



ATCO Electric Ltd.

Disposal of 2018-2021 Transmission Deferral Accounts and Annual Filing for Adjustment Balances

April 26, 2023

Alberta Utilities Commission

Decision 26573-D01-2023

ATCO Electric Ltd.

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Proceeding 26573

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Published by the:

Alberta Utilities Commission
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1 Decision summary

1. This decision sets out the determinations of the Alberta Utilities Commission on an application filed by ATCO Electric Ltd. for its 2018-2021 transmission direct assigned capital deferral accounts and annual filing for adjustment balances (DACDA application). In its application, ATCO Electric requested approval of a one-time net refund to the AESO of \$11.3 million (i.e., a refund to Alberta electricity customers of \$11.3 million).

2. The Commission has decided to disallow the recovery of the following amounts which will increase the total amount of the refund:

- (i) \$4.381 million of forgone return on rate base related to its treatment of customer contributions
- (ii) \$3.0 million related to ATCO Electric's imprudent management and execution of the Jasper Transmission Interconnection Project (Jasper project);
- (iii) A further 20 per cent reduction for amounts imprudently incurred connected with ATCO Electric's engagement of Backwoods Contracting Ltd. (Backwoods) on the Jasper project;¹ and
- (iv) \$0.250 million for work conducted in an effort to mislead and conceal information associated with ATCO Electric's decision to engage Backwoods on the Jasper project.

The Commission has directed that ATCO Electric reflect these disallowances in a future compliance filing. The disallowed amounts will not be recoverable from Alberta electricity customers.

2 Introduction

3. ATCO Electric is a transmission facility owner (TFO) that provides regulated electric transmission service in Alberta. ATCO Electric recovers the costs of providing electric transmission service through its transmission tariff, which must be approved by the Commission. Once approved, ATCO Electric recovers its tariff amounts from the Alberta Electric System Operator (AESO), which collects the costs of transmission services provided to Alberta electricity customers through their respective distribution facility owners, and from customers directly connected to the transmission system.

¹ The Commission estimates this further reduction to be approximately \$2.2 million based on ATCO Electric's applied-for amount. The exact dollar impact of this disallowance will be determined in ATCO Electric's compliance filing to this decision.

4. As with all DACDA applications, this application is an after-the-fact assessment of the prudence of the costs incurred by ATCO Electric, where final costs are established by reconciling and disposing of a number of deferral account balances.² This includes deferral accounts that record costs incurred by ATCO Electric to construct transmission projects undertaken in response to mandatory directions received from the AESO. ATCO Electric's forecast capital costs for these projects were already approved by the Commission in prior regulatory proceedings. If there is a difference between ATCO Electric's forecast capital costs and the actual capital costs incurred, then, subject to the Commission's review and approval, any difference between the amount that ATCO Electric has been paid by the AESO and the amount that ATCO Electric should have been paid by the AESO is either paid to, or recovered from, ATCO Electric, as required. When examining ATCO Electric's application, the Commission assesses the prudence of ATCO Electric's actual capital costs incurred. ATCO Electric is allowed to recover capital costs through its tariff only if the Commission determines that the actual capital costs were prudently incurred.

5. In Decision 2001-110³ the Commission previously articulated the test for prudence as follows:

In summary, a utility will be found prudent if it exercises good judgment and makes decisions which are reasonable at the time they are made, based on information the owner of the utility knew or ought to have known at the time the decision was made. In making decisions, a utility must take into account the best interests of its customers, while still being entitled to a fair return.

6. The Commission has applied this test in determining whether the applied-for costs in ATCO Electric's DACDA application were prudently incurred.

7. ATCO Electric originally requested approval to refund \$7 million for deferral accounts covering the 2018-2020 timeframe and to collect \$3.5 million for annual filing adjustments, resulting in a request for Commission approval of a one-time net refund to the AESO of \$3.4 million.⁴

8. ATCO Electric amended its original application in response to Commission directions, discussed in greater detail in the following sections of this decision. ATCO Electric's amended application included its 2021 DACDA application and removed \$10.8 million of above fair market value costs related to the Jasper project. In the amended application ATCO Electric requested approval of a refund of \$13.9 million for deferral accounts covering the 2018-2021 timeframe (including a refund of \$1.9 million associated with ATCO Electric's direct assigned capital deferral account and a \$12.0 million refund for other deferral account adjustments) and a collection of \$2.6 million for annual adjustments related to cancelled projects. The net result is a request for a one-time net refund to the AESO of \$11.3 million (i.e., a refund to Albertans of \$11.3 million).

² For example: right-of-way payments, property taxes and long-term debt rates as noted in Table 1 below.

³ Decision 2001-110: Methodology for Managing Gas Supply Portfolios and Determining Gas Cost Recovery Rates Proceeding and Gas Rate Unbundling Proceeding, Part B-1: Deferred Gas Account Reconciliation for ATCO Gas, December 13, 2001. This articulation of the prudence test was also cited in decisions 24681-D01-2020 and 3585-D03-2016.

⁴ Totals do not reconcile due to rounding.

9. The Commission has reviewed the entire record in coming to this decision; lack of reference to a matter addressed in evidence or argument does not mean that it was not considered.

10. This decision addresses the contentious cost items included in the application, including application updates, and any matters that the Commission has otherwise determined are required to be specifically addressed. If a matter is not specifically addressed in this decision, it is because the Commission finds the applied-for costs associated with the matter to be reasonable and the applicant's request is therefore approved as filed. All directions in this decision are subject to all findings and other directions made elsewhere in this decision.

11. The Commission requires ATCO Electric to submit a compliance filing that reflects the findings, conclusions and directions of the Commission in this decision on or before May 29, 2023; provided, however, that ATCO Electric is not required to submit such a compliance filing if the Commission orders a compliance filing for ATCO Electric's 2023-2025 general tariff application in Proceeding 27062. In such a case, the Commission directs ATCO Electric to incorporate the findings, conclusions and directions of the Commission in this decision together with its compliance filing to the Commission's decision in Proceeding 27062.

3 Background to the application process

12. On June 9, 2021, ATCO Electric filed its 2018-2020 DACDA application. The Commission considered the 2018-2020 DACDA application in Proceeding 26573 through a hearing process that was expected to culminate in oral argument on September 29, 2021.

13. On October 6, 2021, after oral argument, ATCO Electric requested that the Commission stay the release of its decision on the 2018-2020 DACDA account application. ATCO Electric indicated that a matter was subject to an ongoing internal investigation by its corporate security and also by AUC Enforcement staff.⁵ ATCO Electric indicated that the amounts it was seeking to recover in the application may change, pending the outcome of these investigations. AUC Enforcement staff subsequently informed the Commission that it supported ATCO Electric's request for a stay.

14. In a letter dated October 7, 2021, the Commission granted ATCO Electric's stay request.⁶

15. Suspension of the Commission's consideration of the 2018-2020 DACDA application was necessary because AUC Enforcement staff commenced an investigation, pursuant to sections 8 and 63 of the *Alberta Utilities Commission Act*, asserting that ATCO Electric contravened various regulatory instruments in procuring access matting, brushing/clearing and hydrovac services for the Jasper project (access services).⁷ Amounts related to the Jasper project were included in ATCO Electric's DACDA application for 2018-2020. The investigation by

⁵ Exhibit 26573-X0286, AET Letter Requesting Interim Stay of the AUC's Decision.

⁶ Exhibit 26573-X0288, AUC letter - ATCO Electric request to suspend release of the decision, PDF page 1, paragraphs 1-4.

⁷ Proceeding 27013, Exhibit 27013-X0034, Application of Enforcement Staff re ATCO Electric, PDF pages 4-5, paragraphs 1-7.

AUC Enforcement staff resulted in the commencement of an enforcement proceeding, Proceeding 27013.⁸

16. On April 14, 2022, AUC Enforcement staff and ATCO Electric entered into a settlement agreement on the alleged contraventions that had been the subject of AUC Enforcement staff's investigation and filed the agreement for Commission approval.⁹ Included in the settlement agreement was a request asking the Commission to issue an order, requiring ATCO Electric to pay an administrative penalty in the amount of \$31.0 million made out to the General Revenue Fund of Alberta.¹⁰

17. On June 29, 2022, the Commission approved the settlement agreement in Decision 27013-D01-2022 and ordered, among other things, ATCO Electric to pay an administrative penalty of \$31.0 million.¹¹ In that decision, the Commission made findings which included the following:¹²

- (i) ATCO Electric knowingly sole-sourced access services for the Jasper project to Backwoods at rates above fair market value, to the benefit of its unregulated affiliate, ATCO Structures and Logistics Ltd.¹³
- (ii) Backwoods subcontracted most, if not all, of the matting-related work on the Jasper project to another contractor.¹⁴
- (iii) ATCO Electric created a misleading paper trail justifying its decision and concealing critical information about why it sole-sourced the contract – namely, to benefit ATCO Structures and Logistics Ltd. – in an attempt to avoid Commission detection of its actions and improperly recover those above fair market costs from Alberta electricity customers.¹⁵
- (iv) ATCO Electric estimated that approximately \$10.8 million of the access services costs it incurred for the Jasper project were attributable to the above-market rates that it paid to Backwoods (costs associated with the sole-source Backwoods contract).¹⁶

18. In addition, under the settlement agreement, ATCO Electric agreed to amend its 2018-2020 DACDA application to reflect revised applied-for access services costs for the Jasper project.¹⁷ The settlement agreement also stated that the quantum of any amounts associated with

⁸ AUC Enforcement staff are responsible for investigating complaints and contraventions of AUC rules, orders and decisions, and making recommendations to the AUC on whether to commence enforcement action for alleged contraventions. Protocols regarding the segregation of Enforcement staff and adjudicative personnel are outlined in AUC bulletins 2014-05, Alberta Utilities Commission enforcement policy, and 2016-10, Practices regarding enforcement proceedings and amendments to AUC Rule 001: Rules of Practice.

⁹ Proceeding 27013, Exhibit 27013-X0069, Settlement Agreement and Agreed Statement of Facts.

¹⁰ Proceeding 27013, Exhibit 27013-X0069, Settlement Agreement and Agreed Statement of Facts, PDF page 6.

¹¹ Decision 27013-D01-2022: Enforcement Staff of the Alberta Utilities Commission, Allegations against ATCO Electric Ltd., Proceeding 27013, June 29, 2022.

¹² These findings are the most relevant to this proceeding, and they are not a comprehensive list of the Commission's findings from this decision.

¹³ Decision 27013-D01-2022, PDF pages 4, 9 and 18, paragraphs 2, 27-28 and 70-71.

¹⁴ Decision 27013-D01-2022, PDF pages 9-10, paragraphs 30-31.

¹⁵ Decision 27013-D01-2022, PDF page 4, paragraph 2.

¹⁶ Decision 27013-D01-2022, PDF page 8, paragraph 24.

¹⁷ Proceeding 27013, Exhibit 27013-X0069, PDF pages 6-7, paragraph 12.

ATCO Electric's misconduct related to the procurement of access services for the Jasper project may be assessed and tested by the Commission panel presiding over the 2018-2020 DACDA application in Proceeding 26573.¹⁸

19. In approving that settlement agreement, the Commission indicated that:

ATCO Electric must amend its deferral account application to remove any costs incurred for the Jasper project that are above fair market value, and this will be considered by the Commission panel assigned to the deferral account proceeding. That panel will determine what the fair market value of the work is, based on the evidence of all the parties participating in the deferral account proceeding.¹⁹

20. On July 13, 2022, the Commission issued a letter²⁰ notifying parties that it was reopening Proceeding 26573. In that letter, the Commission directed ATCO Electric:

- (i) to file a comprehensive update to the information that it originally filed in support of the Jasper project;
- (ii) to file exhibits from Proceeding 27013 that contain relevant cost information on access services for the Jasper project; and
- (iii) to refile its 2021 DACDA application (which had been filed in Proceeding 27062) on the record of Proceeding 26573, because the Commission found that it would be more efficient to consider the settlement of ATCO Electric's 2021 deferral balances in Proceeding 26573.

21. On August 11, 2022, ATCO Electric amended its 2018-2020 DACDA application and refiled its 2021 DACDA application on the record of Proceeding 26573.²¹ ATCO Electric removed \$10.8 million associated with the sole-source Backwoods contract from its requested cost recovery, and provided information outlining the assumptions and calculations that it used to derive the \$10.8 million reduction.

22. On September 20, 2022, the Commission filed a letter²² advising parties that further testing of ATCO Electric's 2018-2020 DACDA application would be limited to matters that were both relevant to a DACDA application proceeding (i.e., what costs should be included in customer rates), and were affected by the new information that was disclosed in the enforcement proceeding. The Commission also emphasized that this would not be an opportunity to retest matters that were not relevant to the new information that was disclosed.

23. The Commission did not assess the \$31.0 million administrative penalty in this proceeding, because it was already adjudicated in the enforcement proceeding, and was not a matter that is relevant to a DACDA application.

¹⁸ Proceeding 27013, Exhibit 27013-X0069, PDF page 36, paragraph 144 and footnote 2.

¹⁹ Decision 27013-D01-2022, PDF page 22, paragraph 90.

²⁰ Exhibit 26573-X0291, AUC letter - Reopening of Proceeding 26573 and ATCO Electric's application amendment.

²¹ Exhibit 26573-X0295, Cover Letter enclosing AET Amended 2018-2021 Deferral Application.

²² Exhibit 26573-X0332, AUC letter - Scope of Proceeding 26573 and process schedule.

24. The Commission closed the record for the proceeding on January 26, 2023, when oral reply argument for the application was completed.²³

4 ATCO Electric 2018-2021 DACDA

25. ATCO Electric requested the following adjustments as reflected in Table 1-1 of the application:

Table 1. Summary of deferral accounts and annual adjustments amount/(refund to)

	2018	2019	2020	2021	2022	Total
Deferral accounts	(\$000)					
Direct Assigned Capital	(1,661)	3,102	256	(2,538)	(1,056)	(1,897)
Deducting Deferral	564	356	190	161	99	1,299
Capital Repairs	29	(879)	391	(886)	-	(1,344)
ROW [right-of-way] Payments	48	(543)	(22)	(78)	-	(596)
Property Tax	(2,415)	(5,445)	(1,948)	(1,472)	-	(11,282)
Long-Term Debt Rates	-	(114)	-	-	-	(114)
Total deferral accounts	(3,434)	(3,523)	(1,214)	(4,813)	(956)	(13,934)
Annual filing for adjustments						
Cancelled projects	(244)	3,239	522	(931)	-	2,585
Total annual adjustments	(244)	3,239	522	(931)	-	2,585
Total (refund) / collection	(3,678)	(284)	(691)	(5,745)	(956)	(11,349)

Source: Prepared from Exhibit 26573-X0006.01, AET 2018-2020 Deferral Application, Table 1-1: Summary of Deferral Accounts and Annual Adjustments, PDF page 4.

26. The remainder of this decision addresses each of the issues remaining to be resolved, and any related issues that arise under them.

5 Issue 1: Has ATCO Electric complied with previous Commission directions?

5.1 Decision 24375-D01-2020 (directions 5, 7 and 12) and Decision 22393-D02-2019 (Direction 3)

27. In its application, ATCO Electric responded to three outstanding directions (directions 5, 7 and 12) from Decision 24375-D01-2020²⁴ in respect of ATCO Electric's Transmission Application for Disposal of 2015-2017 Transmission Deferral Accounts and Annual Filing for Adjustment Balances. Copies of these directions have been provided in [Appendix 4](#) of this decision.

28. With respect to Direction 5 allowing ATCO Electric to true up the recovery of certain foundation materials costs for project 55127 in full,²⁵ the Commission finds that ATCO Electric has complied and that no further action by ATCO Electric is required. In the current application,

²³ This oral argument and oral reply argument process was limited to the amendments that ATCO Electric made on and after August 11, 2022, and matters that were both relevant to a DACDA application and were affected by the new information that was disclosed in the enforcement proceeding.

²⁴ Decision 24375-D01-2020: ATCO Electric Ltd., Disposal of 2015-2017 Transmission Deferral Accounts and Annual Filing for Adjustment Balances, Proceeding 24375, November 30, 2020.

²⁵ Exhibit 26573-X0006.01, application, paragraph 21, and Table 2.6-1, PDF pages 11 and 33.

the costs at issue result in offset amounts because of the redeployment of cancelled project material costs for which ATCO Electric had received funding in Decision 24375-D01-2020. Further details respecting this and a similar project are discussed in Section 6 of this decision.

29. With respect to Direction 7 requiring ATCO Electric to ensure air travel costs are charged at no more than commercial airlines economy fare, ATCO Electric stated that an applicable adjustment had not been incorporated into its application on the basis that the amount at issue is immaterial.²⁶ The Commission finds that ATCO Electric has not complied with this direction. The Commission further directs ATCO Electric to reduce its applied-for costs by \$11,267 in its compliance filing to this decision.

30. With respect to Direction 12 requiring ATCO Electric to provide documentation explaining its processes related to determining when external legal resources are required,²⁷ the Commission finds that ATCO Electric complied with this direction and no further action by ATCO Electric is required. The Commission does not accept the Consumers' Coalition of Alberta's (CCA) evidence²⁸ pertaining to this direction or the CCA's evidence recommending that a further disallowance for legal costs incurred for the Jasper project for partners and associates costs is required. The Commission has found that the hourly rate data used by the CCA was outdated and did not provide a reliable point of comparison for the reductions proposed by the CCA.

