



**Enforcement Staff of the Alberta Utilities
Commission**

Settlement Agreement with ATCO Electric Ltd.

September 25, 2024

Alberta Utilities Commission

Decision 29109-D01-2024

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Settlement Agreement with ATCO Electric Ltd.

Proceeding 29109

Application 29109-A001

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

1 Decision summary

1. In this decision, the Alberta Utilities Commission approves a settlement agreement between AUC Enforcement staff and ATCO Electric Ltd. (the Settlement Agreement).¹ The Settlement Agreement addresses contraventions of the *Electric Utilities Act* that arose from ATCO Electric’s lack of transparency and honesty in past Commission proceedings (the contraventions). The contraventions relate to two matters:

- (a) a failure by ATCO Electric to follow a Commission direction to clearly identify and explain accrual amounts in applied-for capital additions for deferral account applications, resulting in the Commission and interveners not having clear information on which to base questions regarding the accrual treatment for a contract close-out settlement which was accrued (and capitalized) beginning in 2015, but not paid until 2018 (the Valard Accrual Disclosure issue); and
- (b) ATCO Electric evidence regarding nightly room rates for the Beaver River Camp that did not present all material facts fully and accurately and instead misrepresented utilization levels to disguise the true costs associated with the Beaver River Camp in subsequent proceedings before the Commission (the Beaver River Camp issue).

2. The Settlement Agreement also rectifies an error made by ATCO Electric where ATCO Electric improperly capitalized costs for certain professional fees paid to Navigant Consulting Inc., whose name subsequently changed to Ankura Consulting Inc. (the Navigant/Ankura cost error).

3. For the reasons below and based on information provided by the parties in their submissions and in the Settlement Agreement, the Commission is satisfied that the contraventions occurred and that the “public interest test” is met by approving the Settlement Agreement and imposing the agreed-upon remedy.

2 Background

4. ATCO Electric is the owner and operator of an electric utility² and is subject to regulation by the Commission.³ As a regulated utility, ATCO Electric is subject to a number of duties and obligations, which among other things, require that the information ATCO Electric provides in its applications, filings and other representations before the Commission be honest, true,

¹ Attached as Appendix 2, Settlement agreement between AUC Enforcement staff and ATCO Electric Ltd.

² As defined in Section 1(o) of the *Electric Utilities Act*.

³ See Part 9 of the *Electric Utilities Act*.

accurate, and not misleading, either expressly or by omission (the duty of candour). This means that ATCO Electric (and all other regulated public utilities) has an obligation to fully and accurately disclose to the Commission all material facts and information relevant to its decisions. The duty of candour is a fundamental premise underlying the *Electric Utilities Act* and is necessary for a properly functioning regulatory system. Its importance cannot be overstated.

5. In the Settlement Agreement, ATCO Electric admitted that, in addition to failing to comply with Direction 11 of Decision 21206-D01-2017⁴ with respect to the Valard Accrual Disclosure issue, it has failed to fulfil its duty of candour with respect to both the Valard Accrual Disclosure issue and the Beaver River Camp issue.

6. ATCO Electric and Enforcement staff jointly proposed an administrative penalty of \$3 million for the contraventions. They also proposed a number of terms and conditions relating to the Valard Accrual Disclosure issue, the Beaver River Camp issue, and the Navigant/Ankura cost error. The terms and conditions include requiring ATCO Electric to refund customers, remove improper costs from rate base, and pay Enforcement staff's costs. Further, ATCO Electric has committed to, and has already implemented, additional internal processes and controls to prevent the reoccurrence of these issues. These include:

- (a) Prior to filing any application, a full reconciliation of the application to the financial statements and latest submitted Rule 005: *Annual Reporting Requirements of Financial and Operational Results* filings will be completed and signed off by the controller of ATCO Electric. Any items of note will be identified and appropriately documented and will be disclosed as part of the application as necessary.
- (b) ATCO Electric will enhance its process to ensure compliance with historical Commission directions. ATCO Electric will develop a formal repository of all outstanding and on-going directions. Furthermore, in preparation of all future applications, an internal document will be created which clearly indicates what directions have been responded to and where in the application the response has been provided. Prior to filing any application, sign-off of this internal document by the vice president, regulatory will be completed to ensure ATCO Electric is in compliance with all prior Commission directions.

