in just and reasonable rates for each of the utilities that are subject to the plan and their customers. This determination is made considering the plan as a whole, where each of the separate but inter-related elements of the PBR plan plays an important role.[34] The operation of the plan is also important in the sense that the response of the utility to the incentives of PBR is a fundamental premise of the PBR framework.

3.2 Purpose of the reopener provision

28. The reopener provision is one essential element of the PBR2 plans. It is the mechanism specifically built into the plan that can act as a safeguard or check against unexpected results, including results that would have a material impact on a utility or its customers, if and when a problem arises in the design or operation of the plan. As noted by the Commission in Decision 2012-237, "[c]ustomers will be protected against earnings significantly above the approved ROE, and the companies will be protected against earnings significantly below the approved ROE, by the incorporation of a re-opener in the plan."[35]

29. Reopener proceedings have been triggered based on the established ROE thresholds on two previous occasions. First, ENMAX Power Corporation achieved ROEs that were at least 300 basis points below the approved ROE in two consecutive years (2011 and 2012) of its formula-based ratemaking (FBR) plan, which ran from 2007 to 2013. In the resulting Decision 2014-100,[36] the Commission determined that adjustments to a plan parameter were warranted to address the circumstances that triggered the reopener and to remedy an issue with the structure of the FBR plan.[37] Second, both ATCO Electric and ATCO Gas achieved ROEs that were at least 300 basis points above the approved ROE in two consecutive years (2016 and 2017) of their PBR1 plans, which ran from 2013 to 2017. ATCO Gas's achieved ROE was also more than 500 basis points above the approved ROE in 2017. In the related Decision 23604-D01-2019,[38] the Commission determined that there was no evidentiary basis to conclude that the ROEs achieved by the ATCO Utilities were the result of a problem with the design or operation of their PBR1 plans.[39]

30. Two points are worth clarifying and emphasizing with respect to the reopener provision included in the Commission-approved PBR plans. First, by finding that a reopening of the PBR plans should not be automatic,[40] the Commission acknowledged that returns that trigger the

[33] In Bulletin 2010-20, Regulated Rate Initiative – PBR Principles, July 15, 2010, the Commission established five PBR principles as a statement of objectives for PBR. The development of every subsequent generation of PBR has been guided by the PBR principles: see Decision 2012-237, paragraph 39; Decision 20414-D01-2016 (Errata), paragraph 22; Decision 27388-D01-2023, paragraph 21.

[34] See for example Decision 20414-D01-2016 (Errata), paragraph 25.

[35] Decision 2012-237, paragraph 36.

[36] Decision 2014-100: ENMAX Power Corporation, Formula-Based Ratemaking Transmission Tariff Re-opener, Proceeding 2182, Application 1608905, April 15, 2014.

[37] See Decision 2014-100, paragraphs 21 and 23.

[38] Decision 23604-D01-2019: AUC-Initiated Review Under the Reopener Provision of the 2013-2017 Performance-Based Regulation Plan for the ATCO Utilities, Proceeding 23604, February 27, 2019.

[39] Decision 23604-D01-2019, paragraphs 2 and 115.

[40] Decision 2012-237, paragraph 757.

reopener provision (either due to being above or below the ROE thresholds) are not in and of themselves sufficient to demonstrate that there is a problem with the PBR plan. However, a material deviation of the actual ROE achieved by a utility from the approved ROE may be an indicator that a PBR plan should be reopened and reviewed.[41]

31. The ability to reopen and review a PBR plan is generally not available unless the reopener provision is triggered. If the reopener provision is not triggered, there is no need for or opportunity to determine whether there is a problem with the design or operation of the plan. Conversely, if the reopener provision is triggered, the Commission must consider whether there is a problem with the design or operation of the plan such that reopening of the plan is warranted.

32. Second, the Commission included both design and operational problems within the scope of PBR1 and subsequent reopener provisions. This is distinct from the FBR plan, which included only structural issues (which is an equivalent term to "design problems" as explained in the quote below) in the scope of its reopener provision. In the Commission's view, this difference in scope between the FBR reopener and a PBR reopener reflects that the FBR plan was structured differently than the PBR plans. In particular, the FBR plan included an earnings sharing mechanism (ESM), while the PBR1 and PBR2 plans did not. In PBR1 and PBR2, the Commission relied solely on the reopener provision to provide safeguards that are adequate to protect both the companies and customers on the basis that those safeguards are comparable to those provided for by an ESM, but do not exhibit the disincentives that arise with ESMs.[42]

33. In Decision 2014-100, the Commission provided the following description of a structural issue (design problem):

> … A structural issue would generally be a feature of the FBR plan that, due to its design, does not result in rates that allow the company a reasonable opportunity to recover its prudently incurred costs plus a reasonable return on its investments. A structural issue may also result if rates are unfair to customers because the rates provide earnings that are significantly above the level that would be required to provide a reasonable opportunity for ENMAX to recover its prudently incurred costs plus a reasonable return. In the Commission's view, a remedy should not be approved in circumstances where it is the discretionary actions of the company, and not the structure of the FBR plan, that resulted in the financial circumstances that triggered the re-opener. Such a remedy would undermine the incentive properties of the FBR plan.[43]

34. In Decision 2012-237, the Commission changed the scope of the reopener provision to include both design and operational problems. It spoke of an "application flaw" separately from a design flaw, apparently equating a flaw in the application of the plan with an "operation flaw."[44] In Decision 23604-D01-2019, the Commission addressed several concerns raised by interveners that the earnings of the ATCO Utilities in PBR1 "were not exclusively due to the operation of the incentive properties of PBR."[45] The Commission's assessment of those intervener concerns related to potential problems with the operation of the PBR plans as distinct from structural or design problems. It is therefore important, when faced with a situation where a

41 Decision 2012-237, paragraph 737.
42 Decision 2012-237, paragraph 819.
43 Decision 2014-100, paragraph 22.
44 Decision 2012-237, paragraph 728.
45 Decision 23604-D01-2019, paragraphs 26 and 60.

utility has triggered reopener thresholds, that the Commission assess the relevant PBR plans from the perspective of whether there may be a problem with the design (structure) or operation (application) of those plans. It follows that a problem with the operation of a PBR plan is distinct from a problem with the design of the plan or any specific elements comprising the PBR formula (e.g., I, X, K-bar, Y factor, Z factor).

35. On this point, in the current proceeding, the ATCO Utilities narrowly characterized a problem that warrants the reopening of a PBR plan as "a plan parameter that does not do what the Commission intended, that cannot be addressed through other features of the plan and which renders the continued operation of the plan untenable."[46] The ATCO Utilities described a problem that would be in the nature of a design problem. As noted above, the PBR reopener provisions were incorporated to address problems with the design *or operation* of a PBR plan. While a problem that arises where the "discretionary actions of the company" result in financial circumstances that trigger the reopener might have been outside of the scope of the FBR reopener provision, due to the differences between FBR and PBR and their respective reopener provisions described above, the Commission considers that a problem arising from the discretionary actions of a utility is within the scope of a PBR reopener provision and may be the basis for an operational problem.

36. Ultimately, the reopener provision included from the outset of the PBR2 plans was intended to safeguard utilities and their customers from problems or unexpected results due to the design or operation of the plans that could ultimately result in rates that are not just and reasonable. Where a utility's earnings fall below the established thresholds, and the Commission determines that the design or operation of a PBR plan deprived the utility of a reasonable opportunity to earn its approved ROE over the PBR term, its customers may be required, as in Decision 2014-100, to pay more. Where a utility's earnings exceed the established thresholds, and the Commission determines that the design or operation of a PBR plan resulted in customers paying rates higher than necessary, the utility may be required to refund its customers.

3.3 Relevant considerations in determining whether reopening is warranted

37. As described above, if a reopener provision is triggered due to returns that exceed or fall below the established thresholds, the Commission will, upon application or on its own initiative, assess whether there is a problem with the design or operation of the PBR plan which may have a material impact on either the utility or its customers and which cannot be addressed through other features of the plan. To discharge this mandate, the Commission must assess whether the PBR plan that set the relevant utility's revenues resulted in just and reasonable rates for that utility and its customers. Evidence that explains what factors contributed to the ATCO Utilities' achieved returns is critical to the Commission's assessment as to whether the reopening of either of the ATCO Utilities' PBR2 plans is warranted.

38. As stated in Decision 23604-D01-2019, in order to identify, assess and, if necessary, address design or operational problems within a plan, a Commission-initiated reopener proceeding is in the nature of an inquiry. During the inquiry the Commission seeks factual information and submissions on the factors that led to the utility's earnings triggering the

[46] Transcript, Volume 4, page 612, lines 8-13.

reopener thresholds. Having identified and assessed those factors, the Commission determines whether a reopener is warranted based on the accumulated evidence and argument.[47]

39. By including a reopener provision with an ROE-based trigger, the Commission established at the outset of each PBR plan that it may be required to engage in a detailed review of the utilities' performance and operations under the plan in order to determine what factors or events led the utility to trigger a reopener threshold. For this purpose, a reopener proceeding necessarily involves the examination of differences between allowed revenues provided by the Commission-approved PBR formula (that is, revenues provided from escalating the going-in rates by the I-X index as well as any supplemental revenues provided through such components of the formula as K-bar, K factor, Y factor and Z factor) and actual incurred costs for the provision of safe and reliable utility service. The Commission may also request a detailed account of utility costs incurred during a PBR plan term for the purposes of a prudence review that may be undertaken at the end of the plan.[48] It is, therefore, essential and good regulatory and business sense for a utility to maintain accounts of the business practices that contributed to that utility's achieved ROE at a level of detail sufficient to ensure that it can provide the necessary information upon the Commission's request, including in circumstances where a reopener is triggered.

40. Some evidence relevant to a reopener and the related differences between revenues provided by the PBR formula and actual incurred costs may be found in the financial reporting requirements set out in Decision 2012-237 and adopted in Decision 20414-D01-2016 (Errata). In recognition of its limited regulatory oversight during the normal operation of a PBR plan, the Commission, in those decisions, directed each utility to include in its annual PBR filings a copy of its Rule 005 filing, additional schedules showing a reconciliation of financial and utility returns, a summary of disallowed costs,[49] and an attestation signed by a senior officer that includes, among other items, certifications on the accuracy, completeness and reasonableness of the numbers and assumptions included in the filing.[50] The Commission emphasized that these reporting requirements do not exempt a utility under PBR from the obligation to maintain detailed accounts in accordance with the acts, regulations, Commission rules, or Commission decisions applicable to the utility. The utilities were specifically directed to maintain the ability to file a complete set of detailed schedules typically used in COS applications with actual results for all years within the term of the PBR plan and to provide them upon request.[51]

41. In this proceeding, the Commission required the ATCO Utilities to provide relevant information, documents or materials that are under their control, and other parties provided any information, evidence or submissions relevant to the issues in the proceeding. However, as noted in Decision 27388-D01-2023, a utility has better knowledge of its operations and the potential

47 Decision 23604-D01-2019, paragraph 25.
48 For example, the Commission conducted a review of 2018-2021 costs for all distribution utilities as part of its 2023 rebasing.
49 Decision 2012-237, paragraphs 860 and 861 (with reference to paragraph 855).
50 Decision 2012-237, paragraph 862
51 Decision 2012-237, paragraph 863. The Commission stated "Therefore, unless otherwise directed or exempted by the Commission, the companies are directed to maintain the ability to file a complete set of MFR [minimum filing requirements] and GRA [general rate application] schedules with actual results for all years within the term of the company's PBR plan. The companies are not required, however, to file a complete set of MFR and GRA schedules annually." This direction remained applicable during the term of the PBR2 plans: Decision 20414-D01-2016 (Errata), paragraph 8 and Appendix 5, PDF page 102.

for improved efficiency and reduced costs than a regulator or interveners ever will.[52] As the owners and operators of their respective utilities, ATCO Electric and ATCO Gas control almost all, if not all, information concerning the factors that contributed to their achieved returns. This information asymmetry is inherent in the regulation of utilities but is particularly pronounced under PBR because of the longer time period between detailed reviews of costs.

42. Notwithstanding that a Phase 1 reopener proceeding is in the nature of an inquiry and that no party bears the onus to demonstrate whether there is a problem with a PBR plan that cannot be resolved without reopening and reviewing the plan, the Commission's information requirements and process directions discussed above were implemented to minimize the impacts of this inherent information asymmetry.

43. To that end, in the current proceeding the Commission sought evidence and submissions on the factors that led to the ATCO Utilities' earnings exceeding the reopener thresholds. In particular, as described above, the Commission required the ATCO Utilities to file an initial submission explaining the reasons for the achieved ROEs in each of 2021 and 2022 exceeding the approved ROE and specified the minimum information requirements for that initial submission.[53] Following that, the Commission allowed for a comprehensive process that involved intervener evidence, IRs to both the ATCO Utilities and interveners, as well as an oral hearing. Finally, the Commission heard argument from all parties. The Commission was aware that a wide variety of factors may have contributed to the ATCO Utilities' returns and that these factors were likely to be different depending on how each utility responded to the design or operation of their respective PBR2 plans. The Commission therefore sought information concerning factors related to both the design and operation of their respective plans.[54]

44. Lastly, in this proceeding, in evaluating whether there is a problem with the plans that requires a reopening, the Commission has been mindful of the five foundational principles, which it has repeatedly endorsed in relation to PBR, including Principle 1 that "[a] PBR plan should, to the greatest extent possible, create the same efficiency incentives as those experienced in a competitive market while maintaining service quality" and Principle 5 that "[c]ustomers and the regulated companies should share the benefits of a PBR plan."

4 What factors contributed to the ATCO Utilities' achieved returns?

45. In this section, the Commission first identifies the factors that contributed to each of the ATCO Utilities' achieved returns in 2021 and 2022 exceeding the approved returns such that a reopener proceeding was triggered. The Commission then reviews these relevant contributing factors and identifies a significant gap in the evidence. In particular, the Commission determines that ATCO Electric did not provide quantitative evidence in respect of the contributing factors for 68 per cent of its total capital savings amount over the PBR2 term. Similarly, ATCO Gas did not provide quantitative evidence in respect of the contributing factors for 90 per cent of its total capital savings amount and 71 per cent of its 2022 operating and maintenance (O&M) savings amount. ATCO Electric and ATCO Gas also provided an estimate of cost savings in 2021 and

---

52 Described in Decision 27388-D01-2023, paragraph 10.
53 Exhibit 28300-X0017, AUC letter - Directions on procedure, paragraphs 13-14.
54 See for example, Exhibit 28300-X0017, AUC letter - Directions on procedure, paragraph 14.

2022 related to full-time equivalent (FTE) reductions, which they could not separate into capital and O&M labour.

4.1 Contributions to the ATCO Utilities' 2021 and 2022 achieved ROEs

46. In their initial filings, the ATCO Utilities did not identify any specific events that led to higher ROEs, but rather, provided the variances between their 2021 and 2022 achieved ROEs and the approved ROE and a high-level breakdown of the variance in each year by category, as follows:

Table 2. 2021 and 2022 achieved ROE vs. approved ROE[55]

	ATCO Electric		ATCO Gas	
	(%)			
	2021	**2022**	**2021**	**2022**
Achieved ROE	12.85	14.52	11.81	14.39
Approved ROE	8.50	8.50	8.50	8.50
Difference	4.35	6.02	3.31	5.89
Categories				
O&M net of Revenue Offsets	(1.27)	(0.94)	(0.37)	2.03
Capital	4.78	5.79	2.59	2.75
Other	0.84	1.17	1.09	1.11
Total	4.35	6.02	3.31	5.89

47. Appendix 4 to this decision includes further breakdowns of the categories in Table 2 that were provided by the ATCO Utilities in their initial submission or in response to IRs. In the rest of this section, each of these three categories is examined, in turn.

4.1.1 Capital

48. Consistent with the information presented in Table 2, the ATCO Utilities submitted that they were able to derive the greatest portion of their cost savings in 2021 and 2022 from capital.[56] The interveners also concluded that the majority of cost savings were derived from capital and focused their submissions almost exclusively on the ATCO Utilities' costs and revenues related to capital.[57]

49. In the context of this proceeding, the ATCO Utilities generally defined "capital cost savings" as the difference between the amount of funding available to a utility for capital resulting from both the I-X and K-bar parameters of the PBR2 formula, net of contributions, (capital-derived funding) and that utility's actual capital spend (i.e., actual capital additions net of contributions). Defined in that manner, ATCO Electric's capital cost savings were $135.8 million in 2021 and $89.3 million in 2022. As set out in Table 2, these capital cost savings represented approximately 4.78 per cent or $45.9 million of the 4.35 per cent or

55 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, Table 2.1. ATCO Gas later identified an error in Table 2.1 and provided a corrected version: Exhibit 28300-X0039.01, ATCO-AUC-2023OCT16-007(f), Table 2, PDF pages 197-198.

