

SUMMARY OF CURRENT PROCEEDINGS

REGULATORY PROCEEDINGS AT THE ALBERTA UTILITIES COMMISSION (AUC)

1.	Method to account for new depreciation parameters under the 2018-2022 Performance Based Regulation Plans (PBR)	ID =24609	Status: Awaiting Decision
<p>Overview: The AUC initiated this proceeding to review how updated depreciation amounts should be implemented in the PBR formula for the second generation (2018-2022) term. ATCO Gas, ATCO Electric, and AltaGas filed new depreciation studies in 2018, while ENMAX, EPCOR and Fortis did not. The depreciation studies filed will have the effect of increasing customer rates on an annual basis throughout the second generation PBR term.</p> <p>There was some ambiguity in the Commission directions regarding how depreciation updates will be incorporated into the second generation PBR formula. Not surprisingly, all the utilities which filed depreciation studies chose the method of updating the PBR formula which will result in the highest rates (and therefore be of most benefit to shareholders). The City and other interveners have submitted evidence showing how updated depreciation should be incorporated into the second generation PBR rates in a way which shares the benefits with ratepayers. ENMAX has not filed a new depreciation study and has not been actively involved in this proceeding.</p> <p>Previous Update:</p> <ul style="list-style-type: none"> The information on the record of this proceeding shows that utilities and interveners are diametrically opposed as to how the depreciation parameters should be incorporated into rates. <p>Latest Developments:</p> <ul style="list-style-type: none"> The proceeding record closed on 2019 October 16 with the filing of reply argument. The Commission now has 90 days to make a decision. 			

2.	ATCO Gas 2018 Depreciation Application	ID =24188	Status: Rebuttal evidence filed on October 31
	<p>Overview: ATCO Gas has completed a depreciation study that shows its depreciation rates for some asset classes are too low. The last depreciation study concluded in 2010. The change primarily results from increased depreciation expense relating to a reduction in the useful life of specific assets, an increase in the cost of disposing old assets and an increase in the amortization rate of the depreciation reserve account. ATCO Gas is applying for an increase to its annual depreciation expense of \$21.3 million.</p> <p>Under Performance Based Regulation, if ATCO Gas can avoid spending money on the maintenance of assets (O&M expense), then the savings accrue to the account of the shareholder. Maintenance can sometimes be avoided by replacing old assets with new at an increased overall cost.</p> <p>ENMAX mentioned in the 2019 January 30 quarterly communication meeting that it will not be filing a depreciation study this year. Further, the assets being depreciated by ATCO Gas are very different than those of ENMAX (with the exception of vehicles, tools and buildings). There is thus very limited risk to ENMAX due to The City's intervention in this proceeding.</p> <p>Previous Updates:</p> <ul style="list-style-type: none"> On 2019 March 18 ATCO responded to information requests on its application. ATCO acknowledged in a response to a question asked by the City that thus far in 2019 it has received approval from the Commission for a 10.5% increase in ATCO Gas south rates. The proposed depreciation expense increase would be an additional 2.5% rate increase for southern Alberta customers. On 2019 July 8 The City filed its evidence in this proceeding. The evidence of the City recommended that the increased depreciation expense not be included in customer rates. To include additional depreciation expenses in customer rates would be contrary to the PBR principles established by the Commission. On 2019 July 11 ATCO filed a motion to strike the evidence of the City from the record of this proceeding. On 2019 July 25 the AUC issued an interim decision to include only 25% (roughly \$5 million) of the additional depreciation expenses in customer rates for 2018 and 2019. This amount could go up or down once a final decision on this application is made. In the decision the AUC noted the City's position that additional depreciation expense should not be included in the rates of ATCO Gas. This interim decision has saved ratepayers roughly \$30 million. <p>Latest Developments:</p> <ul style="list-style-type: none"> On 2019 September 16 the Commission ruled that large portions of the Calgary evidence were required to be redacted as the consideration of whether depreciation updates were consistent with the PBR principles were out of scope of this proceeding. This ruling was unfortunate as it appears that ratepayers will now be forced to pay higher rates in the future due to depreciation expense increases. As this proceeding will not be complete until sometime in late 2019, it is unlikely the full impact of approved additional depreciation expense will be included in rates until 2020. 		