7. Also, as a part of the Settlement Agreement, ATCO Electric has made the following acknowledgement (the acknowledgement):

ATCO Electric acknowledges and agrees that given the AUC's efforts to streamline its process, in future proceedings, it is necessary for ATCO Electric to ensure the information it provides at the outset of an application meets ATCO Electric's duty of candour, either through the body of the application, a Project Summary Report, or another document filed as part of any ATCO Electric application. Where ATCO Electric is aware of a material issue that could reasonably be expected to become contentious upon the filing of an application, ATCO Electric acknowledges and agrees that it should make all reasonable efforts to disclose that issue as part of its initial application materials.

⁴ Decision 21206-D01-2017: ATCO Electric Ltd., 2013 and 2014 Transmission Deferral Accounts and Annual Filing for Adjustment Balances, Proceeding 21206, September 20, 2017.

8. Enforcement staff submitted that the acknowledgement reflects a further, formal level of commitment from ATCO Electric regarding its ongoing efforts to improve its compliance.

3 Should the Commission accept the settlement agreement?

9. In this section, the Commission discusses whether it should accept the settlement agreement reached between ATCO Electric and Enforcement staff as filed. This includes what principles should be applied when considering a settlement agreement and how the joint submissions provided by Enforcement staff and ATCO Electric satisfy the public interest test.

10. The Commission's jurisdiction to consider and approve a settlement agreement is grounded in sections 8, 23(1)(b) and 63 of the *Alberta Utilities Commission Act*. The Commission applies a two-stage test to assess whether a settlement agreement should be approved. First, the Commission must be satisfied that the alleged contraventions occurred. Second, the Commission applies the "public interest test" to assess whether a settlement agreement should be approved. The public interest test requires that the Commission should not depart from a negotiated settlement unless the proposed settlement would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

11. The Commission is satisfied that the contraventions have occurred because ATCO Electric has admitted to the contraventions. Enforcement staff and ATCO Electric have requested that the Commission approve their joint submission on penalty reflected in the Settlement Agreement and have submitted that the Settlement Agreement is in the public interest because it advances the objectives of achieving general and specific deterrence, encouraging compliance and protecting the public, and that it appropriately reflects the seriousness of the contraventions, while also recognizing the impact of important mitigating factors.

12. The Commission has carefully considered the proposed settlement, including the administrative penalties and the terms and conditions agreed to by Enforcement staff and ATCO Electric. The Commission is satisfied that the settlement agreement reached between Enforcement staff and ATCO Electric is in the public interest as it is fit and reasonable, falling within a range of reasonable outcomes, given the circumstances.

13. In particular, the Commission considers that the Settlement Agreement reasonably addresses the two facets of the harm to ratepayers that could arise as a result of contraventions arising from failures to fulfil the duty of candour: (1) actual financial harm; and (2) erosion of the public's trust and confidence in the Commission's regulatory process, and the Commission's trust of ATCO Electric.⁵

14. Concerning the first aspect, the Commission finds that the Settlement Agreement fully addresses the potential for actual financial harm to ratepayers by requiring ATCO Electric to refund its customers and remove improper costs from rate base. Concerning the second aspect, the Commission considers that the proposed monetary penalty and the terms and conditions detailed in the Settlement Agreement, including the commitments and acknowledgement detailed above, are reasonable in addressing that harm.

⁵ Described in Decision 27013-D01-2022: Enforcement Staff of the Alberta Utilities Commission, Allegations against ATCO Electric Ltd., Proceeding 27013, June 29, 2022, at paragraphs 86-87, 91.

15. In coming to this conclusion, the Commission acknowledges that ATCO Electric has a history of failing to fulfil its duty of candour. In Decision 27013-D01-2022 (the Jasper Enforcement Decision)⁶ the Commission imposed a significant financial penalty to address the deliberate and serious nature of the contraventions at issue in that proceeding, which included ATCO Electric failing to fulfil its duty of candour. In conjunction with the financial penalty, the Commission also imposed various terms and conditions to mitigate the likelihood that similar conduct would recur.⁷ In particular, the terms and conditions advanced oversight, reporting and whistleblowing practices at ATCO Electric.