56 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 20.

57 Exhibit 28300-X0092, IPCAA - Evidence of Dustin Madsen - 28300, PDF page 5; Exhibit 28300-X0096, UCA Evidence Submission (Prepared by Russ Bell) - 28300, PDF page 3; Exhibit 28300-X0097, CCA evidence of Jan Thygesen, paragraph 12; Exhibit 28300-X0108, ID 28300 City of Calgary Submissions ATCO Utilities PBR Re-opener Proceeding, PDF page 3.

$41.8 million total variance between ATCO Electric's 2021 achieved ROE and the approved ROE and approximately 5.79 per cent or $57.2 million of the 6.02 per cent or $59.5 million total variance between ATCO Electric's 2022 achieved ROE and the approved ROE.[58]

50. ATCO Gas's capital cost savings were $83.3 million in 2021 and $57.7 million in 2022. As set out in Table 2, these capital cost savings resulted in approximately 2.59 per cent or $27.4 million of the 3.31 per cent or $34.9 million total variance between ATCO Gas's 2021 achieved ROE and the approved ROE and approximately 2.75 per cent or $29.2 million of the 5.89 per cent or $62.6 million total variance between ATCO Gas's 2022 achieved ROE and the approved ROE.[59]

51. Capital-derived funding provided by way of I-X and K-bar in each year of the PBR2 term was calculated based on accepted accounting methods to arrive at capital-related revenue requirement including depreciation, return and income taxes based on an approved going-in rate base and an assumed level of capital additions. Assuming a utility is making additions to rate base in each year of the PBR term, capital funding will increase year over year as a result of the associated increase in depreciation expense and return on rate base. Because of this, the ATCO Utilities highlighted that capital cost savings over the entire PBR2 term must be considered due to the cumulative impact of these savings on 2021 and 2022 achieved returns.[60] Other parties agreed with this.[61] The Commission concurs and has considered the total capital cost savings over the PBR2 term in its assessment.

52. As shown in tables 3 and 4 below, for both ATCO Electric and ATCO Gas the amount of actual capital additions was below the amount of capital-derived funding provided by the PBR formula in every year of the PBR2 term. Appendix 4 to this decision includes further breakdowns of capital cost savings using capital groupings specified in the PBR3 rebasing.

Table 3. ATCO Electric net capital additions cost savings[62]

	2018	2019	2020	2021	2022	Total
	($ million)					
Actual capital additions (net of contributions)	181.5	179.3	177.2	158.9	211.0	907.9
Funded capital additions (net of contributions)	285.6	294.3	302.9	294.7	300.3	1,477.8
Difference	(104.1)	(115.1)	(125.7)	(135.8)	(89.3)	(569.9)

58 Exhibit 28300-X0048, ATCO-UCA-2023OCT16-001(a) Attachment 2.
59 Exhibit 28300-X0047, ATCO-UCA-2023OCT16-001(a) Attachment 1.
60 Exhibit 28300-X0131, ATCO rebuttal evidence, paragraphs 103 and 141; Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 38.
61 Exhibit 28300-X0092, IPCAA - Evidence of Dustin Madsen - 28300, PDF page 9; Exhibit 28300-X0096, UCA Evidence Submission (Prepared by Russ Bell) - 28300, PDF page 7; Exhibit 28300-X0108, ID 28300 City of Calgary Submissions ATCO Utilities PBR Re-opener Proceeding, PDF pages 12-13.
62 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 39, Table 3.3.

Table 4. ATCO Gas net capital additions cost savings[63]

	2018	2019	2020	2021	2022	Total
	($ million)					
Actual capital additions (net of contributions)	263.3	248.8	227.0	226.7	261.8	1,227.6
Funded capital additions (net of contributions)	283.6	294.0	301.2	310.0	319.5	1,508.3
Difference	(20.4)	(45.2)	(74.2)	(83.3)	(57.7)	(280.7)

53. As shown in the above tables, the total capital cost savings for each of ATCO Electric and ATCO Gas over the PBR2 term were $569.9 million and $280.7 million, respectively.[64]

4.1.2 O&M

54. Regarding O&M, ATCO Electric submitted that the PBR2 funding derived from the O&M portion of the PBR2 rebasing revenue requirement[65] (O&M-derived funding) was inadequate to fund its actual O&M costs in both 2021 and 2022, which required it to find greater efficiencies in its capital spending.[66] ATCO Electric stated that in 2021, its actual O&M costs (excluding costs funded through the Y factor) were $16.8 million higher than the O&M-derived funding, and that in 2022, its actual O&M costs were $12.7 million higher than the O&M-derived funding.[67] ATCO Electric estimated that in total, over the PBR2 term, it had an O&M cost deficit (defined as the O&M-derived funding less actual O&M costs) of $65.0 million.[68]

55. ATCO Gas was more successful at achieving cost savings related to O&M. ATCO Gas submitted that its O&M-derived funding was inadequate to fund its actual O&M costs in 2021, which required the utility to find greater efficiencies in its capital spending.[69] ATCO Gas explained that for 2021 its actual O&M costs (excluding costs funded through the Y factor) were $5.4 million higher than the O&M-derived funding. However, in 2022 ATCO Gas's O&M costs were $29.6 million lower than the O&M-derived funding.[70] As set out in Table 2, these O&M cost savings resulted in approximately 2.03 per cent or $21.6 million of the 5.89 per cent or $62.6 million total variance between ATCO Gas's 2022 achieved ROE and the approved ROE.[71] ATCO Gas estimated that in total, over the PBR2 term, it had O&M cost savings of $47.4 million.[72]

---

63 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 87, Table 4.3.

64 As explained earlier in this section, these savings represent the difference between funded and actual net capital additions. To estimate the effect of these savings on the achieved ROE for 2021 and 2022, the ATCO Utilities converted them to a difference in capital-related revenue requirement, resulting in dollar impacts on ROE of $45.9 million for 2021 and $57.2 million for 2022 for ATCO Electric, and $27.4 million for 2021 and $29.2 million for 2022 for ATCO Gas presented in tables 1 and 2 of Appendix 4.

65 In the PBR2 rebasing, the O&M component of the 2017 notional revenue requirement for ATCO Electric was determined based on the lowest O&M cost year during the PBR1 term (2013-2016): see Decision 20414-D01-2016 (Errata), paragraph 52. The capital component of the revenue requirement for ATCO Electric was determined based on the four-year average of actual capital additions from the years 2013-2016: see Decision 20414-D01-2016 (Errata), paragraph 59.

66 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraphs 22 and 37.

67 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraphs 35-37, Table 3.2.

68 Exhibit 28300-X0048, ATCO-UCA-2023OCT16-001(a) Attachment 2, Net O&M.

69 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 85.

70 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 85, Table 4.2.

71 Exhibit 28300-X0047, ATCO-UCA-2023OCT16-001(a) Attachment 1.

72 Exhibit 28300-X0047, ATCO-UCA-2023OCT16-001(a) Attachment 1, Net O&M.

4.1.3 "Other" category

56. Regarding cost savings unrelated to capital or O&M, in response to a Commission IR, the ATCO Utilities provided a breakdown of factors in the "Other" category from Table 2 that contributed to the variance between their achieved and approved ROEs. This breakdown is reproduced in the table below.

Table 5. Breakdown of the "Other" category and ROE impact above approved[73]

	ATCO Electric		ATCO Gas	
	2021	2022	2021	2022
	(%)			
Tax Rate	0.03	(0.01)	0.35	0.52
Accelerated Investment Incentive	0.33	0.77	0.63	0.65
Energy use per customer (UPC)	0.16	(0.08)	(0.20)	(0.07)
Demand UPC/Demand Revenue	0.12	0.41	(0.10)	(0.01)
Prior Period Income Tax Adjustments	(0.15)	(0.11)	0.40	0.18
Other [see Note 1]	0.34	0.19	0.01	(0.16)
Total	0.84	1.17	1.09	1.11

Note 1: The ATCO Utilities explained that the "Other" category in this table includes any revenue differences related to customer growth but clarified that there are offsetting costs that are not distinctly isolated in the analysis.[74]

4.2 What portion of the total cost savings achieved were quantified and explained?

57. At the outset, the Commission wishes to emphasize that the PBR2 plans provided a single envelope of funding. This means that no specific funding was earmarked for specific categories of utility costs. Instead, to maximize the incentive power of the PBR2 plans, the Commission determined that the revenue provided by the PBR2 formula (inclusive of K-bar) could be used for both capital and O&M costs.[75] The single-envelope approach permits utilities to manage costs on a holistic basis to arrive at the optimal mix of O&M and capital expenditures required to fulfil their obligation to provide safe and reliable distribution service. Indeed, the Commission heard from the ATCO Utilities in this proceeding that they had to divert some of the capital-derived funding to O&M activities.

58. Nevertheless, as set out in Section 3, by its very nature, this reopener proceeding requires the Commission to determine whether there is a problem in the design or operation of ATCO Electric's or ATCO Gas's PBR2 plans. This in turn requires an assessment of what factors contributed to each of the utilities triggering the reopener threshold.

59. At the highest level, an achieved ROE is the result of total revenues exceeding total costs. A multitude of often interconnected factors can affect a utility's costs or revenues. While acknowledging that the contributions of these different factors may not be able to be perfectly isolated from each other, the Commission finds it reasonable, for the purposes of this reopener decision, to separate the contributions to the achieved ROE into capital, O&M and other, as was done by the ATCO Utilities in their submissions. The Commission also accepts, for the purposes

73 Exhibit 28300-X0039.01, ATCO-AUC-2023OCT16-007(f), PDF page 199, Table 4.
74 Exhibit 28300-X0039.01, ATCO-AUC-2023OCT16-007(f), PDF page 199, Table 4, note 5.
75 Instead, a utility may, for example, use revenue funded by K-bar, ostensibly to provide incremental capital funding, to fund O&M activities: see Decision 27388-D01-2023, paragraph 206.

of this decision, the ATCO Utilities' approach of estimating capital and O&M savings by comparing capital-derived funding and O&M-derived funding provided by the PBR formula to actual capital and O&M costs, respectively. This analysis assists the Commission in its understanding of the factors that led to the achieved ROEs exceeding the reopener threshold.

60. With this in mind, it is clear from Table 2 that savings related to capital costs (including related effects on return, depreciation and income tax) were the main contributors to ATCO Electric's achieved returns in 2021 and 2022 and to ATCO Gas's achieved returns in 2021. That is, each of these utilities' actual capital costs were much lower than the capital-related funding in those years. In 2022, ATCO Gas's higher returns were driven by savings related to both capital and O&M costs almost in equal measure. A number of factors in the "Other" category also contributed to the ATCO Utilities' ROE variances in 2021 and 2022. However, none of the individual "Other" factors on their own had a material effect on either of the ATCO Utilities' achieved ROEs in 2021 or 2022. In each year, some "Other" factors contributed positively and others negatively to achieved ROEs, but each factor was a relatively minor contributor to the ROEs achieved by each of the ATCO Utilities overall.

61. ATCO Electric, in 2021 and 2022, and ATCO Gas, in 2021, used capital-derived funding to fund their O&M activities. That ATCO Electric and ATCO Gas still achieved ROEs that exceeded reopener thresholds in those years serves to illustrate the significant contributions of capital-related savings to their achieved ROEs.

62. While the ATCO Utilities filed evidence that quantified and explained the drivers behind (referred to herein as "quantification and explanation") a relatively small percentage of the capital and O&M cost savings achieved through the PBR2 term, this was not done in a proactive, comprehensive or uniform manner. Some quantifications and explanations were provided within their original filings; however, a significant amount of information was elicited only in response to IRs from the Commission and interveners. In addition, some quantifications of savings were provided for specific years and other evidence was provided only as high-level, average annual cost savings achieved throughout the PBR2 term. At the oral hearing, Derek McHugh stated that the ATCO Utilities had a challenge quantifying the impact of various initiatives as it was not their focus, and if they had known then that this information would be required, they "probably would have added in some different procedures, processes to track some of those changes"; however, they did not turn their mind "to tracking which efficiency would drive what saving."[76]

63. Because of this lack of comprehensive and uniform information, the Commission and interveners had to review and consolidate the disjointed evidence ultimately provided by the ATCO Utilities to determine what capital and O&M cost savings had been quantified and attributed to a particular initiative.

64. Dustin Madsen, a witness for IPCAA, prepared an estimate of what he considered to be the "quantified efficiency savings" for ATCO Electric from 2018 to 2022. Specifically, he tallied the efficiencies related to capital additions that ATCO Electric had quantified to be $30.3 million in 2021 and $31.7 million in 2022. ATCO Electric did not dispute the numbers that D. Madsen used in his calculation of these efficiency savings but pointed to what D. Madsen did not include in his estimate such as FTE reductions, project prioritization and risk assessment.

[76] Transcript, Volume 1, page 70, lines 15-25; Transcript, Volume 2, page 384, lines 5-6.

65. The Commission considers that the amounts estimated by D. Madsen represent a reasonable starting point and correspond with the Commission's own assessment, as discussed below and summarized in Appendix 5.[77]

66. The quantified and explained capital cost savings for ATCO Electric are approximately $40.80 million in 2021 and $44.40 million in 2022. The main factors driving these capital cost savings were the lack of REA acquisitions ($28.10 million in 2021 and $28.60 million in 2022), capital-related income tax deductions ($10.50 million in 2021 and 13.10 million in 2022),[78] engineering standards ($1.10 million in each of 2021 and 2022), and meter replacement and redeployment ($1.10 million in 2021 and $2.00 million in 2022).[79]

67. The quantified and explained capital cost savings for ATCO Gas are approximately $10.43 million in 2021 and $11.73 million for 2022. The main factors driving these capital cost savings were capital-related income tax deductions ($8.20 million in 2021 and $8.90 million in 2022),[80] joint trench installations ($2.00 million in each of 2021 and 2022), idling reduction ($0.60 million in 2022) and specialized survey equipment ($0.225 million in each of 2021 and 2022).[81]

68. The quantified and explained O&M cost savings for ATCO Gas are approximately $8.72 million in 2022. The main factors driving these O&M savings were the Picarro Surveyor and Leak Reporting initiative ($2.40 million), the meter recall program ($2.0 million), office space reduction ($1.3 million), and system integrity optimization ($1.05 million). The remaining $1.97 million of quantified cost savings were driven by a variety of other initiatives.[82]

69. In addition to the above capital and O&M cost savings, the ATCO Utilities explained that they achieved cost savings due to reductions in the number of employees (measured in FTEs), which required them to do more with less while their systems continued to grow. ATCO Electric explained that during the PBR2 term it had a 13 per cent reduction in FTEs resulting in cost savings of approximately $21.2 million annually. ATCO Gas explained that during PBR2 it had a seven per cent reduction in FTEs, resulting in cost savings of approximately $16.3 million annually. The ATCO Utilities submitted that their FTE reductions involved employees assigned

---

77 In preparing its consolidations, the Commission was required to make some assumptions. Where some reasonable assumptions were possible, the Commission adopted the most conservative interpretation of the quantitative evidence on the record. More specifically, it chose the interpretation of the evidence that resulted in the highest possible quantification of cost savings attributable to efficiency gains as asserted by the ATCO Utilities.

78 ATCO Electric explained that it was able to find higher income tax deductions primarily related to right of way costs, capital repair costs, and removal and abandonment costs: Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 79. These income tax deductions are capital-related and are distinct from tax savings included in the "Other" category in Table 2.

79 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 40, sections 3.2, 3.4; Exhibit X0046.02, PDF page 11.

80 ATCO Gas explained that it was able to find higher income tax deductions primarily related to capitalized administrative and capital repair costs amounting to approximately $8.2 million in 2021 and $8.9 million in 2022: Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 120; Exhibit 28300-X0039.01, ATCO-AUC-2023OCT16-007(f), Table 3. These income tax deductions are capital-related and are distinct from tax savings included in the "Other" category in Table 2.

81 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 88, sections 4.2, 4.4; Exhibit 28300-X0046.02, ATCO-UCA-2023OCT16-009(a), PDF page 21.

