



**Enforcement Staff of the
Alberta Utilities Commission**

Settlement Agreement with ATCO Gas and Pipelines Ltd.

March 7, 2023

Alberta Utilities Commission

Decision 27948-D01-2023

Enforcement Staff of the Alberta Utilities Commission
Settlement Agreement with ATCO Gas and Pipelines Ltd.
Proceeding 27948

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The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

1 Decision summary

1. In this decision, the Alberta Utilities Commission approves the settlement agreement between AUC Enforcement staff and ATCO Gas and Pipelines Ltd. related to the delay in switching 10 customers from mid- or low-use delivery service rates to the high-use delivery service rate. In accordance with the settlement agreement, the Commission imposes a one-time administrative penalty on ATCO Gas of \$14,500. The Commission further directs ATCO Gas to pay \$93,712 to TCB Welding & Construction Ltd. (TCB) and recognizes that, pursuant to the settlement agreement, ATCO Gas has already distributed refunds totalling \$56,796.11 among the nine other affected customers in November 2022.

2 Background and AUC Enforcement staff's application

2. In Decision 26283-D01-2021,¹ the Commission approved terms and conditions of service and rate schedules for ATCO Gas effective April 1, 2021. In accordance with those approvals, ATCO Gas had the following delivery service rate classes:²

- Alternative Technology and Appliance Delivery Service for customers that use less than 40 gigajoules (GJ) per year and use alternative technologies that reduce natural gas heating load including solar thermal, geexchange, and net zero or near net zero emissions homes, or uses natural gas solely for non-space heating purposes;
- low-use delivery service rate available to all customers using up to 1,200 GJ per year;
- mid-use delivery service rate available to all customers using more than 1,200 GJ per year but no more than 8,000 GJ per year; and
- high-use delivery service rate available to all customers using more than 8,000 GJ per year.

3. There are three circumstances in which an eligible customer can switch from a low-use or mid-use rate to a high-use rate class: (i) ATCO Gas initiates an annual review of the past two years of annual consumption to identify customers who would be eligible to be moved to the high-use rate; (ii) ATCO Gas reviews customer usage following a customer application for new or increased connected load; and (iii) a specific customer request.

¹ Decision 26283-D01-2021: ATCO Gas and Pipelines Ltd., 2020 General Rate Application – Phase II Compliance Filing, Proceeding 26283, March 19, 2021.

² In Decision 26283-D01-2021, the Commission approved an additional rate class called the ultra-high-use delivery service, which is available to all customers using more than 100,000 GJ per year; this rate schedule became effective January 1, 2022.

4. TCB is an industrial facility operating near the city of Brooks and a customer of ATCO Gas. TCB's natural gas consumption increased significantly from January 2021 (302.84 GJ) to February 2021 (1,759.56 GJ). ATCO Gas completed a meter resize for TCB on February 24, 2021, to accommodate the increased demand. Contrary to its operational practice, ATCO Gas did not complete a consumption review at this time to determine whether the increase was sustainable. Had a review indicated the increase was sustainable, TCB may have been flagged as qualifying for the high-use rate.

5. TCB's usage remained elevated through June 2021, averaging 6,234.90 GJ per month for the period between March and June 2021, and surpassing the 8,000 GJ threshold for TCB to qualify for a high-use rate. On June 22, 2021, TCB called ATCO Gas to inquire about a high-use rate. TCB was not informed of the different rates offered by ATCO Gas during its initial telephone inquiry; however, during a same day-visit to TCB's site, ATCO Gas staff noted that TCB may be a good candidate for conversion to the high-use rate.³

6. In October 2021, ATCO Gas gave notice to TCB that it would be switched to a high-use rate, which came into effect on November 25, 2021. TCB subsequently requested a refund from ATCO Gas of the difference between the mid-use rate paid and the high-use rate between February 2021 and November 2021. ATCO Gas did not issue this refund.

7. TCB filed a complaint with AUC Enforcement staff concerning the delay in accessing the high-use delivery service rate, which prompted Enforcement staff to initiate an investigation. In its complaint, TCB alleged that it was overcharged by ATCO Gas between December 2020 and November 2021 as a result of ATCO Gas failing to switch TCB's rate from the mid-use delivery service rate to the high-use delivery service rate in a timely manner.

8. The investigation ultimately resulted in Enforcement staff filing the application and the settlement agreement that are the subject of this proceeding. The settlement agreement describes ATCO Gas as failing to:

- make TCB aware of the various rate schedules under which ATCO Gas provides service to different customer rate classes;
- endeavour to apply the applicable rate schedule which is most favourable to TCB in a timely fashion; and
- refund the difference in charges under a different rate schedule for a past period when TCB had requested service under an alternative rate schedule that was available to it.⁴

9. These failures are collectively defined in the settlement agreement as "the Contravention."

10. As set out in the settlement agreement, ATCO Gas admitted to the Contravention⁵ and agreed to the imposition of an administrative penalty. The settlement agreement states that ATCO Gas cooperated with Enforcement staff over the course of the investigation, which was taken into consideration by Enforcement staff in negotiating a settlement, because cooperation

³ Exhibit 27948-X0001, Settlement agreement – ATCO Gas TCB, paragraph 18.