16. Importantly, however, as discussed in the Settlement Agreement, the current proceeding addresses contraventions which occurred prior to the Jasper Enforcement Decision. This is relevant because the contraventions addressed in this proceeding are not a continuation of the contraventions the Jasper Enforcement Decision sought to address, but rather, predate it.

17. Also important to the Commission is that the current proceeding was commenced because ATCO Electric self reported the contraventions to Enforcement staff. The Commission agrees with the parties that ATCO Electric's cooperation in the course of Enforcement staff's investigation is evidence that the changes made to ATCO Electric's internal governance and protocols following the Jasper Enforcement Decision have improved its compliance program. The Commission also agrees that the acknowledgement appears to indicate that ATCO Electric is committed to further improve its compliance going forward. However, the Commission emphasizes that the types of conduct described in the acknowledgement are a bare minimum requirement for all regulated utilities in order to fulfil their duty of candour and utilities must actively review their practices and policies to ensure that the Commission receives thorough and accurate information.

4 Order

18. It is hereby ordered that:

- (1) The Settlement Agreement between AUC Enforcement staff and ATCO Electric Ltd., attached as Appendix 2 to this decision, is approved, as filed.
- (2) ATCO Electric Ltd. shall pay an administrative penalty in the amount of \$1,000,000, for the Beaver River Camp issue, pursuant to sections 63(1)(a) and 63(2) of the *Alberta Utilities Commission Act*. The payment may be made via cheque or bank draft made out to the General Revenue Fund of Alberta and delivered to the AUC within 30 business days of the date of this order.
- (3) ATCO Electric Ltd. shall pay an administrative penalty in the amount of \$2,000,000, for the Valard Accrual Disclosure issue, pursuant to sections 63(1)(a) and 63(2) of the *Alberta Utilities Commission Act*. The payment may be made via cheque or bank draft made out to the General Revenue Fund of Alberta and delivered to the AUC within 30 business days of the date of this order.

⁶ Decision 27013-D01-2022: Enforcement Staff of the Alberta Utilities Commission, Allegations against ATCO Electric Ltd., Proceeding 27013, June 29, 2022

⁷ Decision 27013-D01-2022, paragraph 97.

- (4) ATCO Electric Ltd. shall refund the amount of \$4,000,000 to customers via a billing adjustment to the Alberta Electric System Operator in the billing cycle that follows the Commission's approval of the Settlement Agreement, for the Valard Accrual Disclosure issue, pursuant to sections 63(1)(b) and 63(3) of the *Alberta Utilities Commission Act*.
- (5) With respect to the Navigant/Ankura Costs error, ATCO Electric Ltd. shall remove the original costs of \$377,033.76 along with the associated accumulated depreciation of \$99,301 from its rate base as part of its next General Tariff Application, and shall refund the revenue requirement impact of this amount (\$262,177, inclusive of accumulated depreciation of \$99,301) to customers via a billing adjustment to the Alberta Electric System Operator in the billing cycle that follows the Commission's approval of the Settlement Agreement, pursuant to sections 63(1)(b) and 63(3) of the *Alberta Utilities Commission Act*.
- (6) ATCO Electric Ltd. shall pay the invoiced costs of Enforcement staff's external legal counsel for the investigation and hearing of this proceeding, on a full indemnity basis, pursuant to Section 66 of the *Alberta Utilities Commission Act* in the form of a wire transfer, certified cheque or bank draft made out to the Alberta Utilities Commission within 30 days of the date of this order.
- (7) ATCO Electric Ltd. shall abide by the terms and representations set out in the Settlement Agreement.

Dated on September 25, 2024.

Alberta Utilities Commission

(original signed by)

Douglas A. Larder, KC
Vice-Chair

Appendix 1 – Proceeding participants

Name of organization (abbreviation)	Name of counsel or representative
Enforcement Staff of the Alberta Utilities Commission	J. Safayeni, Stockwoods LLP P. Kahn, Alberta Utilities Commission Enforcement
ATCO Electric Ltd.	L. Cusano, Torys LLP G. Bruni, Torys LLP
Alberta Utilities Commission	Commission panel D.A. Larder, KC, Vice-Chair Commission staff Alyssa Marshall (Commission counsel) Dale Johnston (Commission counsel) Cameron Strasser Rylee Cassidy Kellie Benoche

Appendix 2 – Settlement agreement between AUC Enforcement staff and ATCO Electric Ltd.



