ATCO Electric Transmission and ATCO Pipelines

Application for ATCO Electric Transmission 2015-2017 and ATCO Pipelines 2015-2016 Licence Fees

June 30, 2016

Alberta Utilities Commission
Decision 21029-D01-2016
ATCO Electric Transmission and ATCO Pipelines
Application for ATCO Electric Transmission 2015-2017 and
ATCO Pipelines 2015-2016 Licence Fees
Proceeding 21029

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Fifth Avenue Place, Fourth Floor, 425 First Street S.W.
Calgary, Alberta
T2P 3L8

Telephone: 403-592-8845
Fax: 403-592-4406

Website: www.auc.ab.ca

Contents

1 Introduction

1. In a letter dated October 28, 2015, the Alberta Utilities Commission directed ATCO Electric Transmission (AET), a division of ATCO Electric Ltd. (ATCO Electric), and ATCO Pipelines (AP), a division of ATCO Gas and Pipelines Ltd. (ATCO Pipelines), (collectively, the ATCO Utilities) to file a joint licence fee application with the Commission by November 16, 2015. The application was to include all licence fee related evidence, rebuttal evidence and responses to information requests (IRs) filed in proceedings 3577[1] and 20272.[2]

2. On November 16, 2015, ATCO Electric and ATCO Pipelines filed a joint application requesting approval, for inclusion in revenue requirement, of amounts corresponding to licence fees they are required to pay to ATCO Ltd. for the use of intangibles and associated benefits that they receive from ATCO Ltd. ATCO Electric forecast licence fees of $2.7 million in 2015, $3.1 million in 2016 and $4.7 million in 2017. ATCO Pipelines forecast licence fees of $0.6 million for 2015 and $0.7 million for 2016. Licence fees are subject to placeholder treatment in proceedings 3577 and 20272.[3]

3. On November 17, 2015, the Commission issued notice of the application. Parties previously registered in proceedings 3577[4] and 20272[5] were pre-registered in Proceeding 21029. In accordance with the Commission's October 28, 2015 letter, interveners were directed to file their original intervener evidence and responses to IRs from proceedings 3577 and 20272 on the record of Proceeding 21029 by November 23, 2015. Any other parties who wished to participate in the proceeding were required to file submissions by November 27, 2015.

4. On November 23, 2015, the Office of the Utilities Consumer Advocate (UCA) filed its intervener evidence and related IR responses originally filed in Proceeding 3577. The following day, the Commission received intervener evidence and related IR responses filed in Proceeding 3577 from the Consumers' Coalition of Alberta (CCA).

5. On November 25, 2015, the CCA filed a letter with the Commission addressing differences between the ATCO Electric and the ATCO Pipelines licence fee evidence and the fact that proceedings 20272 and 3577 were at different stages in their respective considerations at

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1 ATCO Pipelines 2015-2016 General Rate Application.
2 ATCO Electric Transmission 2015-2017 General Tariff Application.
3 Licence fees placeholders for ATCO Pipelines are $0 in 2015 and 2016; and for ATCO Electric Transmission $2.7 million in 2015, $3.1 million in 2016 and $4.7 million in 2017.
4 Office of the Utilities Consumer Advocate, The City of Calgary, NOVA Gas Transmission Ltd., Nexen Energy ULC, Canadian Association of Petroleum Producers, the Consumers' Coalition of Alberta, Cenovus Energy Inc., Encana Corporation.
5 AltaLink Management Ltd., Alberta Direct Connect Consumers Association, Industrial Power Consumers Association of Alberta, the CCA, the UCA, Calgary.

the time this proceeding was initiated. Given that the two proceedings were merged at different stages in their respective process schedules, the CCA requested that the Commission clarify how these differences could be dealt with procedurally. The CCA suggested the following two options:

> - Determine that only one set of ATCO's applications will be used – that being AP's [ATCO Pipelines]. The only reason that ATCO Pipelines' is selected is that evidence has been filed on that application. In the CCA's view this would simplify things greatly rather than having two similar but not identical applications on the record. However it does leave the question of how to deal with the two sets of information requests and responses. Given the similarities between the two pieces of evidence the CCA would prefer both sets of information responses remain on the record.
>
> OR
>
> - A process step to ask information requests to ATCO Pipelines and ATCO Electric Transmission as to what differences, if any, there are between the ATCO Pipelines and ATCO Electric Transmission applications.
> - This would be followed by a process step that allowed for interveners to file evidence on the ATCO Electric Transmission application in order to bring the evidentiary record to the same place on the two proceedings.[6]

6. The Commission set the process schedule below to examine the licence fee issue and any potential differences in evidence filed in proceedings 20272 and 3577.

Process step	**Deadline dates**
IRs to ATCO Electric and ATCO Pipelines	December 10, 2015
ATCO Electric and ATCO Pipelines responses to IRs	December 23, 2015
Intervener evidence	January 5, 2016
IRs on intervener evidence	January 15, 2016
Responses to IRs on intervener evidence	January 28, 2016
Rebuttal evidence	February 8, 2016
Oral hearing	February 17-19, 2016

7. In a letter dated January 22, 2016, the UCA objected to what it considered to be new evidence (amendments to Intellectual Property License Agreements (IP agreements) with ATCO Ltd.) filed by the ATCO Utilities on January 14, 2016. The UCA noted that ATCO Electric and ATCO Pipelines' new evidence comprised two amending agreements that:

- rename the IP agreements as License Fee Agreements
- amend the IP agreements to expressly require ATCO Ltd. to "use commercially reasonable efforts to provide … access to … Group Economies" to both ATCO Electric and ATCO Pipelines
- define the benefits that constitute "Group Economies"

8. The UCA submitted that the new evidence appeared to alter the ATCO Utilities' case at a time in the process after which interveners have filed evidence that directly addressed the

[6] Exhibit 21029-X0034, CCA process letter.

absence of "group economies," as a defined term in the IP agreements. The UCA requested that the Commission grant it leave to file minor amendments to its evidence in response to this evidence.

9. On January 26, 2016, the CCA filed a letter with the Commission in support of the UCA's motion.

10. On January 27, 2016, the Commission ruled that the information filed by ATCO Electric and ATCO Pipelines on January 14, 2016, constituted new evidence and granted the UCA, and other interveners, permission to file supplemental evidence restricted to the amending agreements by January 28, 2016. ATCO Electric and ATCO Pipelines were also permitted to respond to any additional evidence tendered by interveners in their respective rebuttal submissions.

11. At the close of the oral hearing, the Commission set the deadline dates for argument and reply argument as March 18, 2016, and April 1, 2016, respectively.

12. The Commission considers that the record for this proceeding closed on April 1, 2016.

13. In reaching the determinations contained within this decision, the Commission considered all relevant materials comprising the record of this proceeding, including the evidence and argument provided by each party. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

2 Background

14. On October 5, 2015, ATCO Pipelines filed rebuttal evidence on behalf of itself and Gowling Lafleur Henderson LLP (Gowlings) in Proceeding 3577[7] that asserted that there was a domestic *Income Tax Act* obligation requiring ATCO Ltd. to charge ATCO Pipelines a licence fee.

15. In Proceeding 3577, the Commission received a motion[8] on October 7, 2015, from the UCA requesting that the Commission either:

(a) strike the portion of ATCO Pipelines' rebuttal evidence that dealt with the domestic *Income Tax Act* obligation as it relates to the applied-for licence fee, or in the alternative,

(b) provide parties with sufficient time to consider the new material, obtain advice, retain experts, potentially tender responding evidence and prepare cross-examination for the oral hearing on the new material. The UCA submitted that this may include the option of rescheduling a portion of the hearing or making use of another proceeding where the licence fee is at issue.

[7] ATCO Pipelines 2015-2016 General Rate Application.
[8] Exhibit 3577-X0269.

16. The UCA objected to the portion of the rebuttal evidence that dealt with domestic *Income Tax Act* obligations. It claimed that it was both new material and that it had been previously requested in IRs, but had not been provided. The UCA maintained that interveners were prejudiced by the introduction of new material within days of the commencement of the oral hearing.