⁴ Exhibit 27948-X0001, Settlement agreement – ATCO Gas TCB, paragraph 3.

⁵ Exhibit 27948-X0001, Settlement agreement – ATCO Gas TCB, paragraph 4.

serves as a mitigating factor for the Commission when determining an appropriate response to a contravention.⁶

11. Under the settlement agreement, ATCO Gas has agreed to pay directly to TCB \$93,712.00. This amount represents the rate differential for the 10 months between February and November 2021 and compensation for the time and inconvenience suffered by TCB to attempt to resolve this matter on its own. The agreement also recognizes ATCO Gas's admission of the Contravention and reflects that the parties agreed to an administrative penalty of \$14,500.00 under sections 63(1)(b) and 63(3) of the *Alberta Utilities Commission Act*.⁷

12. In response to the Contravention, ATCO Gas conducted a process review, identified process gaps and committed to implementing process changes and improvements to ensure high-use delivery rate switch requests from its customers are handled in accordance with its terms and conditions of service.⁸

13. Additionally, and as described in the settlement agreement, in October 2022, ATCO Gas reviewed all of its other potential high-use rate switches from January 2021 onward and voluntarily disclosed to Enforcement staff that nine additional customer switches to the high-use delivery service rate had been unfairly delayed. ATCO Gas has since switched those customers to the high-use delivery rate and refunded the difference to each customer. The refunds, totalling \$56,796.11, were processed in November 2022.⁹

3 Should the Commission approve the settlement agreement?

14. The Commission's jurisdiction to consider and approve the settlement agreement is grounded in the Commission's general powers in sections 8 and 23 of the *Alberta Utilities Commission Act* and the administrative penalty section, Section 63.

15. The parties to the settlement agreement have agreed that:

- ATCO Gas did not make TCB aware of its various offered rate schedules;
- the most favourable rate schedule for TCB and the other impacted customers was not applied in a timely fashion; and
- ATCO Gas did not refund the difference between the rates that TCB paid and the rates that TCB ought to have paid, had it been subject to the appropriate rate schedule between February 2021 and November 2021.

16. Based on the foregoing, the Commission accepts that the Contravention occurred.

⁶ Rule 013: *Criteria Relating to the Imposition of Administrative Penalties*, Section 6.

⁷ Exhibit 27948-X0001, Settlement agreement – ATCO Gas TCB, paragraphs 37-38.

⁸ Exhibit 27948-X0001, Settlement agreement – ATCO Gas TCB, paragraphs 35-36.

⁹ Exhibit 27948-X0001, Settlement agreement – ATCO Gas TCB, paragraph 27.

17. The Commission will next consider whether to accept the settlement agreement as filed. In considering a settlement agreement, the Commission takes guidance from principles developed by courts for joint submissions on sentencing in the criminal law context.¹⁰

18. In *R v Anthony-Cook*, the Supreme Court of Canada specified that the test to be followed when considering whether to depart from joint submissions is the “public interest test,” where “a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.”¹¹ According to *Anthony-Cook*, this high threshold for departing from joint submissions is appropriate given that counsel for the parties to joint submissions are well placed to take into account both the interests of the public and the accused, are highly knowledgeable about the circumstances of the offender and relative strengths and weaknesses of their respective positions, and are professionally and ethically bound not to mislead a court or tribunal.¹²

19. The rationale for establishing a high threshold to depart from joint submissions in the criminal context also applies in the regulatory enforcement context. In AUC enforcement proceedings, a negotiated resolution has significant benefits for all parties, and for the administration of justice, in terms of overall efficiency and allowing for scarce time, resources and expenses to be channeled into other matters. In order for these benefits to be realized, parties must have a “high degree of confidence”¹³ that joint submissions will be accepted, meaning that a stringent public interest test is necessary to achieve the benefits of joint submissions.

20. The Commission has therefore applied the public interest test as articulated in *Anthony-Cook* in assessing the settlement agreement in this case. In applying the test, the Commission has taken into consideration the criteria relating to administrative penalties in Rule 013, as well as other applicable sanctioning principles.¹⁴ The Commission further notes that in Bulletin 2016-10,¹⁵ the Commission stated that “The primary goal of enforcement is to promote compliance with Alberta utility laws and to prevent harm to any person, public or private property or to the integrity of the AUC’s regulatory processes and to ensure that the public and regulated entities understand that there are serious consequences for contraventions.”