31. The Commission also examined ATCO Electric's ongoing compliance with Direction 3 of Decision 22393-D02-2019²⁹ pertaining to travel time for its legal counsel. The Commission directed ATCO Electric to charge legal counsel travel time at 50 per cent of the hourly rate, rather than the 100 per cent rate used by ATCO Electric in the current application. The Commission accepts ATCO Electric's statement that it will apply a reduction of \$12,144³⁰ to the amounts requested in its compliance filing to this decision to comply with this direction.³¹ Doing so will result in ATCO Electric compliance with the Commission's findings in Decision 22393-D02-2019.

32. The Commission notes that non-compliance by ATCO Electric with Direction 7 of Decision 24375-D01-2020 and Direction 3 of Decision 22393-D02-2019, led to these matters being subject to dispute in this proceeding, which was precisely the outcome the Commission sought to avoid in issuing the directions in the first instance. It also led to the unnecessary use of parties' time and resources in their efforts to clarify the record. These outcomes are inconsistent with regulatory efficiency and further, raise concerns with ATCO Electric's ability to comply with Commission directions, and its culture of compliance, without the need for greater regulatory oversight.

²⁶ Exhibit 26573-X0006.01, application, PDF pages 12-13, paragraphs 22-23.

²⁷ Exhibit 26573-X0006.01, application, PDF pages 13-21, paragraphs 24-46.

²⁸ Exhibit 26573-X0248, CCA Evidence on Jasper including Legal Costs

²⁹ Decision 22393-D02-2019: ATCO Electric Ltd., Hanna Region Transmission Development Deferral Account, Proceeding 22393, June 6, 2019.

³⁰ Exhibit 26573-X0261, AET-AUC-2017SEP17-001(b), PDF page 4.

³¹ Transcript, Volume 1 (September 29, 2021), page 28, line 25 to page 29, line 6.

5.2 Ongoing directions

33. ATCO Electric also referred, in the current application, to its continued compliance with earlier Commission directions that addressed the nature and required level of detailed information necessary to support ATCO Electric's DACDA applications.

34. Having reviewed the information provided by ATCO Electric,³² the Commission confirms that ATCO Electric is in compliance with the following decisions and directions:

- Decision 21206-D01-2017 (directions 11 and 12)³³
- Decision 2013-358 (Direction 92)³⁴
- Decision 2014-283 (directions 1, 2, 3, 4 and 21)³⁵

6 Issue 2: Are ATCO Electric's cancelled project costs reasonable?

35. In this section, the Commission examines ATCO Electric's request to recover costs for three categories of cancelled direct assigned projects:³⁶ cancelled system projects, cancelled customer projects and cancelled "other projects."

36. System projects are generally those facilities constructed for the benefit of all users of Alberta's transmission system.

37. Customer projects are initiated by a market participant (or customer) to facilitate the construction of, and that customer's connection to, a transmission facility (a transmission connection facility). The customer funds the project, that is built for its own benefit and use, by making a customer contribution to the TFO that is responsible for Alberta's transmission system where the customer project is located. The costs incurred by the TFO to construct the customer project are offset by the customer contribution.

38. "Other projects" is a category applied to direct assigned projects that are cancelled, and expenditures incurred up to the point of project cancellation are redeployed to a new direct assigned project. In such circumstances, there is a refund (or offset) of costs for the cancelled project that is recognized.

39. In Section 2.6 of its application, ATCO Electric outlined its proposal to recover the net costs associated with the three categories of cancelled direct assigned projects. It asked to recover: \$0.066 million arising from the cancellation of one system project; \$4.381 million related to the cancellation of 14 customer projects and a \$1.796 million refund (or offset) of costs related to "other projects" and other adjustments discussed in Decision 24375-D01-2020.

³² Exhibit 26573-X0006.01, application, PDF pages 21-25, paragraphs 47-53.

³³ Decision 21206-D01-2017: ATCO Electric Ltd., 2013 and 2014 Transmission Deferral Accounts and Annual Filing for Adjustment Balances, Proceeding 21206, September 20, 2017.

³⁴ Decision 2013-358: ATCO Electric Ltd., 2013-2014 Transmission General Tariff Application, Proceeding 1989, Application 1608610, September 24, 2013.

³⁵ Decision 2014-283: ATCO Electric Ltd., 2012 Transmission Deferral Account and Annual Filing for Adjustment Balances, Proceeding 2683, Application 1609720, October 2, 2014.

³⁶ Direct assigned capital projects are transmission facility proposals that the AESO has directed a TFO, in this case ATCO Electric, to submit for Commission approval to meet the need identified in the AESO's needs identification document (NID).

Accordingly, its requested recovery of costs for cancelled direct assigned projects during 2018-2021 was a net amount of \$2.585 million, as shown in Table 2 below:

Table 2. Summary of 2018-2021 cancelled direct assigned project costs

AET appropriation number	AET project name/description	Cost to be recovered/(refunded) (\$ million)
56772	Nevis Transformer	0.066
Total system projects		0.066
51162	Blumenort – Windy Hills 144kv [kilovolt]Transmission Line	0.348
56820	Halkirk II Wind Power Facility	0.195
51181	Three Creeks Power Plant	2.973
56878	SAGD Foster Creek DTS Cap Upgrade	0.031
58526	Oyen Wind Power Project	0.154
58562	Hand Hills Wind Power Project	0.185
58569	Hand Hills Wind Power Facility	0.164
56865	Wainwright	0.045
58572	Hand Hills Wind Project Phase II	0.031
58573	Hand Hills Solar	0.033
51090	ATCO Power Rainbow Lake Gas (2021)	0.028
55605	Kineticor Peace Hills Power Line Tap (2021)	0.091
58525	Oyen Wind Energy Project (2021)	0.023
58574	Forestburg Area Solar (2021)	0.014
Total cancelled customer projects³⁷		4.381
55127	Decision 24375-D01-2020, paragraph 77	(0.100)
55127	Cancelled Project Redeployed Costs	(0.347)
55127	Cancelled Project Redeployed Costs (2021)	(1.074)
55126	Cancelled Project Redeployed Costs	(0.260)
55126	Cancelled Project Redeployed Costs (2021)	(0.015)
Total other projects		(1.796)
Net amount cancelled project costs to be recovered		2.585

Source: Prepared from Exhibit 26573-X0006.01, application, Table 2.6-1, PDF pages 32-33.

6.1 Cancelled system projects

40. Having reviewed the evidence provided by ATCO Electric, the Commission finds that the cost of \$0.066 million incurred in respect of the only cancelled system transmission project (the Nevis transformer project) is reasonable and the Commission approves recovery of this amount by ATCO Electric.

6.2 Cancelled “other projects”

41. As discussed earlier in Section 5, the Commission finds that ATCO Electric has complied with the requirements of Direction 5 of Decision 24375-D01-2020. The issue in that Decision

³⁷ As shown in Exhibit 26573-X0230, AET-CCA-2021JUL14-011(d) Attachment 1, the costs to be recovered for all cancelled customer projects (excluding those denoted in this table by (2021)) include calculations covering the years 2017-2020. This exhibit was not updated by ATCO Electric; however, the costs for all remaining cancelled customer projects denoted in this table by (2021) were provided in Exhibit 26573-X0006.01, Table 2.6-1, PDF pages 32-33. Calculations for projects 51090, 55605, 58525 and 58574 for the years 2017-2021 can be found in Exhibit 26573-X0118.01, Attachment 9.

arose from the incorrect addition of foundation materials to ATCO Electric project 55127. ATCO Electric complied with the Commission-directed true-up in the current application and the amount of \$0.100 million has been included in the refund.

42. Further, with respect to projects 55126 and 55127, ATCO Electric has made the necessary adjustments in respect of the costs incurred and subsequently redeployed to other ATCO Electric projects. Given this, the Commission approves the “other” adjustments amounting to a total refund (or offset) of \$1.796 million, as identified in Table 2 above.

6.3 Cancelled customer projects

43. When a customer project for the construction of transmission connection facilities is cancelled by the market participant, the customer contribution made to the TFO is retained to the extent required to keep the TFO whole for project construction costs it has incurred up to the point of cancellation. In relation to the 14 cancelled customer projects at issue in the current proceeding, ATCO Electric received and retained the customer contributions made to it by the relevant market participants to cover project costs incurred by ATCO Electric for these cancelled projects prior to their cancellation.

44. ATCO Electric is therefore not seeking recovery for capital expenditures for these projects as any capital expenditures made were offset by the relevant customer contributions made to ATCO Electric in respect of them. ATCO Electric is requesting to recover \$4.381 million through its DACDA application for what it says was a benefit received by Alberta electricity customers, which represents a revenue shortfall for ATCO Electric, connected with the 14 cancelled customer projects. It indicated that this customer benefit/revenue shortfall arose because customer contributions associated with the cancelled customer projects were not removed from rate base. The customer contribution amounts therefore acted as an offset to ATCO Electric’s rate base from 2017 to 2021.³⁸

Background on customer contributions for customer projects

45. During a period of significant transmission build in Alberta, generally referred to as the “big build,” the Commission approved a temporary credit relief mechanism called “construction work in progress in rate base” or “CWIP in rate base” accounting for short. CWIP in rate base accounting allowed TFOs additional cash flow to better support the financing of the “big build.”

46. CWIP in rate base temporarily supplanted the existing and more typical mechanism of financing capital investment through an allowance for funds used during construction (AFUDC).³⁹ AFUDC accounting can impact a TFO’s credit metrics during periods of large capital expenditures, such as the big build. Under AFUDC accounting, TFOs do not receive any incremental revenue connected with their capital expenditures until the project is energized and the expenditures are capitalized and the related capital asset is placed into service. Accordingly, until a project is in service, TFOs can have large cash outflows connected with these projects, without corresponding cash inflows resulting from the return of and on capital.

³⁸ Exhibit 26573-X0138.01, AET-AUC-2021JUL14-004, PDF page 71.

³⁹ AFUDC allows utilities to capitalize the carrying costs of financing capital investment at the weighted average cost of capital. However, these costs would be recovered through depreciation expense, or earn a return only at the time the asset was put into utility service.

47. Under CWIP in rate base accounting, the Commission approved the reflection by TFOs in their revenue requirement of return **on** the mid-year CWIP balance on direct assigned projects (return). However, the return **of** the capital investment (depreciation) was reflected in revenue requirement only when the project was energized and the related capital assets put into utility service. Under CWIP in rate base accounting, the mid-year customer contribution balance for any related customer direct assigned project offset the rate base return that would otherwise be reflected in the TFO's revenue requirement.

48. In Decision 20272-D01-2016, the Commission directed ATCO Electric to discontinue CWIP in rate base accounting:

88. ATCO Electric is directed, starting January 1, 2017, to **(1) resume normal regulatory AFUDC accounting for direct assigned capital, (2) discontinue CWIP in rate base for direct assigned projects**, and (3) discontinue recovering the capital portion of pension costs on a cash basis, and instead return to collection of the capital portion of pension expense as part of invested capital. ATCO Electric is directed to reflect this in the compliance filing. [emphasis added]

ATCO Electric's accounting treatment of customer contributions

49. In the current application, ATCO Electric explained that under the accounting practice it adopted in response to Direction 88, it continued to hold customer contributions related to customer projects in CWIP (in rate base) by removing from rate base only its gross project expenditures associated with the projects in question, but not the offsetting customer contributions received in respect of those same projects. Therefore, these contributions were included as offsets to ATCO Electric's rate base after January 1, 2017.

50. As summarized by ATCO Electric in an information request (IR) response:⁴⁰

... AET [ATCO Electric Transmission] is seeking to recover the benefit of the reduced revenue requirement that all customers [ratepayers] have received due to the inclusion of the cancelled projects' contribution WIP [work in progress] in rate base. The reduced revenue requirement related to the cancelled projects benefited all customers [ratepayers] and it would be inappropriate to seek recovery directly from the project customer.

51. ATCO Electric's rate base and the associated return on rate base included in revenue requirement (and ultimately charged to all Alberta electricity customers) was lower during the time customer contributions for those projects remained as an offset to ATCO Electric's overall rate base. As a result of this accounting treatment, ATCO Electric requested to collect what it characterized as the benefit that was afforded to all Alberta electricity customers by having the contributions related to those customer projects offset ATCO Electric's rate base.⁴¹

ATCO Electric's request is not properly the subject of a DACDA proceeding

52. As previously set out in the introductory sections of this decision, a deferral account allows a utility, such as ATCO Electric, to record differences between forecast and actual costs. These amounts are then reviewed by the Commission and if the Commission finds that the actual costs were prudently incurred, the utility can recover those amounts from Alberta electricity customers through rates. By establishing a deferral account, the Commission signals that the

⁴⁰ Exhibit 26573-X0167.01, AET-CCA-2021JUL14-012(b), PDF page 156.

⁴¹ Exhibit 26573-X0006.01, application, PDF pages 33-34, paragraph 63.

amounts included in that account are subject to adjustment, such that differences between forecasts and actual costs may be refunded to or recovered from Alberta electricity customers. Therefore, by using a deferral account, Alberta electricity customers have knowledge that the amounts that they may have to pay are not final until the amount in the deferral account is disposed of on a final basis.⁴²

53. The Commission has considered whether the amounts that ATCO Electric has sought in its application to recover in respect of the 14 customer cancelled projects are amounts that were booked into one or more deferral accounts and are therefore recoverable as DACDA amounts. In other words, the question is whether the \$4.831 million amount represents the difference between a forecast and actual cost that may be tried up because it was subject to deferral account treatment. The Commission has determined that it is not.

54. First, there are no customer project costs for ATCO Electric to recover. ATCO Electric did not characterize the amounts as a “cost” but rather a “benefit” or “revenue shortfall.” It could not do so because ATCO Electric confirmed that it has been kept whole for costs incurred for these customer projects up to the point of project cancellation.⁴³ ATCO Electric indicated that the customer contributions associated with the cancelled projects were retained by ATCO Electric⁴⁴ and that it would be “inappropriate” for it to recover the benefit conferred on all Alberta electricity customers from the market participant or customer for whose benefit the customer project was to be constructed.⁴⁵

55. Second, and related to the first point, ATCO Electric does not incur carrying costs on customer projects where the customer project does not have a system component (as is the case here). Pursuant to a Commission-directed accounting procedure (Decision 2013-358), ATCO Electric must immediately account for customer contributions such that it does not earn carrying charges or return on any amount it has expended toward that customer project.

56. Specifically, in ATCO Electric’s 2013-2014 GTA, the Commission examined ATCO Electric’s internal contribution policy which, at that time, consisted of ATCO Electric recording customer contributions at a point when the project was nearing completion. This approach understated contributions and resulted in an overstatement of ATCO Electric’s revenue requirement because, at the time, CWIP for customer projects was in rate base.

57. In Decision 2013-358, the Commission stated that both capital expenditures and the offsetting contributions are to be treated in lockstep. This alignment was particularly important at a time when “the return on CWIP for direct assigned capital projects is included in revenue requirement” through the CWIP in rate base rate relief mechanism. The Commission stated:

842. For regulatory purposes, a customer contribution is to be accounted for as soon as it is confirmed that a contribution will be required for the project. Waiting until capital expenditures reach ATCO Electric’s approved investment level before contributions are received effectively overstates the rate base, and does not recognize the obligation for a customer contribution. This would be especially troublesome if a customer has already paid the contribution up front, ATCO Electric has incurred capital expenditures, and a number of years have passed before the contribution is recorded as a reduction to rate

⁴² *Bell Canada v Bell Aliant Regional Communications*, 2009 SCC 40, [2009] 2 S.C.R. 764, paragraphs 61-63.

⁴³ Exhibit 26573-X0138.01, AET-AUC-2021JUL14-004, PDF page 71.

⁴⁴ Exhibit 26573-X0138.01, AET-AUC-2021JUL14-004, PDF page 71.

⁴⁵ Exhibit 26573-X0167.01, AET-CCA-2021JUL14-012(b), PDF page 156.

base, especially during this time when the return on CWIP for direct assigned capital projects is included in revenue requirement.⁴⁶

When contributions are treated in lockstep with the expenditures incurred, ATCO Electric does not incur carrying costs or return because the contribution offsets any expenditures made by ATCO Electric and thus negates any financing costs that would otherwise be incurred. ATCO Electric now seeks to recover forgone return because the expenditures and customer contributions were not treated in lockstep.

58. In this case, the costs of the facilities (projects that were ultimately cancelled) were covered by the customer contribution amounts. ATCO Electric was kept whole for the amounts spent in relation to each of the projects by retaining the customer contribution amounts. These are not, therefore, properly characterized as cancelled project costs.

59. In the Commission's view, what ATCO Electric has described as a "benefit" to Alberta electricity customers can equally be characterized as ATCO Electric's forgone return on rate base from 2017 to 2021. In either case, the amount is not a cost that has been booked into a deferral account. The Commission therefore finds that the \$4.381 million amount is not appropriately recoverable through the DACDA application.