Settlement
Agreement.pdf

(consists of 7 pages)

BEFORE THE ALBERTA UTILITIES COMMISSION

ALBERTA UTILITIES COMMISSION ENFORCEMENT STAFF

Applicant

and

ATCO ELECTRIC LTD.

Respondent

SETTLEMENT AGREEMENT

Introduction and Executive Summary

1. On May 31, 2023, ATCO Electric Ltd. (**ATCO Electric**) provided a self-report to Enforcement staff regarding two issues, the Valard Accrual Disclosure Issue and the Beaver River Camp Issue (as defined and described in the Agreed Statement of Facts, referenced below). Enforcement staff took steps to investigate the Valard Accrual Disclosure Issue and the Beaver River Camp Issue, and determined that enforcement steps were warranted. In the course of the investigation, Enforcement staff also identified an error made by ATCO Electric, where ATCO Electric capitalized costs for certain professional fees paid to Navigant/Ankura (**Navigant/Ankura Costs Error**, as defined and described in the Agreed Statement of Facts). The Navigant/Ankura Costs Error related to application support and therefore should not have been capitalized.

2. Enforcement staff and ATCO Electric (together, **the Parties**) have reached a comprehensive settlement on all issues of fact, contraventions and penalties set out in this settlement agreement (**Settlement**) and further agree that the AUC has the jurisdiction to approve the Settlement and all specific requests for approval made herein.

3. In consideration of the agreements and commitments set forth herein, it is agreed by the Parties that the Proceeding be settled, subject to the approval of the AUC, on the following terms and conditions on a full and final basis:

PART I – ACKNOWLEDGEMENTS AND REPRESENTATIONS

4. The Parties acknowledge the Settlement is a comprehensive package dealing with all outstanding issues related to the Valard Accrual Disclosure Issue, the Beaver River Camp Issue, and the Navigant/Ankura Costs Error, and will jointly ask the AUC to accept and approve the Settlement in its entirety and without variation.

5. ATCO Electric acknowledges and agrees that:

- (a) It has had the opportunity to obtain and has received independent legal advice with respect to the Settlement;
- (b) It is entering into the Settlement voluntarily, understanding the nature of the allegations made against it in the application filed concurrently with this Settlement, and with full knowledge of the consequences of agreeing to the Settlement and admitting to the contraventions set out herein;

- (c) Although it has reached an agreement with Enforcement staff on the terms of the proposed penalty, it understands that such agreement does not bind the AUC;
- (d) If the Settlement is accepted and approved by the AUC without variation:
 - i. The AUC's decision and order will constitute a fair and reasonable resolution of all matters arising in the Proceeding;
 - ii. ATCO Electric will not be required to address any additional amounts in respect of the matters arising in the Proceeding in a future rate application before the Commission, except as set out in paragraph 8 of this Settlement;
 - iii. The AUC's decision and order will be final and binding;
 - iv. ATCO Electric will abide by and fully comply with the AUC's decision and order; and
 - v. ATCO Electric will not initiate any appeal or other proceeding seeking in any way to challenge the AUC's decision and order.

7. ATCO Electric acknowledges and agrees that given the AUC's efforts to streamline its process, in future proceedings, it is necessary for ATCO Electric to ensure the information it provides at the outset of an application meet ATCO Electric's duty of candour, either through the body of the application, a Project Summary Report, or another

document filed as part of any ATCO Electric application. Where ATCO Electric is aware of a material issue that could reasonably be expected to become contentious upon the filing of an application, ATCO Electric acknowledges and agrees that it should make all reasonable efforts to disclose that issue as part of its initial application materials.