21. Information in the settlement agreement that addresses the seriousness of the Contravention and mitigating factors includes:

- Each customer that was subject to a delayed delivery service rate switch paid incorrect rates for a period lasting between eight and 10 months.

¹⁰ See Decision 27013-D01-2022: Enforcement Staff of the Alberta Utilities Commission, Allegations against ATCO Electric Ltd., Proceeding 27013, June 29, 2022, paragraphs 64-68; Decision 3110-D03-2015: Market Surveillance Administrator, Market Surveillance Administrator allegations against TransAlta et al., Phase 2 - request for consent order, Proceeding 3110, October 29, 2015, paragraphs 15-21; and Decision 26379-D02-2021: Enforcement staff of the Alberta Utilities Commission, Allegations against Green Block Mining Corp. (formerly Link Global Technologies Inc.), Westlock Power Plant Phase 1, Proceeding 26379, August 19, 2021, paragraphs 14-15.

¹¹ *R v Anthony-Cook*, 2016 SCC 43, paragraph 32.

¹² *R v Anthony-Cook*, 2016 SCC 43, paragraph 44.

¹³ Decision 27013-D01-2022, paragraph 67.

¹⁴ For instance, general and specific deterrence, and proportionality: see *Cartaway Resources Corp*, Re, 2004 SCC 26; *Walton v Alberta (Securities Commission)*, 2014 ABCA 273, paragraphs 151 and 154.

¹⁵ Bulletin 2016-10, Practices regarding enforcement proceedings and amendments to AUC Rule 001: Rules of Practice, March 29, 2016.

- ATCO Gas delayed switching nine of the affected customers to a high-usage delivery service rate for multiple months even after it notified the customers in January 2022 that they were to be switched to the high-use delivery rate in that month.
- ATCO Gas did not refund TCB the difference between the mid-use rate and the high-use rate when TCB requested the refund in June 2021, which required TCB to file a complaint with the Commission rather than immediately resolve the issue among the parties.
- In response to Enforcement staff's investigation, ATCO Gas undertook a review, identified the other customers affected by the same issue, and refunded to them the difference between the rates they were charged and the rates they ought to have been charged had they been assigned the correct delivery service rate.
- ATCO Gas is updating its processes to mitigate the risk of the Contravention reoccurring in the future.
- ATCO Gas cooperated with Enforcement staff, admitted to the Contravention in respect of TCB, voluntarily identified further affected customers and brought these to the attention of Enforcement staff, and made efforts to reach a settlement agreement on an administrative penalty.

22. The Commission finds that the magnitude of the proposed administrative penalty is proportional to the seriousness of the Contravention. In addition, taking into account that the purpose of the Commission's sanctioning authority is protective and preventative, not punitive, the Commission finds that the quantum of the penalty is reasonable. The penalty of the nature agreed to in this case should deter ATCO Gas and act, more broadly, as a general deterrent to delivery service providers to ensure customers are being charged the correct rate. The Commission finds that the proposed penalty reasonably achieves these goals.

23. The Commission concludes that it is in the public interest to approve the settlement agreement, including the \$14,500 administrative penalty, the \$93,712 payment to TCB, and the refund totalling \$56,796.11 to the other affected customers. The Commission recognizes that, as per the settlement agreement, ATCO Gas has already paid out the \$56,796.11 refund to the affected customers other than TCB.

24. The Commission further concludes that the process improvements, as outlined in paragraph 38(c) of the settlement agreement, will serve to mitigate the risk of a similar contravention occurring again and, as such, should be implemented by ATCO Gas.

4 Order

25. It is hereby ordered that:

- (1) The settlement agreement between Enforcement staff and ATCO Gas, attached as [Appendix 2](#) to this decision, is approved as filed.
- (2) ATCO Gas and Pipelines Ltd. shall pay an administrative penalty in the amount of fourteen-thousand and five-hundred dollars (\$14,500) pursuant to

sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*. The payment must be made via cheque or bank draft made out to the General Revenue Fund of Alberta and delivered to the Alberta Utilities Commission within 30 business days of the date of the order.