82 Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 111; Exhibit X0039.01, ATCO-AUC-2023OCT16-003(a), PDF page 20; Exhibit X0046.02, ATCO-UCA-2023OCT16-009(a), PDF page 21.

both to O&M and capital activities, and that the FTE reductions were the direct result of the various cost-saving initiatives and efficiencies achieved over the PBR2 term.[83] However, the ATCO Utilities stated that they are unable to separate the FTE reductions into capital and O&M.[84]

70. ATCO Electric and ATCO Gas also provided qualitative evidence concerning savings that they assert must have resulted from transformational change in their respective organizations[85] or from specific programs or initiatives undertaken during the PBR2 term. The impacts of these alleged drivers on some unknown proportion of the cost savings achieved by the utilities were not quantified either monetarily or otherwise (e.g., by tracking and measuring metrics such as the number of kilometres (km) driven, remote disconnects/reconnects, work-bundling opportunities[86]). For example, in response to submissions from the CCA, the ATCO Utilities provided unquantified explanations for the following programs:[87]

- ATCO Gas's Plastic Mains Replacement (PMR)
- ATCO Gas's Meter Relocation and Replacement Program
- ATCO Electric's Porcelain Switch Replacement

71. As described in Section 5.2 of this decision, the Commission asked the ATCO Utilities to attempt to quantify the contribution of these programs (and any others that they may have not otherwise enumerated) to their achieved earnings and cost savings. The ATCO Utilities declined the Commission's offer to file this supplementary evidence.

72. In response to a Commission IR, the ATCO Utilities conceded that other drivers besides achieved efficiencies contributed to the total amount of capital cost savings over the PBR2 term. For example, the impact on costs of any differences between the approved (lagged) inflation used to escalate the funded K-bar net capital additions and actual inflation, and the impact the pandemic and supply chain constraints had on the actual net capital additions in the years 2020 to 2022. However, the ATCO Utilities were unable to attribute specific cost impacts to these factors despite being specifically asked to support these claims.[88]

73. Based on the Commission's consolidation of various pieces of the ATCO Utilities' submissions as discussed earlier in this section and tabulated in Appendix 5, the evidence in this proceeding reasonably supports that approximately $183 million of ATCO Electric's total savings over the PBR2 term were the result of capital-related efficiencies and measurable cost-saving initiatives and approximately $106 million in cost savings were the result of FTE reductions over the PBR2 term (of which some portion would relate to capital and some to O&M).

---

83 See Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraphs 35, 83; Exhibit 28300-X0039.01, ATCO-AUC-2023OCT16-001(a) and (b).
84 Exhibit 28300-X0046.02, ATCO-UCA-2023OCT16-002(b) and ATCO-UCA-2023OCT16-006(b).
85 Transcript, Volume 1, page 122, lines 1-25; page 123, lines 1-25; page 124, lines 1-6.
86 Transcript, Volume 1, page 64, lines 7-25; page 65, lines 1-20; page 68, lines 1-25.
87 Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, Appendix B, PDF pages 51-62 and 64-68.
88 Exhibit 28300-X0039.01, ATCO-AUC-2023OCT16-008(h).

74. The Commission has similarly determined that the evidence in this proceeding reasonably supports that approximately $28.5 million of ATCO Gas's total savings over the PBR2 term were the result of capital-related efficiencies and measurable cost-saving drivers, approximately $8.72 million dollars of cost savings for 2022 were the result of O&M-related efficiencies and measurable cost-savings drivers, and approximately $81.5 million in cost savings were the result of FTE reductions over the PBR2 term (of which some portion would reasonably relate to capital and some to O&M).

75. As explained in Section 4.1, capital savings over the entire PBR2 term must be considered due to their cumulative impact on 2021 and 2022 achieved returns. In total, over the PBR2 term ATCO Electric had capital savings of $569.9 million of which, as described above, the Commission determined that it reasonably supported approximately $183 million through explanations and quantitative evidence. This leaves approximately $387 million in unquantified and unexplained capital savings, which amounts to 68 per cent of ATCO Electric's total capital savings.[89]

76. During the PBR2 term, ATCO Gas had capital savings of $281 million of which the Commission determined that it had reasonably supported $28.5 million through explanations and quantitative evidence. This leaves approximately $252 million in unquantified and unexplained capital savings, which amounts to 90 per cent of the total capital savings. Unlike capital, O&M does not have a cumulative effect, and for that reason the Commission only considered 2022 O&M cost savings for ATCO Gas. ATCO Gas had O&M savings of $29.6 million in 2022, of which the Commission determined that it had reasonably supported approximately $8.72 million through explanations and quantitative evidence.[90] This leaves approximately $21 million in unquantified and unexplained O&M savings, which amounts to 71 per cent of the total O&M savings.[91]

77. Parties' submissions, and the main issue in this proceeding, related to the question of whether the significant difference between funded and actual spend, and in particular the unquantified and unexplained capital cost savings and 2022 O&M cost savings for ATCO Gas, were the result of PBR incentives or were the result of a flaw in the design or operation of the PBR2 plans. In the next section of this decision, the Commission examines the drivers behind the significant capital savings for the ATCO Utilities in 2021 and 2022 as well as O&M savings for ATCO Gas in 2022 to determine whether there was a problem with the design or operation of the respective utilities' PBR2 plans.

---

[89] Cost savings related to FTE reductions are considered separately because, while ATCO Electric quantified the cost savings that were the result of FTE reductions over the PBR2 term, it was unable to quantify the amount of *capital* cost savings that were the result of FTE reductions.

[90] Appendix 5: Consolidation of evidence of cost savings.

[91] Cost savings related to FTE reductions are considered separately because, while ATCO Electric quantified the cost savings that were the result of FTE reductions over the PBR2 term, it was unable to quantify the amount of *capital* cost savings (over the PBR2 term) and *O&M* cost savings (in 2022) that were the result of FTE reductions.

5 Was there a problem with the design or operation of the ATCO Utilities' PBR2 plans?

78. In this section the Commission considers whether the evidence and submissions on the record of this proceeding support a finding that there is a problem with the design or operation of the ATCO Utilities' PBR2 plans. The Commission finds that while there is no problem with the design of the PBR2 plans, there is a problem with the operation of each of the ATCO Utilities' PBR2 plans that cannot be resolved without reopening those plans.

79. The ATCO Utilities submitted that their PBR2 results reflect how they responded to the enhanced incentive properties of PBR2. They indicated that they innovated and sought out better ways to serve customers and utilized the single envelope of funding to respond to O&M and capital needs to fulfil their obligations, while significantly curtailing capital spending.[92] In particular, the ATCO Utilities indicated that the incremental capital funding mechanism in the PBR2 plans, K-bar, had superior incentive properties as compared to the capital tracker funding mechanism in the PBR1 plans which was based on COS principles. Because of this, the ATCO Utilities contended that their achieved capital savings show that their PBR2 plans worked as designed.[93]

80. All interveners contended that capital savings were not primarily achieved as a result of the efficiencies and cost-cutting behaviour attendant to PBR. They therefore sought to have the ATCO Utilities' PBR2 plans reopened.

5.1 Was there a problem with the design of the PRB2 plans?

81. The UCA, Calgary and IPCAA advanced the view that the flaw in the ATCO Utilities' PBR2 plans was that the K-bar capital funding mechanism, a structural element of the plans, provided more funding than necessary to both ATCO Electric and ATCO Gas.

82. According to the UCA, the ATCO Utilities were able to achieve ROEs that exceeded the reopener triggers because their respective envelopes of funding were set at an excessively high level. The UCA contended that the PBR2 plans set K-bar based on the ATCO Utilities' actual historical capital additions during PBR1, which did not account for the change in incentives from capital trackers in PBR1 to K-bar in PBR2 and included unnecessary REA funding. Under capital trackers, utilities were incented to increase capital spend as these additions would inflate rate base and increase earnings. Under K-bar the utilities were incented to lower capital spend and retain the savings in each year of the plan.[94]

83. IPCAA submitted that the reason ATCO Electric achieved high returns and triggered the reopener mechanism is that the K-bar funding approved for ATCO Electric under its PBR2 plan was based on an excessive level of capital funding because it was unrealistically high relative to the actual level of capital additions. D. Madsen agreed with the UCA that this structural issue is driven by the historical actual capital additions used in K-bar calculations being based on a period that included a capital tracker mechanism, which was a COS-based approach to determining capital funding. D. Madsen contended that because the revenues in PBR2 were based on a level of capital under PBR1 that lacked any effective incentives to reduce capital

[92] Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraphs 19, 29-30.
[93] Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraph 29.
[94] Exhibit 28300-X0096, UCA Evidence Submission (Prepared by Russ Bell) - 28300, PDF pages 6 and 10.

spending, the level of capital funding approved under PBR2 was too high for the ATCO Utilities.[95]

84. In Calgary's view, ATCO Gas's PBR2 plan provided it with more funding than necessary to provide safe and reliable service to customers due to a single envelope of funding with K-bar resulting in high excess returns in later years of PBR2.[96] However, when questioned at the oral hearing, Ben Whyte for Calgary conceded that a four-year average of PBR1 actual capital spend on which K-bar was based was "a reasonable baseline."[97]

85. In contrast to the other interveners, the CCA did not consider that the K-bar provision of the PBR2 plan was flawed. Rather, the CCA's view was that "systemic over-funding in PBR2" took place because the ATCO Utilities revised their asset replacement criteria and safety standards from what was in place in PBR1, making the PBR2 K-bar, which was based on PBR1 capital additions, overstated.[98] The Commission addresses the CCA's submission on this point in Section 5.4.3.1.

86. The ATCO Utilities disagreed with the notion that K-bar was a flaw in the design of the PBR2 plans. They argued that the Commission's intention in designing the K-bar mechanism was to greatly extend PBR incentive properties "to as much capital as possible, provide utilities with maximum flexibility to achieve cost savings which would then be passed on to customers at rebasing and to reduce regulatory burden."[99] The ATCO Utilities added that the Commission never intended that K-bar funding would provide exactly the amount of capital funding that will be spent by a utility during the PBR2 term. In support of this view, they referenced several passages from Decision 22394-D01-2018, where the Commission considered and expressly rejected an annual K-bar adjustment based on actual capital costs as this would "eliminate the reason for including the K-bar mechanism into the PBR plans, namely to expand PBR incentives to capital costs to the greatest extent possible."[100] In their reply argument, the ATCO Utilities also referenced another relevant passage from that decision:

> … The notional capital additions will not be trued up to their actual levels, nor will they be adjusted to reflect a utility's "asset mix" as discussed by Fortis. This means that the revenues provided by K-bar will not reflect the actual incurred costs of the utilities. This feature preserves efficiency incentives because if the distribution utilities can build at levels lower than the prescribed historical average of net capital additions, and/or optimize their capital and O&M spend (employ a "better mix" using Fortis' terminology), all else being equal, they will be able to improve their earnings.[101]

87. The Commission generally agrees with the views of the ATCO Utilities on this point. While the Commission recognizes that over the PBR2 term, the actual capital spend by the ATCO Utilities was significantly below the amount of capital-related funding provided by I-X and K-bar, the Commission does not find that this is the result of a flaw in the K-bar mechanism.

---

95 Exhibit 28300-X0119, IPCAA-AUC-2023DEC04-001(a).
96 Exhibit 28300-X0108, ID 28300 City of Calgary Submissions ATCO Utilities PBR Re-opener Proceeding, PDF pages 8 and 12.
97 Transcript, Volume 2, page 402, lines 3-14.
98 Exhibit 28300-X0097, CCA Evidence of Jan Thygesen, PDF pages 4-5, paragraphs 10-12.
99 Transcript, Volume 4, page 615, lines 23-25; page 616, line 1.
100 Decision 22394-D01-2018: Rebasing for the 2018-2022 PBR Plans for Alberta Electric and Gas Distribution Utilities, First Compliance Proceeding, Proceeding 22394, February 5, 2018, paragraph 223.
101 Decision 22394-D01-2018, paragraph 215.

As set out in the relevant PBR2 decisions, K-bar was not intended to provide funding on a line-item basis for individual projects. Rather, it was meant to allow the utilities to manage costs on a holistic basis to arrive at the optimal mix of O&M and capital expenditures required to fulfill their obligation to provide safe and reliable distribution service. As the ATCO Utilities pointed out, the Commission fully expected that revenues provided by K-bar would not always align with the actual incurred costs of the utilities. Rather, the intent was that K-bar would produce the "… incentives for managing capital costs thereby benefitting both customers and the distribution utilities, and that when the K-bar mechanism is considered in conjunction with the other integrated components of the 2018-2022 PBR plans, will result in just and reasonable rates."[102]

88. Furthermore, as stated in Decision 22394-D01-2018, by basing the K-bar funding on the four year average capital additions for the years 2013-2016, the Commission's express objective was to reflect the net capital additions that occurred during the years in PBR1 where the PBR incentives were stronger and reflected incentives that would stimulate utilities to seek the largest productivity gains and cost savings.[103] As the ATCO Utilities pointed out, in addition to the PBR1 capital additions that were subject to capital tracker treatment, a significant component of capital costs reflected in the base K-bar for PBR2 was subject to full incentive properties as they were managed under the I-X mechanism in PBR1 (48.7 per cent for ATCO Gas and 28 per cent for ATCO Electric).[104]

89. Finally, the Commission agrees with the ATCO Utilities that the Commission took into account the superior incentive power of K-bar as compared to capital trackers. The Commission expressly considered this enhanced incentive power in setting a stretch factor for the PBR2 plans.[105]

90. As discussed in Section 5.4, the Commission also does not accept the view of some of the interveners that there were problems with the design of other elements of the PBR2 plans such as lack of inclusion of an ESM, or a problem with the X factor. Overall, the Commission finds that the evidence in this proceeding does not support the conclusion that there was a flaw in the design of the ATCO Utilities' PBR2 plans. In the next section, the Commission considers whether there was a problem with the operation of the ATCO Utilities' PBR2 plans.

5.2 Was there a problem with the operation of the PBR2 plans?

91. In addition to exploring whether the ATCO Utilities' significant cost savings over the PBR2 term were due to a problem with the design or structural elements of their PBR2 plans, there was also discussion in this proceeding about whether these savings were the result of a problem with the operation of the plans. Specifically, the submissions revolved around whether the significant difference between funded and actual spend was a result of PBR incentives or other factors. For the reasons set out below, the Commission concludes in this section that there was a problem with operation of the ATCO Utilities' PBR2 plans.

92. The ATCO Utilities asserted that they were confident that the majority of the cost savings they achieved during the PBR2 term was a direct result of management decisions and

102 Decision 22394-D01-2018, paragraph 258.
103 Decision 22394-D01-2018, paragraph 177.
104 Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, paragraph 26.
105 Decision 20414-D01-2016 (Errata), paragraph 153.

initiatives.[106] The ATCO Utilities explained that they do not monitor or specifically track all cost-saving initiatives or management decisions on an individual basis.[107] However, they did provide examples of initiatives that they asserted impacted their achieved ROEs in 2021 and 2022. Examples common to both ATCO Electric and ATCO Gas included organizational realignment and activity/role consolidations; work prioritization and aggregation; prioritization of projects; maintenance optimization and operation technology; and income tax deductions. ATCO Electric also cited fleet complement; meter replacement and redeployment; new extension process; engineering standards; and the purchase of Rural Electrification Associations (REAs) as examples of cost-cutting initiatives. ATCO Gas cited examples such as strategic investments; standardization; consolidation and joint trench installations; idling reduction; and specialized survey equipment.[108] Although given multiple opportunities to do so, neither utility attributed cost savings, on a quantitative basis, to these initiatives.

93. Both the UCA[109] and the CCA[110] contended that some of the ATCO Utilities' reductions in capital spending were related to lower workloads rather than efficiency gains. Russ Bell, a witness for the UCA, stated that there were reductions in workload for a variety of reasons including COVID or supply chain issues. According to R. Bell, changes in workload are not efficiencies and should not be to the benefit of the utility.[111] The CCA submitted that lower workloads and related savings appear to have resulted from revising public and worker safety criteria (or modifying the compliance with the criteria) and previously committed replacement volumes and completion dates.[112] Similarly, Calgary indicated that ATCO Gas's choice not to spend the capital does not constitute an efficiency.[113]

94. As described in the previous section of this decision, D. Madsen prepared an estimate of what he considered to be the quantified efficiency savings for ATCO Electric from 2018 to 2022. He observed that ATCO Electric described only a limited number of efficiency gains that would explain the difference in approved versus actual capital additions from 2018 to 2022 and stated that "it is the gap between the funding for capital and the actual identified efficiencies that is of most concern."[114] Overall, D. Madsen was of the opinion that "the lack of quantified accumulated real capital efficiency gains and related revenue requirement [is] troubling given the scope of this proceeding and the intent of PBR as a whole."[115]

95. The Commission shares D. Madsen's concern and is also troubled by the lack of quantification and explanation of savings by the ATCO Utilities attributable at any level (i.e., specific amounts, ranges, estimates) to specific programs, projects or initiatives such as those enumerated by the ATCO Utilities. The gap between the amount of cost savings realized by each

[106] Transcript, Volume 1, page 62, lines 14-22.
[107] Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraphs 40 and 88.
[108] Exhibit 28300-X0020.01, ATCO Utilities Reopener Submission, paragraphs 40 and 88, sections 3.2, 3.4, 4.2, 4.4; Exhibit 28300-X0046.02, PDF page 21.
[109] Exhibit 28300-X0096, UCA Evidence Submission (Prepared by Russ Bell) - 28300, PDF pages 10, 13; Exhibit 28300-X0122, UCA-AUC-2023DEC4-001(a); UCA-AUC-2023DEC4-003(c).
[110] Exhibit 28300-X0121, CCA-AUC-2023DEC18-001(a), PDF pages 1-2.
[111] Exhibit 28300-X0096, UCA Evidence Submission (Prepared by Russ Bell) – 28300, PDF pages 9-10.
[112] Exhibit 28300-X0097, CCA Evidence of Jan Thygesen, PDF page 45, paragraph 146.
[113] Transcript, Volume 4, page 718, lines 9-18.
[114] Exhibit 28300-X0092, IPCAA - Evidence of Dustin Madsen - 28300, PDF page 13.
[115] Exhibit 28300-X0092, IPCAA - Evidence of Dustin Madsen - 28300, PDF page 11.

of ATCO Electric and ATCO Gas over the PBR2 term and the amount that the utilities quantified as being attributable to achieved efficiencies throughout the PBR2 term is inordinate.