17. On October 9, 2015, the Commission ruled that certain portions of ATCO Pipelines' rebuttal evidence amounted to new evidence on potential domestic tax obligations that may require ATCO Ltd. to charge ATCO Pipelines a licence fee. The Commission found that a separate process was required to allow interveners adequate time to consider this material, to assess whether additional intervener evidence was required, and for ATCO Pipelines to provide any necessary rebuttal. Accordingly, the Commission removed the licence fee issue from Proceeding 3577, and assigned a placeholder of $0 to be included in ATCO Pipelines' 2015-2016 revenue requirement until a determination could be made regarding the recovery of licensing fees in a separate proceeding.

18. In the same ruling, the Commission recognized that ATCO Electric had proposed a licence fee in its 2015-2017 general tariff application (GTA), Proceeding 20272. As a result, the Commission requested submissions from parties, by October 22, 2015, on the process and timing to consider jointly the issue of licensing fees for both ATCO Pipelines and ATCO Electric.

19. In a letter dated October 28, 2015, the Commission determined that the most efficient process to address licence fee costs would be to hold a common licence fee proceeding, including an oral hearing. This would allow the Commission to address the licence fee issues related to both the ATCO Electric GTA and the ATCO Pipelines general rate application (GRA) in a single application. Consequently, ATCO Electric and ATCO Pipelines were directed to file a joint licence fee application with the Commission by Monday, November 16, 2015.

3 Details of the application

20. The ATCO Utilities requested that the Commission approve certain amounts attributable to licence fee payments in their respective revenue requirements. These licence fees, which are payable to ATCO Ltd., are intended to compensate that company for its subsidiaries' use of intangibles and associated benefits that they receive as a result of their relationship with their indirect parent. The intangibles covered by the licensing fees include purchasing power benefits and economies of scope and scale, as well as the benefit of the ATCO Ltd. name, trademarks, intellectual property and know-how.[9]

21. ATCO Ltd. imposed licence fees on all of its subsidiaries, regulated and unregulated, beginning on January 1, 2015. As of that date, each of ATCO Ltd.'s subsidiaries have been required to pay a fee associated with the fair market value of benefits received, which was set at one per cent of the operating profit of the applicable subsidiary. According to ATCO Ltd., these fees were established to comply with Canadian tax law requirements to ensure that it realizes fair

[9] Exhibit 21029-X0003, AET and AP application, paragraph 1.

market value for all the benefits it provides to its subsidiaries. ATCO Ltd. explained that the amount of the licence fee has been set using established transfer pricing concepts.[10]

22. ATCO Ltd. engaged Gowlings to provide background information on the transfer pricing issues underlying its decision to charge the licence fees (Gowlings report).[11] The Gowlings report, which was concluded in December 2014, indicated that companies that provide benefits similar to the intangibles to third parties levied a range of charges from one per cent to 10 per cent of operating profit.[12]

4 Discussion of issues

4.1 The ATCO Utilities

23. The ATCO Utilities submitted that their request to include the licence fee amounts in their respective revenue requirements had been fully justified. They claimed that the evidence demonstrated that the net benefits to customers derived from their use of ATCO Ltd. intangibles far outweigh the licence fee amounts. In doing so, they specifically pointed to valuations of a subset of benefits quantified by Ernst & Young Canada LLP (E&Y) and Aon Canada (AON) regarding financing and insurance cost savings, respectively.

24. Based on E&Y's analysis, ATCO Electric's financing cost savings, as a result of being able to access financing at the CU Inc. level, is in the order of $9.2 million for 2015, $10.3 million for 2016 and $10.5 million for 2017. Similarly, ATCO Pipelines' financing cost savings, as a result of being able to access financing at the CU Inc. level, is in the order of $4.4 million for 2015 and $5.5 million for 2016.[13]

25. The ATCO Utilities added that the AON analysis demonstrated that ATCO Electric's and ATCO Pipelines' savings on insurance costs as a result of leveraging the purchasing power and diversification offered by the ATCO Group are $1.1 and $1.6 million, per year, respectively.[14]

26. The ATCO Utilities submitted that payment of the licence fees to ATCO Ltd. for access to these additional benefits is consistent with the expectation that utilities seek cost efficiencies that result in net benefits to customers in providing utility service.[15]

27. The ATCO Utilities asserted that the Commission has long recognized the stand-alone principle, which acts to guard against cross-subsidization when dealing with affiliate transactions. They point out that concerns of cross-subsidization can operate in either direction, subsidization by the regulated utilities of any affiliated company, whether regulated or not, or, subsidization of the regulated utilities by any other affiliate, whether regulated or not. In their view, it would be unreasonable and unfair, and constitute cross-subsidization, if ATCO Ltd. were

[10] Exhibit 21029-X0003, AET and AP application, paragraphs 2-4.
[11] Exhibit 21029-X0002, Appendix A – AP 2015-2016 GRA License Fee Record, PDF pages 78-86.
[12] Exhibit 21029-X0003, AET and AP application, paragraph 5.
[13] Exhibit 21029-X0003, AET and AP application, paragraphs 18-19.
[14] Exhibit 21029-X0003, AET and AP application, paragraph 22.
[15] Exhibit 21029-X0119, AET and AP argument, paragraphs 3, 4 and 7.

expected to provide substantial benefits to any of its affiliates without receiving appropriate compensation.[16]

28. Since 1999, ATCO Electric and ATCO Pipelines, and the other ATCO Ltd. subsidiaries, have been paying an amount to ATCO Ltd. for corporate signature rights to cover the use of the ATCO name, trademarks and know-how. This amount is not intended to compensate ATCO Ltd. for the provision of access to the financing and insurance cost-related group economies identified by the ATCO Utilities in this application.[17] In addition, the licence fee and underlying intangibles are also distinct from the corporate head office costs that are allocated by ATCO Ltd. to its subsidiaries.[18]

29. ATCO Ltd. initially retained Gowlings to provide an opinion on the necessity of charging its affiliates a licence fee. The Gowlings opinion, completed on February 4, 2013, advised that ATCO Ltd. should charge one of its international affiliates, ATCO Australia, a licence fee to help demonstrate compliance with Section 247 of the Canadian *Income Tax Act*, which sets out transfer pricing requirements.[19]

30. Subsequently, Gowlings also advised that there was a requirement, pursuant to Section 69 of the Canadian *Income Tax Act*, that domestic inter-affiliate transactions must also be completed on the same fair market value/arm's-length pricing basis. The applicants explained that while ATCO Ltd. and Gowlings clearly understood that Section 247 of the *Income Tax Act* did not directly apply to domestic affiliated transactions, it was clear that the fair market value/arm's-length pricing derived by the application of transfer pricing rules provided a fair and reasonable basis for the determination of an appropriate licence fee amount to be charged in the domestic Canadian context.[20]

31. Gowlings made pricing recommendations for the licence fee using Royalty Stat, a database used by the Canada Revenue Agency (CRA) for the same purpose. Gowlings employed its standard approach to the determination of an appropriate transfer price and applied standard criteria to narrow down the group of comparators. In the result, it confirmed that a licence fee of between one and 10 per cent of operating profits would be appropriate in the circumstances. ATCO Electric and ATCO Pipelines argued that the comparables used in Gowlings' analysis were indicative of a market price that participants would pay for the common basket of intangibles.[21] [22]

32. Neither ATCO Electric nor ATCO Pipelines agreed that the pricing of the licence fee could be subject to an offset in recognition of the benefit their regulated operations provide to the ATCO Group as a whole. They claimed that such an approach was inconsistent with the provision of intangibles by a parent company to its subsidiaries, and in this case, fails to recognize that the subject intangibles and the benefits derived therefrom would not exist without the creation and coordination role played by ATCO Ltd.[23] Because these intangibles, including

[16] Exhibit 21029-X0119, AET and AP argument, paragraphs 8-9.
[17] Exhibit 21029-X0119, AET and AP argument, paragraph 14; and Transcript, Volume 1, pages 25 and 190.
[18] Transcript, Volume 1, pages 62-63, 126 and 205.
[19] Exhibit 21029-X0107, Gowlings Australia Memorandum.
[20] Exhibit 21029-X0119, AET and AP argument, paragraphs 10-12.
[21] Exhibit 21029-X0119, AET and AP argument, paragraph 36.
[22] Transcript, Volume 1, page 188; Volume 2, pages 350, 354 and 383.
[23] Exhibit 21029-X0119, AET and AP argument, paragraph 15.