- (2) ATCO Gas shall pay \$93,712 directly to TCB, within 30 business days from the date of the order.
- (3) The Commission endorses the requirement in the settlement agreement for ATCO Gas to pay directly to each of the other affected customers the refunds set out below, which represent the difference in delivery rate service charges, for a total of \$56,796.11:¹⁶

Customer	Duration @ incorrect rate	Original charges (\$)	Corrected charges (\$)	Refund
Customer 1	Jan 11 2022 - Sep 27 2022	\$ 150,365.34	\$ 147,158.82	\$ 3,206.52
Customer 2	Jan 11 2022 - Sep 26 2022	\$ 49,579.78	\$ 39,997.43	\$ 9,582.35
Customer 3	Jan 13 2022 - Oct 24 2022	\$ 30,995.29	\$ 28,314.77	\$ 2,680.52
Customer 4	Jan 10 2022 - Oct 21 2022	\$ 38,068.30	\$ 34,713.37	\$ 3,354.93
Customer 5	Jan 25 2022 - Oct 24 2022	\$ 36,942.02	\$ 35,329.57	\$ 1,612.45
Customer 6	Jan 14 2022 - Sep 26 2022	\$ 72,271.20	\$ 64,367.12	\$ 7,904.08
Customer 7	Jan 24 2022 - Oct 21 2022	\$ 95,510.59	\$ 68,963.97	\$ 26,546.62
Customer 8	Jan 11 2022 - Sep 27 2022	\$ 78,784.54	\$ 78,581.65	\$ 202.89
Customer 9	Jan 11 2022 - Sep 27 2022	\$ 64,028.74	\$ 62,322.99	\$ 1,705.75
Total		\$ 616,545.80	\$ 559,749.69	\$ 56,796.11

The Commission recognizes that ATCO Gas has already issued these refund amounts to each of the customers in November 2022.

- (4) ATCO Gas shall, for all future high-use delivery rate switch customer requests, implement the following process improvements:

Customer Engagement & Triage:

- Any reference to delivery rate charges initiated by a customer call is escalated to a Senior Customer Call Representative for consultation.
- Any calls into the Call Centre from High Use customers will be identified for a follow up with a specialized Key Accounts team member.

Communication & Documentation:

- During a potential rate switch evaluation process, the Key Accounts team will remain engaged with the customer and provide the customer with status updates of their delivery rate switch request.
- Monthly reporting will be completed summarizing all unresolved customer calls into the Call Centre for potential escalation.

¹⁶ Exhibit 27948-X0001, Settlement agreement – ATCO Gas TCB, paragraph 27.

Escalation Process:

- All escalations are documented and reviewed on a regular basis to ensure issues are addressed in a timely manner.
- Unresolved issues are escalated to senior leadership in a timely manner.

(collectively, the Terms and Conditions)¹⁷

Dated on March 7, 2023.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Vice-Chair

¹⁷ Exhibit 27948-X0001, Settlement agreement – ATCO Gas TCB, PDF page 9.

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
Alberta Utilities Commission Enforcement (Enforcement staff)
ATCO Gas and Pipelines Ltd. (ATCO Gas) Torys LLP

Alberta Utilities Commission
Commission panel K. Sebalj, Vice-Chair
Commission staff M. Anderson (Commission counsel) A. Spurrell C. Meulenbroek S. Sharma

Appendix 2 – Settlement agreement

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Appendix 2 -
Settlement agreeme

(consists of 10 pages)

ALBERTA UTILITIES COMMISSION

IN THE MATTER OF the *Alberta Utilities Commission Act*, SA 2007, c A-37.2 and the regulations made thereunder;

BETWEEN:

Alberta Utilities Commission Enforcement Staff

Applicant

-and-

ATCO Gas and Pipelines Ltd.

Respondent

Settlement Agreement

I Introduction and executive summary

1. In October 2022, the Alberta Utilities Commission Enforcement staff (**Enforcement staff**) concluded an investigation in response to a complaint received from TCB Welding & Construction Ltd., operating under the trade name TCB Manufacturing (**TCB**), concerning charges for high use delivery service for Site ID 0003922706617 near the city of Brooks (**the Site**). In its complaint, TCB alleged that ATCO Gas and Pipelines Ltd. (**ATCO Gas**) had delayed switching it from the mid use delivery service rate to the high use delivery service rate, and that as a result of the delay, TCB was overcharged from December 2020 to November 2021.

2. In response to Enforcement staff's investigation (**Investigation**), ATCO Gas reviewed all of its other potential high use rate switches from January 2021 to present and voluntarily disclosed to Enforcement staff that nine additional customers' (**Customers**) switches to the high use delivery service rate had been unfairly delayed. The Customers had been notified that they would be switched to the high use delivery service rate in January 2022, but those adjustments had not yet been made in ATCO Gas's billing system.

3. The Investigation confirmed and, for the purposes of this settlement agreement, ATCO Gas admits that contrary to Decision 26283-D01-2021 and Section 4.10 of its *Customer Terms and Conditions for Gas Distribution Service*, it failed to:

- (a) Make TCB aware of the various rate schedules under which ATCO Gas provides service to different customer rate classes;
- (b) Endeavour to apply the applicable rate schedule which is most favourable to TCB and the Customers in a timely fashion; and,

(c) Refund the difference in charges under a different rate schedule for a past period when TCB had requested service under an alternative rate schedule that was available to it. (collectively, the **Contravention**)

4. Enforcement staff and ATCO Gas have entered into a settlement agreement to address the admitted contravention (**Settlement or Settlement Agreement**). ATCO Gas was cooperative, forthright and responsive concerning all aspects of Enforcement staff's Investigation.