96. As discussed earlier in this decision, the Commission acknowledges that the funding provided to each of the ATCO Utilities by the PBR2 plans was a single envelope intended to be used flexibly by the utilities to provide safe and reliable service in the most efficient manner possible. In the context of a Phase 1 reopener review as is the case here, the Commission also does not expect every dollar of cost savings to be perfectly quantified and apportioned precisely to the specific driver of that dollar of savings. However, it does expect distribution utilities to be aware of the factors, both within and outside of their control, that contribute to the cost savings achieved during a PBR term. The Commission also expects that utilities will be able to adequately explain the difference between revenues provided by the PBR formula and the actual costs incurred with reference to the associated quantified cost savings attributable to those factors or, in instances where such quantification and explanation is not feasible, with a reasonably robust description of the utility’s choices and actions (supported by evidence such as business cases or corporate directives) that led to the related reduction in costs.

97. The Commission also reiterates that a fundamental premise of a PBR plan is to create incentives for regulated utilities to actively seek out ways to continue to deliver safe and reliable utility service at a lower cost by implementing efficiency enhancements in its operations, capital deployment and other business practices. If they are successful, they retain the increased profits generated by those cost reductions within the PBR term, and customers get the benefit of a more efficient utility and lower cost structures for the same or better utility service over the long term.

98. Implementing efficiency enhancements is a deliberate and active choice. While there will be some cultural change resulting in incremental and potentially unmeasurable positive change, in general, businesses identify areas for improvement, action those areas subject to appropriate internal approvals, implement processes to effect change and track and measure the initiatives to determine whether those initiatives are yielding the anticipated results. Accordingly, the Commission considers that it makes sound business sense for an organization to track its management decisions and implemented efficiency initiatives to verify that they are producing the intended productivity and efficiency improvements and cost savings and, if they are not, to provide the basis for adapting or abandoning those initiatives. This is even more essential for a regulated utility that is subject to Commission oversight.

99. As an example, in this proceeding, the ATCO Utilities explained what factors contributed to ROE variances in the “Other” category in each of 2021 and 2022, as set out in Table 5 of Section 4.1. The Commission is satisfied with those explanations and with how the ATCO Utilities attributed each of the factors enumerated in the “Other” category to their respective achieved returns. Overall, the Commission finds that the explanations provided by each of the ATCO Utilities in this “Other” category were thorough and commensurate with the amounts that each of the enumerated factors contributed to the overall achieved ROE.

100. It is also noteworthy that the ATCO Utilities themselves were in a similar proceeding previously and were able to quantify and attribute their costs savings. In PBR1, both ATCO Utilities similarly achieved high returns that triggered the reopener thresholds in the final two years of those plans. In contrast to this proceeding, in the PBR1 reopener proceeding, the ATCO Utilities were able to quantify the efficiencies achieved and explain what drove the cost

savings.[116] In Decision 23604-D01-2019, based on the quantifications and explanations provided, the Commission found that there was no evidentiary basis to conclude that the earnings achieved by the ATCO Utilities above the Commission's generically approved ROE were the result of a problem with the design or operation of the ATCO Utilities' PBR1 plans.[117] It is therefore the case that the ATCO Utilities are familiar with the reopener process and with the evidentiary requirements associated with it.

101. In the current reopener proceeding, the ATCO Utilities' evidence related to capital cost savings over the PBR2 term and ATCO Gas's evidence related to its 2022 O&M cost savings was lacking, despite multiple opportunities to provide evidence concerning these matters. As discussed in Section 4.2 of this decision, the ATCO Utilities only quantified and explained between 10 to 30 per cent of their 2021 and 2022 achieved capital savings and ATCO Gas's 2022 O&M savings. ATCO Electric and ATCO Gas also attributed $42.4 million and $32.6 million, respectively, of cost savings in 2021 and 2022 to FTE reductions which they could not separate into capital and O&M labour. For the remaining significant majority of cost savings in these categories, the ATCO Utilities did not explain what factors contributed to the savings achieved. Therefore, the Commission is left with minimal meaningful information related to the source and quantification of the ATCO Utilities' capital cost savings and ATCO Gas's 2022 O&M cost savings. This is the gap that has been described by interveners as troubling and which the Commission is left to address.

102. In assessing the evidence that the ATCO Utilities did provide in this proceeding, the Commission has taken a conservative approach and given the ATCO Utilities the benefit of the doubt regarding the source of savings that were quantified.

103. First, the Commission has not, as part of this proceeding, tested whether the quantified cost savings that were attributed by the ATCO Utilities to specific management decisions or initiatives were the result of efficiency gains as intended by the PBR2 plans. Instead, the Commission has accepted all quantified and explained cost savings, including those related to FTE reductions to have resulted in efficiency gains. Had quantitative evidence been provided for most or all of the savings achieved, the Commission would have engaged in an exercise to assess whether the savings were the result of efficiency gains arising from the incentives intended by the PBR2 plans.

104. Second, and relatedly, the Commission has factored into its assessment reasonable allowances for some over- or undercounting due to the complexities of determining the precise impacts of a specific cost-saving driver, and the possibility of savings that are driven by interrelated factors that could affect more than one area of the business.

105. Third, the Commission considers that descriptions of the specific programs listed above could reasonably establish that some portion of the ATCO Utilities' capital and ATCO Gas's O&M cost savings are attributable to efficiency gains. Specifically, the ATCO Utilities qualitatively described a number of programs and, as a result of intervener and Commission requests, provided a detailed description of how they changed these programs in response to PBR incentives.[118] The Commission accepts that there exists some tolerance band around the

116 Decision 23604-D01-2019, paragraphs 27-28, 36-37.
117 Decision 23604-D01-2019, paragraph 115.
118 See sections 4.2 and 5.2, above.

efficiencies quantified and explained by the ATCO Utilities to account for these programs that were described but not quantified. The Commission cannot, however, assign any reasonable value (even through ranges or by specifying some level of uncertainty) to this tolerance band because these programs and activities were not quantified at any level by the utilities themselves.

106. While the ATCO Utilities strongly contended that any unexplained and unquantified savings were derived from an organizational transformation, these statements were high level, unsubstantiated, and insufficient in proportion to the otherwise unquantified or unexplained cost savings. Further, these assertions were of limited material value to the factual exercise of determining what behaviours and business decisions contributed to the ATCO Utilities' achieved returns.

107. In the oral hearing, D. McHugh stated that the ATCO Utilities do not have the information required to reconcile their cost savings any further than what has already been provided on the record of this proceeding.[119] The Commission finds this statement to be inconsistent with other statements the ATCO Utilities made in this proceeding related to their sophisticated and superior business management. The ATCO Utilities provided information on the use of short-term performance incentives for management staff at all levels.[120] The ATCO Utilities' evidence of their ability to set performance targets and to measure performance at such a granular level is not consistent with their professed inability to determine the source of organization-level cost savings.

108. The ATCO Utilities also discussed their processes for the monthly management of capital projects and programs. These processes involve ongoing decision-making regarding adjustments to capital and O&M plans and comparing actual expenditures to those set out in the relevant business plans.[121] Again, there is an inconsistency between the ATCO Utilities' evidence of their ongoing monthly processes to manage their capital and O&M programs and their evidence that they do not have a record of what programs resulted in a significant majority of capital, and in the case of ATCO Gas, O&M cost savings. Calgary highlighted a similar inconsistency with respect to the ATCO Utilities' inability to provide business unit level FTE information in standard operational functions given the claim that their management was largely responsible for their excessive earnings due to their business acumen.[122] It strains credulity for the Commission to accept that entities as sophisticated as the ATCO Utilities, with professed business practices as described in their evidence, would not have documented or tracked the source of hundreds of millions of dollars in savings.

109. Even taking a conservative approach as described above, the Commission finds that the evidentiary gap between the ATCO Utilities' total cost savings and the cost savings that were either quantified and attributed to specific efficiency gains or sufficiently described remains inordinately large. Based on the consolidated evidence available in Appendix 5, the ATCO Utilities were collectively unable to quantify and reasonably explain the drivers behind more than $500 million in cost savings over the PBR2 term (the capital portion of which had an impact on ROEs achieved in 2021 and 2022 due to the cumulative effect of capital savings) and

[119] Transcript, Volume 2, page 384, lines 7-25; page 385, lines 1-3.
[120] Exhibit 28300-X0039.01, ATCO-AUC-2023OCT16-002 (e)(ii) and (vi).
[121] Transcript, Volume 2, pages 346-348.
[122] Exhibit 28300-X0108, ID 28300 City of Calgary Submissions ATCO Utilities PBR Re-opener Proceeding, PDF page 13.

$153 million in 2021 and 2022. To be clear, the amount of unquantified and unexplained cost savings were set out separately for each utility in Section 4, and the Commission considered these amounts separately for each utility.

110. While the Commission is not bound by the rules of evidence,[123] in this Commission-initiated proceeding and considering the information asymmetry that is inherent in the regulation of utilities, it finds that it is appropriate to adopt principles related to negative inferences; in particular, that a decision maker can draw a negative inference from the absence of relevant information on the record and may conclude that the matter that was not recorded did not occur or exist.[124]

111. The magnitude of the savings that were neither quantified nor attributed to particular projects, programs or initiatives by the ATCO Utilities has led the Commission to conclude that the savings cannot be attributed to utility-driven efficiency gains resulting from the incentives intended under PBR. The Commission's view is that much of the ATCO Utilities' unquantified and unexplained savings were the result of factors other than efficiencies, including those asserted by the interveners, such as the ATCO Utilities opting to not pursue certain capital projects (what the UCA and the CCA referred to as "lower workloads"), and realizing cost savings as a result of COVID-related externalities including supply chain disruptions that prevented the ATCO Utilities from executing certain required projects. These decisions are made by each of the ATCO Utilities in response to their PBR2 plans and are therefore operational, rather than structural in nature.

112. The Commission therefore finds that the PBR2 plans of ATCO Electric and ATCO Gas did not operate as intended in each of 2021 and 2022. The result is rates that were not just and reasonable in those years because customers were required to pay rates (including the rates of return achieved by the ATCO Utilities that exceeded the approved return and the threshold for the reopener) without receiving the benefit of more efficient utility service. In other words, the operation of the plans was inconsistent with the bargain that is inherent in PBR, and customers paid more than what was reasonably required for the provision of safe and reliable utility service. The Commission finds that this constitutes a problem with the operation of each of ATCO Electric's and ATCO Gas's PBR2 plans.

113. In the next section, the Commission considers whether the operational problem with the ATCO Utilities' PBR2 plans can be resolved without reopening and reviewing the plans.

5.3 Can the operational problem be addressed through rebasing or other features of the PBR2 plans?

114. In this proceeding, the ATCO Utilities advanced the proposition that cost savings relative to PBR revenues, however achieved, should be considered to be the result of efficiencies because at rebasing and throughout future PBR terms, the savings lower rates for customers.[125] The ATCO Utilities submitted that as a result of rebasing, the revenue requirements of ATCO Gas and ATCO Electric decreased by $51 million and $41 million, respectively, between 2022 and

[123] *Alberta Utilities Commission Act*, Section 20.
[124] See Lederman, Sidney N., Bryant, Alan W. & Fuerst, Michelle K., *Sopinka, Lederman & Bryant: The Law of Evidence in Canada*, 5th ed. (Toronto: LexisNexis Canada, 2018) at §6.253, which discusses Section 30(2) of the *Canada Evidence Act.*
[125] Transcript, Volume 1, page 59, lines 16-21; page 93, lines 5-9.

2023.[126] They further indicated that these revenue requirement reductions can be viewed as general indicators of efficiencies achieved over PBR2.[127] Accordingly, the ATCO Utilities contended that from the perspective of customer benefits, there is no flaw or problem in the design or operation of the PBR2 plans, and that the plans worked as intended to the benefit of the utilities and their customers alike.[128]

115. The Commission does not accept this proposition. The exercise of rebasing is different from the exercise of determining whether a reopener is warranted. The rebasing process touched on the issue of whether and to what extent achieved ROEs that exceed approved ROEs can be relied on as an indication that utilities were achieving efficiencies under PBR. It was not a detailed review of the factors that contributed to the achieved ROEs and whether achieved ROEs significantly higher or lower than the approved ROE were the result of a problem with the design or operation of a PBR plan. However, this type of review is squarely within the scope of a reopener proceeding. A reopener is a different tool for a different purpose.

116. If rebasing was the appropriate tool to address the possibility of a utility achieving returns significantly higher or lower than the Commission's approved ROE, there would be no need for a reopener tied to a material variance between the actual and approved ROEs as a safeguard to ensure that any potential problems arising in the design or operation of a plan would be addressed. Instead, the answer would be for either the utility (in the case of a downside reopener trigger) or the customers of the utility (in the case of an upside reopener trigger) to, regardless of whether there was a problem with the design or operation of the plan or not, wait until rebasing to recover the under-earnings or share the over-earnings on a go-forward basis. That clearly was not the Commission's intent when it included a reopener as part of its PBR plans.

117. From this perspective, the Commission also does not accept that any reduction in total costs, as ultimately captured in rebasing, is sufficient to exonerate a utility from demonstrating that the savings achieved during the PBR term were the result of efficiencies in response to the incentives of PBR. In its decisions dealing with PBR3 rebasing for ATCO Electric and ATCO Gas, the Commission concluded that while it can be a useful indicator, the achieved ROE cannot be fully equated to a measurement of realized efficiencies.[129] In the rebasing decisions, the Commission accepted that the decrease in the ATCO Utilities' respective revenue requirements is an indication that *rebasing* is functioning as that plan element was intended. In other words, because utility revenues and costs are being realigned (where they were de-linked over the prior PBR term), in-plan utility-achieved savings (retained as profits by the utility in each year of the term) are shared through rebasing as a one-time resetting of going-in rates for the next PBR term. However, the Commission also provided for a possibility that "if a utility was not successful in achieving efficiencies that resulted in cost savings during a PBR plan, or faced any other challenges managing its costs such that its earnings were below the approved ROE, the COS rebasing presents an opportunity for the utility to make its case to the Commission to set rates that will allow it a reasonable opportunity to earn the approved rate of return in the future."[130]

[126] Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, paragraph 65.
[127] Transcript, Volume 1, page 93, lines 11-16.
[128] Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, paragraphs 65-66, 68.
[129] Decision 26615-D01-2022: ATCO Electric Ltd., FortisAlberta Inc., 2023 Cost-of-Service Review, Proceeding 26615, July 28, 2022, paragraph 77; Decision 26616-D01-2022: ATCO Gas, Apex Utilities Inc., 2023 Cost-of-Service Review, Proceeding 26616, September 1, 2022, paragraph 81.
[130] Decision 26616-D01-2022, paragraph 47.