8. In respect of issues relating to the Navigant/Ankura Costs Error, ATCO Electric acknowledges and agrees that it will:

- (a) remove the original cost of \$377,033.76 along with the associated accumulated depreciation of \$99,301 from its 2026 opening rate base as part of its next General Tariff Application; and
- (b) refund the revenue requirement impact of the \$377,033.76 between 2018 to 2025 (which the parties have agreed to be in the amount of \$262,177, inclusive of the \$99,301 of accumulated depreciation) to ratepayers, by way of a billing adjustment to the Alberta Electricity System Operator (**AESO**) in the billing cycle following the AUC's decision with respect to this Settlement.

For further clarity, Enforcement staff accept that the steps set out above reflect ATCO Electric's correction of an error and do not allege any contraventions in this regard.

9. The Parties agree that in the event the AUC considers rejecting the Settlement or any part of it, and provides notice to the Parties of its concerns, the Parties will engage in

further discussions and make best efforts to agree on further submissions to the AUC to address those concerns.

PART II – THE AGREED FACTS AND ATCO ELECTRIC’S ADMITTED CONTRAVENTIONS

10. The Parties agree that the Agreed Statement of Facts (**ASF**) attached as **Appendix “A”** is included as part of this Settlement and sets out the facts to which the Parties agree and admit for the purposes of the Proceeding as well as the contraventions admitted by ATCO Electric. The Parties agree the AUC can accept the facts set out in the ASF as true and proven in the Proceeding.

11. Based on the facts contained in the ASF, and as expressly acknowledged at paragraph 114 thereof, ATCO Electric admits that it has contravened the *Electric Utilities Act* by:

- (a) with respect to the Valard Accrual Disclosure Issue, failing to fulfil the duties and obligations imposed upon it as an electric utility owner and operator in Alberta, which among other things, require that the information ATCO Electric provides in its applications, filings and other representations before the AUC be honest, true, accurate, and not misleading, either expressly or by omission (**duty of candour**), in respect of the 2015-2017 Deferral Account Proceeding (AUC Proceeding 24375) (“**2015-2017 DAP**”), and failing to comply with Direction 11 issued in Decision 21206-D01-2017, in respect of the 2015-2017 DAP; and

- (b) with respect to the Beaver River Camp Issue, failing to fulfil its duty of candour, in respect of the 2013-2014 Deferral Account Proceeding (AUC Proceeding 23114), and the 2015-2017 DAP.

(together, the **Contraventions**).

12. Enforcement staff agree to not undertake any further prosecutions or commence any further enforcement proceedings against any ATCO affiliated entities or individuals relating to the Valard Accrual Disclosure Issue, the Beaver River Camp Issue, and the Navigant/Ankura Costs Error, provided that ATCO Electric complies with the terms of the Settlement and any related decision and orders made by the AUC.

PART III – JOINT SUBMISSION ON PENALTY AND COSTS

13. The Parties will jointly request that the AUC issue a decision accepting the Settlement without variation and that the AUC issue an order (**Order**) requiring ATCO Electric to:

- (a) pay an administrative penalty in the amount of THREE MILLION (\$3,000,000) pursuant to subsections 63(1)(a) and 63(2) of the *Alberta Utilities Commission Act*, in respect of the Contraventions. The payment may be made by wire transfer, certified cheque or bank draft made out to the General Revenue Fund of Alberta and delivered to the AUC within 30 business days of the date of the Order;

- (b) refund the amount of FOUR MILLION (\$4,000,000) to customers via a billing adjustment to the AESO in the billing cycle that follows the Commission's approval of this Settlement, should such approval occur;
- (c) pay the invoiced costs of Enforcement staff's external legal counsel for the investigation and hearing of this Proceeding, on a full indemnity basis, pursuant to section 66 of the *Alberta Utilities Commission Act*, in the form of a wire transfer, certified cheque or bank draft made out to the Alberta Utilities Commission and delivered to the AUC within 30 business days of the date of the Order.

14. ATCO Electric shall not claim or seek to recover any of these amounts in any AUC proceeding.

DATED this 24th day of June, 2024

**Alberta Utilities Commission
Enforcement Staff**

ATCO Electric Ltd.

Per: Parvez Khan
Parvez Khan, Director, Compliance
and Enforcement
AUC Enforcement staff

Per: Melanie Bayley
Melanie Bayley, President

Date: June 21, 2024

Date: June 24, 2024