5. The Parties acknowledge this Settlement is a comprehensive package dealing with all outstanding issues arising in the Investigation and will jointly ask the Commission to accept and approve the Settlement in its entirety and without variation.

6. For the reasons set out in further detail below, the Settlement includes an administrative penalty of \$14,500, a refund to TCB of \$93,712 and a refund of \$56,796.11 to be distributed among the Customers.

7. Enforcement staff consider that the Settlement Agreement fosters public protection, encourages compliance with the Alberta Utilities Commission's approved Terms and Conditions for Gas Distribution Service, serves as a deterrent and is therefore in the public interest. Enforcement staff and ATCO Gas therefore jointly request that the Commission approve the Settlement Agreement without variation.

II Agreed facts

8. In Decision 26283-D01-2021, the Commission approved terms and conditions of service and rate schedules for ATCO Gas effective April 1, 2021. The approved rates included a low use delivery service rate that was available to all customers using up to 1,200 gigajoules (GJ) per year, a mid use delivery service rate that was available to all customers using more than 1,200 GJ per year but no more than 8,000 GJ annually and a high use delivery service rate that was available to all customers using more than 8,000 GJ per year.

9. Customers are able to switch from the low or mid use delivery service rate to the high use delivery service rate provided they meet the consumption eligibility requirements. There are three ways in which high use rate switches can occur: (1) ATCO Gas initiates an annual review of the past two years of annual consumption to identify customers who would be eligible to be moved to the high use rate; (2) ATCO Gas reviews customer usage following a customer application for new or increased connected load; and (3) a specific customer request.

10. Most rate switches arise from action taken by ATCO Gas to initiate an annual review. In ATCO Gas's experience, specific customer requests are rare and a review of the customer's consumption is conducted by ATCO Gas to avoid premature switching.

11. Each of TCB and the Customers were billed for natural gas service at either the low use or mid use service delivery rate after they had met the usage requirements for a high use delivery service rate.

TCB

12. TCB is an industrial facility operating near the city of Brooks and provides machining, assembly, fabrication, construction and inspection services to its customers. It is a customer of ATCO Gas and, prior to November 2021, received natural gas service from ATCO Gas at the mid use delivery service rate.

13. In November of 2020, at TCB's request, ATCO Gas attended the Site and sized and ordered a new meter based on TCB's anticipated increase in usage.

14. Between November 2020 and February 2021, TCB's gas consumption in GJs was:

- November 2020 = 205.53
- December 2020 = 271.96
- January 2021 = 302.84
- February 2021 = 1,759.56

15. On February 24, 2021, ATCO Gas completed a meter resize which increased the capacity of gas service at the Site. ATCO Gas did not complete a consumption review to determine whether the increase was sustainable contrary to its operational practice.

16. Between March 2021 and June 2021, TCB's gas consumption was greater than the annual amount of 8,000 GJs required for ATCO Gas customers to meet the eligibility consumption usage for the high use delivery service rate. During that time TCB's gas consumption in GJs was:

- March 2021 = 5,436.21
- April 2021 = 6,715.16
- May 2021 = 6,300.26
- June 2021 = 6,487.95

17. On June 22, 2021, TCB spoke with ATCO Gas three times over the telephone:

- Call #1 – The TCB owner called regarding high bills and asked that the meter be checked because he was concerned that it may not be calibrated properly. The TCB owner stated that the costs were ten times his regular bill amount.
- Call #2 – The TCB owner stated “We use a ton of natural gas, and we use a consistently high gas rate. And someone said that when you do that, you can offer a plan where you pay just a high gas usage rate.”

The ATCO Gas agent did not inform the TCB owner of the various rate schedules under which ATCO Gas provides service, but stated “so that would be something you would need to discuss with your retailer.” The TCB owner replied that they were told that this “was with ATCO,

actually.” The ATCO Gas agent responded that “we don’t deal with any sort of billing or rates here.” The TCB owner asked again “nothing at all? Not even on, like ... an industrial use?” The ATCO Gas agent replied “no we haven’t done anything like that since 2004.”¹

- Call #3 – ATCO Gas contacted TCB to obtain authorization to add a third-party contact to the account.

18. ATCO Gas attended the Site on June 22, 2021, after the three telephone calls. During that visit, ATCO Gas noted that TCB had installed new equipment that was running 24 hours per day, seven days a week. ATCO Gas also noted that there was a pressure increase since the new meter was installed in February 2021, and that there had been consistent usage since that time, and that TCB may be a good candidate for conversion to the high use rate.