group economies, would not exist without ATCO Ltd., the subsidiaries are not entitled to receive an offset because they did not create the current structure that leads to the benefits achieved.[24]

33. Gowlings explained that in parent/subsidiary relationships, it is the parent that creates, coordinates and provides the intangibles for the benefit of the subsidiaries and, therefore, it is the parent company that determines the quantum of the licence fee to be charged to the subsidiaries. ATCO Electric and ATCO Pipelines explained that the engagement of E&Y and AON to quantify the benefits the companies obtain with respect to financing and insurance represents a measure of due diligence to ensure the benefits they receive outweigh the fees charged by ATCO Ltd.[25]

4.2 The CCA

34. The CCA noted that the issue in this application is solely whether amounts paid by ATCO Electric and ATCO Pipelines on account of the ATCO Ltd. licence fee, will be included in the companies' respective revenue requirements.[26] It argued that because the proposed licence fee is not supported by any costs, nor required for utility service, and there is no risk of a tax liability arising if customers do not pay the licence fee, the application should be dismissed. The CCA submitted that Mr. Hill, partner of tax services at Gowlings, confirmed that there is no tax concern in the following exchange with the panel chair:

> 17 Q. So why in this analysis do you not refer at all to Section 69 since it was prepared for purposes of a domestic situation?
>
> A. MR. HILL: Because it's not a tax problem. I mean, from my perspective, there's been -- I was providing advice on what the proper compensation would be for the intangibles from a transfer pricing perspective. If it was ever going to be challenged, it would be challenged by CRA under Section 69. It was never an issue from a perspective [sic]. It's an issue of being compliant with transfer pricing rules domestically between intercorporate -- between two corporations. It was never driven in my part by CRA is going to do X, Y, Z to you.[27]

35. The CCA argued that the proposed charge is merely an inter-company charge and that, because the regulated companies are paying their share of costs through corporate allocations, no further fees are required for utility service. In paragraph 53 of its evidence, the CCA stated that:[28]

> 53. The Commission has examined these issues in the past. The Commission stated that customers are not harmed as long as only the incremental costs of a service or asset are recovered.
>
> > The Board notes ATCO's view that customers are not harmed as long as the non-regulated affiliate pays the utility's incremental cost of providing service. The Board agrees, that on a short-term basis, customers are not harmed as long as the fee charged covers the short-term incremental costs of providing service. The Board also agrees that on a long-term basis customers are not harmed if the fee charged covers the long-term incremental costs of providing service.[23]

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[24] Transcript, Volume 1, page 254; Volume 2, page 287.
[25] Exhibit 21029-X0119, AET and AP argument, paragraph 39.
[26] Exhibit 21029-X0115, CCA argument, paragraphs 3-4.
[27] Exhibit 21029-X0115, CCA argument, paragraph 12.
[28] Exhibit 21029-X0033, CCA evidence.

[23] Decision 2002-069 ATCO Group Affiliate Transactions and Code of Conduct Proceeding Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues, pp. 82-83

36. The CCA claimed that its position in this regard accords with the Commission insofar as in Decision 2008-100,[29] the ATCO Electric Ltd. Stand Alone Study,[30] the Commission stated:

> **3.2 Stand Alone Study**
> … With respect to a stand alone utility, the directors and management have responsibilities to ratepayers that include the following:
> - Capturing all efficiencies that will reduce the cost of utility service to ratepayers.
> - Accessing the lowest cost financing at the best terms available to finance utility operations.
> - Maintaining the safe, efficient and reliable operation of the utility.
>
> If a parent organization assumes control of the management of its subsidiary utility, it also assumes management's responsibilities to ratepayers.

37. Therefore, the CCA argued that ATCO Ltd. management has the same responsibilities cited from Decision 2008-100.

38. ATCO Electric and ATCO Pipelines indicated that the benefits from the intangibles are all due to ATCO Ltd. The CCA disagreed with this assertion and stated in evidence that no analyses have been done to consider how much of the benefit of group purchasing comes from the regulated utilities or to determine whether name recognition comes from the regulated utilities rather than the unregulated businesses.[31]

> 51. …
>
> > 42. ATCO indicated that no analysis had been undertaken to "consider how much of the benefit of group purchasing is coming from the ATCO companies regulated by the Alberta Utilities Commission. As shown above, the regulated companies have approximately 75% of the assets (which have to be purchased) and will have a majority of the sales (and presumably the majority of the associated purchases) therefore the bulk of the benefits from group purchasing must come from the regulated utilities, not the unregulated companies and ATCO Ltd.
> >
> > 43. Similarly, ATCO has not done any analysis "to determine whether in fact the name recognition comes from the AUC regulated businesses rather than the unregulated businesses" However, S&P did observe that the regulated utilities "are very closely linked to the group's brand and reputation." "[C]losely linked" is interpreted as being the linkage akin to a two-way street – ATCO Ltd. also benefits from the name recognition of its unregulated utilities. [Footnotes omitted.]

[29] Decision 2008-100: ATCO Electric Ltd., Stand Alone Study, Proceeding 18, Application 1562230-1, October 21, 2008.
[30] Exhibit 21029-X0115, CCA argument, paragraph 32.
[31] Exhibit 21029-X0115, CCA argument, paragraph 51.

39. The CCA argued that there are no incremental costs for incremental services and that to the contrary, the fact that the bulk of the benefits arise from the regulated utilities themselves means that the application should be denied.[32]

40. The CCA also argued that ATCO Electric and ATCO Pipelines could obtain the same benefits that they claim to realize as a result of their association with ATCO Ltd. through coordination with one another. It also points to the fact that CU Inc., which holds only regulated utilities, has a higher stand-alone debt rating than ATCO Ltd. In the CCA's view, this suggests that, from a debt perspective, there would be no negative effect if a centralized utility-based organization were realized.[33]

41. The CCA argued that Gowlings' use of the Comparable Uncontrolled Price (CUP) method in its determination of an appropriate transfer price was inconsistent with the conditions outlined in CRA 87-2. In its view, Gowlings' selection criteria have nothing to do with the CUP method. For example, the Gowlings' method does not look at size because "data on revenues and operating profits are often not specifically referenced in license or royalty agreements."

42. The CCA explained that the CUP method requires the use of relevant information and acknowledges that if relevant comparable information is not available, then a CUP approach cannot be used. The CCA argued that Gowlings ignored this fact and, instead, continued using the data provided by its economist, whether it was relevant or not.[34]

43. The CCA explained that the CUP approach, which is rigorous, requires the demonstration of buying and selling of similar products. However, during the hearing, the applicants confirmed that the products under consideration for the licence fee are not available in the marketplace:

> Q. If you turn the page to the top of page 3, it continues: (as read)
> "The stand-alone study is an independent verification of the reasonableness of these allocated costs. This package of services/functions is not competitively available in the marketplace."
>
> Q. And you agree still today that that package is not available in the marketplace? Yes?
>
> A. MR. GRATTAN: I would agree with that.[34]

[34] Transcript pages 186- 187 quoting from Exhibit 103 PDF page 3 ID 18 ATCO ELECTRIC LTD. 2007-2008 GENERAL TARIFF APPLICATION SUPPLEMENTARY FILING – STAND ALONE STUDY

44. The CCA argued that because the CUP method requirements were, in fact, too stringent for the applicants' purposes, they ultimately obtained an opinion and analysis that purported to be a CUP analysis when it was not.

45. The CCA argued that there was no meaningful information on the record to show how products that are bought and sold by a large conglomerate such as ATCO Ltd. compare to the

[32] Exhibit 21029-X0115, CCA argument, paragraph 55.
[33] Exhibit 21029-X0115, CCA argument, paragraph 41.
[34] Exhibit 21029-X0115, CCA argument, paragraphs 59-63.

selected comparators.[35] Further, the applicants did not identify a single company that could be considered to be comparable to either ATCO Electric or ATCO Pipelines, such as "TransCanada, TransAlta, Enbridge, Fortis, AltaGas, EPCOR" on the basis of similar costs.[36]

46. The CCA also suggested that the applicants had confirmed that the subject licence fees had been imposed by, but not negotiated with, ATCO Ltd. It referred to the following exchange with Commission counsel in doing so:

> Q. I believe we heard yesterday that it was sometime in 2014 that both ATCO Electric Ltd. and ATCO Pipe were informed by ATCO Ltd. that the license **fee would be imposed**; is that right?
> A. MS. PROCYSHYN: That's fair.[37] [Emphasis added by the CCA.]