118. The Commission therefore disagrees that the existence or lack of customer benefits at rebasing is the appropriate test for a reopener. The sharing of benefits through rebasing is not dispositive of whether or not there is a problem in the design and operation of the prior PBR plan. It is possible (as the Commission found to be the case here) that the achieved ROEs exceeded the approved ROE due in whole or in part to factors unrelated to PBR incentives, such as the earnings driven by factors other than achieved efficiencies. The opposite could also be true: the lack of customer benefits at rebasing due to low ROEs does not necessarily imply that there was a problem with the design or operation of the relevant plan. It may have been a utility's inability to find cost efficiencies and meet the productivity target implied in the X factor. In either case, the fact that benefits were, or were not, passed on to customers at rebasing does not supplant the purpose of or process for the reopener included in the PBR2 plans, nor does it obviate the need to file evidence to quantify and explain the source of achieved savings.[131]

119. While rebasing was the only plan feature suggested by any party as a way to address any problem arising with the plans, the Commission has also considered whether the problem it has found exists with the operation of the plans could be addressed through other features of the ATCO Utilities' PBR2 plans. Given that the reopener thresholds of the ATCO Utilities were triggered in the two final years of their respective plans, and it has been nearly two years since the plans concluded, the Commission finds that other plan features are not available, in the circumstances of this case, to address the operational problem identified by the Commission.

5.4 Other issues raised by interveners

120. In this section, the Commission considers other issues raised by the interveners that they contended were problems in the design or operation of the ATCO Utilities' PBR plans.

5.4.1 Treatment of specific capital expenditures including funding for REA purchases

121. All interveners pointed to specific funding for expenditures that they contended contributed to the ATCO Utilities' achieved ROEs. They suggested that the inclusion of funding for these items or the related enjoyment by the utilities of unexpected savings not attributable to the actions of the utilities was not the intent of PBR, amounted to windfall gains, and therefore, constitutes a flaw in the PBR2 plans. According to the interveners, rather than being funded through the general envelope of the PBR formula, these potential expenditures should have either been given deferral or capital-tracker type treatment to ensure that customer rates reflect the actual associated costs of these items (i.e., treat these items on a COS-type basis).

122. Calgary submitted that the exclusion of the information technology (IT) common matters glide path is a design flaw in the PBR2 plans.[132] The CCA indicated that exogenous events, such as tax rate changes and accelerated capital cost allowance amortization option changes, resulted in a windfall for the ATCO Utilities and had nothing to do with superior management, and thus should be given deferral account treatment.[133] D. Madsen stated that customers were required to pay depreciation in 2021 and 2022 on capital that was not required to be spent, and suggested that this led to an excess collection of depreciation expense by ATCO Electric. Therefore,

[131] The Commission acknowledges, however, that depending on the nature of a reopener remedy, it may affect the quantum of benefits shared with customers at rebasing. For example, if a reopener remedy results in greater sharing of benefits with customers during the PBR term, this may reduce the amount of benefits shared at rebasing, all other things being equal.

[132] Exhibit 28300-X0120, CAL-AUC-2023DEC4-002(c).

[133] Exhibit 28300-X0097, CCA evidence of J. Thygesen, paragraphs 132-133 and 144.

D. Madsen proposed that an adjustment to depreciation expense to reflect the actual capital spend in the PBR2 term should occur.[134]

123. The UCA noted that a large driver for ATCO Electric's variance between actual capital spending and K-bar funding during PBR2 was the inclusion of funding for REA purchases in K-bar. Russ Bell noted that, as the purchase of an REA is a discrete event that requires specific approval, inclusion of funding for REA purchases must be considered a flaw and should be removed from the K-bar methodology.[135] D. Madsen also stated that because ATCO Electric did not purchase any REAs, unspent funding for such purchases may not be a reasonable efficiency gain on which to reward ATCO Electric.[136]

124. The Commission finds that the above-mentioned items highlighted by the interveners do not result in a flaw in the ATCO Utilities' PBR2 plans. While it is the case that funding for each of the items raised by the interveners resulted in an increase to the ATCO Utilities' achieved ROE in 2021 and 2022, under different circumstances, it is equally possible that the funding "earmarked" for such items could have fallen short of actual costs for those items during the term, which would have resulted in lower earnings. In designing its PBR plans (including PBR2), the Commission sought to ensure that as much of the funding and as many of the costs to be incurred during the plan were subject to the incentive properties of PBR to maximize the incentive power of the plan and incentivize the utilities to find efficiencies in managing their business. In doing so, the Commission was aware that funding is provided as an envelope based on historical actual spending and that some costs may go up and others may go down during the term of the plans; however, it was satisfied that the utilities would be able to deliver safe and reliable service and having the opportunity to earn a reasonable rate of return under the overall envelope of funds provided by the PBR2 plans.

125. Specifically regarding the REA purchases, in Decision 24405-D01-2019,[137] the Commission considered the rate treatment of amounts paid by a distribution utility in Alberta for the acquisition of distribution systems owned by REAs, gas co-operatives and municipalities under the PBR2 plans. In that decision, the Commission stated that it will not, absent compelling reasons, direct a freely negotiated acquisition between a distribution utility and an REA or a municipality. The Commission stated that this approach is consistent with the Commission's intent in establishing parameters for the PBR2 term and its expectation that the funding provided using base rates and the K-bar mechanism be used to fund these types of acquisitions by a distribution utility.[138] The Commission also stated that the distribution utility's choices in relation to a voluntary acquisition should be responsive to PBR incentives to minimize costs and achieve operational efficiencies, consistent with the general provisions of the PBR2 plans.[139]

126. The Commission continues to hold the views expressed in Decision 24405-D01-2019. While the Commission recognizes that over the PBR2 term, K-bar provided more funding for REA purchases than what was available to be purchased,[140] the Commission agrees with ATCO

[134] Exhibit 28300-X0092, IPCAA - Evidence of Dustin Madsen - 28300, PDF page 16.
[135] Exhibit 28300-X0096, UCA Evidence Submission (Prepared by Russ Bell) - 28300, PDF page 13.
[136] Exhibit 28300-X0092, IPCAA - Evidence of Dustin Madsen - 28300, PDF page 13.
[137] Decision 24405-D01-2019: Generic Proceeding to Review Rate Treatment of Distribution System Acquisition Costs Under Performance-Based Regulation, Proceeding 24405, September 6, 2019.
[138] Decision 24405-D01-2019, paragraph 63.
[139] Decision 24405-D01-2019, paragraph 65.
[140] Transcript, Volume 2, pages 360-363.

Electric that the single-envelope approach inherent in the PBR2 plans meant that K-bar was not intended to provide funding on a line-item basis for individual projects.[141] Instead, K-bar is intended to allow the utility to manage the funds in a single envelope to ensure safe and reliable service to all customers. In this way, funding for REA purchases is similar to funding for other capital projects. The amount funded through K-bar may either be higher or lower than the amount actually spent on a particular project; however, the Commission believes that K-bar produces the intended incentives for managing total capital costs, thereby benefiting both customers and the distribution utilities. Additionally, some of the individual project amounts may balance out over the course of several PBR terms. As an illustration, ATCO Electric's K-bar in PBR3 reflects zero REA purchases during PBR2. This means that there is no funding through K-bar for any REA purchases ATCO Electric may make over the PBR3 term. As a result, if ATCO Electric were to purchase an REA during PBR3, it would have to fund the purchase from within the single envelope of funding provided through the parameters of each of the plans, despite not having notional capital funding for REA purchases because no specific funding is included in its PBR3 K-bar calculation.

127. The Commission underscored in Decision 24405-D01-2019 that in designing the PBR2 formula, it expressed a clear intent that the vast majority of capital should be subject to the superior incentive properties of PBR in a manner consistent with PBR principles.[142] Additionally, the Commission emphasized in Decision 24405-D01-2019 that the distribution utility's choices in relation to a voluntary acquisition should be subject to PBR incentives to minimize costs and achieve operational efficiencies. As a result, the Commission does not find, as advanced in the UCA's and IPCAA's submissions, that the inclusion funding for the purchase of REAs in ATCO Electric's PBR2 funding demonstrates a flaw in ATCO Electric's PBR2 plan.

128. Similarly, in Decision 2014-169,[143] the Commission pointed out that the total factor productivity studies used to determine the X factor in the PBR formula are based on the movement of the costs of all factors of production, which include IT costs. The Commission acknowledged that some costs of utility companies increase and some decrease over time. The Commission ultimately concluded that separating IT costs and subjecting them to a glide path (i.e., a specified, annual price reduction based on approved costs) would "distort unnecessarily the incentives created by performance-based regulation and would be inconsistent with the principles of performance-based regulation."[144]

129. It is from this perspective that the Commission agrees with the ATCO Utilities that the interveners' proposals to extend deferral account or similar treatment to certain individual cost items, including REA purchases and IT costs, would be inconsistent with PBR principles and prospective ratemaking intended in the PBR2 plans. Not reconnecting actual utility costs with customer rates for certain individual cost items is not a flaw in a plan. On the contrary, in PBR1, the Commission eliminated a number of existing deferral accounts and did not approve certain new proposed accounts. In Decision 2012-237, the Commission stated that the ability to recover costs outside of the I-X mechanism should be an extraordinary remedy for cost recovery.[145] In

[141] Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, paragraph 130.
[142] Decision 24405-D01-2019, paragraph 61.
[143] Decision 2014-169: ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.) 2010 Evergreen Proceeding for Provision of Information Technology and Customer Care and Billing Services Post 2009 (2010 Evergreen Application), Proceeding 240, June 13, 2014.
[144] Decision 2014-169, paragraph 460.
[145] Decision 2012-237, paragraph 631.

doing so, the Commission recognized that adding more deferral accounts lessens the incentive properties of a plan and moves the regulation of utilities closer to a COS regime. The Commission continues to hold this view.

130. Therefore, the Commission finds that the lack of deferral account or similar COS-type treatment for specific cost items, including REA purchases, as submitted by the interveners, does not result in a flaw in the ATCO Utilities' PBR2 plans.

5.4.2 Other concerns raised by Calgary

131. In this proceeding, Calgary raised several other concerns with ATCO Gas's actions and with the operation of ATCO Gas's PBR2 plan. Calgary stated that ATCO Gas used its PBR2 funding envelope to increase its allocated corporate costs in a manner that restricted the proper amount of benefits that should have been passed to customers in PBR3.[146] Calgary also expressed the view that the premature exclusion of an ESM was a significant, material design flaw of the PBR2 plan.[147] As well, according to Calgary, the Commission failed to recognize that because capital under PBR1 was effectively COS based, the X factor should have been higher, or a separate capital-based X factor should have been considered for ATCO Gas.[148]

132. On the matter of corporate cost allocation, the Commission agrees with ATCO Gas that the costs that have been allocated are based on allocation methodologies previously approved by the Commission.[149] The costs are those required to support centralized corporate functions that are not embedded in the utility and, as a result, are shared and allocated among the various ATCO companies.

133. With respect to the exclusion of ESM, the Commission clearly indicated it would not include the ESM in the PBR2 plans and designed the plans accordingly.[150] The Commission relied on other elements of the plans (including rebasing, reopener, and X factor) to ensure that the benefits of PBR2 would be shared with customers. For example, as stated in Decision 2012-237:

> 819. The Commission has approved safeguards in Section 8 of this decision that provide for a re-opening and review of the companies' PBR plans if the reported ROE of a company significantly exceeds the approved ROE or if the company experiences a significant shortfall in earnings. These safeguards are comparable to those provided for by an ESM but do not, in the Commission's view, exhibit the disincentives that arise with ESMs.

134. As it pertains to the X factor for PBR 2, there was extensive evidence and discussion around the appropriate level of the X factor, inclusive of stretch, in the proceeding to establish the PBR2 plans.[151] In contrast, in this proceeding Calgary did not support its contention that the

---

146 Transcript, Volume 4, page 691, line 25, page 692, lines 1-4.
147 Exhibit 28300-X0108, ID 28300 City of Calgary Submissions ATCO Utilities PBR Re-opener Proceeding, PDF pages 2-4. Exhibit 28300-X0120, CAL-AUC-2023DEC4-002(a).
148 Exhibit 28300-X0108, ID 28300 City of Calgary Submissions ATCO Utilities PBR Re-opener Proceeding, PDF pages 2-4. Exhibit 28300-X0120X0121, CAL-AUC-2023DEC4-002(a).
149 Transcript, Volume 1, page 188.
150 Decision 20414-D01-2016 (Errata), Appendix 5, Section 9, page 91.
151 Decision 20414-D01-2016 (Errata), paragraph 156.

X factor should have been set higher, or that a separate capital-based X factor should have been considered beyond its assertion.

135. For the above reasons, the Commission rejects Calgary's position that corporate cost allocations, the exclusion of an ESM, or issues with the X factor were flaws in ATCO Gas's PBR2 plan.

5.4.3 Service quality and compliance with Commission directions

136. One potential outcome of the strong incentives created by PBR to cut costs is that utilities may compromise on quality of service as a way to reduce costs and, therefore, maximize profits which the utilities can retain during the term of their plans. In designing the PBR2 plans, the Commission recognized the potential for such undesirable outcomes and indicated that it would continue to administer Rule 002: *Service Quality and Reliability Performance Monitoring and Reporting for Owners of Electric Distribution Systems and for Gas Distributors*[152] (enhanced for PBR purposes at the onset of PBR1) to address the requirement for service quality measurement and reporting under PBR.[153]

137. In this proceeding the CCA advanced the view that the ATCO Utilities were able to achieve the capital savings they did because they revised their asset replacement criteria from what was in place in PBR1, resulting in a systemic over-funding in PBR2 since K-bar was based on PBR1 capital tracker amounts. The CCA explained that the funding model of PBR2 was predicated upon the ATCO Utilities employing the same public and worker safety standards as it applied prior to and during PBR1, and the ATCO Utilities adhering to the commitments they made in PBR1 with respect to public and worker safety in terms of asset replacements. The CCA contended that the flaw in the PBR2 plans was the omission of a requirement to notify the Commission of revised replacement schedules and apparent abandonment of deadlines for the replacement of assets previously identified as safety hazards and which the Commission had agreed to. According to the CCA, the ATCO Utilities appeared to have unilaterally and without disclosure revised previous commitments and public and worker safety standards to reduce volumes of work. The second flaw identified by the CCA was that there is no constraint on the ATCO Utilities applying in future for additional funding to "catch-up" to the schedules that they committed to in PBR1 but then relaxed in PBR2.[154]

138. Jan Thygesen, a witness for the CCA, highlighted examples of capital programs where he suggested that the ATCO Utilities reduced capital spending during PBR2 by changing previous practices and/or altering the rationale they had previously used to justify the need for capital funding, which was obtained through a capital tracker mechanism during PBR1. In this regard, J. Thygesen raised two issues: (i) there may have been a relaxing of safety standards to achieve the cost savings; and (ii) such practices contradicted previous Commission directions.[155] The Commission considers these issues in turn.

[152] Decision 20414-D01-2016 (Errata), paragraph 257.
[153] Decision 20414-D01-2016 (Errata), paragraph 260.
[154] Exhibit 28300-X0121, CCA-AUC-2023DEC18-001(a) and (b); CCA-AUC-2023DEC18-002(c).
[155] Exhibit 28300-X0097, CCA Evidence of Jan Thygesen, PDF page 5, paragraphs 12, 146; Exhibit 28300-X0121, CCA-AUC-2023DEC18-001(a).