Recovery by ATCO Electric would constitute impermissible retrospective ratemaking

60. The Alberta Court of Appeal has described retrospective ratemaking as imposing on a utility's current electricity customers, shortfalls (or surpluses) incurred by previous generations of customers. The court noted that retrospective ratemaking is generally prohibited because it creates inequities or improper subsidizations as between past and present electricity customers (who may not be the same).⁴⁷

61. In this case, ATCO Electric's proposal would have a retrospective effect because it is expressly seeking to recover forgone past revenue (which resulted in a benefit to its past electricity customers), from 2017 to 2021 – and to recover this revenue from ATCO Electric's current electricity customers. ATCO Electric's rates for this period were finalized,⁴⁸ as noted by the CCA,⁴⁹ under Decision 20272-D01-2016,⁵⁰ Decision 22742-D01-2019,⁵¹ Decision 22742-D02-2019,⁵² Decision 24964-D01-2021⁵³ and Decision 24964-D02-2021.⁵⁴

⁴⁶ Decision 2013-358, PDF page 188, paragraph 842.

⁴⁷ *Calgary (City) v Alberta (Energy and Utilities Board)*, 2010 ABCA 132, paragraph 48.

⁴⁸ With some amounts subject to deferral account treatment.

⁴⁹ Transcript, Volume 1 (September 29, 2021), page 104, lines 18-22.

⁵⁰ Decision 20272-D01-2016, ATCO Electric Ltd., 2015-2017 Transmission General Tariff Application, Proceeding 20272, August 22, 2016.

⁵¹ Decision 22742-D01-2019, ATCO Electric Ltd., 2018-2019 Transmission General Tariff Application, Proceeding 22742, July 4, 2019.

⁵² Decision 22742-D02-2019, ATCO Electric Ltd., 2018-2019 Transmission General Tariff Application, Proceeding 22742, October 2, 2019.

⁵³ Decision 24964-D01-2021, ATCO Electric Ltd., 2020-2022 Transmission General Tariff Application, Proceeding 24964, March 1, 2021.

⁵⁴ Decision 24964-D02-2021, ATCO Electric Ltd., 2020-2022 Transmission General Tariff Application, Proceeding 24964, March 19, 2021.

62. While a deferral account, such as ATCO Electric's DACDA, is a recognized exception to the rule against retroactive and retrospective ratemaking,⁵⁵ the Commission has found above that the amounts that ATCO Electric seeks to recover are not amounts that are subject to deferral account treatment. Granting ATCO Electric's request to recover any forgone return for this period would therefore constitute impermissible retrospective ratemaking and is denied.

ATCO Electric's accounting treatment of customer contributions was its own error

63. Having found that the \$4.381 million is not properly recoverable through the current DACDA and that recovery of this amount would therefore constitute impermissible retrospective ratemaking, the Commission is not required to go any further. It will, however, address ATCO Electric's submissions that focus on ATCO Electric's compliance filing to Decision 20272-D01-2016 in response to Direction 88.

64. In those submissions, ATCO Electric appeared to argue that the Commission's approval of ATCO Electric's compliance with Direction 88 included approval of ATCO Electric's accounting practice of holding customer contributions related to customer projects in CWIP (in rate base) by removing from rate base only its gross project expenditures associated with the projects in question, but not the offsetting customer contributions received in respect of those same projects. This, ATCO Electric stated, resulted in a benefit that was afforded to all Alberta electricity customers, although the Commission has noted that it is also the case that it caused ATCO Electric to forgo its return on rate base on these amounts.

65. The CCA asked an IR on this point.⁵⁶ In its response, ATCO Electric did not directly address its decision, in response to Direction 88, to remove the capital expenditures from rate base, but not remove the customer contributions associated with those expenditures. Instead, ATCO Electric's IR response focused on the Commission's acceptance of certain schedules filed as part of its compliance filing to Decision 20272-D01-2016 and Direction 88. In the paragraphs that follow, the Commission examines whether its approval of ATCO Electric's compliance filing to Direction 88 caused ATCO Electric to forgo its return.

66. In Decision 22050-D01-2017⁵⁷ (which addressed compliance with Decision 20272-D01-2016 and Direction 88), the Commission accepted that ATCO Electric had complied with Direction 88. In support of its compliance with that direction, ATCO Electric referred the Commission to an attachment and schedule that described the discontinuation of CWIP in rate base for direct assigned projects in 2017 and the resumption of normal regulatory AFUDC accounting starting January 1, 2017.⁵⁸ There was nothing in ATCO Electric's compliance filing that indicated it did not remove customer contributions from rate base, nor did it bring this accounting treatment to the Commission's attention or seek guidance as to whether it would be appropriate to do so. The schedules filed by ATCO Electric did not set out how it would treat customer contributions.

⁵⁵ *Bell Canada v Bell Aliant Regional Communications*, 2009 SCC 40, [2009] 2 S.C.R. 764, paragraphs 61-63.

⁵⁶ Exhibit 26573-X0167.01, AET-CCA-2021JUL14-011, PDF pages 151-152.

⁵⁷ Decision 22050-D01-2017: ATCO Electric Ltd., 2015-2017 Transmission General Tariff Application Compliance Filing, Proceeding 22050, June 19, 2017.

⁵⁸ Proceeding 22050, Exhibit 22050-X0019.01, PDF page 133, refers to "Attachment 4, GTA Schedule 10-1, for the discontinuation of CWIP in rate base for direct assigned projects in 2017 and GTA Schedule 9-2 for the resumption of normal regulatory AFUDC accounting starting January 1, 2017 for direct assigned capital."

67. The Commission considers that ATCO Electric's decision to implement an accounting treatment that did not remove the offsetting customer contributions from rate base was entirely within ATCO Electric's management and control. The Commission was not privy to ATCO Electric's accounting treatment. This appears to have been conceded by ATCO Electric's counsel during oral argument. There, the panel chair asked ATCO Electric's counsel to further explain the basis for ATCO Electric no longer recording CWIP in rate base while continuing its accounting practice of recording the related customer contributions as an offset to rate base.⁵⁹

68. Through its counsel, ATCO Electric confirmed that when the Commission directed ATCO Electric to discontinue CWIP in rate base treatment and resume normal regulatory AFUDC accounting for direct assigned capital, ATCO Electric determined that Direction 88 was intended to apply to capital only, and not to the offsetting customer contributions. ATCO Electric's counsel explained that ATCO Electric's staff determined that the discontinuance of the CWIP in rate base approach for capital was a separate matter not connected to the treatment of customer contributions in CWIP, and thus should not trigger a change in the accounting treatment of construction contributions.⁶⁰ ATCO Electric also requested confirmation from the Commission that, "on a go-forward basis, the treatment of contributions be changed so that it's treated the same as CWIP."⁶¹

69. The Commission finds that ATCO Electric adopted a particular interpretation of Direction 88 which was not evident when it made its compliance filing to that direction. There is no indication in Decision 22050-D01-2017 that the Commission explicitly, nor impliedly approved such an interpretation, nor does the record of that proceeding set out that ATCO Electric had assumed the accounting treatment that resulted in the forgone revenue it now seeks to recover. ATCO Electric's interpretation is inconsistent with the manner that customer contributions for customer projects were expected to be accounted for, as clearly set out in Decision 2013-358. The Commission finds that ATCO Electric erred in not treating customer contributions in lockstep with capital expenditures as required by Decision 2013-358 and that the Commission was not and could not have been aware of this accounting treatment without further and specific information from ATCO Electric.

70. The Commission finds that the \$4.381 million in forgone revenue that ATCO Electric seeks to recover from Alberta electricity customers results from its own error arising from its accounting treatment of customer contributions. It is not reasonable for ATCO Electric to recover this amount from Albertans.

71. For all of these reasons, the Commission denies ATCO Electric's proposed recovery of the \$4.381 million amount it sought under the pretense of cancelled customer project costs. The Commission directs ATCO Electric to reduce its applied-for costs by \$4.381 million in its compliance filing to this decision.

72. The Commission also requires ATCO Electric to ensure that its current and future accounting practices fully reflect the resumption of normal regulatory AFUDC accounting for its direct assigned capital. Specifically ATCO Electric must account for customer contributions in a

⁵⁹ Transcript, Volume 1 (September 29, 2021), page 72, line 2 to page 73, line 17.

⁶⁰ Transcript, Volume 1 (September 29, 2021), page 82, line 8 to page 83, line 21.

⁶¹ Transcript, Volume 1 (September 29, 2021), page 84, lines 8-11.

manner that ensures that the customer contributions are treated in lockstep with capital expenditures as described in Decision 2013-358 on a go-forward basis.

7 Issue 3: Were ATCO Electric's capital costs on the Jasper project prudently incurred?

73. Prior to 2019, Jasper National Park, the Municipality of Jasper and the surrounding area were not connected to the Alberta Interconnected Electric System (AIES), but were served by the Astoria Hydro and Jasper Palisades power plants.⁶² The isolated generating units at these power plants were either expected to reach end-of-life conditions by 2021 or the output of the units was expected to be insufficient to supply electricity customers with reliable power.

74. ATCO Electric referenced⁶³ a 2014 feasibility study⁶⁴ that concluded that an interconnection project was the most economical long-term solution to ensure system reliability and to provide long-term supply of power to the Jasper National Park area, the Municipality of Jasper, and industrial electricity customers within the park boundary.

75. The Jasper project,⁶⁵ which connects Jasper National Park, the Municipality of Jasper and the surrounding area to the AIES consisted of the construction of the following primary elements by ATCO Electric:

- (i) the Sheridan 2085S Substation located within Jasper National Park; and
- (ii) 45 kilometres of 69 kV single-circuit transmission line from the Jasper National Park boundary to the Sheridan 2085S Substation.

76. The planned in-service date in ATCO Electric's proposal to provide service (PPS)⁶⁶ was May 1, 2018, which was not met. The project was energized on May 9, 2019.

77. ATCO Electric initially requested approval of capital additions for the project in the amount of \$119.1 million to December 31, 2020. In response to the Commission's July 13,

⁶² Exhibit 26573-X0064.01, Jasper Transmission Interconnection.

⁶³ Exhibit 26573-X0064.01, Jasper Transmission Interconnection, PDF page 3.

⁶⁴ ATCO Electric referenced Proceeding 20272, Exhibit 20272-X0050, 54904 – Jasper Transmission Interconnection – 2015-2017 GTA, PDF pages 6-25.

⁶⁵ In Decision 22125-D01-2018: Jasper Interconnection Project, Alberta Electric System Operator Needs Identification Document, Proceeding 22125, Application 22125-A001, May 4, 2018, the Commission approved a NID application from the AESO, and facility applications by ATCO Electric Transmission and AltaLink Management Ltd. to construct and operate a new substation, alter an existing substation, and construct and operate a transmission line to connect the Jasper area to the AIES.

⁶⁶ The AESO may request that the TFO provide a PPS (or service proposal), along with a PPS cost estimate: 2015-002R-Service-Proposals-and-Cost-Estimating-2022-03-04.pdf (aeso.ca). The PPS provides an overview of the transmission facility project, including a project summary, an overview of the TFO's scope of work, a cost estimate, the planned schedule and any assumptions and risks. Typically, the AESO issues this request before directing the TFO to submit a transmission facility proposal (facility application) to the Commission for approval of permits and licences for a transmission facility project. For the purpose of preparing a NID, the AESO also relies on information provided by the TFO in the PPS to satisfy certain information requirements in Rule 007: *Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments*.

2022,⁶⁷ letter, asking ATCO Electric to update its application to reflect the findings in Decision 27013-D01-2022 and to refile its 2021 DACDA application on the record of this proceeding, ATCO Electric adjusted its requested capital additions for this project by the following amounts:

- (i) a reduction of \$10.8 million associated with the sole-source Backwoods contract, as described in Decision 27013-D01-2022; and
- (ii) a reduction of \$2.8 million in 2021 trailing costs for the Jasper project.

78. With the two adjustments noted above, ATCO Electric requested approval of capital additions for the Jasper project in the amount of \$105.5 million to December 31, 2021. These costs exceed the \$84.0 million cost that ATCO Electric expected to incur in its PPS.

79. Based on its review of the record of this proceeding, the Commission has identified the following issues with respect to this project:

- (i) Did ATCO Electric prudently manage and execute the consultation, permitting, regulatory and approval phases of the Jasper project?
- (ii) Were ATCO Electric's electrical cable, AC mitigation and supervisory costs prudently incurred?
- (iii) What is the total value of the Backwoods contract?
- (iv) Does the \$10.8 million reduction proposed by ATCO Electric reflect the full imprudent amount associated with the sole-source Backwoods contract?
- (v) What costs were incurred by ATCO Electric for work conducted in an effort to mislead and conceal information associated with the sole-source Backwoods contract?
- (vi) Should ATCO Electric be directed to track actions and costs related to its implementation of the settlement agreement concerning the Jasper project?

80. The Commission will address each of these questions in the sections that follow.

7.1 Did ATCO Electric prudently manage and execute the consultation, permitting, regulatory and approval phases of the Jasper project?

81. For the reasons set out in this section, the Commission has decided to disallow the recovery of \$3.0 million for the imprudent management and execution of the consultation, permitting, regulatory and approval phases of the Jasper project.

7.1.1 ATCO Electric made unreasonable assumptions and did not adequately assess foreseeable risks which contributed to project delays

82. In this section of the decision, the Commission identifies five of ATCO Electric's assumptions for the consultation, permitting, regulatory and approval phases of the Jasper project – one that appears to have been used in the early stages of the project, and four that were used in

⁶⁷ Exhibit 26573-X0291, AUC letter - Reopening of Proceeding 26573 and ATCO Electric's application amendment.

developing its PPS estimate⁶⁸ – and explains why these assumptions were not reasonable. The Commission also explains why ATCO Electric did not reasonably assess the risks associated with consultation and third-party permit delays in its PPS estimate.

Planning assumptions used in the early stages of the project

83. In the early stages of the project, ATCO Electric made assumptions that were not realistic, given what it knew or should have known, about how long it would take to receive the approval of a detailed impact assessment (DIA) from Parks Canada. ATCO Electric required a DIA approved by Parks Canada to obtain a Development Permit to start construction within Jasper National Park. The DIA assessed current environmental conditions at ATCO Electric's facilities and right-of-way (ROW) within Jasper National Park, identified potential impacts of the project on the environment, the surrounding community, nearby pipelines, etc., and identified measures to mitigate any adverse effects caused by the project. The DIA process also required ATCO Electric to consult with any affected Indigenous communities.

84. ATCO Electric stated that it “based its expectation of PC [Parks Canada] approvals on its experience with distribution facility builds within the park. AET’s impression of the line build and design, was that it was not dramatically different when compared to previously constructed distribution facilities that were built within the park boundaries. The expectation was that with respect to approvals, Parks Canada would view this approval process the same way.”⁶⁹

85. In the Commission’s view, it was not reasonable for ATCO Electric to make this assumption, because: (i) it is not reasonable to expect that a transmission project would have the same characteristics and related permitting and approvals process as a distribution project; and (ii) given ATCO Electric’s admittedly limited and dated experience with the Parks Canada DIA process,⁷⁰ it was reasonable to expect or within ATCO Electric’s ability to confirm, that the DIA process would have evolved since ATCO Electric constructed its last distribution facility in Jasper National Park or that the requirements and rigour applied to that process could be elevated for a transmission project. In relying on the assumptions that it did, ATCO Electric misapprehended, from the very outset, the scope and complexity of the Jasper project.

PPS estimate assumptions

86. ATCO Electric had already encountered multiple consultation, permitting, regulatory and approval delays in relation to the Jasper project by the time it submitted its PPS estimate on June 1, 2016.^{71 72} Given the delays that it encountered up to that point, it knew or should have known that it could expect further challenges in the consultation, permitting, regulatory and

⁶⁸ Exhibit 26573-X0068, Jasper Transmission Interconnection – PPS Estimate, PDF pages 10-17.

⁶⁹ Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(d), PDF pages 61-62.

⁷⁰ Exhibit 26573-X0138.01, AET Information Responses to AUC Part 1 of 2, IR response AET-AUC-2021JUL14-005(b), PDF page 84.

⁷¹ Example: using Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 60, the Commission observes that on February 2, 2015, ATCO Electric and Parks Canada set a proposed date of April to May 2016 for approval of the DIA. In April and May 2016, ATCO Electric was still working on its first DIA review submission to Parks Canada.

⁷² Example: using Exhibit 26573-X0077, Jasper Transmission Interconnection – AESO Communications, PDF page 9, ATCO Electric stated in a February 2, 2016, meeting with the AESO that it would submit its PPS by April 25, 2016. On an actual basis, ATCO Electric submitted its PPS on June 1, 2016.

approval processes. It was unreasonable for ATCO Electric to make the assumptions described below in its PPS estimate about the project's expected timelines.

87. First, ATCO Electric assumed that "it would not be subjected to extreme requests, not normally required in a typical AESO direct assigned transmission project, from either Parks Canada or other stakeholders during or after the project's completion."⁷³

88. In the Commission's assessment, this assumption was not reasonable. The Jasper project was significantly more complex than typical AESO direct assigned capital projects. The Jasper project had a winding, narrow ROW with limited access points, and was to be constructed within mountainous and undulating terrain in a national park, which forms part of a UNESCO World Heritage Site.⁷⁴ Applicable laws require ATCO Electric to satisfy numerous permitting requirements that are not typically contemplated on other AESO direct assigned transmission projects, including those required by Parks Canada.