47. The CCA argued, based on the above, that there was no negotiation with respect to the licence fees, no questioning of the purposes of the fee, just an acceptance by the utilities that a fee for intangibles was being imposed. Therefore, the CCA claimed that the argument that the fees charged by ATCO Ltd. are comparable to a freely negotiated market price, as is required by the CUP method, should be dismissed.[38]

48. The CCA also pointed to the fact that the applicants had confirmed that there was no difference between signature rights and the licensing of intellectual property except for (a) the inclusion of group economies, which Gowlings did not deal with, and (b) the fee calculation. In the CCA's view, because Gowlings did not deal with group economies, there was no evidence to support the payment of a fee for that aspect of the licence fee. The CCA also argued that because the licence fee for the ATCO name, trademarks and know-how is simply a replacement for signature rights that is just calculated differently, the application should be dismissed because the Commission had already denied the inclusion in revenue requirement of amounts paid to ATCO Ltd. for signature rights.[39]

49. In reply argument, the CCA noted[40] that ATCO Electric and ATCO Pipelines stated the following at paragraph 12 of their argument:

> 12. While ATCO Ltd. and Gowlings clearly understood that Section 247 of the *ITA* [*Income Tax Act*] did not directly apply to domestic affiliated transactions, it was clear that the fair market value/arm's-length pricing derived by the application of transfer pricing rules likewise provided a fair and reasonable basis for the determination of an appropriate License Fee amount to be charged in the domestic Canadian context (Transcript, Vol 1., p. 207).[41]

50. The CCA argued that while it may have been clear to ATCO Ltd., it directly contradicts a statement made by the applicant companies in their application, which stated:

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35 Exhibit 21029-X0115, CCA argument, paragraph 65.
36 Exhibit 21029-X0115, CCA argument, paragraphs 47 and 50.
37 Transcript, Volume 2, pages 282-284.
38 Exhibit 21029-X0115, CCA argument, paragraph 92.
39 Exhibit 21029-X0115, CCA argument, paragraphs 80-81.
40 Exhibit 21029-X0124, CCA reply argument, paragraph 9.
41 Exhibit 21029-X0119, AET and AP reply argument.

> ATCO Ltd. established the license fee in order to comply with international tax law and to ensure that it had appropriately charged all subsidiaries for all the costs and benefits provided by ATCO Ltd.[42]

51. The CCA argued that CRA 87-2, which describes arm's-length pricing for the transfer of intangible property, deals with cross-border transactions, not domestic inter-affiliate transactions.

4.3 Calgary

52. Calgary submitted that the applicants have neither demonstrated that the requested costs are just and reasonable, nor that the intangibles attributed to the licence fee are required for the delivery of utility service to customers or the operation of the utility.[43]

53. Calgary argued that under Section 44(3) of the *Gas Utilities Act*, and Section 12(4) of the *Public Utilities Act*, ATCO Pipelines and ATCO Electric, respectively, bear burdens to demonstrate that any costs they seek to recover in rates are just and reasonable. In Calgary's view, neither company had discharged its respective onus and, therefore, recovery of the applied-for costs must be denied as a matter of law.[44]

54. In Calgary's view, a key issue in this proceeding is whether customers actually receive any measurable or quantifiable benefits from the intangibles to which the licence fee purportedly relates.[45] It argued that the record of the proceeding does not disclose the existence of any benefit to customers associated with the intangibles that would not otherwise be generally available to the ATCO Utilities themselves, acting prudently.[46]

55. Calgary addressed, in turn, each of the benefits alleged to accrue to the ATCO Utilities as a result of their affiliation with ATCO Ltd. They include group economies and benefits of association with the ATCO brand, trademarks and "know-how." Calgary's arguments regarding each of these intangibles is summarized below.

4.3.1 Group economies

56. The applicants claimed that one area of benefit is a reduction in utility operating costs that results in lower costs/rates for customers (e.g., access to lower financing costs, lower insurance premiums and benefits associated with access to a larger labour pool). Calgary argued that the concept of group economies only emerged as a result of a regulatory application made by ATCO Pipelines. It also submitted that the applicants had not made any efforts to negotiate with ATCO Ltd. regarding potential offsets to fees arising from the purchasing power the utilities bring to benefit the entire ATCO Group of companies.[47]

57. Calgary also observed that neither ATCO Electric nor ATCO Pipelines chose to avail themselves of the benefit of independent legal advice when they were made aware that the licence fee would be imposed. Further, subsequent amendments to the licence agreements,

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[42] Exhibit 21029-X0002, Appendix A - AP 2015-2016 GRA License Fee Record, PDF page 2 of 355, lines 13-15.
[43] Exhibit 21029-X0116, Calgary argument, paragraph 14.
[44] Exhibit 21029-X0116, Calgary argument, paragraphs 15-21.
[45] Exhibit 21029-X0116, Calgary argument, paragraph 22.
[46] Exhibit 21029-X0116, Calgary argument, paragraph 14.
[47] Exhibit 21029-X0116, Calgary argument, paragraphs 24-27.

which included references to group economies, were prepared by legal counsel acting for both parties to the transaction. Calgary further submitted that the circumstances surrounding the negotiation of licence fees generally raised concerns with affiliate transactions.[48]

58. With respect to economies arising through debt financing, Calgary argued that because CU Inc. raises debt and subsequently mirrors down the cost of debt to the ATCO Utilities, it is CU Inc. and not ATCO Ltd. that provides any savings with respect to such costs. Calgary further noted that because ATCO Ltd.'s debt is rated lower than that of CU Inc., it puts into question the value to customers of any alleged cost of debt-related economies.[49]

4.3.2 Use of ATCO name

59. Calgary questioned whether the use of the ATCO name and brand actually benefit the applicants. For example, it argued that ATCO Pipelines derives no real benefit from the use of the ATCO name because all its arrangements are with Nova Gas Transmission. Similarly, all of ATCO Electric's arrangements are with the Alberta Electric System Operator, its service area is generally geographic, and its customers are "locked-in."[50]

60. Calgary submitted that the use of the ATCO name and brand arose solely due to the 1999 re-organization of the ATCO Utilities, which was a decision made solely by ATCO Ltd. Consequently, the use of the name was corporately imposed on the utilities and their customers by ATCO Ltd.[51]

4.3.3 Trademarks

61. During the oral hearing, Calgary's counsel questioned whether ATCO Ltd. actually owned, or was legally entitled to licence, many of the trademarks that purportedly brought value to the applicants and benefitted their customers. Calgary submitted that neither ATCO Electric nor ATCO Pipelines had demonstrated prudence or due diligence by confirming that the trademarks in respect of which the licence fee is being charged are actually legally owned by the licensor, ATCO Ltd. Therefore, Calgary submitted that value or weight cannot be ascribed to this claimed intangible and any benefits arising from it.[52]

4.3.4 Know-how

62. ATCO Electric and ATCO Pipelines described know-how as valuable operational and technical systems, including policies and business know-how, and access to research platforms and programs needed to stay abreast of technological improvements. Calgary argued that there is no evidence that demonstrated how, when, to whom, as well as in what manner, or in what way, the applicants' employees have benefitted from any know-how transferred by ATCO Ltd. For example, there was no evidence on the record of any ATCO Ltd. manuals being developed and shared with employees on specific know-how topics; no training by ATCO Ltd. on specific

48 Exhibit 21029-X0116, Calgary argument, paragraphs 27-28.
49 Exhibit 21029-X0116, Calgary argument, paragraphs 29-31.
50 Exhibit 21029-X0116, Calgary argument, paragraphs 33-35.
51 Exhibit 21029-X0116, Calgary argument, paragraphs 36-37.
52 Exhibit 21029-X0116, Calgary argument, paragraphs 39-45.

know-how topics; and no formal and structured access for employees of ATCO Electric or ATCO Pipelines to written or digital materials developed or published by ATCO Ltd.[53]