19. On June 30, 2021, at TCB’s request ATCO Gas attended the Site to ‘clock’ the meter, however it was unable to do so because TCB was conducting maintenance work at that time. ATCO Gas showed TCB how to clock the meter themselves.

20. On July 13, 2021, ATCO Gas attended the Site to install high use equipment due to the increased usage.

21. Between July 2021 and October 2021, TCB’s gas consumption in GJs was:

- July 2021 = 4,445.51
- August 2021 = 7,635.85
- September 2021 = 6,139.85
- October 2021 = 9,121.16

22. On October 21, 2021, ATCO Gas informed TCB that it would be switched to the high use delivery service rate, and would commence billing on the high use delivery rate on its November invoice.

23. Effective on November 25, 2021, ATCO Gas switched TCB from the mid to high use delivery service rate. TCB’s gas consumption for November 2021 was 5,935.47 GJs.

24. Following the rate switch, TCB contacted ATCO Gas by telephone on five occasions from January 7, 2022 through March 14, 2022, requesting a refund of the difference between the mid use rate paid and the high use rate from the February 2021 billing period until November 25, 2021.² No refund was provided to TCB.

25. The differential between the rates paid by TCB and the rates that should have been paid by TCB, had TCB been paying the high use delivery rate from February 1, 2021 to November 25, 2021, is \$88,726.00, excluding interest.

¹ Quotations provided are from the transcribed telephone recordings provided by ATCO Gas.

² Transcripts of the telephone call recordings dated January 7 and 31 and March 4, 10 and 14 have been provided by ATCO Gas.

Customers with delayed switch to high use delivery service rates

26. As part of ATCO Gas’ annual review process, it notified customers in January of 2022 that they were to be switched to the high use delivery rate effective January 2022. In a review conducted in October 2022, ATCO Gas identified that nine Customers were delayed in being switched to the high use delivery rate within the billing system.

27. Upon identifying these Customers, they were switched to the high use delivery rate within the ATCO Gas billing system and refunded the differential between the rates paid by the Customers and the rates that should have been paid by the Customers had they been paying the high use delivery rate. All refunds were processed in November, 2022. The details of these refunds are provided below:

Customer	Duration @ Incorrect Rate	Original Charges (\$)	Corrected Charges (\$)	Refund (\$)
Customer 1	Jan 11 2022 -Sep 27 2022	\$ 150,365.34	\$ 147,158.82	\$ 3,206.52
Customer 2	Jan 11 2022 -Sep 26 2022	\$ 49,579.78	\$ 39,997.43	\$ 9,582.35
Customer 3	Jan 13 2022 -Oct 24 2022	\$ 30,995.29	\$ 28,314.77	\$ 2,680.52
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Customer 8	Jan 11 2022 -Sep 27 2022	\$ 78,784.54	\$ 78,581.65	\$ 202.89
Customer 9	Jan 11 2022 -Sep 27 2022	\$ 64,028.74	\$ 62,322.99	\$ 1,705.75
Total		\$ 616,545.80	\$ 559,749.69	\$ 56,796.11

Four of the Customers were on low use delivery rates. The circumstances for each of the Customers is as follows:

- Customers 1, 8 and 9: these customers were on construction heat for a period of time which is not representative of a customer’s typical consumption.
- Customer 7: this customer saw a significant increase in load between 2020 and 2021 which qualified it for the high use delivery rate

III Regulatory framework and governing legislation

28. In Decision 26283-D01-2021, the Commission approved ATCO Gas’ *Customer Terms and Conditions for Gas Distribution Service*, effective April 1, 2021.³

29. Section 4.10(a) of the customer terms and conditions of service requires ATCO Gas to make customers aware of the rate schedules available and to endeavour to apply the applicable rate most favourable to the customer. Further, ATCO Gas is required to refund the difference in charges to the customer for any past period during which the customer requested an alternative

³ The previous Terms and Conditions of Service effective as of January 1, 2021, were approved in Decision 25863-D01-2020: ATCO Gas and Pipelines Ltd. 2021 Annual Performance-Based Regulation Rate Adjustment. The language in Section 4.10 is unchanged.

rate and was eligible to receive that rate. Section 4.10(a) of the ATCO Gas *Customer Terms and Conditions for Gas Distribution Service* states:

4.10 Application of Rate Schedules

(a) The Company will make Customers aware of the various Rate Schedules under which the Company provides service to different Customer rate classes. The Company will endeavor to apply the applicable Rate Schedule which is most favorable to the Customer, providing the Rate Schedule applies to the service requested by the Customer, the Customer is eligible for the requested service, and that application of the requested Rate Schedule does not have an adverse impact on other Customers of the Company. The Company shall not be required to refund the difference in charges under different Rate Schedules for any past period during which the Customer did not request service under an alternate Rate Schedule that may have been available to such Customer.