3.	Application for Cost recovery of Wipro proceeding costs	ID =24760	Status: Awaiting Decision																				
<p>Overview: On 2019 July 24 the City filed an application seeking cost recovery for the costs incurred by the City in the Wipro proceeding. If the Commission decides to allow The City's cost claim, a future application would be made to recover all (or a portion) of the approximately \$1 million spent on the four-year Wipro proceeding. This application lists the following facts which changed over the course of the Wipro proceeding.</p> <ul style="list-style-type: none"> • ATCO represented that certain material was confidential or did not exist, when the existence of the material was confirmed in fact later in the proceeding; • Repeated motions for better ATCO discovery were required by Calgary; • Significant and undue delays occurred in the proceeding which were not caused by Calgary; • The scope of the proceeding expanded beyond that originally anticipated and provided for and which could be reasonably anticipated; • The extent and degree of confidential ATCO material was beyond that originally anticipated and provided for and which could be reasonably anticipated; and • The length and duration of the Proceeding was beyond that originally anticipated and provided for and which could be reasonably anticipated. <p>Latest Developments:</p> <ul style="list-style-type: none"> • The record of this proceeding closed on 2019 September 13. Typically costs claim decisions are released relatively quickly compared to utility rate decisions. However, this one will be tricky for the Commission. Changing the intervener cost recovery practice which has been in place for over ten years will require significant consideration. 																							
4.	Wipro Decision Compliance Proceedings	ID =24805, 24817, 24880, 24881	Status: Information responses filed on October 24																				
<p>Overview: The four ATCO Utilities (ATCO Gas, ATCO Electric – Distribution, ATCO Electric – Transmission and ATCO Pipelines) have filed their applications to reflect the impacts of the Wipro Decision (Decision 20514). The two cost of service companies (ATCO Electric – Transmission and ATCO Pipelines) have filed their Wipro impacts as part of their large general tariff applications. The two Performance Based Regulation (PBR) companies (ATCO Gas and ATCO Electric – Distribution) have filed their Wipro impacts as part of their annual rates applications. PBR annual rates applications are always on a tight timeline in order to get new rates in place for 2020 January 1.</p> <p>Interestingly, as part of the ATCO appeal of the Wipro Decision an affidavit was filed by an ATCO executive. In the affidavit ATCO quantified the effect on ATCO earnings of the Wipro Decision. The Table filed in the affidavit is reproduced below.</p> <table border="1"> <thead> <tr> <th colspan="4">Estimated ATCO Utilities Earnings Impact from Decision 20514</th></tr> <tr> <th>(\$Million)</th><th>2015 to 2024 (Contract Term)</th><th>2025 Forward</th><th>Total</th></tr> </thead> <tbody> <tr> <td>IT Operating Costs</td><td>(\$64)</td><td>-</td><td>(\$64)</td></tr> <tr> <td>IT Capital Costs</td><td>(\$39)</td><td>(\$51)</td><td>(\$90)</td></tr> <tr> <td>Earnings Impact</td><td>(\$103)</td><td>(\$51)</td><td>(\$154)</td></tr> </tbody> </table> <p>These amounts correspond to initial calculations done by regulatory staff. This level of disallowance is a clear indication of the serious findings of imprudence by the Commission.</p>				Estimated ATCO Utilities Earnings Impact from Decision 20514				(\$Million)	2015 to 2024 (Contract Term)	2025 Forward	Total	IT Operating Costs	(\$64)	-	(\$64)	IT Capital Costs	(\$39)	(\$51)	(\$90)	Earnings Impact	(\$103)	(\$51)	(\$154)
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Latest Developments <ul style="list-style-type: none"> Intervenors and the Commission filed information requests on 2019 October 7. ATCO provided information responses on 2019 October 21. ATCO has not provided detailed information as to how the Wipro disallowances will be reflected in customer rates. The City has filed a motion to compel ATCO to provide a proper level of detail of the Wipro disallowances on 2019 October 24. 		
5.	AUC initiated review of the concepts and principles of an anomaly	ID =24325
Status: Oral Argument on November 1		
<p>Overview: On 2019 February 14, the AUC initiated a proceeding to examine the concepts and principles of an anomaly adjustment to the Performance Based Regulation (PBR) framework for the 2018-2022 term. This is an important proceeding for the City, as ATCO is attempting to have any adjustment to its Wipro costs be shielded from impacting the PBR companies (ATCO Gas and ATCO Electric - Distribution).</p> <p>This is also an important proceeding for ENMAX as they have applied for a number of anomaly adjustments which would have given them more revenue over the 2018-2022 period. For reference the ENMAX 2018 actual ROE was 6.53%, down from 9.64% in 2017.</p> <p>Previous updates:</p> <ul style="list-style-type: none"> ATCO has submitted evidence that adjustments such as the Wipro costs do not properly fit into the PBR framework. The City has requested that the Commission confirm that any adjustment to the Wipro costs be considered as a placeholder adjustment for the PBR companies. On 2019 September 18 and 19 regulatory staff attended the stakeholder discussion of this issue at the AUC Calgary office. After two days of discussion it remains unclear how the Commission will deal with PBR anomalies. Some utilities at the meeting requested the Commission provide an example of an anomaly. The Commission subsequently declined to provide an anomaly example in a letter on 2019 October 10. <p>Latest Developments:</p> <ul style="list-style-type: none"> Written argument was filed by the City on 2019 October 22. The argument focused on why the disallowances ordered in the Wipro decision should not be changed or overridden by any determinations related to PBR anomalies in this proceeding. Regulatory staff will be attending the oral argument process step in Edmonton on 2019 November 1. 		
REGULATORY PROCEEDINGS AT THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION (CRTC)		
6.	City of Calgary ROW Bylaw	ID= CRTC 8690-C126-201612250
Status: Negotiations Ongoing		
<p>Overview: On 2016 November 28, The City of Calgary filed a request for approvals from the CRTC in respect of the access and use of municipal rights-of-way by telecommunications service providers. The City sought the guidance of the CRTC as to whether a bylaw of general application is a proper form of consent as set out in the Telecommunications Act. In the event the CRTC rules that the Bylaw is not a proper form of consent, The City's application also included a second part which requests the CRTC accept our standard form Municipal Consent and Access Agreement (MCAA).</p> <p>Previous updates:</p>		