63. In any event, Calgary submitted that the evidence that supports the quantum and pricing of the licence fees is questionable and cannot be relied upon.[54]

64. Calgary argued that the risk of a tax assessment was overstated and pointed out that neither ATCO Ltd. nor the applicants have taken any steps to confirm the existence or materiality of the claimed risk by obtaining an advance tax ruling.[55] Calgary submitted that there has been a consistent historical pattern of prior licence dealings without assessment. Additionally, Calgary argued that both applicants have been deducting fees charged by ATCO Ltd. for signature rights for income tax purposes since 1999, and that consequently, the risk of a CRA assessment or reassessment of amounts that have been previously claimed by ATCO Electric and ATCO Pipelines for tax purposes is low.[56]

65. Calgary argued that another aspect of the tax risk issue was the applicability of Section 247 of the *Income Tax Act* to transactions between ATCO Ltd. and its domestic subsidiaries. In its view, the UCA's expert tax witness was clear that Section 247 applies between residents and non-residents and cross-border transactions. Therefore, this section does not apply to the transactions between ATCO Ltd. and its domestic affiliates.[57] Calgary submitted that whatever the statutory interpretation might be, the tax risk lies with ATCO Ltd. and not ATCO Electric and ATCO Pipelines.[58]

66. Calgary submitted that the justification of ATCO Electric and ATCO Pipelines for including licence fee amounts in their respective revenue requirements was not adequately supported by evidence.[59] It argued that the comparables used in the Gowlings report resulted in licence fee estimates for baskets of intangibles that did not match those claimed to be provided to ATCO Electric and ATCO Pipelines by ATCO Ltd. Calgary submitted that the fact that Gowlings' witness admitted that an exact match would never be found to the ATCO Ltd. case speaks to the unreliability of the databases and the sampling techniques used and, therefore, the unreliability of the Gowlings evidence.[60]

67. In reply argument, Calgary reiterated that there were no benefits to customers from the use of intangibles and potential savings in, for example, insurance and financing costs that might have otherwise been realized by the ATCO Utilities themselves, assuming they acted prudently.[61]

68. Calgary also questioned whether the use of the ATCO name by the transmission companies should be paid for by customers, when the ATCO witnesses confirmed that it is the distribution customers who are ultimately the end user. Calgary argued that charging customers

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53 Exhibit 21029-X0116, Calgary argument, paragraphs 46-50.
54 Exhibit 21029-X0116, Calgary argument, paragraph 14.
55 Exhibit 21029-X0116, Calgary argument, paragraph 60.
56 Exhibit 21029-X0116, Calgary argument, paragraphs 61-66.
57 Exhibit 21029-X0116, Calgary argument, paragraphs 70-71.
58 Exhibit 21029-X0116, Calgary argument, paragraphs 72-75.
59 Exhibit 21029-X0116, Calgary argument, paragraph 14.
60 Exhibit 21029-X0116, Calgary argument, paragraphs 87-93.
61 Exhibit 21029-X0120, Calgary reply argument, paragraphs 7-9.

for the use of the ATCO name would appear to be double dipping, because ATCO distribution companies pay the licence fees as well. Therefore, it argued, there should only be a single assessment of any licence fee upon customers assuming the fee is reasonable and that the underlying intangibles being licensed are required for the provision of utility service.[62]

69. Calgary argued that there was no evidence that the intangibles provided by ATCO Ltd. were actually required in the provision of utility service. Because there was no evidence on the record that the intangibles are required for the provision of utility service, Calgary submitted that a key criterion had not been met by ATCO Electric and ATCO Pipelines for inclusion of the licence fees in revenue requirement.[63]

70. Calgary restated that the tax risk of ATCO Ltd. was not a relevant factor to consider in determining whether the application should be approved. It argued further that the tax risk of ATCO Electric and ATCO Pipelines was immaterial given that there had been no assessment or reassessment of their respective tax filings since 1999, when the ATCO signature rights regime commenced.[64]

4.4 The UCA

71. The UCA submitted that the licence fee conflicts with the regulatory compact because it attempts to create a return in excess of the authorized return on assets used to provide utility service. The UCA argued that any management fee levied upon ATCO Electric and ATCO Pipelines by ATCO Ltd. should be rejected as unacceptable because it amounts to extra compensation above the approved rate of return.[65]

72. The UCA also submitted the licence fee was not a true cost and, in any event, it was not prudently incurred. The UCA explained that when a utility seeks to have ratepayers provide additional revenue to it, the utility must justify that additional revenue as being either a prudently incurred cost or as part of its reasonable return on capital, which the licence fee is neither.[66] The UCA provided the following reasons:

> The License Fee only arises due to ATCO Ltd.'s choice of corporate structure
>
> …
>
> The License Fee pays for services ATCO Ltd. is required to provide in any event
>
> …
>
> The standalone principle does not apply because the License Fee could not be passed on to customers in a competitive market.[67]

73. The UCA argued that the applicants had not justified the quantum of the licence fee; therefore, the licence fee must be rejected. In its view, ATCO Electric and ATCO Pipelines failed to demonstrate a sufficient link between international transfer pricing principles and fair market value to justify charging international transfer prices to captive domestic customers. The UCA also claimed that the ATCO Utilities had failed to ensure that their own interests were

62 Exhibit 21029-X0120, Calgary reply argument, paragraphs 14-16.
63 Exhibit 21029-X0120, Calgary reply argument, paragraphs 20-23.
64 Exhibit 21029-X0120, Calgary reply argument, paragraphs 24-27.
65 Exhibit 21029-X0118, UCA argument, paragraphs 19-20.
66 Exhibit 21029-X0118, UCA argument, paragraph 28.
67 Exhibit 21029-X0118, UCA argument, paragraphs 29-54.

considered in establishing the quantum of the licence fee because the quantum of the fee is variable, vague and based on comparables that bear no resemblance to their respective circumstances.[68]

74. The UCA submitted that the applicants had not demonstrated the value to ratepayers from the ATCO name, trademarks, intellectual property and know-how. It argued that much of the applicants' justification must be discounted because the know-how provided by ATCO Ltd. amounts to management functions that the executives are required to perform in any event. The UCA argued that once double counting of management expertise was accounted for, all that was left are trademarks and advertising benefits, which are unnecessary for monopoly service providers with captive customer bases. Therefore, the UCA argued, as in past signature rights decisions, the licence fee costs should be rejected because they are not required to provide utility service.[69]

75. The UCA also submitted that the applicants had failed to apply the stand-alone principle when calculating the licence fee. In its view, benefits provided to the ATCO Group as a result of the fact that it includes the applicant companies should be recognized in any licence fee calculation. Because ATCO Group inter-affiliate transactions may put ratepayers at risk of harm from cross-subsidies and uncompetitive practices, economies of scale should compensate ratepayers for such risks. However, the UCA argued that in this case, ATCO Electric and ATCO Pipelines improperly proposed to diminish benefits while retaining the risk. In the UCA's view, both these reasons suggest that the quantum of the licence fee, as applied for, should be set to zero.[70]

76. The UCA argued that the licence fee is not required by the *Income Tax Act*. It submitted that the applicants have been consistently unclear in their analysis regarding this aspect of the case, originally claiming that the requirement to charge the fee was underpinned by Section 247 of the *Income Tax Act* and then seeming to rely on Section 69 of the same statute (while also alluding to other provisions), and finally downplaying tax obligations as a reason for the proposed licence fees. The UCA argued that Mr. Peters' evidence unequivocally demonstrated that neither Section 247 nor Section 69 of the *Income Tax Act* creates an obligation to charge the subject licence fee.[71] For example, Mr. Peters concludes that the preconditions for the application of Section 69 are not met by the licence fee agreements between ATCO Ltd. and the applicants.[72]

77. The UCA further submitted that no other section of the *Income Tax Act* requires ATCO Ltd. to charge the licence fee. It noted that while Gowlings had generally referenced several other anti-avoidance provisions of the *Income Tax Act*, including sections 15, 56 and 246, in support of the licence fee, in its view, the applicability of each of these provisions had been successfully challenged by Mr. Peters.[73]

78. The UCA stated that even if the licence fee were required by the *Income Tax Act*, the requirement to charge the licence fee would stem from the corporate structure that ATCO Ltd.