89. ATCO Electric took an inconsistent position with respect to its stated assumption that it did not expect to encounter atypical requirements in relation to the Jasper project. In particular, to support the prudence of its costs, ATCO Electric explained that it needed to satisfy numerous requirements that are not typically contemplated on a transmission project⁷⁵ because of the complexities and environmental limitations of working within Jasper National Park. The requirements identified by ATCO Electric included:⁷⁶

- (i) The DIA requirements outlined above by the Commission.
- (ii) The requirement to submit a Damage Prevention Plan (DPP) for approval before any activities could occur within 30 metres of the Trans Mountain Canada (Trans Mountain)⁷⁷ Pipeline which was parallel to the ROW used for the project. The DPP required mitigation measures to be implemented before construction activities could proceed parallel to the pipeline and within the existing utility corridor.
- (iii) Canadian National Railway (CNR) road use and rail crossing requirements.

90. ATCO Electric knew, among other things, that it was building a transmission line in a national park, on a ROW that largely paralleled a federally regulated oil transmission pipeline and that the line would be required to cross a federally regulated railway. While ATCO Electric explained that the complexities of the additional processes and requirements enumerated above led to numerous permitting and approval delays that it said could not have been anticipated,⁷⁸ in the Commission's view most of these processes and requirements could and should have been assumed (or anticipated) to be required from the outset of project planning, and in building the PPS estimate, given the nature and complexities of the project.

⁷³ Exhibit 26573-X0068, Jasper Transmission Interconnection – PPS Estimate, PDF page 10.

⁷⁴ <https://whc.unesco.org/en/list/304/>

⁷⁵ Exhibit 26573-X0064.01, Jasper Transmission Interconnection, PDF page 9; and Exhibit 26573-X0262, AET Rebuttal Evidence, PDF page 68, paragraphs 132-133.

⁷⁶ Exhibit 26573-X0064.01, Jasper Transmission Interconnection.

⁷⁷ Formerly Kinder Morgan Canada.

⁷⁸ Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(e), PDF pages 69-70.

91. Accordingly, ATCO Electric should have made reasonable and realistic assumptions about the possible trajectory of the processes described above, including the possibility of encountering additional requests from stakeholders (that are not typically contemplated for an AESO direct assigned transmission project) and delays in receiving the related approvals. More robust assumptions would have, in turn, required ATCO Electric to anticipate and reasonably incorporate into the earliest versions of the project plan and into the PPS estimate, foreseeable incremental stakeholder requirements and any additional process steps that could foreseeably be necessary to those requirements. This would have allowed ATCO Electric to design and implement strategies to allow for more streamlined and timely compliance with the requirements of all relevant stakeholders.

92. Second, ATCO Electric assumed that “project execution will be able to proceed as planned.”⁷⁹ This statement does not accord with the following facts, all of which were known at the time that the project was being planned. ATCO Electric did not have significant experience with projects that were similar in scope, size or complexity to the Jasper project.⁸⁰ ATCO Electric admitted that it had limited and dated experience with constructing and operating distribution facilities within a national park, and it had little experience with the construction of transmission facilities in such a location. Given ATCO Electric’s lack of experience and knowledge, it was not reasonable for it to assume that project execution would proceed as planned. Furthermore, given the known complexity of the Jasper project, it was foreseeable that project execution would be subject to unexpected and potentially material schedule deviations.

93. Third, ATCO Electric assumed that “the Parks Canada DIA will be completed on time and with no impact to the project’s scope or schedule” and “the Parks Canada permit process will not add requirements beyond what has been accounted for, or which are beyond the project capabilities.”⁸¹ The Commission observes that Parks Canada and other stakeholders were also unfamiliar with the construction of a transmission line in a national park,⁸² something that ATCO Electric could have easily ascertained at the earliest stages of the project. It is reasonable to expect that these parties would, like ATCO Electric, be subject to a learning curve, making it unreasonable for ATCO Electric to assume that the project’s scope and schedule would be met without any timeline/schedule disruptions. By setting assumptions that did not anticipate these foreseeable disruptions, ATCO Electric could not put in place strategies to effectively avoid, address or mitigate them.

94. It is significant that when ATCO Electric filed its PPS, the Jasper project had already encountered multiple delays including delays related to the approval of the DIA⁸³ and the submission of the PPS⁸⁴ itself. Given the trajectory of the project at the time the PPS was finalized, further unexpected requirements and related delays were reasonably foreseeable. This

⁷⁹ Exhibit 26573-X0068, Jasper Transmission Interconnection – PPS Estimate, PDF page 11.

⁸⁰ Exhibit 26573-X0138.01, AET Information Responses to AUC Part 1 of 2, IR response AET-AUC-2021JUL14-005(b), PDF page 84.

⁸¹ Exhibit 26573-X0068, Jasper Transmission Interconnection – PPS Estimate, PDF pages 11 and 15.

⁸² Exhibit 26573-X0262, AET Rebuttal Evidence, PDF page 117, paragraph 224.

⁸³ Using Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 60, the Commission observes that on February 2, 2015, ATCO Electric and Parks Canada set a proposed date of April to May 2016 for approval of the DIA. In April and May 2016, ATCO Electric was still working on its first DIA review submission to Parks Canada.

⁸⁴ Using Exhibit 26573-X0077, Jasper Transmission Interconnection – AESO Communications, PDF page 9, ATCO Electric stated in a February 2, 2016, meeting with the AESO that it would submit its PPS by April 25, 2016. On an actual basis, ATCO Electric submitted its PPS on June 1, 2016.

is further support for the finding that it was unreasonable for ATCO Electric to assume that the project would not encounter further schedule deviations.

95. ATCO Electric also assumed that the DIA approval process could proceed concurrently with the AUC's facility approval (FA) process.⁸⁵ However, it became apparent that Parks Canada wanted to wait for the FA decision before issuing its findings on the DIA.

96. Based on the record, it appears that ATCO Electric was caught off guard by this development. ATCO Electric's assumption, and the sudden nature of how this issue developed, appear to demonstrate: (i) a failure to identify and communicate this foreseeable issue earlier in the project's lifecycle; and (ii) that ATCO Electric's stakeholder consultation was not as comprehensive as it claimed.^{86 87}

97. Fourth, ATCO Electric assumed that "an AUC hearing will not be required."⁸⁸ While the wording of this assumption was not clear as to whether ATCO Electric meant that no oral hearing, no written hearing or no hearing (at all) would be required, the Commission has interpreted it to be referring to an oral hearing. This is because it would be highly unlikely for a project such as the Jasper project to proceed without any AUC hearing at all. Even with this more generous interpretation, the Commission considers this assumption to be unreasonable. It was foreseeable given the size, complexity and location of the project, that interested parties would apply to intervene in the Commission's FA process. Given ATCO Electric's significant experience with the AUC's FA process, it also knew or should have known that any such interventions would, by law,⁸⁹ require the Commission to hold a written hearing at a minimum, and that in practice, an oral hearing was more likely to be required than not.

Risk assessment for consultation and third-party permit delays

98. In its PPS, ATCO Electric identified the risk of consultation and third-party permit delays. It assessed this risk at a 40 per cent probability.⁹⁰ In response to a Commission IR, ATCO Electric explained, in relation to this risk: (i) that it did not anticipate the large delays from either Parks Canada or Trans Mountain, nor the additional requirements from Parks Canada and Trans Mountain and the compounding impacts of these delays; (ii) that these impacts (large delays, additional requirements, compounding impacts) were not foreseeable at the time of the PPS estimate and risk register development, and therefore were not adequately quantified in the risk register filed with the PPS; and (iii) that it had applied a low probability to this risk.

⁸⁵ Exhibit 26573-X0262, AET rebuttal evidence, PDF pages 66-67, paragraphs 128-130, and Exhibit 26573-X0138.01, AET Information Responses to AUC Part 1 of 2, IR response AET-AUC-2021JUL14-005(a), PDF pages 82-84.

⁸⁶ Exhibit 26573-X0138.01, AET Information Responses to AUC Part 1 of 2, IR response AET-AUC-2021JUL14-005(b), PDF page 84.

⁸⁷ The record of communications between ATCO Electric and the AESO (See for example Exhibit 26573-X0077, Jasper Transmission Interconnection – AESO Communications and Exhibit 26573-X0071, Jasper Transmission Interconnection – Monthly AESO Progress Reports) also demonstrate minimal communication of issues and risks (and in particular schedule risks) with a critical stakeholder on the Jasper project.

⁸⁸ Exhibit 26573-X0068, Jasper Transmission Interconnection – PPS Estimate, PDF page 11.

⁸⁹ *Alberta Utilities Commission Act*, Section 9(2).

⁹⁰ Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(e), PDF pages 69-70.

99. The Commission finds that ATCO Electric did not reasonably assess the risk of consultation and third-party permit delays.

100. As identified above, neither the stakeholders nor ATCO Electric were experienced with constructing a transmission line through a national park and the related processes. Given this lack of experience and knowledge, and the complexities of the project, it was or should have been evident, based on what ATCO Electric knew or should have known, that it would more than likely encounter schedule deviations and additional unexpected requirements from stakeholders; that these schedule deviations and requirements could have a negative effect on project timelines and create further delays; and that these issues could have compounding effects (e.g., delays) on both schedule and costs. Furthermore, given the trajectory of the project at the time the PPS was finalized (as previously described, it had encountered multiple delays even prior to the finalization of the PPS), the prudent course would have been for ATCO Electric to comprehensively consider the possibility of further delays and to plan (including steps to avoid and mitigate) accordingly. It did not do so.

101. The Commission finds that given what ATCO Electric knew or should have known at the time about the project, the risk of consultation and third-party permit delays should have been assessed at a higher probability. Further, it was imprudent for ATCO Electric to not conduct a more thorough assessment of: (i) the potential for additional unexpected requirements and schedule deviations; (ii) the associated impacts of these events including additional and compounding delays and cost increases; and (iii) strategies to avoid, address and mitigate these potential delays and cost increases.

102. ATCO Electric stated that it would have increased its forecasts to accommodate “large” delays from either Parks Canada or Trans Mountain, and the additional requirements from Parks Canada or Trans Mountain that further impacted the resulting impact of the “large” delays on project costs, had it been aware of these issues when preparing its PPS estimate.⁹¹ It therefore contended that in the end, the actual costs would have been the same as its current applied-for costs for the Jasper project.

103. The Commission is of the view that increases to the PPS estimates are not the only way that ATCO Electric could have addressed the potential for delays. As set out above, prudent planning requires anticipating deviations from the plan. A sufficiently realistic assessment of the foreseeable risks associated with the Jasper project could have resulted in the identification of a number of strategies to address them, including more proactive communications, greater front loading of tasks related to permitting requirements, and more robust plan B (or C) contingency planning to **avoid** additional costs rather than automatically equating the realization of foreseeable risks with incremental project costs.

104. Based on the “full version” of ATCO Electric’s PPS risk register (filed in its rebuttal evidence), it appears that ATCO Electric planned to use some of these strategies to avoid the risk of “construction timing restriction due to environmental and species at risk,” setting out the following mitigation strategies: (i) “have a strong project plan from all disciplines with plan B backup;” and (ii) “front end planning at all stage before execution starts to ensure sensitive areas are identify [*sic*] early and are shared with the project team.”⁹² Similar mitigation measures could

⁹¹ Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(e), PDF pages 69-70.

⁹² Exhibit 26573-X0263, Section 3.1 Attachment 1, PDF page 3.

and should have been adopted to avoid and mitigate all schedule-related risks on the Jasper project (including risks associated with requirements from Parks Canada during the DIA process). Based on the Commission's review of the record of this proceeding, such mitigation measures were not identified or used for any of the other risks included in ATCO Electric's risk register or discussed in this section. It is also not clear, whether ATCO Electric conducted any other contingency planning or developed any other mitigation strategies⁹³ related to timing delays.⁹⁴

105. With an earlier and more thorough assessment and weighing of consultation and third-party permit delay risks, ATCO Electric could have developed a more effective and cost-efficient strategy to mitigate the full impact of the additional, compounding and prolonged delays (and associated cost increases) that it encountered during the consultation, permitting, regulatory and approval phases of the project (including the delay in the start of construction that had a material effect on costs, as discussed in further detail below).

106. In conclusion, ATCO Electric has not persuaded the Commission that many of the assumptions built into its project plan were reasonable, or that it proactively identified, assessed and developed plans to avoid and mitigate critical risks to the Jasper project schedule. As a result, the Commission is also not persuaded that ATCO Electric had effective and cost-efficient strategies to avoid or mitigate the delays (and associated cost increases) that it encountered during the consultation, permitting, regulatory and approval phases of the project. Based on the information available to ATCO Electric from the early stages of the project, and leading up to its PPS estimate, the Commission finds that additional requirements and requests, non-standard timelines and schedule deviations were foreseeable. Failure to identify and plan for these foreseeable risks resulted in the major delays ultimately encountered by ATCO Electric during the consultation, permitting, regulatory and approval phases of the project, the late start to construction activities and the associated increased project costs. While the Commission acknowledges that the standard for project management and the related development of assumptions is not perfection and that not all risks are foreseeable, the record of ATCO Electric's underlying assumptions in relation to the Jasper project shows that ATCO Electric adopted a pattern of adherence to unrealistic assumptions and, as a result, unrealistic project timelines.

⁹³ In Exhibit 26573-X0262, AET rebuttal evidence, PDF pages 65, 68 and 78, paragraphs 125, 135 and 150, ATCO Electric stated that it worked with stakeholders throughout the duration of the project to expedite approvals in order to mitigate and avoid delays. Apart from the examples that ATCO Electric provided, where it attempted to expedite approval of the final DIA after it was filed, the Commission was unable to find additional evidence demonstrating and confirming that ATCO Electric attempted to use this as a mitigation strategy during all phases of the project to avoid foreseeable risks (i.e., unexpected requirements and consultation delays). Furthermore, Parks Canada stated that the DIA could not be reviewed by ATCO Electric's requested deadline, because the DIA was received later than expected and there were still outstanding submissions from ATCO Electric.

⁹⁴ The Commission asked ATCO Electric in AET-AUC-2021JUL14-012(d) to discuss whether it used any mitigation strategies to avoid cost escalations from delays (e.g., once it was identified that Parks Canada had a complex permitting process, did ATCO Electric consider the risks associated with any potential delays in this permitting process, and did ATCO Electric employ any strategies to mitigate these risks). In Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(d), ATCO Electric responded that it worked with stakeholders to expedite approvals and it provided justification for its decision to continue construction in the fall of 2018 under a compressed schedule. Otherwise, ATCO Electric did not identify any mitigation strategies in response to this IR.

7.1.2 ATCO Electric's management and execution of the consultation, permitting, regulatory and approval processes led to delays in the start of construction

107. This section examines three regulatory approval processes completed in relation to the Jasper project that ATCO Electric has not persuaded the Commission were prudently managed and executed. The first two approvals, the DIA and special activity permits (SAPs) approvals, were required by Parks Canada. The third approval is the damage prevention plan (DPP) for ATCO Electric to be able work near and cross the Trans Mountain Pipeline. Each of these approvals was required before ATCO Electric could commence construction of the Jasper project.

108. Importantly, the Commission finds that the proceeding record contains significant and material information gaps in relation to these approval processes. This is unreasonable, given the material cost increases that occurred as a result of the delays that ATCO Electric encountered in the DPP and DIA processes (primarily the costs associated with the delay in the start of construction, which are discussed in greater detail below). Because of these information gaps, the Commission is unable to conclude that ATCO Electric managed all aspects of the DIA, SAP and DPP processes in a prudent and cost-efficient manner. Accordingly, the Commission finds that ATCO Electric did not meet its onus to demonstrate that the associated cost of those delays were all prudently incurred.

The DIA and SAP regulatory permitting process

109. Parks Canada approved ATCO Electric's DIA on June 22, 2018.

110. Parks Canada's approval took over two years longer to obtain than ATCO Electric had initially projected. On February 2, 2015, ATCO Electric and Parks Canada proposed a date of December 18, 2015, for ATCO Electric to submit the final DIA with final approval of the DIA expected in April to May of 2016.⁹⁵ In May of 2016, ATCO Electric was still working on its first DIA review submission to Parks Canada.

111. All projects require an effective approach to communicating with stakeholders. The circumstances and added complexity of the Jasper project would, however, foreseeably and reasonably require an enhanced level of communication and a special emphasis on stakeholder communication within the larger project management framework. This is because it was critical for ATCO Electric to identify stakeholder requirements in a comprehensive and prompt manner, and to proactively manage risks (approval delays, the need for revisions, etc.) to the project to avoid and to mitigate delays, and the potential cost impacts of a late start to construction. ATCO Electric knew, or should have known,⁹⁶ that delays would have a cascading effect, due to the seasonal restrictions on construction and as such, the need to avoid or mitigate delays. It was

⁹⁵ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 60.

⁹⁶ The Commission observes that the evidence is inconsistent on this point. In Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(e), PDF pages 69-70, ATCO Electric stated that it did not anticipate or foresee the large delays from either Parks Canada or Trans Mountain Canada, nor the additional requirements from Parks Canada and Trans Mountain Canada that further impacted the resulting impact of these delays on project costs. However, ATCO Electric filed the "full version" of its PPS risk register as Exhibit 26573-X0263, Section 3.1 Attachment 1 at the time of rebuttal evidence, where it appears that ATCO Electric at least considered the possibility of the cascading effects/impacts from delays in the consultation, permitting, regulatory and approval phases of the project.

foreseeable that the related requirement for early, frequent and effective communication with stakeholders would be a significant risk mitigation tool.