5.4.3.1 Safety and reliability

139. In his evidence for the CCA, J. Thygesen pointed to ATCO Gas's PVC replacement program, stating that the replacement of older brittle PVC pipe has been an ongoing issue for several decades due to safety concerns. In Decision 2011-450, the Commission agreed that there was a serious safety and reliability issue with respect to the risk of brittle failure associated with plastic and PVC pipe when subjected to stress and directed a pipe replacement program to be implemented over a 20-year period ending in 2031.[156] [157] J. Thygesen stated that despite this, the average kilometres of pipe replaced by ATCO Gas went from 276 km per year in PBR1 to 136 km per year in PBR2, a pace at which ATCO Gas would be unable to complete the remaining replacements by the 2031 deadline.[158] J. Thygesen also stated that given the evidence provided by ATCO Gas and accepted by the Commission that older PVC pipe poses risks and safety concerns, ATCO Gas's reduced level of PVC replacements increases the overall risk that was originally contemplated by the Commission in approving its replacement.[159]

140. In its rebuttal evidence, ATCO Gas clarified that the PVC replacement falls under its Plastic Mains Replacement (PMR) Program and the scope of this program is to replace all early generation or vintage plastic pipe installed prior to 1978, including both polyethylene (PE) and PVC plastics. The purpose of this program is to proactively replace vintage plastic before brittle failure occurs.[160]

141. Approximately five years following Decision 2011-450, in Proceeding 20604,[161] ATCO Gas updated its risk prioritization to target higher service density areas and to continually review the program impact on safety to determine the appropriate pace of pipe replacement.[162] ATCO Gas explained that in refining the prioritization to include service density in 2015, the severity of failure consequences of the remaining pipe in the system would be considerably reduced. As a result, it said that it prioritized the highest risk areas first. It also explained that it has seen a system wide reduction in leaks on plastic mains and services during the PBR1 and PBR2 terms. ATCO Gas explained that instead of following a spend profile of replacements that was determined under different circumstances, it has aimed to maximize risk reduction per dollar as it sought to further refine its PMR risk reduction criteria.[163]

142. ATCO Gas stated that in 2019 it engaged the Gas Technology Institute (GTI) based on GTI's recent publication relating to risk assessments for plastic pipe. GTI's recommended risk assessment will be based on testing and analyzing field samples to produce an evaluation of the probability of failure over time to determine replacement timelines for pipeline segments. ATCO Gas explained that it is aware that certain remaining resins could potentially be validated

[156] Decision 2011-450: ATCO Gas, 2011-2012 General Rate Application Phase I, Proceeding 969, December 5, 2011, paragraph 191.
[157] Exhibit 28300-X0097, CCA Evidence of Jan Thygesen, PDF pages 5-7, paragraphs 14-16.
[158] Exhibit 28300-X0097, CCA Evidence of Jan Thygesen, PDF pages 13 and 16, paragraphs 28 and 38. J. Thygesen observed that there was 5,520 km of older PVC pipe remaining at the end of 2022, which would take 41 years to replace at the rate of completion demonstrated during the PBR2 plan.
[159] Exhibit 28300-X0097, CCA Evidence of Jan Thygesen, PDF page 15, paragraph 32.
[160] Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, Appendix B, paragraph 3.
[161] Proceeding 20604, ATCO Gas and Pipelines Ltd., 2014 PBR Capital Tracker True-Up and 2016-2017 PBR Capital Tracker Forecast.
[162] Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, Appendix B, paragraph 6.
[163] Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, Appendix B, paragraphs 9-14.

to allow the PMR program to be extended beyond 2031.[164] It indicated that the implicit funding levels for PBR3 will reflect the PBR2 activity levels; meaning that if there is any acceleration in replacements they will have to be managed under the “single envelope” approach. Also, any service quality and reliability standards will still follow the Rule 002 requirements.[165]

143. J. Thygesen also pointed to ATCO Electric’s porcelain switch replacement program where the utility used safety concerns to justify funding for the program in PBR1 but reduced the replacement volumes in PBR2. J. Thygesen stated that based on ATCO Electric’s previous evidence, there were approximately 300,000 porcelain switches in service in 2013, and by 2018 it had replaced an estimated 15,000 switches. J. Thygesen referred to previous capital tracker proceedings where the replacement of the porcelain switches were deemed to be a safety concern to the public and workers.[166] While J. Thygesen acknowledged that ATCO Electric has stated that its highest risk switches have already been replaced, he contended that the utility has not provided evidence that the switches with the most system impact risk are also the switches that pose the most risk to the public and workers.[167]

144. In its rebuttal evidence, ATCO Electric explained that in its 2013 capital tracker application it identified a total of 23,000 switches as high-priority risk and those were the ones planned for replacement. While there are approximately 300,000 switches in total that could be replaced, ATCO Electric actively targeted the 23,000 high-risk switches, indicating that the others are to be replaced through work bundling opportunities.[168] ATCO Electric also explained that it did not revise its standards and approach to dealing with potentially hazardous assets. It followed its “Porcelain Switch Replacements Assets Guidelines,” which was filed as part of its 2014-2015 capital tracker application.

145. In his evidence, J. Thygesen also explained that ATCO Gas’s meter relocation program has been in place since 2003 and was approved to focus on reducing risk and improving safety for employees and the public relating to line pressure inside buildings. In Proceeding 20604, ATCO Gas submitted that it would take an additional 15 years to relocate the remaining 40,000 T3L and T4 meter sets that remained inside residences. ATCO Gas has relocated 14,000 meters since 2016 leaving approximately 26,000 meters to be relocated by 2031. Based on the relocation rate during PBR2, J. Thygesen asserted that the relocations will not be completed in the timeline originally submitted by ATCO Gas.[169] J. Thygesen also stated that ATCO Gas has not explained how the slower pace of relocations in PBR2 are consistent with the safety concerns that were outlined in previous proceedings and that the safety guidelines have been relaxed to reduce costs.[170]

146. In its rebuttal evidence, ATCO Gas explained that by the end of 2018 it had replaced all the remaining below-ground entry meters except where there were customer refusals or for homes where there is no feasible location outside for the meter. Approximately 182,000 meters have been moved since the start of the program with approximately 14 per cent of inside meters remaining. COVID-19 restrictions impacted ATCO Gas’s ability to access meters inside

164 Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, Appendix B, paragraph 15.
165 Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, Appendix B, paragraph 19.
166 Exhibit 28300-X0097, CCA evidence of Jan Thygesen, PDF page 19, paragraph 48.
167 Exhibit 28300-X0097, CCA evidence of Jan Thygesen, PDF pages 19-20, paragraphs 49-52.
168 Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, Appendix B, paragraph 38.
169 Exhibit 28300-X0097, CCA evidence of Jan Thygesen, PDF pages 24-26, paragraphs 64-72.
170 Exhibit 28300-X0097, CCA evidence of Jan Thygesen, PDF page 26, paragraphs 70-72.

customers homes and as a result ATCO Gas only prioritized customer-requested meter moves. ATCO Gas also explained that as the program continued, the highest risk meters were relocated. ATCO Gas extended certain program timelines where it was determined that there would be no material negative impact on the performance of the asset or the probability of its failure.[171]

147. The Commission understands that J. Thygesen was concerned that the level of capital savings achieved by the ATCO Utilities during PBR2 may have come at the expense of the safety and reliability of their electric and gas distribution systems. The Commission acknowledges the basis for these concerns, as some of the main programs highlighted by J. Thygesen, such as the PMR, meter relocations and the replacement of porcelain switches, have been supported by a considerable amount of utility evidence over the years in various proceedings highlighting significant safety and reliability concerns. While, as further discussed in this and the next section of its decision, the Commission shares some of J. Thygesen's concerns with respect to the ATCO Utilities' changed practices, the Commission cannot conclude based on the record of this proceeding that the capital savings achieved during PBR2 came at the expense of the safety and reliability of ATCO Electric's and ATCO Gas's distribution systems during the PBR2 term and thus demonstrate a flaw in the respective ATCO Utilities' plans.

148. First, the Rule 002 safety and reliability metrics of ATCO Electric and ATCO Gas did not show any material deterioration during the PBR2 term.[172] J. Thygesen admitted that the ATCO Utilities met the Rule 002 metrics but asserted that the standards are at such a high level that some potential microlevel safety standards and risks to the public and utility employees may not be reported.[173] While the Commission acknowledges that Rule 002 metrics are at a high level and can be considered lagging indicators,[174] they remain valid, Commission-approved indicators for the purposes of service quality measurement and reporting under PBR. The Commission will continue to monitor the adequacy of Rule 002 metrics; as well, the Commission will take action if there is evidence of service quality degradation. The Commission continues to hold the view expressed in Decision 2012-237 that "The Commission will require the companies to maintain their current levels of service quality throughout the PBR term."[175]

149. Second, the ATCO Utilities have explained that any changes to the scope and timing of a specific program are based on more recent information than was available when the program was originally assessed by the Commission, such as the updated testing done for the PMR pipe as described by ATCO Gas. In the Commission's view, such continual assessments, and the potential adoption of new approaches to providing safe and reliable utility service is consistent with the incentives of PBR and general good utility practice as long as it is sufficiently justified and does not result in a decline in the safety or quality of service over time.

150. Finally, the Commission places significant weight on the assurances of the ATCO Utilities, as the owners and operators of their distribution systems, who stated that their

---

[171] Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, Appendix B, paragraphs 25 and 30.
[172] Exhibit 28300-X0131, ATCO Utilities rebuttal evidence, paragraph 40.
[173] Transcript, Volume 3, page 503, lines 9-24.
[174] Under Rule 002, electric utilities must report the system average interruption frequency index (SAIFI) and the system average interruption duration index (SAIDI) to measure electrical distribution system performance and reliability. These metrics are considered lagging since a potential change in system performance and reliability may not be identified until future Rule 002 reporting period.
[175] Decision 2012-237, paragraph 868.

distribution systems are not more risky in 2022 than in 2018 because they have systematically prioritized the replacement of higher risk assets and the risks associated with the remaining assets remain within acceptable industry standards.[176] At the oral hearing, the Commission questioned the representatives of the ATCO Utilities on their project planning, prioritization and risk management approaches for capital programs. In response, D. McHugh for ATCO Electric provided examples such as the pole test and treat program where ATCO Electric decreased the frequency of testing from nine to 11 years but started treating the poles earlier. Also, ATCO Electric testified that the switch from mechanical to herbicide vegetation management has reduced the risk of vegetation interfering with the wires. D. McHugh explained that no trade-off with safety and reliability occurred because in both cases there are benefits from a safety and reliability perspective while implementing a cost-effective way to perform the work.[177]

151. Similarly, Lance Radke explained that despite changing the timelines for programs such as the PMR, ATCO Gas ensures that it is continuing to operate the system safely and reliably both for its customers and employees.[178] L. Radke also stated that ATCO Gas has been operating a gas network in Alberta for over 100 years and when a decision is made to delay spending, the utility management are aware that it is a long-term decision and may result in something that they have to deal with down the road if they are not happy with the decision.[179]

152. For the reasons set out above, the Commission does not find that the capital savings achieved during PBR2 in relation to the programs highlighted by J. Thygesen came at the expense of safety and reliability of the ATCO Utilities' respective distribution systems, during the PBR2 term. However, in light of the fact that the overwhelming majority of capital savings during the PBR2 term were unquantified and the sources or causes of those savings were unexplained (as discussed in Section 5.2 above), the Commission cannot conclude that the ATCO Utilities' actions over the PBR2 term will not have an adverse impact on safety and reliability of their systems over time or will not result in future requests for additional cost recovery to pay for the extension of these programs into future years. The Commission is mindful of the pattern that J. Thygesen has highlighted and has balanced this against the steadfast assurances provided by the ATCO Utilities, but notes that safe and reliable service are paramount obligations that should not be compromised regardless of PBR incentives. Further, the Commission expects that the ATCO Utilities' actions in a current term should not have negative ratepayer consequences in future PBR terms either in terms of future rate increases to address expenditures not made in the current term or of degradation in service quality that becomes detectable in the future.

5.4.3.2 Compliance with Commission directions

153. In Decision 2011-450, the Commission directed ATCO Gas to implement its plastic pipe replacement project (i.e., to replace all plastic pipe installed prior to 1975) over a 20-year period.[180] As discussed above, during the PBR2 term, ATCO Gas changed its approach concerning plastic pipe replacement based on more recent information than was available when

176 Transcript, Volume 4, page 642, lines 3-7.
177 Transcript, Volume 1, page 51, lines 17-25; page 52, lines 1-25; page 53, lines 1-16.
178 Transcript, Volume 2, page 359, lines 13-25; page 360, lines 1-16.
179 Transcript, Volume 2, page 353, lines 1-18.
180 Decision 2011-450, paragraph 191.

the program was originally assessed by the Commission.[181] In the oral hearing, Stephanie Schubert confirmed that it is not ATCO Gas's current plan to complete the replacements within the 20-year timeline directed by the Commission in Decision 2011-450.[182] In addition to the operational reasons for this shift in approach as discussed above, ATCO Gas stated that, from a regulatory perspective, it is able to unilaterally extend the timeline for the plastic pipe replacement program because the Commission's direction no longer applies:

> ATCO Gas's understanding was that under PBR 2, with the delinking of revenues and costs and the intention to reduce regulatory burden was that we didn't have to come back to the Commission for approval for operational decisions, which we believe would still allow us to provide safe and reliable service.[183]

154. Further, S. Schubert explained ATCO Gas's position that Commission approval of programs or projects applied for under COS regulation no longer applies because the intention of PBR2 was not to provide funding for discrete programs or projects.[184]

155. With respect to the particular direction at paragraph 191 of Decision 2011-450, S. Schubert also explained that ATCO Gas took the Commission's direction at paragraph 192[185] as an indication that there was some flexibility to increase or decrease the pace of the pipe replacement program based on updated information, including conversations with peers, updated industry data, leak history data and learnings gained from the implementation of the program thus far.[186]

156. More generally, S. Schubert confirmed that it is ATCO Gas's understanding that, as long as its continues to provide safe and reliable service while meeting its service reliability metrics, the utility can run its business in such a way that might change from what was originally approved, considered or requested in past Commission proceedings.[187] Gurb Hari confirmed that ATCO Electric is of the same view.[188]

157. The ATCO Utilities' view on this point is not entirely correct. The Commission agrees that, as owners and operators of their respective distribution systems, ATCO Electric and ATCO Gas are required to make operational and strategic decisions that, over time, may involve the reassessment of their practices and procedures. This may in turn result in a different assessment of risk and changed ways of conducting business to the extent they can find a more efficient way to provide safe and reliable service. Indeed, as S. Schubert pointed out, in Decision 2011-450, the Commission found that it may be appropriate to reconsider the scope and timelines of the plastic pipe replacement program as additional leak history data became available and directed

---

[181] For example, S. Schubert explained that ATCO Gas now has "information from an industry report that indicated the best way forward would be to do sampling of the individual resins," and that the 2030 time frame "isn't relevant anymore because we'll have better, more targeted information in order to reduce probability of failure": Transcript, Volume 1, page 83, lines 2-19.

[182] Transcript, Volume 1, page 83, line 2.

[183] Transcript, Volume 1, page 84, lines 9-15.

[184] Transcript, Volume 1, page 84, lines 21-23.

[185] Decision 2011-450, paragraph 192: "As additional leak history data on pipe installed from the 1973 to1977 period becomes available it may be appropriate to reconsider the program scope and timelines. The Commission directs AG to continue to provide plastic pipe leak history in future capital program applications."

[186] Transcript, Volume 2, page 355, lines 21-25, page 356, lines 1-8; Transcript, Volume 2, page 367, lines 5-10.

[187] Transcript, Volume 1, page 85, lines 5-8.

[188] Transcript, Volume 2, pages 293, line 25, page 294, line 1.

ATCO Gas to file that leak history data in future applications. However, this does not mean that a regulated utility is permitted to ignore a prior Commission direction.

158. The Commission exercises a general supervision over all electric and gas utilities and their owners.[189] The owner of an electric distribution system has a duty to operate and maintain the electric distribution system in a safe and reliable manner,[190] and the owner of a gas utility has a duty to furnish safe, adequate and proper service and keep and maintain the owner's property and equipment in such condition as to enable the owner to do so.[191] While the responsibility for ensuring safe service ultimately rests with utility owners, in the absence of transparency and communication, deviating from prior safety-related Commission determinations or directions hinders the Commission's ability to effectively fulfil its supervisory role. This is particularly the case when the change in business practice is the result of a change in risk tolerance and there is the possibility that there may be associated risks to the distribution system in the longer term.

159. The introduction of PBR did not relieve the distribution utilities of their obligations to comply with pre-existing Commission directions, whether related to utility operations or other aspects of their regulated businesses. A Commission direction remains binding until it is completed and is determined by the Commission to have been complied with or is varied or rescinded by the Commission. If the ATCO Utilities have new and better information that they believe can support a request to vary or rescind an existing Commission direction, they may make such a request.

160. The Commission's direction at paragraph 191 of Decision 2011-450 and all other active Commission directions remain in force. The Commission directs ATCO Electric and ATCO Gas to review all active directions and, in their next annual PBR rate adjustment filings, to file a list of all active directions, including a detailed assessment of the status of each direction. At a minimum, the list must include, as applicable, the start date or anticipated start date and the anticipated end date for all ongoing,[192] in progress, and not yet started responses or actions required to comply with Commission directions.

6 Over what period should any adjustments be applied?

161. Having determined that there is a problem with the operation of the ATCO Utilities' PBR2 plans that cannot be resolved without reopening and reviewing the plans, the Commission now turns to the consideration of remedy and the applicable time period of such remedy. This

---

[189] See for example *Electric Utilities Act*, Part 9; *Gas Utilities Act*, Part 2.

[190] *Electric Utilities Act*, Section 105(1)(c). Owners of electric distribution systems also have the duty to make decisions about building, upgrading and improving the electric distribution system for the purpose of providing safe, reliable and economic delivery of electric energy having regard to managing losses of electric energy to customers in the service area served by the electric distribution system and any non-wires services: Section 105(1)(b).

[191] *Gas Utilities Act*, Section 35(c). The owner of a gas utility is also prohibited from providing or maintaining any service that is unsafe, improper or inadequate: Section 25(c).

[192] Here, the Commission distinguishes completed directions, where the Commission has determined that the direction has been complied with such that the utility has no further obligations, and ongoing directions, where the utility may have already complied with the direction, but also has ongoing obligations to continue to comply with the direction with no anticipated end date until the direction is varied or rescinded by the Commission (e.g., to provide certain information every year in an annual filing requirement).

consideration engages the question of whether applying a remedy is prohibited by the principle of retroactive ratemaking.