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[68] Exhibit 21029-X0118, UCA argument, paragraphs 56 and 60-82.
[69] Exhibit 21029-X0118, UCA argument, paragraphs 57 and 83-99.
[70] Exhibit 21029-X0118, UCA argument, paragraphs 58 and 100-122.
[71] Exhibit 21029-X0118, UCA argument, paragraphs 123-160.
[72] Exhibit 21029-X0118, UCA argument, paragraph 135.
[73] Exhibit 21029-X0118, UCA argument, paragraph 162.

has chosen and, therefore, the costs associated with the licence fee should still be denied. It argued that there would be no need to license intellectual property rights or know-how between divisions of a single corporate entity.[74]

79. In reply argument, the UCA further submitted that ATCO Electric and ATCO Pipelines had incorrectly claimed that the intangibles (and the benefits derived from them) would not exist without the creation and coordination role played by ATCO Ltd. and that they had properly sought cost efficiencies resulting in net benefits to customers. In the UCA's view, the applicants would still benefit from name recognition, goodwill, know-how, and economies of scope and scale, even if the management functions currently performed by ATCO Ltd. were performed by the utilities themselves, or by some other entity.[75]

80. The UCA argued that if the Commission allowed ATCO Electric and ATCO Pipelines to recover the licence fee from ratepayers, it would constitute a bonus on the rate of return already given to them.[76]

81. The UCA also emphasized that, in its view, the benefits of the corporate structure chosen by ATCO Ltd. flow both ways, a fact that the utilities did not appear to consider in their analyses. It noted that ATCO Ltd. chose its corporate structure prior to the introduction of the licence fee, which, logically, it would only have done if it anticipated benefits above and beyond those it received when management of the utilities was contained within the utilities.[77]

82. The UCA reiterated that ATCO Electric and ATCO Pipelines had not justified the quantum of the licence fee. It stated that the Gowlings' transfer pricing analysis was unpersuasive and so was its "basket approach" to comparables. The UCA submitted that the industry in which companies operate is relevant to their comparability for the purpose of a transfer pricing analysis. It noted that while the intangibles provided under the purportedly comparable agreements included patents, goodwill, and advertising trademarks may be of substantial value to parties in a competitive market, these same intangibles have virtually nothing in common with the intangibles for which the utilities say ratepayers ought to pay.[78]

83. In their argument, the applicants stated that it is the normal commercial arrangement for a parent company to determine the quantum of the licence fee to be charged to its subsidiaries, and that it is, therefore, appropriate that ATCO Ltd. set the fee for the benefits it is providing. The UCA disagreed and stated that, as a matter of Canadian law, a transfer pricing analysis must consider both the interests of the licensor and the licensee. It also disagreed with the companies' assertion that there simply are no off-setting benefits that flow from the subsidiaries to the parent.[79]

84. The UCA further submitted that, whether or not it is the normal commercial arrangement for a parent company to set the value of a licensing fee, this practice is inappropriate in the regulated context in which ATCO Electric and ATCO Pipelines operate wherein the costs are

[74] Exhibit 21029-X0118, UCA argument, paragraphs 165-170.
[75] Exhibit 21029-X0122, UCA reply argument, paragraphs 7-9.
[76] Exhibit 21029-X0122, UCA reply argument, paragraph 11.
[77] Exhibit 21029-X0122, UCA reply argument, paragraph 17.
[78] Exhibit 21029-X0122, UCA reply argument, paragraphs 19-26.
[79] Exhibit 21029-X0122, UCA reply argument, paragraphs 31-32.

borne by ratepayers. In the UCA's view, "The incentives are simply different in a regulated monopoly than they are in a competitive market. And that difference is of fundamental importance."[80]

4.5 The ATCO Utilities' reply

85. In reply argument, the utilities disagreed with the interveners' assertions that the licence fees are simply another inter-company charge that is already included in head office costs.[81] They maintained that intangibles have never been included in head office costs.

86. ATCO Electric and ATCO Pipelines also noted that Calgary appeared to suggest that they and ATCO Ltd. should not acknowledge a requirement to pay fair market value for domestic affiliate transactions when they have been advised that there is a requirement to do so, because there is little risk of tax reassessment. The applicants argued that Calgary's position is irresponsible and at odds with advice provided by Gowlings on potential tax risk.[82]

87. The applicants further argued that the provision of intangibles and the associated benefits is also entirely consistent with, and is allowed by, the ATCO Group Inter-Affiliate Code of Conduct.[83]

88. Responding to the UCA's characterization of the licence fees as constituting a form of enhanced return, the ATCO Utilities explained that the licence fee charged is a real and actual cost that is legitimately incurred and must be paid for the provision of intangibles, including group economies pursuant to IP Agreements between the parties.

5 Commission findings

5.1 Overview

89. As stated by Mr. Justice Rothstein in *ATCO Gas and Pipelines Ltd. v. Alberta* (Utilities Commission) 2015 SCC45 at paragraph 7:[84]

> [7] In Canadian law, "just and reasonable" rates or tariffs are those that are fair to both consumers and the utility: *Northwestern Utilities Ltd. v. City of Edmonton*, 1929 CanLII 39 (SCC), [1929] S.C.R. 186, at pp. 192-93, per Lamont J. Under a cost of service model, rates must allow the utility the opportunity to recover, over the long run, its operating and capital costs. Recovering these costs ensures that the utility can continue to operate and can earn its cost of capital in order to attract and retain investment in the utility: *OEB*, at para. 16. Consumers must pay what the Commission "expects it to cost to efficiently provide the services they receive" such that, "**overall, they are paying no more than what is necessary for the service they receive**": *OEB*, at para. 20. [Emphasis added.]

90. In this application, the ATCO Utilities requested that, as a consequence of the parental corporate structure, they receive benefits for which ATCO Ltd. requires compensation and which

[80] Exhibit 21029-X0122, UCA reply argument, paragraphs 33-34.
[81] Exhibit 21029-X0121, AET and AP reply argument, paragraph 29.
[82] Exhibit 21029-X0121, AET and AP reply argument, paragraph 46.
[83] Exhibit 21029-X0121, AET and AP reply argument, paragraph 53.
[84] ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission) 2015 SCC45.

should be included in their respective revenue requirements. The principal benefits that they identified were generally:

- lower financing costs
- lower insurance costs
- general purchasing power and associated benefits
- the ATCO name and trademark, intellectual property and know-how

91. In addition, the ATCO Utilities asserted that it was necessary to charge a licensing fee in order to meet the Canadian tax law requirements.

5.1.1 Are licence fees required to be charged to comply with the *Income Tax Act*?

92. ATCO Ltd. has decided, based on advice provided by Gowlings, to charge both its domestic and international subsidiaries a licence fee for the use of various intangibles. The Commission heard evidence that ATCO Ltd. elected to do so in order to demonstrate compliance with Canadian tax laws on transfer pricing. The subject licence fee has been charged by ATCO Ltd. since January 2015 and both ATCO Electric and ATCO Pipelines have been paying the fee since that time. The question in this proceeding is whether the licence fees paid by the applicant companies, which amount to one per cent of their respective operating profits, should be included in revenue requirement as costs reasonably incurred in connection with the provision of utility services.