112. There is evidence on the record of this proceeding that demonstrates that ATCO Electric did not communicate effectively with Parks Canada to understand its DIA requirements:

- (i) July 28, 2016, meeting minutes: Parks Canada stated that ATCO Electric’s “archeological and historical data information did not satisfy its wants and needs,” and Parks Canada’s Archeological and Historical Department stated that they had raised concerns before about the lack of communication between Parks Canada and ATCO Electric on the proposed route of the powerline.⁹⁷
- (ii) August 11, 2016, meeting minutes: Parks Canada identified concerns with the project files that ATCO Electric issued to Parks Canada for review, stating that temporary workspaces were not shown, and that an overview assessment of the route was not issued.⁹⁸
- (iii) July 20, 2017, letter to ATCO Electric: Parks Canada stated that it reviewed ATCO Electric’s revised development permit documents and drawings, and determined that “there are project footprint alterations ... that have not been factored into the Archeological Impact Assessment, and that work remains to be completed.”⁹⁹
- (iv) September 29, 2017, letter to ATCO Electric: Parks Canada stated that it was continuing its review of the DIA, development permits and record of consultation, and that some of the associated documents were still outstanding from ATCO Electric.¹⁰⁰

113. Accordingly, based on the record of this proceeding, the Commission finds that ATCO Electric’s communication efforts were ineffective at identifying and understanding Park Canada’s requirements in a timely and comprehensive manner. ATCO Electric failed to effectively identify or anticipate changes to the DIA process, or to Parks Canada’s expectations since ATCO Electric’s previous encounter with Parks Canada on a distribution build. It also appears that ATCO Electric failed to effectively understand the necessary requirements to obtain approval of its DIA in a timely manner.

114. The delays connected with Parks Canada’s approval of the DIA are important. There were interdependencies between Parks Canada’s approval of the DIA and ATCO Electric’s ability to apply for and obtain SAPs from Parks Canada. To apply for and obtain the SAPs, Parks Canada had to approve ATCO Electric’s DIA. Accordingly, ATCO Electric’s delay in obtaining approval of its DIA directly led to a delay in its ability to apply for and obtain its SAPs, and, in turn, to delays in the commencement of construction (including preparation activities such as brushing/clearing).

⁹⁷ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 233.

⁹⁸ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 239.

⁹⁹ Exhibit 26573-X0268, Section 3.2.2 Attachment 1, PDF page 7.

¹⁰⁰ Exhibit 26573-X0268, Section 3.2.2 Attachment 1, PDF page 16.

115. ATCO Electric indicated that it encountered critical delays in obtaining SAPs from Parks Canada.¹⁰¹ SAPs were required for brushing/clearing, access and site preparation activities, among other things. ATCO Electric applied for SAPs in June and July 2018, after receiving approval of the DIA from Parks Canada. At that time, ATCO Electric expected the SAPs to have a two-week approval timeline. However, these SAPs were not approved by Parks Canada until August to October 2018, up to three months after they were expected.

116. ATCO Electric began to experience delays in the SAP approval process on, and after, July 2018. This was a critical period in the project's lifecycle, yet ATCO Electric did not explain why the SAP approval was delayed beyond the two-week period or describe the cause(s) of the delay. It appears to the Commission that ATCO Electric may not have provided the full record of communication with Parks Canada,¹⁰² particularly with respect to the SAP approval process. ATCO Electric did not provide any meeting minutes with Parks Canada after July 19, 2018.¹⁰³ Either there were no further meetings with Parks Canada after this time, there were meetings for which there are no minutes or notes, or ATCO Electric has notes of meetings that it has not filed on the record of this proceeding. In any case, the Commission is concerned. Either ATCO Electric has not produced relevant and probative information or the absence of meeting records demonstrates that ATCO Electric's communications with Parks Canada were significantly lacking during this time period. In addition, the correspondence that ATCO Electric filed during rebuttal evidence was sporadic and did not provide any clear insight into the cause of delays during the SAP approval process.¹⁰⁴

The DPP regulatory permitting process

117. Based on its review of the Parks Canada communications filed by ATCO Electric,¹⁰⁵ it appears to the Commission that ATCO Electric encountered significant delays in reaching an agreement to access Trans Mountain's utility corridor. In the minutes of an October 8, 2015, meeting between ATCO Electric and Parks Canada, ATCO Electric first informed Parks Canada that talks had started with Trans Mountain, and that Parks Canada had requested a joint meeting between all stakeholders once the framework of an agreement was in place.¹⁰⁶

118. In the December 17, 2015, meeting minutes, a due date of "Late Q1 2016 or early Q2 2016" was established for this meeting.¹⁰⁷ This deadline was pushed back multiple times, and in the February 23, 2017, meeting minutes, ATCO Electric provided a final updated due date of "Late Q3, 2017"¹⁰⁸ (a delay of more than one year). In the December 15, 2016, meeting minutes, ATCO Electric informed Parks Canada that the deadline to complete the joint agreement to

¹⁰¹ Exhibit 26573-X0138.01, AET Information Responses to AUC Part 1 of 2, AET-AUC-2021JUL14-005(b), PDF page 86.

¹⁰² ATCO Electric did not provide any meeting minutes with Parks Canada: (i) between May 4, 2017, and August 10, 2017; (ii) between August 10, 2017, and July 19, 2018; and (iii) after July 19, 2018.

¹⁰³ Exhibit 26573-X0268, Section 3.2.2 Attachment 1, PDF page 28.

¹⁰⁴ Exhibit 26573-X0268, Section 3.2.2 Attachment 1.

¹⁰⁵ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1.

¹⁰⁶ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 97.

¹⁰⁷ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 125.

¹⁰⁸ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 319.

access Kinder Morgan Canada's utility corridor was set at April 30, 2017.¹⁰⁹ The January 12, 2017, meeting minutes also reflect that the DPP was under review for the seventh time.¹¹⁰

119. ATCO Electric did not explain the nature or cause(s) of the Trans Mountain-related delays outlined above (e.g., why the DPP was reviewed seven times). There is also insufficient evidence to demonstrate that ATCO Electric tried to employ any mitigation strategies to avoid the delays or related cost escalations, once it was evident that delays were occurring and ongoing in the approval process with Trans Mountain.

ATCO Electric did not provide requested information

120. The onus rests on ATCO Electric to provide the evidentiary support for the requests in its application. There are instances where ATCO Electric was asked to provide supporting information, but declined to do so or provided incomplete responses.

121. In AET-AUC-2021JUL14-012(d),¹¹¹ the Commission asked ATCO Electric to provide a narrative that outlines and explains **all** of the major delays that ATCO Electric encountered on the Jasper project, including Parks Canada's permitting process, and the negotiation process with Trans Mountain, in chronological order. The Commission also asked ATCO Electric to explain the causes of these delays.

122. In response, ATCO Electric provided a high-level and general summary of the delays that occurred during the period following the submission of its FA and DIA, and immediately prior to the start of project construction. ATCO Electric did not provide the requested narrative that chronicles all of the major delays that occurred in the DIA process from start to finish with an explanation describing each delay, nor did it provide the requested information in respect of any of the other numerous regulatory and permitting processes that were delayed during this time period. The failure to provide the requested information includes information on the DPP-related delays discussed above, and the delays during the DIA process.¹¹² Furthermore, ATCO Electric did not explain the cause of the delays (e.g., why the DIA involved up to nine rounds of reviews, what necessitated each additional review, etc.) or provide information about what party or parties contributed to or were responsible for the delays.

123. In AET-CCA-2021JUL14-003(a)¹¹³ the CCA asked ATCO Electric to "provide all emails, letters, meeting notes, meeting minutes and all other correspondence between AET and the AESO, Parks Canada, the NEB/CER, and TMC (formerly Kinder Morgan) that relate to the

¹⁰⁹ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 288.

¹¹⁰ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 295.

¹¹¹ Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(d).

¹¹² Using Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003(a) Attachment 1, PDF page 60, the Commission observes that on February 2, 2015, ATCO Electric and Parks Canada proposed a date of December 18, 2015, to submit the final DIA. This schedule also assumed that only one review would be necessary. On an actual basis, ATCO Electric submitted its final DIA on June 14, 2017. That DIA went through what appears to be five rounds of reviews (the Commission does however observe that in Exhibit 26573 X0262, AET rebuttal evidence, PDF page 66, ATCO Electric lists the DIA as having gone through nine rounds of reviews).

¹¹³ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003.

Jasper Transmission Interconnection.” ATCO Electric declined to provide the communications with Trans Mountain.

7.1.3 The delays in the start of construction caused ATCO Electric to incur increased costs

124. The DIA set a narrow construction window for the Jasper project.¹¹⁴ Under the DIA, ATCO Electric could only undertake construction activities outside of peak tourist season in Jasper National Park. Parks Canada defined peak tourist season as June 1 to September 5.

125. ATCO Electric’s failure to obtain approval of the DIA, DPP and SAPs in a timely manner and well outside of its anticipated schedule at the time of the PPS, resulted in compounding issues that created significant delays to ATCO Electric’s project schedule. This had a material effect on project timing, and resulted in increased costs associated with the consultation, permitting, regulatory and approval phases of the project (including project management costs).

126. ATCO Electric predicted that construction activities on the project would begin in September 2018.¹¹⁵ However, because of the delays identified above that ATCO Electric encountered during the consultation, permitting, regulatory and approval phases of the project (including the approval of SAPs from Parks Canada and approval of its DPP from Trans Mountain), construction did not start until October 23, 2018.¹¹⁶

127. For this reason, ATCO Electric chose to compress its construction schedule (i.e., accelerate construction) by opening up additional/multiple simultaneous work fronts along the ROW, in order to complete the project within Parks Canada’s construction window. Consequently, ATCO Electric incurred increased costs to support construction activities on multiple work fronts (including access matting, line construction, supervision, etc.) rather than doing the work sequentially as originally planned. A breakdown of the additional costs attributable to the project start delays was filed by ATCO Electric in response to Commission IR AET-AUC-2021JUL14-012(e).¹¹⁷

128. As discussed above, the Commission’s IR AET-AUC-2021JUL14-012(d)¹¹⁸ also asked ATCO Electric to provide a narrative of all the major delays encountered in the project, including an explanation of how these delays contributed to cost escalations by project line item with the associated variances. It is not clear to the Commission whether the breakdown filed by ATCO Electric in AET-AUC-2021JUL14-012(e) was a comprehensive listing of all delays encountered. It appears that this breakdown provides variances related to specific construction activities that are tied to the project start delays, but the Commission is unsure whether it includes owner’s costs associated with delays in the DIA process or other similar delays.¹¹⁹

¹¹⁴ Exhibit 26573-X0262, AET rebuttal evidence.

¹¹⁵ Exhibit 26573-X0262, AET Rebuttal Evidence, PDF pages 55-56, paragraphs 106-107.

¹¹⁶ In Exhibit 26573-X0064.01, Jasper Transmission Interconnection, PDF page 12, ATCO Electric stated that brushing and site access work in advance of line construction activities could not commence until October 2018, while line construction activities were delayed until late November 2018.

¹¹⁷ Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(e), PDF pages 68-69.

¹¹⁸ Exhibit 26573-X0139.01, AET Information Responses to AUC Part 2 of 2, IR response AET-AUC-2021JUL14-012(d), PDF pages 64-66.

¹¹⁹ Exhibit 26573-X0064.01, Jasper Transmission Interconnection, PDF page 25.

129. While, for all of the reasons set out in this section, the Commission is not persuaded that ATCO Electric managed and executed the consultation, permitting, regulatory and approval phases of the Jasper project in a prudent manner, the Commission is also not persuaded that all of the costs connected with the project delays are attributable to ATCO Electric's imprudence. Such a finding would imply that all of the delays in the consultation, permitting, regulatory and approval phases of the project were avoidable with prudent project management and execution. The Commission does not believe that this is a reasonable conclusion.

130. Given the complexities of the Jasper project, the Commission acknowledges that it was unlikely that all of the delays that ATCO Electric encountered, and the increased costs attributable to such delays, were entirely caused by ATCO Electric's own imprudence and therefore that all delays and associated costs could have been avoided. For example, ATCO Electric encountered delays during the FA proceeding, not all of which were entirely avoidable given the circumstances and complexities of the project.

131. In its submission, the CCA recommended a disallowance of \$5.9 million to the Jasper project's costs for imprudent project management (including schedule management). In the Commission's view, a disallowance of this magnitude would overstate the costs associated with ATCO Electric's imprudent management and execution of the Jasper project. Based on the Commission's detailed analysis set out above, the Commission finds that a lower disallowance is appropriate in the circumstances.

132. Accordingly, the Commission directs ATCO Electric to reduce its applied-for costs for the Jasper project by \$3.0 million in its compliance filing to this decision, which represents approximately three per cent of the current total applied-for project costs and approximately 14 per cent of the variance between PPS forecast and actual applied-for project costs. The Commission notes that this disallowance includes amounts for the disallowance attributed to its findings in Section 7.2.3 of this decision provided below.

7.2 Were ATCO Electric's electrical cable, AC mitigation and supervisory costs prudently incurred?

7.2.1 Were ATCO Electric's electrical cable costs prudently incurred?

133. The Jasper project was the first time that ATCO Electric used the 69 kV rated Aerial Cable System (ACS) overhead conductor in a transmission application. Actual costs incurred to incorporate the overhead conductor into the Jasper project design were higher than the estimate, with the overhead conductor cited by ATCO Electric as having contributed \$3 million to the increased project costs. The CCA raised concerns regarding ATCO Electric's limited experience with the overhead conductor and the potential for this limited experience to have led to poor planning and higher costs.

134. The majority of the variance related to the 69 kV rated ACS overhead conductor was attributed to the cost of physical equipment¹²⁰ and the Commission is satisfied that these costs were prudently incurred. Furthermore, based on its review of the record of this proceeding, the Commission is not persuaded that the costs associated with incorporating this overhead conductor into the project design were imprudently incurred. Consequently, the Commission

¹²⁰ Exhibit 26573-X0064.01, Jasper Transmission Interconnection, PDF page 18.

approves the costs associated with the ATCO Electric's use of the 69 kV rated Hendrix ACS overhead conductor as filed.

7.2.2 Were ATCO Electric's AC mitigation costs prudently incurred?

135. ATCO Electric interacted with ATCO Pipelines & Liquids (ATCO Pipeline) and Trans Mountain, who own CER-regulated pipelines in the utility corridor to assess, and where appropriate, mitigate the effect ATCO Electric's transmission line imposes, through electrical interference, on these pipelines.

136. ATCO Pipeline and Trans Mountain independently hired consultants to conduct the AC mitigation studies for their respective pipelines. ATCO Electric identified unexpected results in the Trans Mountain study and hired its own consultant to provide recommendations on required AC mitigation actions for the Trans Mountain-owned asset.¹²¹ Trans Mountain's consultant and ATCO Electric's consultant were unable to agree upon a recommended course of AC mitigation, which resulted in ATCO Electric and Trans Mountain jointly engaging an independent consultant to review the initial studies, conduct its own analysis, and provide final recommendations. The Commission understands that this process is in accordance with standard industry practice and therefore finds that it was a reasonable course of action, given the circumstances of this project.

137. The Commission finds that the costs of the AC mitigation studies and of the AC mitigation measures that arose from those studies were prudently incurred and approves ATCO Electric's AC mitigation costs as filed.

7.2.3 Were ATCO Electric's Trans Mountain supervisory and advisory costs prudently incurred?

138. The DPP for the Trans Mountain pipeline outlines protection measures including requiring construction work near the pipeline to be supervised. The area within 30 metres to each side from the centreline of CER-regulated pipelines is an area where extra precautions and authorizations (written consent of the pipeline company or an Order issued by the CER) are required for certain activities to occur.¹²² Accordingly, ATCO Electric incurred costs to have Trans Mountain inspectors on site to provide supervision pursuant to the DPP.

139. ATCO Electric understood that the requirement outlined in the DPP for onsite Trans Mountain inspectors would cease once the necessary access mats were installed. However, Trans Mountain ultimately required inspectors to be on site any time construction activities occurred within 7.5 metres of Trans Mountain's pipeline. ATCO Electric conveyed that this supervision requirement was unexpected and was therefore not considered during the development of the cost estimate in the PPS. When more information became available on the requirement, ATCO Electric updated its cost estimate.

140. The Trans Mountain supervisory and advisory costs, which included the cost of Trans Mountain inspectors, totalled \$4.6 million over the course of the Jasper project.

¹²¹ Exhibit 26573-X0139.01, AET Information Response to AUC Part 2 of 2, PDF page 21.

¹²² *Canadian Energy Regulator Pipeline Damage Prevention Regulations – Authorizations*, SOR/2016-124, s. 2 and 6 to 14

141. Based on the record of this proceeding, the Commission is not persuaded that ATCO Electric's consultation efforts with Trans Mountain were comprehensive. ATCO Electric did not provide a comprehensive record of communications with Trans Mountain on the record of this proceeding.¹²³ Moreover, the timing and unexpected nature of the on site supervision requirement suggest that ATCO Electric's communications were not fully effective. It is unclear to the Commission why this requirement could not have been identified much sooner, given what was known about the proximity of the transmission line to the Trans Mountain's pipeline.