IV Admitted Contravention:

30. For the purposes of the Settlement Agreement, ATCO Gas admits and agrees to the following contravention:

Contrary to Decision 26283-D01-2021 and Section 4.10 of its *Customer Terms and Conditions for Gas Distribution Service*, ATCO Gas failed to:

- (a) Make TCB aware of the various rate schedules under which ATCO Gas provides service to different customer rate classes;
- (b) Endeavour to apply the applicable rate schedule which is most favourable to TCB and the Customers in a timely fashion; and,
- (c) Refund the difference in charges under a different rate schedule for a past period when TCB had requested service under an alternative rate schedule that was available to it.

V Agreed terms and conditions of settlement

31. Section 63 of the *Alberta Utilities Commission Act* states, *inter alia*, that if the Commission determines in a hearing or other proceeding that a person has contravened or failed to comply with any provision of that act or any other enactment under the jurisdiction of the Commission or any Commission rule, it can impose an administrative penalty and any terms or conditions considered appropriate. The Commission has found that the reference to “other proceeding” includes a settlement process.⁴ The purpose of the Commission’s sanctioning authority is to achieve general and specific deterrence, encourage compliance and protect the public. As well, while sanctions are intended to be protective and preventative, they are not to be punitive.

⁴ See for example Decision 23013-D01-2018 (Errata): Application for approval of a settlement agreement between the Market Surveillance Administrator, TransAlta Corporation and Capital Power Generation Services Inc., Proceeding 23013, Application 23013-A001, August 24, 2018, paragraph 20.

32. The Commission makes enforcement decisions based on the relevant factors of the case before it and has enacted Rule 013: *Criteria Relating to the Imposition of Administrative Penalties* to provide guidance when considering the imposition of an administrative penalty under the *Alberta Utilities Commission Act*. Section 4 of Rule 013 lists factors to be considered in determining the seriousness of the offence and Section 6 lists mitigation factors to be considered.

33. In assessing the seriousness of the Contravention, of the 23 factors listed in Section 4 of Rule 013, the following matters are of note:

- (a) The harm caused by ATCO Gas' failure to comply with its approved terms and conditions of service resulted in TCB and the Customers paying higher bills for natural gas delivery service for a period of time because ATCO Gas failed to move the Customers to a high use rate either when requested (TCB) or in a timely and more favourable way when eligible. (s.4(1)).
- (b) The harm was not widespread across ATCO Gas customers but limited to TCB and the Customers identified in this agreement (s. 4(5)).
- (c) The harm occurred over a number of months, depending on the customer:
 - TCB - approximately 10 months (February 2021 to November, 2021)
 - Customers - approximately 8-9 months

(s. 4(17)).

34. Many of the other factors enumerated in Section 4 of Rule 013 are not present and do not apply. For example: there was no loss of life or endangerment of persons, there was no damage to property or the operation of the bulk electric system, there was no fraudulent conduct or misrepresentation of material facts, ATCO Gas was not reckless or deliberately indifferent nor did it engage in a cover up, and ATCO Gas did not resist or ignore Enforcement staff's inquiry into the Contravention and when made aware of the Investigation, conducted an internal review that identified the other nine affected Customers. In particular, as it concerns TCB, the Contravention resulted from a breakdown in internal call centre processes, which ATCO Gas has committed to restructure so as to avoid any such issues in the future.

35. As noted, Section 6 of Rule 013 details factors to be considered in determining if any mitigation is warranted in the amount of the administrative penalty to be imposed. Many of those factors relate to the presence, strength, integrity and success of an existing compliance system; which, in the circumstances of this contravention is not applicable. However, mitigation factors such as the response and cooperation of ATCO Gas when made aware of the Investigation do apply. In addition to the customer review, ATCO Gas also conducted a process review, identified process gaps and is in the process of implementing process changes and improvements to ensure high use delivery rate switch requests from its customers are handled in accordance with its terms and conditions of service.

36. In view of ATCO Gas having:

- (1) Cooperated fully with Enforcement staff in the Investigation;
- (2) Reviewed all of its other potential high use rate switches from January 2021 to present and having identified nine additional Customers affected by its failure to move these Customers to the high use delivery rate in a timely manner; and
- (3) Taken steps to implement process changes and improvements to avoid future non-compliance concerning high use delivery rate switching for eligible customers;

the Parties jointly request that the Commission issue an order requiring ATCO Gas to pay an administrative penalty in the amount of \$14,500 pursuant to sections 63(1)(a) and 63(2)(a) of the *Alberta Utilities Commission Act*, payable to the General Revenue Fund and delivered to the Commission within 30 business days of the order.