162. The ATCO Utilities' position is that to reopen their PBR2 plans now to address earnings that correspond with the savings they contend customers now enjoy in PBR3 would be patently unfair, inconsistent with just and reasonable prospective rates and engage the prescription against retroactive ratemaking.[193]

163. The ATCO Utilities referred to Decision 2014-100, where they said the Commission determined that it would have been contrary to the principle against retroactive ratemaking to apply a remedy to the years of the FBR term in which ENMAX's rates had been finalized.[194] The ATCO Utilities argued that rates for ATCO Electric and ATCO Gas have been finalized for the years 2018, 2019, 2020 and 2021, which means that adjusting rates for those years is precluded by the prohibition against retroactive ratemaking.[195]

164. The ATCO Utilities acknowledged that their 2022 rates remain interim pending a final weighted average cost-of-capital adjustments in their respective K-bar calculations, but they said this situation is distinguishable from the ENMAX FBR decision, where ENMAX requested interim rates pending the reopener review.[196] Nevertheless, in the ATCO Utilities' submission, it would be inappropriate to claw back earnings from 2022 because PBR explicitly directs that the benefits of those cost savings in earlier years of the PBR term are meant to be retained by the utility (i.e., they are in part due to the cumulative impact of capital savings in earlier years of the term).[197]

165. The Commission is satisfied that applying a remedy for the years in which the reopener provision was triggered (2021 and 2022) is not prohibited by the principle of retroactive ratemaking. All parties were aware of the reopener provisions (including the ROE thresholds that applied). As discussed in Section 3, the reopener provision was specifically included in the PBR2 plans to provide a mechanism to review and, if necessary, address results that may suggest a problem with the design or operation of a PBR plan. In the Commission's view, as the affected parties were aware that the rates were subject to change, this matter is clearly within the knowledge exception to the prohibition against retroactive ratemaking, as discussed in cases such as *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*,[198] and *Calgary (City) v Alberta (Energy and Utilities Board)*.[199]

166. Having said that, the Commission's view is that applying a remedy to years in the PBR2 plans prior to the triggering events (i.e., to the years 2018, 2019 and 2020) is not appropriate in the current circumstances. Given that the Commission has identified a problem with the operation of the ATCO Utilities' PBR2 plans in the years that the reopener provisions were triggered (i.e., 2021 and 2022), it need only assess whether the prohibition against retroactive

193 Transcript, Volume 4, page 657, lines 5-11.
194 Transcript, Volume 4, page 659, lines 5-10.
195 Transcript, Volume 4, page 659, lines 14-18.
196 Transcript, Volume 4, page 659, lines 18-22.
197 Transcript, Volume 4, page 659, line 23 to page 660, line 8.
198 2014 ABCA 28, paragraphs 51-57.
199 2010 ABCA 132, paragraph 57, citing *Bell Canada v Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 SCR 1722 and *Bell Canada v Bell Aliant Regional Communications*, 2009 SCC 40.

ratemaking applies in those years. It is worth reiterating that in setting the PBR2 plans, the Commission was exercising its jurisdiction to set just and reasonable rates. In this way the PBR2 plans were set to ensure that rates set pursuant to those plans would be just and reasonable unless and until a reopener is found to be warranted. After hearing all of the evidence in this proceeding, the Commission has found that there was a problem with the operation of the ATCO Utilities' PBR2 plans during the 2021 and 2022 plan years, and that this problem has resulted in rates that were not just and reasonable in those years. The Commission is not persuaded, however, that any potential remedy is warranted for the years prior to 2021, and for that reason the years 2018, 2019 and 2020 will not be considered in the second (remedy) phase of this proceeding.

167. In this way, this matter is similar to the Commission's determinations in Decision 2014-100. There, the Commission determined that ENMAX triggered the reopener as a result of an unanticipated and significant increase in capital additions starting in 2010, that the increase in capital additions caused a plan parameter to be unable to achieve its intended objective and, accordingly, that modifications to that plan parameter were warranted.[200] On that basis, the Commission found that it would only be reasonable and fair to allow for an adjustment to ENMAX's FBR plan going back to 2010.[201]

168. However, this matter is distinguishable from Decision 2014-100 on other grounds. There, prior to triggering a reopener proceeding, ENMAX requested that the Commission not finalize its 2010, 2011, 2012 and 2013 rates until a decision was made on its reopener application.[202] Given the findings described above, the Commission was not required to determine whether applying a reopener remedy to a year in which rates are otherwise finalized would amount to retroactive ratemaking. Here, the ATCO Utilities did not provide the Commission with any advance notice that they were likely to trigger a reopener proceeding, nor did any party request that the ATCO Utilities' PBR2 rates not be finalized in the normal course. Given the findings in this proceeding, the Commission was required to determine whether applying a reopener remedy in 2021 would amount to retroactive ratemaking. As described above, the Commission has determined it would not.

169. Further, in the Commission's view, it cannot be that although the reopener is triggered and the Commission determines that a problem exists, there is no remedy available for the year 2021. The very purpose of the reopener provision, which, as discussed herein, is an essential parameter of the PBR2 plans, would be rendered inapplicable if that were the case. In the result, even in the face of a clear problem with the design or operation of a plan, the Commission would be unable to remedy the issue. This would have the opposite effect to the purpose of the reopener provision, which is to act as a safeguard against unexpected results which, as was the case here, may not become known until the rates for one or more relevant years of the term are final. In the Commission's view, the knowledge exception to the prohibition against retroactive ratemaking applies to the reopener provisions of the PBR2 plans and allows, in this case, for a remedy to be applied to both 2021 and 2022, the years in which the reopener provision was triggered.

[200] Decision 2014-100, paragraph 54.
[201] Decision 2014-100, paragraphs 35-39.
[202] Decision 2014-100, paragraph 37.

170. For the following reasons, the Commission also disagrees with the ATCO Utilities that it would somehow be unfair and inconsistent with just and reasonable prospective rates to reopen their PBR2 plans after the PBR2 term has concluded.

171. First, it is important to note that the ROE trigger of the reopener provision is a lagging indicator of performance. For that reason, it may not be evident that a reopener provision has been triggered (particularly with respect to the last years of a PBR plan) until after the PBR plan has been completed. That is exactly what transpired in this case, where the ATCO Utilities' Rule 005 filings, which were made well after their PBR2 plans had ended, confirmed that the ATCO Utilities had triggered the two-consecutive-year 300 basis point threshold (for 2021 and 2022) and the single-year 500 basis point threshold (for 2022).

172. Further to this point, this ROE-based reopener provision of a PBR2 plan was not new. It was carried over unaltered from the PBR1 plan. The ROE-based reopener thresholds in the PBR1 plans were, in turn, carried over from the ENMAX FBR plan approved in Decision 2009-035.[203] Indeed, the ATCO Utilities ought to be aware of the operation of the ROE-based reopener provision as they both triggered the PBR1 reopener, as here, in the final years of their PBR1 plans. In that case, the Commission commenced a reopener proceeding and considered whether reopening was warranted, ultimately determining that it was not.

173. Second, the reopener is not the only plan parameter that may apply after the PBR term is complete. An efficiency carry-over mechanism approved for PBR1 and PBR2 plans permitted utilities to continue to benefit from any efficiency gains after the end of a PBR term and carry over a portion of earnings above the approved return to the two years after the plan. Further, the distribution utilities, including the ATCO Utilities, performed Y factor and K-bar true-ups pertaining to their PBR2 plans after those plans ended, in 2023 and 2024.

174. Finally, the Commission has also considered the ATCO Utilities' submission that it would be inappropriate to claw back earnings from 2022 because the benefits of these cost savings are in part due to the cumulative impact of capital savings in earlier years of the term. The Commission acknowledges that earnings in later years of a PBR plan (such as 2021 and 2022 here) are invariably affected by capital savings from earlier years of the plan due to the cumulative nature of these savings, as discussed in Section 4.1 of this decision. However, as set out in Section 3, the Commission examines the source of these savings to determine whether to reopen a plan only if a reopener threshold is triggered. By confining the Phase 2 remedy proceeding to the years in which the reopener thresholds were triggered by the ATCO Utilities, the Commission has eliminated the possibility that such a remedy would "claw back" savings achieved in the earlier years of the ATCO Utilities' plans. Given that the reopener thresholds were triggered in the final years of the plan, however, the Commission finds that it is fair, just and reasonable for any remedy to be applicable to those years.

175. For these reasons, the Commission finds that there is no unfairness in applying a remedy to the final years of the ATCO Utilities' PBR2 plans in which the reopener thresholds were triggered and a problem identified. To conclude that no remedy is available because the term has ended, because it would be inconsistent with prospective rate setting or because years in which the problem was identified include cumulative savings, would be to ignore or render moot the

[203] It should be noted, however, that the scope of the FBR reopener was different (as described in Section 3.2 of this decision).

application of the reopener provision as specifically described in Decision 2012-237 and Decision 20414-D01-2016 (Errata).

7 Process and scope for Phase 2

176. In its directions on procedure, the Commission stated that if it determines that reopening either or both of the ATCO Utilities' PBR2 plans is warranted, it would direct any necessary further process and the scope for that second phase at that time.[204] Having determined in this decision that there is a problem with the PBR2 plans of both ATCO Electric and ATCO Gas that warrants reopening those plans, the Commission now sets out the scope and preliminary process steps for Phase 2 of the reopener review. The Commission will create a new proceeding for this purpose and will pre-register the ATCO Utilities in the Phase 2 proceeding. Any interveners who wish to participate will be registered upon request.

177. In Phase 2, the Commission will reopen the ATCO Utilities' PBR2 plans. The scope of Phase 2 will be to determine the appropriate remedy to address the problem identified in this first phase of the reopener proceeding as set out in Section 5.2. Because the PBR2 plans are complete, an adjustment to the PBR2 plans on a go-forward basis is not a possible remedy. Therefore, the Commission considers that an appropriate remedy may be in the nature of refunds to the ATCO Utilities' customers that relate to the quantum of savings that were not supported through evidence of quantified efficiencies and explanations of the drivers and sources of those efficiencies, which resulted in savings.

178. As a first process step of the Phase 2 reopener review, the Commission authorizes and encourages the parties to commence a negotiated settlement process (NSP) pursuant to Rule 018: *Rules on Negotiated Settlements* in an attempt to reach agreement on a proposed remedy that addresses the problem identified in this first phase for consideration by the Commission. One of the five foundational PBR principles is that customers and the regulated companies should share the benefits of a PBR plan. The Commission considers that interveners, who represent many of the utilities' customers, are well positioned to negotiate a solution to the problem with the PBR plans that embraces this principle.

179. The Commission directs the ATCO Utilities to advise on the status of any NSP by June 28, 2024, and if possible, include reasonable proposed dates for reporting on the progress of the NSP and the filing of any negotiated settlement agreement (NSA). If the parties are unwilling to pursue an NSP, the Commission will set out a further process for the Phase 2 proceeding.

180. Details of further process steps will be determined by the Commission if and as required following notice of whether the parties are engaging in settlement discussions and if so, once the outcome of that process is known. However, at this time, the Commission provides the following general guidance concerning the contents of the parties' submissions should Phase 2 not be resolved through an NSP.

181. No further fact evidence will be permitted to be filed in Phase 2. The factors that contributed to the ATCO Utilities' achieved ROEs in each of 2021 and 2022 were squarely at issue and have been thoroughly addressed in Phase 1. The Commission set a robust process to

[204] Exhibit 28300-X0017, AUC letter – Directions on procedure, July 31, 2023, paragraph 6.

ensure that all available relevant evidence was filed on the record and made the findings set out in this decision based on that record. To be clear, the Commission is not precluding the filing in Phase 2 of submissions that analyze, consolidate or utilize the fact evidence filed in Phase 1 of this proceeding or submissions that relate to options or methodological approaches for an appropriate remedy based on the fact evidence in Phase 1.

182. Phase 2 will address the quantum of the remedy and the mechanism by which the remedy is to be implemented. As such, the process steps will seek evidence and submissions that (i) provide the proposed quantum of any adjustments, in dollars, broken out by utility and specify to which period(s) they apply; (ii) explain the mechanism/methodology used to effect the remedy (including all necessary assumptions); (iii) clearly specify what Phase 1 evidence is being relied on to support or justify the proposed remedy and recovery mechanism; and (iv) justify the choice of methodology/mechanism, including an explanation of how it results in a just and reasonable outcome for each of the utilities and their customers

183. Lastly, and for clarity, the Commission will not exclude any matters from the NSP. As such, the Commission's determinations on all matters, including the prudence of the ATCO Utilities' 2022 actual capital additions and the finalization of their respective 2023 opening rate bases, will be made in the Phase 2 decision.

Dated on May 22, 2024.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Vice-Chair

(original signed by)

Michael Arthur
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
ATCO Electric Ltd. Bennett Jones LLP
ATCO Gas and Pipelines Ltd. Bennett Jones LLP
Consumers' Coalition of Alberta (CCA)
Industrial Power Consumers Association of Alberta Ackroyd LLP
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP Russ Bell & Associates Inc.
The City of Calgary (Calgary) McLennan Ross Barristers & Solicitors

Alberta Utilities Commission

Commission panel
- K. Sebalj, Vice-Chair
- M. Arthur, Commission Member

Commission staff
- A. Marshall (Commission counsel)
- A. Culos (Commission counsel)
- E. Deryabina
- A. Spurrell
- S. Sharma
- C. Young

Appendix 2 – Oral hearing – registered appearances

Name of organization (abbreviation) Name of counsel or representative	Witnesses
ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd. S. Assie L. Smith	L. Radke L. Brennand S. Schubert J. Smith D. McHugh C. Severson G. Hari K. Trunzo
The City of Calgary (Calgary) D. Evanchuk	B. Whyte K. Wyllie
Office of the Utilities Consumer Advocate (UCA) K. Rutherford C. Auch	R. Bell
Consumers' Coalition of Alberta (CCA) J. Wachowich	J. Thygesen
Industrial Power Consumers Association of Alberta (IPCAA) R. Secord	D. Madsen

Alberta Utilities Commission Commission panel K. Sebalj, Vice-Chair M. Arthur, Commission Member Commission staff A. Marshall (Commission counsel) A. Culos (Commission counsel) E. Deryabina A. Spurrell S. Sharma C. Young

Appendix 3 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. The Commission's direction at paragraph 191 of Decision 2011-450 and all other active Commission directions remain in force. The Commission directs ATCO Electric and ATCO Gas to review all active directions and, in their next annual PBR rate adjustment filings, to file a list of all active directions, including a detailed assessment of the status of each direction. At a minimum, the list must include, as applicable, the start date or anticipated start date and the anticipated end date for all ongoing, in progress, and not yet started responses or actions required to comply with Commission directions.. .... paragraph 160

2. The Commission directs the ATCO Utilities to advise on the status of any NSP by June 28, 2024, and if possible, include reasonable proposed dates for reporting on the progress of the NSP and the filing of any negotiated settlement agreement (NSA). If the parties are unwilling to pursue an NSP, the Commission will set out a further process for the Phase 2 proceeding... paragraph 179

Appendix 4 – Breakdown of ROEs and capital additions

(return to text)

Appendix 4 -
Breakdown of ROEs

(consists of 4 pages)

Appendix 5 – Consolidation of evidence of cost savings

(return to text)

Appendix 5 -
Consolidation of evi

(consists of 3 pages)

Appendix 4 – Breakdown of ROEs and capital additions

Table 1 – ATCO Electric Achieved ROE vs. Approved ROE[1]

ATCO Electric
Achieved ROE vs. Approved ROE
($ million)

	2021			2022		
	Utility Earnings	**ROE**	**Mid-Year Common Equity**	**Utility Earnings**	**ROE**	**Mid-Year Common Equity**
Approved	**81.7**	**8.50%**	**961.5**	**84.0**	**8.50%**	**988.2**
O&M net of Revenue Offsets (Table 2.1)	(12.2)	-1.27%		(9.3)	-0.94%	
Capital						
Return	18.1	1.89%		21.4	2.17%	
Depreciation	17.6	1.83%		20.6	2.08%	
Income Tax (excluding income tax deductions)	(0.3)	-0.03%		2.1	0.21%	
Income Tax Deductions (Table 3.4)	10.5	1.09%		13.1	1.33%	
Subtotal Capital (Table 2.1)	45.9	4.78%		57.2	5.79%	
Other						
Tax Rate (Table 5.1)	0.3	0.03%		(0.1)	-0.01%	
Accelerated CCA (Table 5.2)	3.2	0.33%		7.6	0.77%	
Energy UPC (Table 6.3)	1.5	0.16%		(0.8)	-0.08%	
Demand UPC (Table 6.4)	1.2	0.12%		4.0	0.41%	
Prior Period Income Tax Adjustments	(1.5)	-0.15%		(1.1)	-0.11%	
Other	3.4	0.36%		1.9	0.20%	
Subtotal Other (Table 2.1)	8.1	0.84%		11.6	1.17%	
Total Difference (Table 2.1)	**41.8**	**4.35%**		**59.5**	**6.02%**	
Achieved	**123.5**	**12.85%**		**143.5**	**14.52%**	

[1] Exhibit 28300-X0048, ATCO-UCA-2023OCT16-001a attachment 2.