142. Had ATCO Electric identified these requirements at an earlier stage in the project's lifecycle (through effective and comprehensive stakeholder consultation), it could have explored the potential for mitigation of supervisory costs either with Trans Mountain or in terms of its own construction plan. However, ATCO Electric's reactive approach precluded any opportunity to minimize the need for Trans Mountain supervisors on site, the duration that they would be required to be on site, or the costs associated with this requirement.

143. The Commission is therefore unable to conclude that all of ATCO Electric's applied-for costs, for Trans Mountain's supervisory and advisory costs, were prudently incurred. The disallowance of imprudently incurred costs associated with these findings is reflected in the \$3.0 million disallowance directed by the Commission in Section 7.1.

7.3 What is the total value of the Backwoods contract?

144. In the amendment to its application filed August 11, 2022,¹²⁴ ATCO Electric proposed to reduce the amounts it applied to recover for the Jasper project by \$10.8 million.¹²⁵ ATCO Electric indicated that the \$10.8 million reduction was intended to be a proxy for the access services rates that ATCO Electric would have obtained from a vendor under a competitive bidding process, but did not obtain because it decided to approve a direct contract award to Backwoods.

145. ATCO Electric determined the \$10.8 million reduction (associated with the sole-source Backwoods contract) by using the differences between:¹²⁶ (i) the actual rates paid to Backwoods on the Jasper project; and (ii) the rates from ATCO Electric's 2018 Master Service Agreement (2018 MSA) with TerraPro for a separate scope of access services work undertaken on a different project. At a high level, ATCO Electric then applied the differences to the total value of the Backwoods contract, which ATCO Electric identified as \$33.1 million.¹²⁷ Accordingly, before the Commission can consider whether the \$10.8 million reduction proposed by ATCO

¹²³ Exhibit 26573-X0164, AET Responses to CCA Part 1 of 2, AET-CCA-2021JUL14-003.

¹²⁴ Exhibit 26573-X0295, Cover Letter enclosing AET Amended 2018-2021 Deferral Application.

¹²⁵ In Proceeding 27013, Exhibit 27013-X0069, Settlement Agreement and Agreed Statement of Facts, PDF pages 6-7, paragraph 12, AUC enforcement staff and ATCO Electric agreed that ATCO Electric would amend its 2018-2020 DACDA application (Proceeding 26573) to exclude from its claim all costs above fair market value for access services for the Jasper project, which was estimated by ATCO Electric to be \$10.8 million. The Commission approved this amount in principle in Decision 27013-D01-2022, PDF page 25, paragraph 105, as part of its approval of the settlement agreement. Subsequently, in Exhibit 26573-X0295, Cover Letter enclosing AET Amended 2018-2021 Deferral Application, PDF page 1, ATCO Electric excluded from its requested recovery all costs above fair market value for access services for the Jasper project by \$10.8 million, as proposed in the Settlement Agreement and Agreed Statement of Facts and Contraventions and approved in principle by the Commission in Decision 27013-D01-2022.

¹²⁶ Transcript, Volume 1 (January 25, 2023), page 25, lines 20-23, page 26, lines 17-25 and page 27, lines 1-9.

¹²⁷ Exhibit 26573-X0064.01, Jasper Transmission Interconnection, Table 7: Site Preparation and Survey Costs, PDF pages 19-20.

Electric reflects the full imprudent amount associated with the sole-source Backwoods contract, it must confirm the total value of the Backwoods contract.

146. There are at least three sources of information on the record of this proceeding that indicate different amounts paid by ATCO Electric under the Backwoods contract.

147. The first source of information is a breakdown filed by ATCO Electric that shows the initial value of the Backwoods contract, and subsequent change orders:

Table 3. Initial value of Backwoods access services contract and subsequent change orders

	Date issued	Matting	Clearing	Hydrovac	Total
		(\$ million)			
Initial contract	2018	13.0	1.5	0.5	15.0
Change order 1 and 2	November 2018	5.8	0.9	-	6.6
Change order 3 and 4	January 2019	3.0	1.3	-	4.3
Change order 5	March 2019	6.3	3.2	-	9.4
Total		28.1	6.9	0.5	35.3

Source: Refer to ATCO Electric's May 2021 REF in Exhibit 26573-X0348, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff, PDF page 76.

148. The second source of information about amounts incurred under the Backwoods contract comes from an investigation report prepared by the security team of ATCO Electric's indirect corporate parent. ATCO Corporate Security reported that a sixth change order valued at \$1.4 million was approved for the Backwoods contract on May 14, 2019.¹²⁸

149. In referencing the change orders, the Commission understands that the issuance of a change order means that cost increases were authorized, but that not necessarily all amounts authorized under a change order were incurred. With that said, it is unclear why a sixth change order would have been issued, if work could have been completed under the Backwoods contract pursuant to a prior change order.

150. The Executive Summary of ATCO Corporate Security's investigative report indicated that the final award to Backwoods Contracting was in the amount of \$35,305,889. It also noted that ATCO Electric claimed, in its 2018-2020 DACDA application, \$37 million for the Backwoods Energy direct award contract.¹²⁹

151. The third source of information about the value of the Backwoods contract came from the Agreed Statement of Facts made between ATCO Electric and AUC Enforcement staff. That instrument indicates that the total amount ultimately paid to Backwoods was \$31.1 million for matting-related work and \$2.1 million for brushing/clearing-related work.¹³⁰

152. The Commission observes the following inconsistencies in the information that ATCO Electric provided.

¹²⁸ Exhibit 26573-X0349, Documents provided to Enforcement Staff by ATCO Electric during the Investigation, PDF page 30.

¹²⁹ Exhibit 26573-X0349, Documents provided to Enforcement Staff by ATCO Electric during the Investigation, PDF page 30.

¹³⁰ Exhibit 26573-X0346, Agreed Statement of Facts, PDF page 23, paragraph 58.

153. First, in its application, ATCO Electric stated that it incurred \$2.1 million in brushing/clearing costs on the Jasper project.¹³¹ However, based on the change order information, it appears that ATCO Electric approved \$6.9 million in brushing/clearing costs as part of the Backwoods contract, in addition to any amounts for brushing/clearing that may have been paid under change order 6.

154. Second, ATCO Electric applied a reduction (for imprudently paying rates to Backwoods that were above fair market value) to a total contract value of \$33.1 million (before ATCO Electric's reduction).¹³² However, it is unclear whether the total value of the Backwoods contract was \$33.1 million because:

- (i) the total value of the initial contract and all subsequent change orders is \$36.7 million;¹³³ and
- (ii) the ATCO Investigation Executive Summary stated that the final award to Backwoods Contracting was \$35,305,889 (a very precise number) or \$37 million (as the costs included in ATCO Electric's 2018-2020 DACDA application).

155. Third, it appears that ATCO Electric incurred \$0.5 million in hydrovac costs. However, based on the record of this proceeding, the Commission is unable to confirm which category of costs (as outlined in the Jasper project summary) includes hydrovac costs, and whether ATCO Electric made an adjustment to its hydrovac costs for the imprudent amounts associated with the sole-source Backwoods contract.

156. Given this lack of clarity, the Commission directs ATCO Electric, in its compliance filing to this decision:

- (i) to explain the inconsistencies identified above in the total value of the amounts incurred under the Backwoods contract;
- (ii) to confirm the total amount that ATCO Electric is requesting approval to recover for the Backwoods direct award contract in its 2018-2021 DACDA application;
- (iii) to provide a breakdown of the amount in subpart (ii) by cost category (mat rentals, mat purchases, mat movement, mat cleaning, brushing/clearing, hydrovac, etc.);
- (iv) to confirm that ATCO Electric applied the appropriate and necessary adjustments (i.e., consistent with the methodology that it used to calculate its currently proposed \$10.8 million reduction)¹³⁴ to each cost category from part (iii), by reducing the imprudent amounts associated with the sole-source Backwoods contract; and

¹³¹ Exhibit 26573-X0064.01, Jasper Transmission Interconnection, Table 7: Site Preparation and Survey Costs, PDF pages 19-20.

¹³² Exhibit 26573-X0064.01, Jasper Transmission Interconnection, Table 7: Site Preparation and Survey Costs, PDF pages 19-20.

¹³³ \$15.0 million initial contract + \$6.6 million for change order 1/2 + \$4.3 million for change order 3/4 + \$9.4 million for change order 5 + \$1.4 million for change order 6 = \$36.7 million.

¹³⁴ The details were filed on the confidential record: Exhibit 26573-X0310-C, Attachment 12 – Jasper Fair Market Value.

- (v) if a certain cost category was not reduced, as part of the adjustment to reflect the imprudent amounts associated with the sole-source Backwoods contract, to explain why a reduction was not necessary in each such case.

7.4 Does the \$10.8 million reduction proposed by ATCO Electric reflect the full imprudent amount associated with the sole-source Backwoods contract?

157. ATCO Electric's 2018 MSA rates were obtained through a competitive request for proposal (RFP) process for a separate scope of access services work. This RFP was conducted at around the same time that construction activities were ramping up on the Jasper project.¹³⁵ ATCO Electric therefore asserted that its comparative rates analysis (of differences between the 2018 MSA rates and the actual rates paid to Backwoods) and the 2018 MSA rates together provide a reasonable (but not precise) indication of the rates that ATCO Electric could have obtained under a competitive bidding process for access services on the project.¹³⁶

158. The Commission considers that ATCO Electric's reduction of \$10.8 million is a reasonable starting point from which to determine the appropriate adjustment to the value of the sole-source Backwoods contract. However, the Commission finds that ATCO Electric's comparative rates analysis and the 2018 MSA rates are not determinative of reasonable amounts that ATCO Electric would have prudently incurred if it had competitively procured access services for the Jasper project. For the reasons that follow, the Commission has decided that it is reasonable to apply an additional reduction of 20 per cent to ATCO Electric's proposed reduction,¹³⁷ to ensure that ATCO Electric's access services costs reflect a reasonable proxy for the fair market value of prudent access services for the Jasper project.

Further adjustments are necessary to ATCO Electric's estimate

159. The Commission must estimate the prudent cost of access services for the Jasper project because ATCO Electric did not conduct a competitive bidding process to obtain access services. Instead, ATCO Electric chose to sole-source the access service contract for the Jasper project to Backwoods at rates that it knew were above fair market value. Therefore, the Commission does not have the benefit of analyzing: (i) rates that were obtained through a competitive process specific to the Jasper project; or (ii) work that would have been performed by a successful bidder to that competitive process on the Jasper project.

160. The Commission is put in the position of determining a counterfactual scenario. That scenario is: what are the amounts that ATCO Electric would have been charged for access services for the Jasper project if the access services had been obtained under a competitive process. This includes consideration of what rates would have been charged and how much ATCO Electric would have been billed. It also requires a consideration of whether the access services would have been contracted to one or more successful bidders for the various access services required (all of which ATCO Electric ultimately awarded to Backwoods). This counterfactual exercise is inherently imprecise, and while it is impossible to know what would

¹³⁵ Exhibit 26573-X0348, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff, PDF pages 106-109.

¹³⁶ Transcript, Volume 1 (January 25, 2023), page 12, lines 16-20, page 15, lines 14-22 and page 26, lines 1-11.

¹³⁷ ATCO Electric used \$10.8 million as a proxy in its application for the imprudent amount associated with the sole-source Backwoods contract. That amount is subject to change in accordance with the Commission's directions set out in Section 7.3.

have happened with certainty, the Commission is charged with determining a reasonable amount for the access services, based on the record before it.

161. The counterfactual exercise does not shift ATCO Electric's burden. ATCO Electric bears the onus of establishing that the access services costs it has claimed in its amended application were prudently incurred.¹³⁸

162. In its analysis, ATCO Electric explained that it did not review and compare detailed information from the Backwoods invoices to calculate the proposed reduction for access mat handling/movement and brushing/clearing costs. It opted instead to perform a high-level rate analysis using a simple average of the differences between Backwoods' labour and equipment rates from the Jasper project, and TerraPro's rates from the 2018 MSA, to calculate a percentage reduction for access mat handling/movement and brushing/clearing costs.¹³⁹

163. The Commission finds that ATCO Electric's approach is flawed. ATCO Electric assigned equal weight to all labour and equipment categories, notwithstanding that the actual number of equipment and labour resources used on the Jasper project are known and not weighed equally. Furthermore, given that the contract value, and by extension the scope, of the 2018 MSA is significantly smaller compared to the Jasper project,¹⁴⁰ it is likely that the resource profile (number, composition and type of equipment and labour resources) used on the Jasper project differed when compared to the 2018 MSA.

164. The Commission is, however, of the view that ATCO Electric's comparative analysis and the 2018 MSA provides a workable, though not in all respects comparable, baseline for use as a starting point for the determination of prudent access services costs for the Jasper project. Based on the high-level and cursory nature of ATCO Electric's analysis, and given the importance of determining a reasonable amount for prudently incurred access services costs that will ultimately be borne by Alberta electricity customers, the Commission has, in the following sections, conducted its own analysis, which includes considerations not otherwise addressed by ATCO Electric. In particular, the Commission has assessed how access services rates would have differed from those under the competitively procured 2018 MSA, how volumes of access services work would have differed under a competitively procured contractor when compared to Backwoods, as well as the value that Backwoods brought to the Jasper project, in order to come to a reasonable estimate of above fair market costs incurred by ATCO Electric for access services.

Competitive rates and value

165. For the reasons that follow, the Commission's finds that the 2018 MSA rates are higher than rates that could reasonably have been obtained by ATCO Electric through a competitive

¹³⁸ *Electric Utilities Act*, Section 121(4); Decision 2044-D01-2016: AltaLink Management Ltd., 2012 and 2013 Deferral Accounts Reconciliation Application, paragraphs 110-117; *ATCO Gas and Pipelines Ltd. v Alberta (Utilities Commission)*, 2015 SCC 45, paragraph 42.

¹³⁹ The details were provided on the confidential record: Exhibit 26573-X0310-C, Attachment 12 - Jasper Fair Market Value and Exhibit 26573-X0363-C, AET Responses to AUC Round 4 IRs, IR response AET-AUC-2022OCT21-006(b)-CONF.

¹⁴⁰ The details were provided on the confidential record: Exhibit 26573-X0348-C, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff, PDF pages 106-109.

RFP process for access services on the Jasper project, and that it is unclear what value Backwoods brought to the project.

166. First, the Commission agrees with the CCA, that ATCO Electric would have likely received a discount on the rates from a competitive RFP for access services for the Jasper project, compared to the rates from the 2018 MSA.¹⁴¹ The contract value, and by extension the scope of the 2018 MSA, is significantly smaller compared to the Jasper project.¹⁴² The 2018 MSA therefore does not reflect lower prices for a higher volume of work that would be expected on the Jasper project because of economies of scale. The access services rate analysis conducted by ATCO Electric's internal regulatory group agreed with this premise.¹⁴³ There were also examples of cases cited on the record of this proceeding where ATCO Electric received lower prices for higher volumes of materials¹⁴⁴ and received higher prices for lower volumes of access mats.¹⁴⁵

167. Second, some contractors provided more competitive access mat rental rates, while others provided more competitive labour rates.¹⁴⁶ This prompted the Commission to ask ATCO Electric whether it would have been more cost-efficient to segment the access services scope of work (i.e., renting access mats, access mat handling services, brushing/clearing, etc.) by awarding different contracts with different work scopes to different access services providers (based on the competitiveness of their rates).

168. ATCO Electric conceded that historically, on previous projects, brushing/clearing and access maintenance contracts have been tendered separately from access matting services (supply and movement) contracts, and awarded to separate parties. It also explained that there were limited instances where different aspects of the access matting scope were contracted to different entities, but that it was more common for the brushing/clearing scope of work to be treated separately. However, for the Jasper project, ATCO Electric contended that it would not necessarily have been more efficient to award different scopes of access services work to different contractors (and thereby use multiple contractors), given the constraints of the ROW on the Jasper project. It explained that: (i) these constraints drove a desire to minimize the number of parties working on the ROW, to control physical traffic; and (ii) running additional contractors in this narrow ROW, with multiple work fronts, would further complicate line construction activities.

169. The Commission observes that ATCO Electric's position appears to be contradicted by the fact that ATCO Electric did use multiple access services contractors on the Jasper project: TerraPro (as a subcontractor to Backwoods) for the access matting scope of work; and Backwoods for the brushing/clearing scope of work. ATCO Electric also maintained that Backwoods did not cause any inefficiencies. Therefore, it is unclear to the Commission why the

¹⁴¹ Transcript, Volume 1 (January 25, 2023), page 89, lines 16-24.

¹⁴² The details were provided on the confidential record: Exhibit 26573-X0348-C, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff, PDF pages 106-109.

¹⁴³ Exhibit 26573-X0348, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff, PDF page 65-68.

¹⁴⁴ Exhibit 26573-X0410, 26573 CCA responses to AUC IR Round 2 CONF Unredacted, IR response CCA-AUC-2022DEC19-001(a), PDF page 3.

¹⁴⁵ The details were provided on the confidential record: Exhibit 26573-X0368-C, AET-AUC-2022OCT21-007(k) Attachment 1.

¹⁴⁶ The details were provided on the confidential record: Exhibit 26573-X0313-C, Attachment 15 – Exhibit 27013-X0082-C Tab 14 - 2018 Matting MSA Bid Rates.

different scopes of access services work could not have been segmented and awarded to different contractors, based on the price competitiveness of their rates.