- The CRTC decision was received on 2019 January 25. The CRTC denied Calgary's part 1 application for a declaration that the ROW Bylaw was a 'form' of consent the Carriers could rely upon to fulfill their obligations under the Telecom Act.
- The CRTC did provide a decision on part 2 of the application regarding the 2015 Standard Form MCAA. Many of the provisions were affirmed, with a few sections being left for the parties to negotiate.
- The City filed leave to appeal to the Federal Court of Canada (FCC) regarding part 1 only. The FCA dismissed our leave for appeal case without reasons. There is no opportunity to seek leave to the Supreme Court, meaning this part of the application is now finished.
- Between April and August 2019, The City and the Carriers have met six times and have documented the outstanding points. The Carriers continue to question every City fee, and reason for them, including fees they had agreed to in previous agreements; The City continues to provide explanations and are slowly moving them to an improved understanding.
- The City and the Carriers were to report back to the CRTC at the end of August 2019.

Latest Developments:

- As the negotiations on outstanding matters continues the parties requested an extension of the date to report back to the CRTC. The new date requested was 2019 October 31.
- Between September and October 2019, The City and the Carriers met a further 3 times with several written submissions exchanged between meetings.
- Progress continues to be slow; as a result the parties will need to seek a further extension. The request will be to extend until mid-December.
- Should an agreement not be reached by mid-December the parties will report back to the CRTC with the items that remain outstanding and request a determination on those matters.

LEGAL PROCEEDINGS BEFORE THE ALBERTA COURTS

7.	City of Calgary ROW Bylaw	ID= 1701-03414	Status: Awaiting Decision
	<p>Overview: On 2018 October 19 the Court of Queen's Bench (QB) rendered the decision on the Carriers' application to have the ROW Bylaw deemed inoperable vis-à-vis telecommunications companies. The QB decision struck any the reference to telecommunications from the Bylaw.</p> <p>Previous updates:</p> <ul style="list-style-type: none"> • The City engaged outside legal counsel to provide an opinion regarding an appeal of the decision. • After reviewing the opinion, The City filed an appeal to the Alberta Court of Appeal. • External legal counsel supported internal legal counsel in the development of The City's appeal and factum, the review of the Carriers' factum, and court presentation prep. <p>Latest Developments:</p> <ul style="list-style-type: none"> • The hearing at the Court of Appeal before Madame Justice Paperny, Madame Justice Rowbotham, and Mister Justice Wakeling, occurred on 2019 October 10. All three justices were keenly interested in the arguments of The City as well as the Carriers. • A written decision will be rendered in due course. 		
8.	Appeal of Wipro Decision (Decision 20514)	ID= 1901-0209AC	Status: Leave to appeal being heard on October 29

Overview: On 2019 July 4 ATCO filed a leave to appeal application with the Alberta Court of Appeal. The City subsequently requested, and was granted, standing to participate in the appeal process.

Latest Developments:

- On 2019 October 3 ATCO filed a Memorandum of Fact and Law stating where they feel the AUC erred in its Decision. As noted above an affidavit was filed which provided a calculation of the impact to ATCO Utilities earnings.
- Regulatory staff will attend the 2019 October 29 Leave to Appeal hearing.