37. The penalty amount recognizes ATCO Gas' admission of the contravention which avoids a protracted hearing and facilitates a timely resolution of this matter. The Parties agree that the proposed \$14,500.00 administrative penalty reflects the seriousness of the contravention and achieves the public interest objectives of public protection, encouraging compliance as well as general and specific deterrence.

38. In addition to the imposition of an administrative penalty, sections 63(1)(b) and 63(3) of the *Alberta Utilities Commission Act*, authorize the Commission to impose any terms or conditions that the Commission considers appropriate and to direct any action specified in the order. Pursuant to this authority the Parties jointly request that the Commission issue an order:

- (a) Requiring ATCO Gas to pay directly to TCB, no later than 30 business days from the date of the order, \$93,712.00. This amount represents the rate differential for the 10 months between February and November 2021 and compensation for the time and inconvenience suffered by TCB to attempt to resolve this matter on its own.
- (b) Requiring ATCO Gas to pay directly to each of the Customers, the refunds set out below, which represent the difference in delivery service rate charges, recognizing that ATCO Gas has already agreed to and has in fact provided these refund amounts to each of the Customers in November 2022, as follows:

Customer	Duration @ Incorrect Rate	Original Charges (\$)	Corrected Charges (\$)	Refund (\$)
Customer 1	Jan 11 2022 -Sep 27 2022	\$ 150,365.34	\$ 147,158.82	\$ 3,206.52
Customer 2	Jan 11 2022 -Sep 26 2022	\$ 49,579.78	\$ 39,997.43	\$ 9,582.35
Customer 3	Jan 13 2022 -Oct 24 2022	\$ 30,995.29	\$ 28,314.77	\$ 2,680.52
Customer 4	Jan 10 2022 -Oct 21 2022	\$ 38,068.30	\$ 34,713.37	\$ 3,354.93
Customer 5	Jan 25 2022 -Oct 24 2022	\$ 36,942.02	\$ 35,329.57	\$ 1,612.45
Customer 6	Jan 14 2022 -Sep 26 2022	\$ 72,271.20	\$ 64,367.12	\$ 7,904.08
Customer 7	Jan 24 2022 -Oct 21 2022	\$ 95,510.59	\$ 68,963.97	\$ 26,546.62
Customer 8	Jan 11 2022 -Sep 27 2022	\$ 78,784.54	\$ 78,581.65	\$ 202.89
Customer 9	Jan 11 2022 -Sep 27 2022	\$ 64,028.74	\$ 62,322.99	\$ 1,705.75
Total		\$ 616,545.80	\$ 559,749.69	\$ 56,796.11

for a total of \$56,796.11.

- (c) Directing ATCO Gas to implement the following process improvements for the handling of its high use delivery rate switch customer requests:

Customer Engagement & Triage:

- Any reference to delivery rate charges initiated by a customer call is escalated to a Senior Customer Call Representative for consultation.
- Any calls into the Call Centre from High Use customers will be identified for a follow up with a specialized Key Accounts team member.

Communication & Documentation:

- During a potential rate switch evaluation process, the Key Accounts team will remain engaged with the customer and provide the customer with status updates of their delivery rate switch request.
- Monthly reporting will be completed summarizing all unresolved customer calls into the Call Centre for potential escalation.

Escalation Process:

- All escalations are documented and reviewed on a regular basis to ensure issues are addressed in a timely manner.
- Unresolved issues are escalated to senior leadership in a timely manner.

VI General

39. This Settlement Agreement includes facts admitted for the purpose of dispensing with formal proof thereof. ATCO Gas's agreement to the terms of this Settlement Agreement does not constitute an admission as to the facts or findings in any other civil or criminal proceedings.

40. The Parties agree that in the event the Commission considers rejecting the Settlement or any part of it, and provides notice to the Parties of its concerns, the Parties will engage in further discussions and make best efforts to agree on further submissions to the Commission to address those concerns.

41. Subject to the Commission's approval of this Settlement Agreement, execution and fulfillment of the terms of this Settlement Agreement by ATCO Gas resolves all issues involving the conduct described above, and Enforcement staff agree not to undertake any further prosecutions, commence any further enforcement proceedings or take any steps against ATCO Gas or individuals relating to the facts and Contravention.

Settlement Agreement with ATCO Gas and Pipelines Ltd.

AGREED TO THIS 11TH DAY OF January, 2023



Luigi A. Cusano, K.C.
Counsel for ATCO Gas & Pipelines Ltd.

AGREED TO THIS 11TH DAY OF January, 2023



Catherine M. Wall
Counsel, Enforcement staff
Alberta Utilities Commission