93. All the participants in this proceeding tendered evidence on whether ATCO Ltd. is obliged to charge its domestic affiliates a licence fee in accordance with Canadian tax law. In their originally filed materials, ATCO Electric and ATCO Pipelines explained that the work conducted by Gowlings on cross-border transactions involving ATCO Australia confirmed that pursuant to Section 247 of the Canadian *Income Tax Act*, ATCO Ltd. is required to charge its international affiliate, ATCO Australia, for the provision of intangibles. They indicated that the same underlying fair market value and "arm's-length" pricing principles governing ATCO Ltd.'s relationship with ATCO Australia are also applicable to domestic inter-affiliate transactions pursuant to Section 69 of the Canadian *Income Tax Act.*

94. However, in subsequently filed responses to information requests, both ATCO Electric and ATCO Pipelines appeared to downplay the tax element of the application with respect to domestic subsidiaries:

> The obvious difference between cross-border and domestic related party transactions is that, in the latter case, the CRA does not generally concern itself with intercompany transactions in the absence of some overall Canadian tax mischief or leakage. But that does not change the scheme of the Act. For example, as indicated above, if a Canadian parent company incurred expenses that were solely for the benefit of its Canadian subsidiary, paragraph 18(1)(a) of the Act would apply to prohibit the deduction of those expenses to the parent company which would end up being punitive in nature (i.e. one-sided adjustment). However, as both entities are taxable entities in Canada and are related

> companies, CRA generally will often turn a blind eye to that transaction, unlike cross-border related-party.[85]
>
> …
>
> ATCO Ltd. became aware of the tax implications described above when ATCO Australia became an ATCO subsidiary. Research conducted by Gowlings clearly indicated that international subsidiaries were required to pay a fair market value license fee for the benefits listed in part (a) and the fee should use appropriate transfer pricing methodology. Although domestic subsidiaries are not required by the Income Tax Act to pay license fees to parent companies, analysis by ATCO Ltd. indicated that subsidization and consistency issues would exist if all subsidiaries received the same benefits and only some paid a license fee. For these reasons, domestic ATCO subsidiaries were required to pay a comparable license fee based on internationally recognized transfer pricing methodologies.[86]

95. The panel chair questioned the applicants' transfer pricing expert, Mr. Hill, on this topic during the oral hearing. Over the course of this exchange, Mr. Hill suggested that the licence fee charged by ATCO Ltd. is not actually underpinned by concerns regarding tax but, is instead, a consistent application of transfer pricing between ATCO Ltd. subsidiaries:

> Q. So when I read this -- well, first of all, you mentioned yesterday you confirmed that Section 247 of the Income Tax Act is for purposes of international cross-border transactions?
>
> A. MR. HILL: The legislation is. Yes, that's correct.
>
> Q. And then the OECD guidelines again deals with cross-border transactions, correct?
>
> A. MR. HILL: OECD cross-border transactions, that's correct.
>
> Q. And both 247 and the OECD guidelines are meant to address related party transactions that cross the border, correct?
>
> A. MR. HILL: That is correct. And they also provide guidance in determining that value. So when we deal with Section 69 of the Income Tax Act, we're utilizing the principles that are enshrined in the Income Tax Act under 247 and determining the value, but it has no basis on the potential assessing of a domestic transaction. So it just sort of gives you guidance on how to determine that value. There's many ways to determine that value, but this is the most recognized internationally in order to determine a value of a transfer price or inadequate consideration.
>
> Q. So to your point, I believe your -- from a domestic purpose -- from a domestic perspective, I think your advice to ATCO was to use Section 69 to say that these transactions have to be documented and that this charge has to go to the Canadian subs, correct?
>
> A. MR. HILL: My advice to ATCO Limited was you're providing a benefit to your subs just like you're doing with Australia and there's a requirement in the Income Tax Act

[85] Exhibit 21029-X0001, Appendix B - AET 2015-2017 GTA License Fee Record, AET-CCA-2015JUN08-095c, PDF page 405.

[86] Exhibit 21029-X0002, Appendix A - AP 2015-2016 GRA License Fee Record, AP-AUC-2015FEB03-095c, PDF page 40.

> that you make sure you receive adequate consideration. How you go ahead and determine that value, I gave the principles that we would normally utilize and provided that advice.
>
> Q. So why in this analysis do you not refer at all to Section 69 since it was prepared for purposes of a domestic situation?
>
> A. MR. HILL: Because it's not a tax problem. I mean, from my perspective, there's been -- I was providing advice on what the proper compensation would be for the intangibles from a transfer pricing perspective. If it was ever going to be challenged, it would be challenged by CRA under Section 69. It was never an issue from a perspective. It's an issue of being compliant with transfer pricing rules domestically between intercorporate -- between two corporations. It was never driven in my part by CRA is going to do X, Y, Z to you. If it's if you don't do it CRA could possibly do that because that's enshrined in the Income Tax Act to deal with the arm's-length principle. But I was advising advice on the value of the benefits of being provided from a domestic company to another company.
>
> A. Mr. GRATTAN: … The tax issue is -- it's there. We've talked a lot about it, but it's not at the heart of what this case is all about. [Emphasis added.][87]

96. Based on the above evidence, the Commission is not persuaded that either Section 247 or Section 69 of the *Income Tax Act* imposes a requirement for ATCO Ltd. to charge its domestic subsidiaries a fee for the use of the identified intangibles. It is likewise unpersuaded that either ATCO Electric or ATCO Pipelines is exposed to tax liability in connection with the imposition of the licence fee.

97. In the Commission's view, the central question is whether the fees paid by the applicants are paid to obtain benefits that are necessary for the provision of utility service to customers. The Commission's consideration of these matters is detailed in the following sections of this decision.

5.1.2 Quantification of the benefits from the ATCO name, trademarks and know-how

98. In the application, ATCO Electric and ATCO Pipelines explained that since 1999, they and the other ATCO Ltd. subsidiaries have been paying an amount to ATCO Ltd. for corporate signature rights to cover the use of its name, trademarks and know-how, but had not factored in benefits derived from group economies.[88]

99. During questioning at the oral hearing, the utilities' witness panel clarified that the January 14, 2016 amendments to the pre-existing Intellectual Property License Agreements, retitled as License Fee Agreements, were largely similar to the corporate signature rights previously considered and denied by the Alberta Energy and Utilities Board, the Commission's predecessor:

> Q. With the bringing in of the licence fee regime, does the corporate signature rights regime persist or is it a replacement?

[87] Transcript, Volume 2, pages 397-401.
[88] Exhibit 21029-X0119, AET and AP argument, paragraph 14; and Transcript, Volume 1, pages 25 and 190.

A. MS. PROCYSHYN: It's a replacement.

Q. It's a replacement, okay. Now, in terms of the differences between the two, once more it's my understanding, based upon what I heard yesterday, that the corporate signature rights are sort of an IP-based fee? It's all based on use of intellectual property. Is that fair?

A. MS. PROCYSHYN: Corporate signature rights were ATCO name, trademarks, and know-how only, not group economies.

Q. So the difference is the inclusion of the group economies rolled into the licence fee?

A. MS. PROCYSHYN: Yes.

Q. That's the difference.

Q. Now, this is a question for -- it might be for Mr. Hill as well. So the corporate signature rights included the ATCO brand trademark and know-how, and that was a certain amount of money that was charged for that. The new fee, when it was valued by Gowlings, resulted in a valuation that was based upon the inclusion of those intangibles only, right?

A. MR. HILL: In general it was trademark, trade name, know-how. But when we value intangibles, we value -- we look at a basket of intangibles.[89]

100. Gowlings and the applicant utilities did not quantify directly the benefits associated with the ATCO Ltd. name, trademarks and know-how.[90] Instead, the Commission understands that the Gowlings report purported to determine a licence fee amount to be charged by ATCO Ltd. to its subsidiaries for intangibles based on a fair market assessment of a basket of intangibles of selected comparators.

101. Consequently, the Commission considers that the reasonableness of the licence fee amount must be assessed in light of the fair market valuation of intangibles performed by Gowlings. The Commission has therefore examined both the overall methodology employed and the actual comparables used to arrive at the suggested fee level of one per cent of operating profits.

102. The ATCO Utilities' evidence was that Gowlings used a CUP methodology to assess the amount of the licence fee. The CUP analysis completed by Gowlings involved a comparison of the intangibles provided by ATCO Ltd. to the intangibles provided by the following companies:

- Showboat Inc. (gaming establishment)
- SA Horizons (computer training establishment)
- The Fonda Group, Inc. (Splash, Party Creations)
- Saddington Ltd. (anti-counterfeiting, product authentication)

[89] Transcript, Volume 2, pages 316-317.
[90] Exhibit 21029-X0003, License Fee Application, PDF pages 7-9.

- EF Marketing (freight transportation and logistics, and produce and distribute merchandise such as pens, buttons and bumper stickers)
- AT&T, with no detail as to what is being licensed apart from the name[91]

103. The valuation methodology used by Gowlings is problematic in several respects. For example, while the Commission understands that intangibles such as patents, goodwill and advertising trademarks are valuable in competitive markets, the Gowlings analysis does not adequately explain how these benefits are also necessary for and valuable to monopoly service providers such as ATCO Electric and ATCO Pipelines. Consequently, the Commission finds that Gowlings has not adequately explained how the intangibles offered by companies in its study are truly comparable to those allegedly provided to ATCO Electric and ATCO Pipelines by ATCO Ltd.