170. Ultimately, had the access services work been competitively tendered, the Commission is of the view that it is reasonable to believe that, depending on the bids received, multiple awards could have been made to separate contractors based on bid criteria, including experience, estimates of work volume and rates. The opportunity to do so was forgone on the Jasper project as a result of the decision to sole-source the access services contract to Backwoods. For this reason, the Commission finds that further cost savings could have been realized with a market-based contract that are not accounted for in ATCO Electric's proposed \$10.8 million reduction.

171. Third, the Commission is not persuaded that Backwoods added value to the performance of the access matting scope of work, in its capacity as the manager of this work.

172. ATCO Electric sole-sourced the access services contract for the Jasper project to Backwoods. Multiple parties from ATCO Electric expressed concerns with Backwoods' inexperience in terms of the access matting scope of work required to be completed on the Jasper project.¹⁴⁷ ATCO Electric's own regulatory group stated that "adopting this structure to provide these service with a vendor who does not have the experience to provide these services will result in a higher overall project cost."¹⁴⁸

173. Backwoods subsequently subcontracted all of the access matting (including access mat rentals and mat handling/movement) work to TerraPro,¹⁴⁹ a large, experienced matting and earthworks contractor with 14 offices across Western Canada, approximately 100,000 access mats in their inventory and 2,800 completed projects since its inception in 2006.¹⁵⁰

174. After the access matting scope of work was subcontracted to TerraPro, ATCO Electric explained that Backwoods was primarily accountable for the commercial project and construction management activities of their contract scope, including managing subcontractors.¹⁵¹

175. It is well established on the record of this proceeding that Backwoods lacked experience in delivering the very services that it was contracted by ATCO Electric to provide. This is supported by the concerns expressed by ATCO Electric's own regulatory group with respect to Backwoods' experience and the associated project costs, and the lack of a competitive RFP process to confirm that Backwoods was qualified to manage the access services scope of work for a project where there was "a winding, narrow ROW with limited access points, mountainous and rocky terrain, uncertain and evolving Parks Canada requirements, and working in proximity to major transmission pipelines and rail lines."¹⁵² The Commission therefore finds it reasonable

¹⁴⁷ Exhibit 26573-X0349, 27013-X0053.01-C Appendix F - Documents provided to Enforcement Staff by ATCO Electric during the Investigation, PDF page 35, paragraph 18; Exhibit 26573-X0348, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff, PDF pages 2 and 67.

¹⁴⁸ Exhibit 26573-X0348, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff, PDF page 67.

¹⁴⁹ Exhibit 26573-X0346, 27013-X0069 Settlement Agreement and Agreed Statement of Facts, PDF page 31, paragraph 110.

¹⁵⁰ Exhibit 26573-X0346, 27013-X0069 Settlement Agreement and Agreed Statement of Facts, PDF page 18, paragraph 26.

¹⁵¹ Exhibit 26573-X0416, AET Round 2 Rebuttal Evidence, PDF page 11, paragraph 23.

¹⁵² Transcript, Volume 1 (January 25, 2023), page 17, lines 19-25.

to conclude that Backwoods' ability to manage issues or challenges arising throughout the project would not compare favourably to a more experienced vendor or vendors addressing the same issues or challenges. It follows that the volume of work required by Backwoods to address the issues and challenges arising on the Jasper project would reasonably be expected to be higher than would be the case for a seasoned vendor with a greater level of experience and expertise. As such, the Commission concludes that the work completed and the inefficiencies created by using Backwoods, a relatively inexperienced vendor, increased the costs compared to the costs that would have been incurred had a competitively procured and more experienced contractor been awarded the work, as was the case under the 2018 MSA.

176. It is also unclear to the Commission what value Backwoods brought to the matting scope of work. Backwoods subcontracted the access matting scope of work to TerraPro, a highly experienced access services contractor. TerraPro attended the plan-of-the-day meetings, which ATCO Electric described as follows:¹⁵³

Plan of the day meetings were held at the field level between AET and ROW contractors where directions were given to ROW contractor to deliver and lay down mats at the planned tower site locations. The Field teams meeting would occur first thing in the morning followed by an internal Project Management meeting to communicate the plan. The discussion would focus on the daily activities, go-forward activities, and any issues and mitigation efforts ongoing to efficiently plan and progress construction.

The line construction contractor provided the Construction team with detailed planning schedules. The information was then communicated to the entire team at the Plan of the day meetings. This information was used to coordinate mat requirements with the matting contractor to support construction activities and provide access to, and use of, the work site locations.

177. The line contractor and ATCO Electric appear to have provided direction and instruction on matting requirements during the plan-of-the-day meetings, and TerraPro was directly involved in these meetings. Furthermore, given the difference in experience between TerraPro and Backwoods, the Commission is not persuaded that Backwoods could have provided any incremental support or insight that TerraPro would not already have had and been able to provide to the line contractor, on how to manage the access mats. The Commission is therefore of the view that the value Backwoods brought to the Jasper project was not established by ATCO Electric.

178. In view of the above, and understanding that the Commission cannot observe directly applicable market rates, because it is considering a counterfactual scenario, the Commission has decided that it is reasonable to apply an additional reduction of 20 per cent to ATCO Electric's proposed reduction. ATCO Electric proposed a \$10.8 million reduction in its application; however, given the uncertainty in the total value of the Backwoods contract (as set out in Section 7.3), the Commission directs ATCO Electric to calculate this additional 20 per cent reduction in accordance with [Appendix 3](#). The Commission considers that this additional reduction reasonably reflects the incremental imprudent costs that the Commission has decided are not otherwise captured in ATCO Electric's currently proposed \$10.8 million reduction.

¹⁵³ Exhibit 26573-X0358, AET Responses to AUC Round 4 IRs, IR response AET-AUC-2022OCT21-010(a), PDF page 60; and Exhibit 26573-X0401, 26573 CCA Evidence - AET Proposed Redactions, PDF page 9, paragraph 20(m).

7.5 What costs were incurred by ATCO Electric for work conducted in an effort to mislead and conceal information associated with the sole-source Backwoods contract?

179. In the Commission's September 20, 2022, letter reopening the proceeding,¹⁵⁴ it indicated that this proceeding would test "costs related to efforts to mislead and conceal critical information" related to the Backwoods contract. ATCO Electric estimated that these costs were \$13,675.¹⁵⁵ ¹⁵⁶ The CCA contended that these costs amounted to \$818,000.¹⁵⁷

180. For the reasons that follow, the Commission has decided that \$250,000 is a reasonable estimate of costs related to efforts to mislead and conceal critical information.

181. ATCO Electric contended that this category of imprudent costs should only include costs connected to activities undertaken by individuals with knowledge that their activities would mislead or conceal information.¹⁵⁸ ATCO Electric focused on the word "efforts" used by the Commission in reopening the scope of this proceeding and argued that the definition of the word "efforts" implies knowledge or, at the very least, an understanding of an overall objective. It further indicated that the "vast majority" of individuals involved in the execution of the project and preparation of the 2018-2020 DACDA application did not have knowledge of the underlying circumstances or the objective of avoiding detection.

182. The Commission does not accept ATCO Electric's interpretation. That interpretation focuses on one word from the Commission's reopening letter (i.e., "efforts,") while minimizing the context in which that word appears. The Commission's reopening letter made clear it was examining "costs related" to "efforts" to "mislead and conceal" in this proceeding. In the Commission's view, costs related to efforts to mislead and conceal include costs connected to work undertaken, whether knowingly or unknowingly, in furtherance of misleading or concealing information related to ATCO Electric's actions. It is the prudence of costs connected to the conduct, rather than whether the conduct, or "effort" was undertaken knowingly in furtherance of an illicit objective that is at issue. Ultimately, it is neither fair nor reasonable for Alberta electricity customers to pay, through their rates, for costs incurred to perpetuate a lie, whether knowingly or not.

183. ATCO Electric's cost estimate of \$13,675 is significantly understated because in preparing it, ATCO Electric assumed that an individual had to be aware of the circumstances surrounding the Backwoods access services contract, in order for the costs connected with imprudent activities that individual performed to be included in its estimate. Because of this assumption, ATCO Electric's estimate did not include costs related to multiple imprudent activities that would not have been required, but for the Backwoods access services contract. For example, ATCO Electric did not include the costs of:

¹⁵⁴ Exhibit 26573-X0332, AUC letter - Scope of Proceeding 26573 and process schedule.

¹⁵⁵ Exhibit 26573-X0358, AET Responses to AUC Round 4 IRs, IR responses AET-AUC-2022OCT21-011 and AET-AUC-2022OCT21-012.

¹⁵⁶ Transcript, Volume 1, (January 25, 2023), page 12, lines 21-24.

¹⁵⁷ Transcript, Volume 1, (January 25, 2023), page 82, lines 14-18.

¹⁵⁸ Transcript, Volume 1, (January 25, 2023), pages 41-42.

- (i) Analyses that were undertaken to calculate the regulatory risk associated with the sole-source Backwoods contract.¹⁵⁹
- (ii) Negotiations with Backwoods to bring its rates closer to fair market value,¹⁶⁰ which would not have been necessary if ATCO Electric procured its access services through a competitive bidding process.
- (iii) Conversations, meetings and other work conducted to justify and defend its decision to imprudently sole-source the access services contract to Backwoods.
- (iv) Documenting a false record, including drafting and providing misleading information in the original 2018-2020 DACDA application and this proceeding, etc.¹⁶¹

None of this work would have been required had the truth been told from the outset.

184. The true scope of this work cannot be ascertained on the record of this proceeding. ATCO Electric took the position that knowledge is required for an individual to mislead or conceal. Also, ATCO Electric did not provide a cost estimate (including data on individuals involved, their hourly rates, the amount of time spent on each activity, etc.) for all of the imprudent activities that were undertaken (e.g., research and analysis conducted by ATCO Electric's forestry team around fair market rates).¹⁶²

185. Furthermore, the Commission does not agree with ATCO Electric's submission, that a vast majority of the 2018-2020 DACDA application support costs would have been incurred regardless of how the access services were procured. ATCO Electric's submission implies that there is a one-to-one relationship between the activities that were undertaken to support the Backwoods contract and the activities that would have been undertaken had the access services been competitively procured.¹⁶³

186. In the Commission's view, it is inherently more time consuming to mislead and conceal than it is to simply state the truth. This is the case for the contracting work itself, but is particularly true in the context of a regulatory proceeding where an application, evidence, IR responses and rebuttal evidence are prepared and necessarily approved by the relevant executives within ATCO Electric prior to being filed with the Commission. The Commission is cognizant of the level of effort expended on a typical DACDA application and considers that such effort would increase significantly where some, but not all, ATCO Electric employees involved in the preparation of this material were working to conceal or create misleading evidence. Merely

¹⁵⁹ Example: Decision 27013-D01-2022, PDF page 14, paragraph 49(5).

¹⁶⁰ Activities identified in Exhibit 26573-X0348, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff; and Exhibit 26573-X0349, 27013-X0053.01-C Appendix F - Documents provided to Enforcement Staff by ATCO Electric during the Investigation.

¹⁶¹ Activities identified in Exhibit 26573-X0348, 26573-X0317 Attachment 19 - Exhibit 27013-X0035, Appendix A - Documents provided to Enforcement Staff; and Exhibit 26573-X0349, 27013-X0053.01-C Appendix F - Documents provided to Enforcement Staff by ATCO Electric during the Investigation.

¹⁶² The details were filed on the confidential record: Exhibit 26573-X0378-C, AET-AUC-2022OCT21-011(a) Attachment 1; Exhibit 26573-X0316-C, Attachment 18 – Exhibit 27013-X0127-C Tab 15 – Forestry Team Research.

¹⁶³ Transcript, Volume 1 (January 25, 2023), pages 46-57.

tracking who is aware of the need to cover up the truth and who is not, would have created additional work and a high degree of inefficiency.

187. In Decision 27013-D01-2022 the Commission addressed the (then paused) DACDA proceeding directly, indicating that approximately 45 ATCO Electric employees were involved, most of whom were not aware of the events surrounding the decision to directly award the Backwoods contract.¹⁶⁴ Decision 27013-D01-2022 also spoke to the false evidence provided and the omissions deliberately made. As the CCA analysis shows, some detailed information can also be gleaned from the Settlement Agreement and Agreed Statement of Facts and Contraventions.¹⁶⁵ Ultimately, however, only ATCO Electric knows with any certainty the costs related with efforts to mislead and conceal in relation to the Backwoods contract and the associated issues in the 2018-2020 DACDA proceeding and it has not been particularly forthcoming in this regard.

188. While the Commission has some information about the imprudent work that was undertaken on the Jasper project with respect to the issuance of the Backwoods contract (e.g., ATCO Electric had to prepare briefings, analyses, the 2018 requisition enhancement form, etc., in order to justify and defend its decision to contract with Backwoods) and the associated costs,¹⁶⁶ there is limited information about the work that was undertaken to support the Jasper project in ATCO Electric's 2018-2020 DACDA application. In this regard, the Commission observes that the Jasper project was the largest issue in ATCO Electric's 2018-2020 DACDA application and expects that ATCO Electric would therefore have devoted a significant amount of time to support this aspect of its application when compared to other areas.

189. The Commission must rely on information that is on the record to inform an estimate for what it considers to be a reasonable amount attributable to efforts to mislead and conceal. While the CCA's effort to develop its own estimate was helpful in the sense that the results of that analysis provided one possible bookend for the Commission's consideration, the assumptions that were necessarily required to be made, given the significant information asymmetry in this regard, weakened the analysis and compromised the Commission's ability to rely on this estimate. The CCA itself acknowledged that its proposal was imprecise¹⁶⁷ and reduced the amount of its proposed disallowance significantly at the time of argument.¹⁶⁸

190. Without a much higher degree of cooperation, effort, and transparency from ATCO Electric on this issue, it is not possible for the Commission to develop a precise estimate. ATCO Electric did not provide an estimate of the number of individuals who were assigned to support the Jasper project. It attempted to provide this information in reply argument,¹⁶⁹ but the Commission did not permit this information to be filed on the proceeding record so late in the hearing process.¹⁷⁰

¹⁶⁴ Decision 27013-D01-2022, PDF pages 13 and 60-61, paragraphs 47 and 118-119.

¹⁶⁵ The details were filed on the confidential record: Exhibit 26573-X0429-C, Exhibit 26573-X0409.01-C 26573-X0403.01-C Attachment 2 - Costs of Investigations and Efforts to Mislead.

¹⁶⁶ The details were filed on the confidential record: Exhibit 26573-X0378-C, AET-AUC-2022OCT21-011(a) Attachment 1; Exhibit 26573-X0381-C, AET-CCA-2022OCT21-006(a)-CONF Attachment 1. See also Exhibit 26573-X0346, 27013-X0069 Settlement Agreement and Agreed Statement of Facts.

¹⁶⁷ Transcript, Volume 2 (January 26, 2023), page 41, lines 15-25.

¹⁶⁸ Transcript, Volume 1 (January 25, 2023), page 82, lines 14-18.

¹⁶⁹ Transcript, Volume 2 (January 26, 2023), pages 62-70.

¹⁷⁰ Transcript, Volume 2 (January 26, 2023), page 71, lines 1-10.

191. As a result, and to determine a reasonable estimate grounded in the facts, the Commission has considered the following:

- (i) Available information about efforts to mislead and conceal concerning the imprudent contracting work that was undertaken on the Jasper project,¹⁷¹ including descriptions of this work in the Agreed Statement of Facts and Contraventions from Proceeding 27013;¹⁷²
- (ii) The duration that the 2018-2020 DACDA proceeding was active, provision for an expected period of preparation as well as for work spent on the Backwoods contract itself, all of which would have been charged to the Jasper project;
- (iii) The significance of the Jasper project to the 2018-2020 DACDA proceeding and ATCO Electric's 2018-2020 DACDA application;
- (iv) The starting point that approximately 45 employees were involved in the application (as stated in Decision 27013-D01-2022);
- (v) Acknowledgement that not all 45 employees would have worked on the Jasper project aspects of the DACDA and that of those that would have dedicated time to it, that work was unlikely to be full time during the period of preparing the application and when the proceeding was active;
- (vi) Acknowledgment that of the time spent on the Jasper project, only a fraction would have been either knowingly or unknowingly expended in an effort to mislead and conceal information from the Commission; and
- (vii) Taking a conservatively low average of the charge out rates for employees working on the matter.

192. Based on this admittedly high level and deliberately conservative analysis, the Commission has decided that \$250,000 in imprudently incurred costs related to efforts by ATCO Electric employees to mislead and conceal information should be disallowed from the applied-for costs for the Jasper project.

193. Accordingly, the Commission directs ATCO Electric to reduce its applied-for costs for the Jasper project by \$250,000 in its compliance filing to this decision. This reduction is incremental to the other reductions and disallowances that the Commission has directed in this decision. This is, in the Commission's view, an understated, but nevertheless reasonable disallowance in the circumstances of this proceeding.