Table 2 – ATCO Gas Achieved ROE vs. Approved ROE[2]

ATCO Gas
Achieved ROE vs. Approved ROE
($ million)

	2021			2022		
	Utility Earnings	**ROE**	**Mid-Year Common Equity**	**Utility Earnings**	**ROE**	**Mid-Year Common Equity**[1]
Approved Earnings	**89.8**	**8.50%**	**1,056.7**	**90.3**	**8.50%**	**1,062.7**
O&M net of Revenue Offsets (Updated Table 2.1)	(3.9)	-0.37%		21.6	2.03%	
Capital						
Return	9.3	0.88%		10.8	1.01%	
Depreciation	7.5	0.71%		8.3	0.79%	
Income Tax (excluding income tax deductions)	2.4	0.23%		1.2	0.11%	
Income Tax Deductions (Updated Table 4.4[3])	8.2	0.77%		8.9	0.84%	
Subtotal Capital (Updated Table 2.1)	27.4	2.59%		29.2	2.75%	
Other						
Tax Rate (Table 5.1)	3.7	0.35%		5.5	0.52%	
Accelerated Investment Incentive (Table 5.2)	6.7	0.63%		6.9	0.65%	
UPC (Table 6.1)	(2.1)	-0.20%		(0.8)	-0.07%	
Demand Revenue (Table 6.2)	(1.1)	-0.10%		(0.2)	-0.01%	
Prior Period Income Tax Adjustments	4.2	0.40%		2.0	0.18%	
Other	0.1	0.01%		(1.7)	-0.16%	
Subtotal Other (Updated Table 2.1[2])	11.4	1.08%		11.8	1.11%	
Total Difference (Updated Table 2.1)	**34.9**	**3.31%**		**62.6**	**5.89%**	
Achieved	**124.7**	**11.81%**		**153.0**	**14.39%**	

Notes:
1 ATCO Gas Rule 005, Schedule 2.0, Line 3.
2 Please refer to Table 2 provided in the response to ATCO-AUC-2023OCT16-007(f).
3 Please refer to Table 3 provided in the response to ATCO-AUC-2023OCT16-007(f).

2 Exhibit 28300-X0047, ATCO-UCA-2023OCT16-001a attachment 1.

Table 3 – ATCO Electric Net Capital Additions Cost Savings[3]

ATCO Electric
NET CAPITAL ADDITIONS COST SAVINGS
($ million)

Actual Capital Additions (net of contributions)	**2018**[1]	**2019**[1]	**2020**[1]	**2021**[1]	**2022**
Customer Growth	58.9	73.6	67.2	47.5	46.9
Rebuilds, Replacements and Life Extensions	37.2	33.5	33.4	30.9	44.8
Environment, Reliability and Safety	9.5	7.4	5.0	9.0	1.0
Externally Driven System Modifications	16.0	5.4	10.6	5.9	5.0
Metering	10.9	7.6	7.3	5.0	1.9
Forestry Protection	19.3	27.9	19.3	23.7	27.9
General Support	23.1	19.1	33.8	31.1	59.1
System Purchases (REA's, annexation)	0.0	-	-	-	-
Distribution to Transmission Contributions	6.5	4.6	(0.1)	-	-
Generation Stations	-	-	-	-	-
Z Factor	0.0	-	-	-	-
CIS Replacement	-	-	-	-	16.4
Grid Modernization	-	-	0.7	5.9	8.0
Total	**181.5**	**179.3**	**177.2**	**158.9**	**211.0**

Funded Capital Additions (net of contributions)	**2018**	**2019**	**2020**	**2021**	**2022**
Customer Growth	87.8	90.5	93.2	90.7	92.4
Rebuilds, Replacements and Life Extensions	50.6	52.1	53.6	52.2	53.2
Environment, Reliability and Safety	17.7	18.2	18.7	18.2	18.6
Externally Driven System Modifications	21.3	21.9	22.5	21.9	22.4
Metering	2.0	2.1	2.1	2.1	2.1
Forestry Protection	12.9	13.3	13.7	13.3	13.6
General Support	51.5	53.1	54.6	53.1	54.1
System Purchases (REA’s, annexation)	27.2	28.1	28.9	28.1	28.6
Distribution to Transmission Contributions	13.6	14.1	14.5	14.1	14.3
Generation Stations	0.0	0.0	0.0	0.0	0.0
Z Factor	0.9	1.0	1.0	1.0	1.0
CIS Replacement	-	-	-	-	-
Grid Modernization	-	-	-	-	-
Total[2]	**285.6**	**294.3**	**302.9**	**294.7**	**300.3**

Variance	**2018**	**2019**	**2020**	**2021**	**2022**
Customer Growth	(28.9)	(16.9)	(25.9)	(43.2)	(45.5)
Rebuilds, Replacements and Life Extensions	(13.4)	(18.6)	(20.3)	(21.3)	(8.4)
Environment, Reliability and Safety	(8.1)	(10.8)	(13.7)	(9.2)	(17.6)
Externally Driven System Modifications	(5.3)	(16.5)	(11.9)	(16.1)	(17.3)
Metering	8.9	5.6	5.2	2.9	(0.2)
Forestry Protection	6.4	14.6	5.6	10.4	14.3
General Support	(28.4)	(34.0)	(20.8)	(22.0)	4.9
System Purchases (REA’s, annexation)	(27.2)	(28.1)	(28.9)	(28.1)	(28.6)
Distribution to Transmission Contributions	(7.1)	(9.4)	(14.6)	(14.1)	(14.3)
Generation Stations	(0.0)	(0.0)	(0.0)	(0.0)	(0.0)
Z Factor	(0.9)	(1.0)	(1.0)	(1.0)	(1.0)
CIS Replacement	-	-	-	-	16.4
Grid Modernization	-	-	0.7	5.9	8.0
Total	**(104.1)**	**(115.1)**	**(125.7)**	**(135.8)**	**(89.3)**

Notes:
[1] Proceeding 27672, Exhibit 27672-X0066, schedules 4.1 and 4.2.
[2] Proceeding 27388, Exhibit 27388-X0457, PDF page 73, ATCO(AllParties)-AUC-2023FEB28-016(a).

[3] Exhibit 28300-X0023, Appendix C, ATCO Electric Net Capital Cost Savings.

Table 4 – ATCO Gas Net Capital Additions Cost Savings[4]

ATCO Gas
NET CAPITAL ADDITIONS COST SAVINGS
($ million)

Actual Capital Additions (net of contributions)	2018[1]	2019[1]	2020[1]	2021[1]	2022
Growth	73.9	70.0	61.3	57.1	74.1
System Sustainment	70.2	58.5	62.7	62.6	62.2
Infrastructure Renewal	63.5	61.2	25.1	37.4	43.9
Metering	16.7	21.6	20.2	24.2	24.8
General Support	39.1	37.6	57.8	28.2	56.7
Z Factor	(0.2)	-	-	-	-
Commercial Below Ground Entry Project (ATCO)	(0.0)	(0.0)	-	-	-
CIS Replacement	-	-	-	17.2	0.1
Total	**263.3**	**248.8**	**227.0**	**226.7**	**261.8**

Funded Capital Additions (net of contributions)	2018	2019	2020	2021	2022
Growth	68.3	70.8	72.5	74.7	76.9
System Sustainment	66.5	68.9	70.6	72.7	74.9
Infrastructure Renewal	100.8	104.5	107.1	110.2	113.6
Metering	16.2	16.8	17.2	17.7	18.3
General Support	31.7	32.9	33.7	34.7	35.8
Z Factor	-	-	-	-	-
Commercial Below Ground Entry Project (ATCO)	-	-	-	-	-
CIS Replacement	-	-	-	-	-
Total[2]	**283.6**	**294.0**	**301.2**	**310.0**	**319.5**

Variance	2018	2019	2020	2021	2022
Growth	5.6	(0.8)	(11.3)	(17.5)	(2.8)
System Sustainment	3.7	(10.5)	(7.9)	(10.1)	(12.8)
Infrastructure Renewal	(37.3)	(43.3)	(82.0)	(72.8)	(69.7)
Metering	0.5	4.7	2.9	6.5	6.6
General Support	7.3	4.7	24.1	(6.5)	20.9
Z Factor	(0.2)	-	-	-	-
Commercial Below Ground Entry Project (ATCO)	(0.0)	(0.0)	-	-	-
CIS Replacement	-	-	-	17.2	0.1
Total	**(20.4)**	**(45.2)**	**(74.2)**	**(83.3)**	**(57.7)**

Notes:
1 Proceeding 27684, Exhibit 27684-X0045, Schedule 4.4 - North and Schedule 4.4 – South.
2 Proceeding 27388, Exhibit 27388-X0457, PDF page 73, ATCO(AllParties)-AUC-2023FEB28-016(a).

4 Exhibit 28300-X0031, Appendix L, ATCO Gas Net Capital Cost Savings.

Appendix 5 – Consolidation of evidence of cost savings

	ATCO Electric						Source Proceeding 28300
	2018	2019	2020	2021	2022	Total	
	($ million)						
O&M							
Remote Meter Disconnects		0.70	0.30	0.50	0.50	2.00	Exhibit X0020.01, PDF page 21, paragraph 56; Exhibit X0046.02, PDF page 11
Patrol Frequency Optimization	0.93	0.93	0.93	0.93	0.11	3.83	Exhibit X0039.01, PDF page 21
Pole Testing Optimization	*0.40*	*0.40*	*0.40*	*0.40*	*0.40*	2.00	Exhibit X0039.01, PDF page 21
Vegetation Management	0.10	0.70	0.80	1.40	2.70	5.70	Exhibit X0046.02, PDF Page 11
Fleet Size Reduction	0.30	0.60	0.60	0.60	0.70	2.80	Exhibit X0046.02, PDF page 11
Office Space Reduction				0.06	0.40	0.46	Exhibit X0039.01, ATCO-AUC-2023OCT16-015, PDF pages 231-232
Subtotal	**1.73**	**3.33**	**3.03**	**3.89**	**4.81**	**16.79**	
Capital							
Fleet Size Reduction	4.90	3.60				8.50	Exhibit X0046.02, PDF page 11
Engineering Standards	0.40	0.90	1.00	1.10	1.10	4.50	Exhibit X0046.02, PDF page 11
Meter Redeployment				1.10	2.00	3.10	Exhibit X0046.02, PDF page 11
Meter Compliance Sampling			2.50			2.50	Exhibit X0046.02, PDF page 11
REA Acquisitions	27.20	28.10	28.90	28.10	28.60	140.90	Exhibit X0020.01, paragraph 78
Income Tax Deductions				10.50	13.10	23.60	Exhibit X0020.01, paragraph 79
Subtotal	**32.50**	**32.60**	**32.40**	**40.80**	**44.80**	**183.10**	
FTE Reductions	*21.2*	*21.2*	*21.2*	*21.2*	*21.2*	106.00	Exhibit X0039.01, PDF page 2
Total	**55.43**	**57.13**	**56.63**	**65.89**	**70.81**	**305.89**	
Actual Capital Additions	**181.5**	**179.3**	**177.2**	**158.9**	**211.0**	**907.0**	Exhibit X0020.01, paragraph 39, Table 3.3
Funded Capital Additions	**285.6**	**294.3**	**302.9**	**294.7**	**300.3**	**1,477.8**	Exhibit X0020.01, paragraph 39, Table 3.3
Variance	**(104.1)**	**(115.1)**	**(125.7)**	**(135.8)**	**(89.3)**	**(569.9)**	Exhibit X0020.01, paragraph 39, Table 3.3

	ATCO Electric						Source Proceeding 28300
	2018	2019	2020	2021	2022	Total	
	($ million)						
Actual O&M	**124.3**	**111.0**	**139.3**	**130.0**	**128.1**	**632.7**	Exhibit X0048, attachment 2, net O&M
Funded O&M	**109.7**	**113.1**	**116.3**	**113.3**	**115.4**	**567.8**	Exhibit X0048, attachment 2, net O&M
Variance	**14.6**	**(2.1)**	**23.0**	**16.7**	**12.7**	**64.9**	Exhibit X0048, attachment 2, net O&M

	ATCO Gas						Source Proceeding 28300
	2018	2019	2020	2021	2022	Total	
	($ million)						
O&M							
Aerial Meter Reading	0.50	0.50	0.50	0.50	0.50	2.50	Exhibit X0046.02, PDF page 21
Picarro Surveyor and Leak Reporting		1.10	1.00	2.20	2.40	6.70	Exhibit X0039.01, PDF page 2, ATCO-AUC-2023OCT16-008(k); Exhibit X0046.02, PDF page 21
Idling Reduction					0.40	0.40	Exhibit X0046.02, PDF page 21
Meter Recall Program			0.50	2.00	2.00	4.50	Exhibit X0046.02, PDF page 11
Smartphone Rollout				0.50	0.50	1.00	Exhibit X0046.02, PDF page 11
Office Space Reduction	0.29	0.95	0.95	0.95	1.30	4.44	Exhibit X0020.01, paragraph 111
Measurement Optimization	*0.10*	*0.10*	*0.10*	*0.10*	*0.10*	0.50	Exhibit X0039.01, PDF page 20
Tools and Equipment Optimization	*0.06*	*0.06*	*0.06*	*0.06*	*0.06*	0.30	Exhibit X0039.01, PDF page 20
Valve Optimization	*0.40*	*0.40*	*0.40*	*0.40*	*0.40*	2.00	Exhibit X0039.01, PDF page 20
Station Optimization	*0.01*	*0.01*	*0.01*	*0.01*	*0.01*	0.05	Exhibit X0039.01, PDF page 20
System Integrity Optimization	*1.05*	*1.05*	*1.05*	*1.05*	*1.05*	5.25	Exhibit X0039.01, PDF page 20
Subtotal	**2.41**	**4.17**	**4.57**	**7.77**	**8.72**	**27.64**	
Capital							
Joint Trench Installation	2.00	2.00	2.00	2.00	2.00	10.00	Exhibit X0046.02, PDF page 21
Idling Reduction					0.60	0.60	Exhibit X0046.02, PDF page 21
Specialized Survey Equipment		0.10	0.225	0.225	0.225	0.775	Exhibit X0046.02, PDF page 21
Income Tax Deductions				8.20	8.90	17.10	Exhibit X0039.01, ATCO-AUC-2023OCT16-007(f), Table 3
Subtotal	**2.00**	**2.10**	**2.225**	**10.425**	**11.725**	**28.475**	
FTE Reductions	*16.30*	*16.30*	*16.30*	*16.30*	*16.30*	81.50	Exhibit X0039.01, PDF page 2
Total	**20.71**	**22.57**	**23.10**	**34.50**	**36.75**	**137.61**	

	ATCO Gas						Source Proceeding 28300
	2018	2019	2020	2021	2022	Total	
	($ million)						
Actual Capital Additions	**263.3**	**248.8**	**227.0**	**226.7**	**261.8**	**1,227.6**	Exhibit X0020.01, paragraph 87, Table 4.3
Funded Capital Additions	**283.6**	**294.0**	**301.2**	**310.0**	**319.5**	**1,508.3**	Exhibit X0020.01, paragraph 87, Table 4.3
Variance	**(20.4)**	**(45.2)**	**(74.2)**	**(83.3)**	**(57.7)**	**(280.7)**	Exhibit X0020.01, paragraph 87, Table 4.3
Actual O&M	**182.7**	**193.0**	**212.6**	**221.1**	**192.8**	**1002.2**	Exhibit X0047, attachment 1, net O&M
Funded O&M	**197.4**	**204.6**	**209.7**	**215.7**	**222.3**	**1049.7**	Exhibit X0047, attachment 1, net O&M
Variance	**(14.7)**	**(11.6)**	**3.0**	**5.4**	**(29.6)**	**(47.5)**	Exhibit X0047, attachment 1, net O&M

Assumptions:

- If either ATCO Electric or ATCO Gas gave a singular annual cost-savings amount throughout the PBR2 term, this number was used for all the years and is denoted by italicized text.