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ALBERTA UTILITIES COMMISSION

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

PBR-Plans - Rate Adjustment

Application

This proceeding was a review initiated by the Alberta Utilities Commission (“AUC”) under the reopener provisions of the ATCO Electric Ltd. (“AE”) and ATCO Gas and Pipelines Ltd. (“AG”), (collectively, “ATCO Utilities”) performance-based regulation (“PBR”) plans for the 2018-2022 period (“PBR2”).

Decision

The AUC found that, in 2021 and 2022, the PBR2 plans of the ATCO Utilities did not operate as intended and that their operation for those years was inconsistent with the incentives inherent in PBR. This resulted in the 2021 and 2022 rates the ATCO Utilities charged not being just and reasonable since customers were required to pay rates without receiving the benefit of a more efficient utility service. The AUC decided to reopen the ATCO Utilities’ PBR2 plans and conduct a separate phase two proceeding to determine the quantum of the remedy and the mechanism for the implementation of the remedy.

Pertinent Issues

Background

AE and AG are regulated by the AUC under a performance-based regulation. PBR is intended to create incentives for regulated utilities to seek out ways to continue to deliver safe and reliable utility service at a lower cost by adopting more efficient business practices. If successful, they retain the increased profits generated by those cost reductions over a longer period compared to the cost-of-service regulation. However, those cost savings or other benefits must be allocated between the utilities and their customers.

The AUC implemented a PBR framework for the 2013-2017 term (“PBR1”) in *Decision 2012-237*. The AUC established PBR plans for the 2018-2022 term in *Decision 20414-D01-2016 (Errata)* and for the 2024-2028 term (“PBR3”) in *Decision 27388-D01-2023*.

For all PBR2 plans, an achieved return on equity (“ROE”) that is 500 basis points above or below the approved ROE in a single year, or 300 basis points above or below the approved ROE for two consecutive years is sufficient to warrant consideration of reopening and reviewing a PBR plan. The reopener provisions were an essential element of the PBR2 plans, which acted as a safeguard against unexpected results, including results that would have a material impact on a utility or its customers when a problem arises in the design or operation of the plan.



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ATCO Utilities

The ATCO Utilities triggered the reopener provisions of their PBR2 plans by exceeding the two consecutive-year 300 basis point threshold for 2021 and 2022 and the single-year 500 basis point threshold for 2022. The scope of the reopener provisions included both PBR design and operational problems. Returns that trigger the reopener provisions are not sufficient to demonstrate that there is a problem with the PBR plan. Consequently, the first phase of the reopener proceeding is in the nature of an inquiry and no party bears the onus to demonstrate whether there is a problem with a PBR plan that cannot be resolved without reopening and reviewing the plan.

This proceeding was the first phase of the reopener proceeding where the AUC assessed whether to reopen the PBR2 plans of AE and AG. The AUC considered whether there was a design flaw in the plans, whether there were operational problems with the plans, and whether any operational problems could be addressed through rebasing or other features of the PBR2 plans.

Design Flaw

Regarding the design of the PBR2 plans, the AUC concluded that the evidence in the proceeding did not support the conclusion that there was a flaw in the design of the ATCO Utilities' PBR2 plans.

Operational Problems

With regard to the operation of the PBR2 plans, the AUC found that the evidentiary gap between the ATCO Utilities' total cost savings and the cost savings that were either quantified or attributed to specific efficiency gains, was inordinately large. The magnitude of the savings that were neither quantified nor attributed to particular projects, programs or initiatives by the ATCO Utilities led the AUC to conclude that the savings achieved could not be attributed to utility-driven efficiency gains resulting from the incentives intended under PBR. The AUC, therefore, found that the PBR2 plans of AE and AG did not operate as intended in 2021 and 2022. As a result, the rates were not just and reasonable in those years because customers were required to pay rates without receiving the benefit of a more efficient utility service.

Addressing the Operational Problems

With regard to whether these operational problems could be addressed through rebasing or other features of the PBR2 plans, the AUC found that the exercise of rebasing was different from the exercise of determining whether a reopener was warranted and that the sharing of benefits through rebasing was not dispositive of whether or not there was a problem in the design and operation of a prior PBR plan. The AUC determined that other plan features were also not available to address the identified operational problems, given that nearly two years passed since the plans concluded. Consequently, the AUC held that there was a problem with the operation of the ATCO Utilities' PBR2 plans that could not be resolved without reopening and reviewing the plans.

Next Steps

Having determined that there was a problem with the PBR2 plans of both AE and AG, which warranted reopening those plans, the AUC set out the scope and preliminary process steps for phase two of the reopener review ("Phase 2"). The AUC stated that it will create a new Phase 2 proceeding, in which it will pre-register the ATCO Utilities and any interveners who wish to participate will be registered upon request.

In Phase 2, the AUC will reopen the ATCO Utilities' PBR2 plans. The scope of Phase 2 will be the determination of the appropriate remedy to address the problems identified in the first phase of the reopener proceeding. The AUC also authorized and encouraged the parties to commence a negotiated settlement process ("NSP") pursuant to *Rule 018: Rules on Negotiated Settlements* ("Rule 018") to attempt to reach an agreement on a proposed remedy that addresses the identified problems. The AUC did not exclude any matters from the NSP.

The AUC will provide details of further process steps following notice of whether the parties engaged in settlement discussions and, if so, once the outcome of that process becomes known. Phase 2 will address the quantum of the remedy and the mechanism for the implementation of the remedy. As such, the process steps will seek evidence and submissions that: (i) provide the proposed quantum of any adjustments, in dollars, broken out by utility, including to which period(s) they apply; (ii) explain the mechanism/methodology used to effect the remedy (including all necessary assumptions); (iii) clearly specify what evidence from the first phase is relied on



to support or justify the proposed remedy and recovery mechanism; and (iv) justify the choice of methodology/mechanism, including an explanation of

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how it results in a just and reasonable outcome for the utilities and their customers.