194. The Commission emphasizes that in coming to this disallowance amount, the intention is to remove imprudent costs actually incurred in relation to the work conducted on, and in relation to, the Jasper project. The Commission's cautious approach, given imperfect information, is intended to balance the need to ensure that Alberta electricity customers are not paying through

¹⁷¹ The details were filed on the confidential record: Exhibit 26573-X0378-C, AET-AUC-2022OCT21-011(a) Attachment 1; Exhibit 26573-X0381-C, AET-CCA-2022OCT21-006(a)-CONF Attachment 1; and Exhibit 26573-X0429-C, Exhibit 26573-X0409.01-C 26573-X0403.01-C Attachment 2 - Costs of Investigations and Efforts to Mislead.

¹⁷² Exhibit 26573-X0346, 27013-X0069 Settlement Agreement and Agreed Statement of Facts.

their rates for ATCO Electric's imprudence, with the need to provide ATCO Electric a reasonable opportunity to recover its prudently incurred costs.

7.6 Should ATCO Electric be directed to track actions and costs related to its implementation of the settlement agreement concerning the Jasper project?

195. The Office of the Utilities Consumers Advocate (UCA) requested that the Commission direct ATCO Electric to directly track all actions and costs related to its implementation of the settlement agreement concerning the Jasper project, and to include that information in its Rule 005 filings.¹⁷³ ATCO Electric agreed to provide this information in its Rule 005 filings.¹⁷⁴ Accordingly, the Commission directs ATCO Electric to include the information requested by the UCA in its Rule 005 filings.

8 Order

196. It is hereby ordered that:

- (1) ATCO Electric submit a compliance filing that reflects the findings, conclusions and directions of the Commission in this decision on or before May 29, 2023; provided, however, that ATCO Electric is not required to submit such a compliance filing if the Commission orders a compliance filing for ATCO Electric's 2023-2025 general tariff application in Proceeding 27062. In such a case, ATCO Electric is ordered to incorporate the findings, conclusions and directions of the Commission in this decision together with its compliance filing to the Commission's decision in Proceeding 27062.

Dated on April 26, 2023.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Vice-Chair

¹⁷³ Transcript, Volume 1 (January 25, 2023), page 125, lines 3-11.

¹⁷⁴ Exhibit 26573-X0361, AET Responses to UCA Round 4 IRs.

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
ATCO Electric Ltd. (ATCO Electric) Bennett Jones LLP
Consumers' Coalition of Alberta (CCA) Bema Enterprises Ltd.
Office of the Utilities Consumers Advocate (UCA) Brownlee LLP InterGroup Consultants

<p>Alberta Utilities Commission</p> <p>Commission panel K. Sebalj, Vice-Chair</p> <p>Commission staff P. Khan (Commission counsel) N. Bal (Commission counsel) A. Starkov L. Mullen C. Meulenbroek</p>
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Appendix 2 – Virtual oral hearing – registered appearances

Name of organization (abbreviation) Name of counsel or representative
ATCO Electric Ltd. (ATCO Electric) Sean Assié
Consumers' Coalition of Alberta (CCA) James Wachowich, KC
Office of the Utilities Consumer Advocate (UCA) Thomas Marriott, KC Keegan Rutherford

Alberta Utilities Commission
Commission panel K. Sebalj, Vice-Chair
Commission staff P. Khan (Commission counsel) N. Bal (Commission counsel) A. Starkov

Appendix 3 – Commission directions on reductions to the Jasper project

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Appendix 3.1 – Commission-directed clarification on the value of the sole-source Backwoods contract

Item	Total value of the Backwoods contract (\$ million)	Commission-directed clarifications for the value of the sole-source Backwoods contract	Reference to decision section and paragraph
What is the total value of the Backwoods contract?			
There are three sources of information that indicate different amounts paid to Backwoods			
(1)	31.1 + 2.1 = 33.2	From the Agreed Statement of Facts made between ATCO Electric and AUC Enforcement staff. That instrument indicates that the total amount ultimately paid to Backwoods was \$31.1 million for matting-related work and \$2.1 million for brushing/clearing-related work.	Section 7.3, paragraph 151
(2)	36.7	From the breakdown filed by ATCO Electric that shows the initial value of the Backwoods contract, and subsequent change orders.	Section 7.3, paragraph 154
(3)	35.3 to 37	From the Executive Summary of ATCO Corporate Security's investigative report, which indicated that the final award to Backwoods was in the amount of \$35,305,889. It also noted that ATCO Electric claimed, in its 2018-2020 DACDA application, \$37 million for the Backwoods direct award contract.	Section 7.3, paragraph 154
(4)	TBD	ATCO Electric confirmation of the total value of the Backwoods contract.	Section 7.3, paragraph 156

Appendix 3.2 – Commission-directed clarification on applied-for reduction for imprudent amount associated with the sole-source Backwoods contract

Item	Applied for reduction (\$ million)	Commission-directed clarifications on applied-for reduction to sole-source Backwoods contract	Reference to decision section and paragraph
Applied-for reduction for imprudent amounts associated with the sole-source Backwoods contract			
(5)	10.8	ATCO Electric determined the \$10.8 million reduction by using the differences between: (i) the actual rates paid to Backwoods on the Jasper project; and (ii) the rates from ATCO Electric's 2018 Master Service Agreement. At a high level, ATCO Electric then applied the differences to the total value of the Backwoods contract.	Section 7.3, paragraph 145
(6) which is dependent on (4)	TBD	ATCO Electric confirmation of its applied-for reduction for imprudent amounts associated with the sole-source Backwoods contract, which is dependent on the total value of the Backwoods contract.	Section 7.3, paragraph 156

Appendix 3.3 – Commission-directed additional reduction for imprudent amount associated with the sole-source Backwoods contract

Item	Directed additional reduction (\$ million)	Commission-directed additional reduction for imprudent amount associated with the sole-source Backwoods contract	Reference to decision section and paragraph
Directed reduction for imprudent amounts associated with the sole-source Backwoods contract			
(7) = (6) x 20 per cent	TBD	The Commission has decided that it is reasonable to apply an additional reduction of 20 per cent to the imprudent amount associated with the sole-source Backwoods contract. This reduction amount is dependent on the clarifications directed in the above appendixes.	Section 7.4, paragraph 178

Appendix 3.4 – Summary of Commission-directed reductions for the Jasper project

Item	Amount of reduction (\$ million)	Commission-directed reductions	Reference to decision section and paragraph
Directed reduction for imprudent management and execution of the Jasper project			
(8)	3.0	ATCO Electric's imprudent management and execution of the consultation, permitting, regulatory and approval phases of the Jasper project. This amount will not be adjusted in the compliance filing.	Section 7.1, paragraph 132
Directed reduction for work conducted in effort to mislead and conceal information associated with the sole-source Backwoods contract			
(9)	0.250	Disallowance for work conducted in effort to mislead and conceal information associated with the sole-source Backwoods contract. This amount will not be adjusted in the compliance filing.	Section 7.5, paragraph 193
Directed additional reduction for imprudent amount associated with the sole-source Backwoods contract			
(10) = (7)	TBD	The Commission has decided that it is reasonable to apply an additional reduction of 20 per cent to the imprudent amount associated with the sole-source Backwoods contract. This reduction amount is dependent on the clarifications directed in the appendixes above.	Section 7.4, paragraph 178
(11) = (8)+(9)+(10)	TBD	Total Commission-directed reductions for Jasper project	

Appendix 4 – Summary of Commission directions addressed in application

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This section is provided for the convenience of readers and outlines the directions from Decision 2013-358 (ATCO Electric Ltd., 2013-2014 Transmission General Tariff Application), Decision 2014-283 (ATCO Electric Ltd., 2012 Transmission Deferral Account and Annual Filing for Adjustment Balances), Decision 21206-D01-2017 (ATCO Electric Ltd., 2013 and 2014 Transmission Deferral Accounts and Annual Filing for Adjustment Balances) and Decision 24375-D01-2020 (ATCO Electric Ltd., Disposal of 2015-2017 Transmission Deferral Accounts and Annual Filing for Adjustment Balances) and which the Commission finds have been satisfied. In the event of any difference between the directions in this section and those in the main body of the decisions referenced, the wording in the main body of those decisions shall prevail.

Decision 2013-358 (Direction 92)

92. The Commission directs ATCO Electric, in its next transmission GTA and next annual transmission deferral account application, to include the following additional information with respect to any individual direct assigned capital project that has a forecast capital cost in excess of \$5.0 million:

- project milestone schedules and the timing of capital expenditures
- AESO change order requests and authorizations
- cost estimates at the stages described in paragraph 1082 of this decision
- cost estimates by the categories described in paragraph 1084 of this decision
- the preliminary engineering costs included in the cost estimates
- the detailed engineering costs included in the cost estimates
- schedules of project attributes, for both transmission line projects and substation projects, similar to the information provided in response to information request IPCAA-AE-008(c)
- parametric values that are derived through the use of parametric estimating techniques
- the current AESO functional specifications
- bulk transmission line optimization studies where required by ISO Rule 502.2
- post completion reports
- 60-day and 150-day reports that are filed in response to the AESO's rules
..... Paragraph 1096

Decision 2014-283 (directions 1, 2, 3, 4 and 21)

1. Of particular concern is that the information provided with ATCO's original filing did not include a clear breakdown of the original cost estimate for the portion of certain projects it was requesting to be added to rate base in 2012. Most notably, ATCO's initial filing did not provide any estimate of the baseline cost estimate for the portion of the NE Loop project to be added in 2012, subsequently clarified to be the 9L84 segment of the project from the Salt Creek 977S substation to the Black Fly 934S substation, compared to the actual costs to be added in 2012. The Commission considers that the initial cost breakdown that ATCO provided in attachment 1 of its application, which suggested that

- the requested 2012 addition amount of \$229.2 million compared favourably to the PPS stage estimate of \$237.4 million for the entire project, was misleading and contributed to the additional process required to examine the application. In light of this issue, in all future capital deferral account applications, ATCO is directed to ensure that the PPS stage estimates it provides are properly matched to the specific facilities it is proposing for inclusion in rate base in that year. Paragraph 102
2. Further to the findings in Section 2.1.2 above that a key purpose of baseline estimates is to assist in drawing attention to variances requiring additional investigation, the Commission directs ATCO to provide the following in all future applications:
 - a detailed breakdown of PPS format cost estimates or reports that have been prepared at each of the PPS stages, and at the 180-day after the permit and licence stage
 - any final cost report prepared after energization
 - the details of owner costs and distributed cost line items that were supplied through information requests in this proceeding. Paragraph 103
 3. ATCO is directed to file the above-noted cost breakdown information, accessible in a useable electronic format, such as excel, in all its future capital deferral account filings. Paragraph 104
 4. A final concern identified by the Commission during its initial review of the application related to its difficulty in matching the project names and related numbers used by ATCO to project naming conventions used in other proceedings. It is essential that the Commission and parties be able to clearly understand what specific facilities were contemplated at the time project forecasts were provided at various project development stages. Consequently, ATCO is directed to provide information that is sufficient to clearly match the projects for which capital additions are requested to the facility application, the NID application, and all associated decisions, including the specific permits and licences issued. Furthermore, in the event that the functional specification or scope of a specific project is changed for any reason subsequent to the issuance of the permit and licence, ATCO is directed to provide a clear explanation of both the nature and timing of the changes that have occurred..... Paragraph 105
 21. However, the Commission remains concerned with the limited information provided by ATCO in its initial application. To address this concern, ATCO is directed to provide both a breakdown of applied-for trailing cost addition amounts in a substantially similar format to the breakdown provided in CCA-AE-18, Attachment 1, and to also provide explanations of trailing costs in a format equivalent to that provided in ATCO's response to CCA-AE-18, part (b) for all future direct assigned transmission project deferral account reconciliation applications. Paragraph 801

Decision 21206-D01-2017 (directions 11 and 12)

11. Nonetheless, to properly assess the final project costs, the Commission considers that in order to balance the Commission's concerns with respect to accruals while allowing ATCO Electric to recover all prudently incurred project costs in a fiscal year, it will not direct ATCO Electric to remove any accrued costs from its applied-for capital additions

but will direct ATCO Electric to file certain additional information in future applications. The Commission directs ATCO Electric to clearly identify and explain accrual amounts included in applied-for project capital additions for all future deferral account applications. The Commission also directs ATCO Electric to clearly identify all trailing costs that resulted from reconciling accrued amounts to actual final costs, in all future deferral account applications; this can be provided in a similar format to that provided in Table 2-8 in this application. Paragraph 234

- 12. With respect to filing requirements, as set out in Direction 1 from Decision 2011-507, Direction 92 from Decision 2013-358 and directions 1, 2, 3, 4 and 21 from Decision 2014-283 and in the additional information provided as outlined in Tables 2-6 and 2-7 of the application, the Commission finds that the level of detail provided for the requested project capital additions was helpful in its consideration of this application and therefore directs ATCO Electric to file this information in all future DACDAs. Paragraph 243

Decision 24375-D01-2020 (directions 5 and 12)

- 5. The Commission also accepts AET’s proposal to true up this \$0.1 million of foundation materials in a subsequent deferral application. For the purposes of this application, the Commission accepts that the \$0.1 million of foundation materials incurred for Project 55127 are reasonable and will allow AET to recover this cost in full. The Commission directs AET to correct for this error in its future deferral applications.paragraph 91
- 12. Therefore, the Commission directs AET, as part of its next DACDA application, to fully document and explain the internal processes used to determine when external legal resources are required, to establish the scope of the work to be performed by those resources, and to provide demonstrative examples for small, medium and large projects.paragraph 330

Appendix 5 – 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 requires ATCO Electric to submit a compliance filing that reflects the findings, conclusions and directions of the Commission in this decision on or before May 29, 2023; provided, however, that ATCO Electric is not required to submit such a compliance filing if the Commission orders a compliance filing for ATCO Electric's 2023-2025 general tariff application in Proceeding 27062. In such a case, the Commission directs ATCO Electric to incorporate the findings, conclusions and directions of the Commission in this decision together with its compliance filing to the Commission's decision in Proceeding 27062..... paragraph 11
2. With respect to Direction 7 requiring ATCO Electric to ensure air travel costs are charged at no more than commercial airlines economy fare, ATCO Electric stated that an applicable adjustment had not been incorporated into its application on the basis that the amount at issue is immaterial. The Commission finds that ATCO Electric has not complied with this direction. The Commission further directs ATCO Electric to reduce its applied-for costs by \$11,267 in its compliance filing to this decision..... paragraph 29
3. For all of these reasons, the Commission denies ATCO Electric's proposed recovery of the \$4.381 million amount it sought under the pretense of cancelled customer project costs. The Commission directs ATCO Electric to reduce its applied-for costs by \$4.381 million in its compliance filing to this decision..... paragraph 71
4. Accordingly, the Commission directs ATCO Electric to reduce its applied-for costs for the Jasper project by \$3.0 million in its compliance filing to this decision, which represents approximately three per cent of the current total applied-for project costs and approximately 14 per cent of the variance between PPS forecast and actual applied-for project costs. The Commission notes that this disallowance includes amounts for the disallowance attributed to its findings in Section 7.2.3 of this decision provided below.
..... paragraph 132
5. Given this lack of clarity, the Commission directs ATCO Electric, in its compliance filing to this decision:
 - (i) to explain the inconsistencies identified above in the total value of the amounts incurred under the Backwoods contract;
 - (ii) to confirm the total amount that ATCO Electric is requesting approval to recover for the Backwoods direct award contract in its 2018-2021 DACDA application;
 - (iii) to provide a breakdown of the amount in subpart (ii) by cost category (mat rentals, mat purchases, mat movement, mat cleaning, brushing/clearing, hydrovac, etc.);
 - (iv) to confirm that ATCO Electric applied the appropriate and necessary adjustments (i.e., consistent with the methodology that it used to calculate its currently proposed \$10.8 million reduction) to each cost category from part (iii), by reducing the imprudent amounts associated with the sole-source Backwoods contract; and

- (v) if a certain cost category was not reduced, as part of the adjustment to reflect the imprudent amounts associated with the sole-source Backwoods contract, to explain why a reduction was not necessary in each such case. paragraph 156
- 6. In view of the above, and understanding that the Commission cannot observe directly applicable market rates, because it is considering a counterfactual scenario, the Commission has decided that it is reasonable to apply an additional reduction of 20 per cent to ATCO Electric’s proposed reduction. ATCO Electric proposed a \$10.8 million reduction in its application; however, given the uncertainty in the total value of the Backwoods contract (as set out in Section 7.3), the Commission directs ATCO Electric to calculate this additional 20 per cent reduction in accordance with Appendix 3. The Commission considers that this additional reduction reasonably reflects the incremental imprudent costs that the Commission has decided are not otherwise captured in ATCO Electric’s currently proposed \$10.8 million reduction. paragraph 178
- 7. Accordingly, the Commission directs ATCO Electric to reduce its applied-for costs for the Jasper project by \$250,000 in its compliance filing to this decision. This reduction is incremental to the other reductions and disallowances that the Commission has directed in this decision. This is, in the Commission’s view, an understated, but nevertheless reasonable disallowance in the circumstances of this proceeding. paragraph 193
- 8. The Office of the Utilities Consumers Advocate (UCA) requested that the Commission direct ATCO Electric to directly track all actions and costs related to its implementation of the settlement agreement concerning the Jasper project, and to include that information in its Rule 005 filings. ATCO Electric agreed to provide this information in its Rule 005 filings. Accordingly, the Commission directs ATCO Electric to include the information requested by the UCA in its Rule 005 filings. paragraph 195