104. The Commission is also concerned that the selection criteria utilized by Gowlings lacked the transparency generally required to test the conclusions of the report, as disclosed in the following exchange that occurred between Mr. Hill and counsel for Calgary, Mr. Evanchuk, during the oral hearing:

> Q. You don't use as a criterion the size of the licensee's or the nature of the licensee's enterprise?
>
> A. MR. HILL: Absolutely. That would be normal criteria.
>
> Q. You do or you don't?
>
> A. MR. HILL: We do. That would be normally a criteria when you're trying to select a comparable. Now, keep in mind –
>
> Q. But that's not on your list here, sir, is it? No?
>
> A. MR. HILL: No.
>
> Q. Why not?
>
> A. MR. HILL: I would have to ask my economist would that be there [sic]. It narrowed it down this way with these comparables. He's a very experienced Ph.D. economist and doing these on a regular basis, and this is based on the comp set that he provided me. This is what was done.
>
> Q. So your -- Gowlings -- sorry, excuse me. Gowlings' retainer sort of sets it up that you'll agree to provide the services to ATCO, the ATCO entity who's sponsoring this report, and then they sort of leave it to you because you're the ones who do this in the field. And this individual, the Ph.D. economist, made the assessment to apply these search criteria, correct?
>
> A. MR. HILL: That is correct.

[91] Exhibit 21029-X0002, Appendix A – AP 2015-2016 GRA License Fee Record, PDF pages 85-86.

> Q. And he also made the decision to exclude the size of the undertaking and the industry of the undertaking?
>
> A. MR. HILL: I don't know if he excluded it or it's in one of these search criteria. It's just not written clearly.[92]

105. The Commission shares Calgary's concern[93] that Mr. Hill was not fully aware of the selection criteria used for the final selection of comparables upon which he was providing his testimony. Consequently, there was very little transparency that would allow the Commission to assess the underlying database used for comparator selection.

106. The Commission has previously identified similar concerns with the probative value of evidence presented in summary form, or in a format that precludes a critical assessment of the underlying methodology. For example, in Decision 2014-169, which determined the ATCO Utilities 2010 Evergreen II proceeding, the Commission made the following observations on the difficulties inherent in assessing the value of evidence prepared using confidential data:[94]

> 272. The Commission considers that the methods used by both expert parties to arrive at a fair market value are, at a high level, generally similar. Both utilize proprietary databases, contract comparisons and information specific to the ATCO Utilities and ATCO I-Tek. However, the differences and questions regarding the data presented, its confidentiality, and its lack of scientific and statistical foundation present the Commission with significant challenges in drawing conclusions.
>
> …
>
> 437. … However, in this case, many of the critical details of the benchmarking performed by both groups of consultants were withheld because the information was considered by them to be competitively sensitive. In addition, the Commission's ability to examine the facts was limited because it has not been the Commission's practice to examine confidential information unless it is also provided to the parties (the applicant and interveners) subject to a confidentiality undertaking. The Commission was also not able to see and compare the contracts selected by the consultants and the individuals who chose the comparator contracts for use by the consultants were not made available for questioning by the Commission. [Footnote omitted.]

107. The Commission was presented with similar difficulties in assessing the probative value of the Gowlings evidence. Consequently, it was unable to assign it more than minimal weight in its assessment of the reasonableness of the licence fee amount.

108. The Commission finds that there is significant uncertainty regarding the nature of the benefits alleged to flow to the utilities by virtue of their association with the ATCO Ltd. brand, and, given this, the ATCO utilities have not persuaded the Commission that the payment of a licence fee is warranted.

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[92] Transcript, Volume 2, pages 386-387.

[93] Exhibit 21029-X0116, Calgary argument, paragraphs 87-93; and Transcript, Volume 2, pages 386-387.

[94] Decision 2014-169: ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.) 2010 Evergreen Proceeding for Provision of Information Technology and Customer Care and Billing Services Post 2009 (2010 Evergreen Application), Proceeding 240, Application 1605338-1, June 13, 2014. Errata released on February 6, 2015.

109. The Commission is not persuaded that the Gowlings report provides any additional evidence that would sufficiently differentiate licence fees from corporate signature rights (the costs of which have previously been denied inclusion in revenue requirement).

110. Based on this evidence, the overall lack of transparency, the lack of explanation of the relevance of the intangibles, and Mr. Hill's admitted unfamiliarity with the selection criteria, the Commission is not persuaded that the methodology used by Gowlings in the determination of the licence fee amount is adequate to support the utilities' position that these amounts represent prudently-incurred costs warranting recovery through rates.

5.1.3 Asymmetrical treatment

111. The Commission is also concerned by the asymmetrical assessment provided by the Gowlings report in this regard. Based on the explanation given by Mr. Hill, this resulted in licence fee costs being borne by customers without a detailed cost/benefit assessment and in a potential conflict between ATCO Ltd.'s interests and those of regulated customers. The Commission notes the discussion between the panel chair and Mr. Hill:

> Q. So let's talk about those benefits then. Did you have any questions about whether there were benefits? Or you just assumed?
>
> A. MR. HILL: In any transfer pricing report you have to rely on what a senior manager tells you about your company, not just ATCO Limited, in any particular company. When you're dealing with brand -- when you're dealing with name recognition, you're dealing with trademarks, it's very straightforward. They fall within a gamut of a transfer pricing model.
>
> Q. So you got information from ATCO Limited regarding those benefits that they -- so you assume that those were benefits to ATCO Pipe and ATCO Electric, but you didn't verify whether those benefits were, in fact, there with ATCO Electric or ATCO Pipe? You didn't speak to any of them?
>
> A. MR. HILL: I wouldn't in any transfer pricing report because those benefits are provided -- the name brand, I could look to see ATCO Electric is carrying the name ATCO. ATCO Pipeline is carrying the name ATCO. And so as is pointed out here, they are gaining the benefits of that ATCO brand. Now, to the details that you need to determine the value of a brand, from a subsidiary perspective, they're receiving those benefits whether they feel -- whether they feel they're getting value for their money is generally not the discussion when you're dealing with the subsidiaries. They're receiving that brand. To give you an example, I know if you're dealing with a franchisee, sometimes they don't feel like they're getting their money for their royalty payments. But it's a parent push down to a subsidiary.[95]

112. The Commission finds that when determining a licence fee to be charged to utilities, there should be recognition of the benefits provided by the licensee to the licensor. The Commission's position in this regard is supported by the opinion of Mr. Justice Rothstein in the case of *Canada v. GlaxoSmithCline* where the Supreme Court of Canada determined that subsection 69(2) of the *Income Tax Act* requires a fair transfer price between non-arm's-length parties to reflect the interests of both parent and subsidiary:

[95] Transcript, Volume 2, pages 406-407.

> Third, prices between parties dealing at arm's length will be established having regard to the independent interests of each party to the transaction. That means that the interests of Glaxo Group and Glaxo Canada must both be considered. An appropriate determination under the arm's length test of s. 69(2) should reflect these realities.[96]

113. There is no evidence that the interests of both ATCO Ltd. and its subsidiaries were considered by any party in either the original decision to levy the licence fees or any subsequent determination of what the appropriate amounts of the fees should be. This demonstrated asymmetry of treatment (which was admitted by Mr. Hill) is further evidence of the unreasonableness of the payment of such fees by ATCO Electric and ATCO Pipelines in the circumstances of this case.

5.1.4 Group economies

114. In their argument, ATCO Electric and ATCO Pipelines suggest that "subsection 69(1) of the Canadian *Income Tax Act* requires that fair market value consideration be paid to ATCO Ltd. for the right to use the subject intangibles."[97] They have both repeatedly acknowledged that Gowlings' transfer pricing analysis did not account for the value of group economies.

115. ATCO Electric and ATCO Pipelines argued that analyses conducted by E&Y and AON confirmed that savings related to financing and insurance costs sufficiently justified the quantum of the licence fees charged to them. The Commission considers that any assessment of what the ATCO Utilities refer to as group economies must be based on a consideration of all the costs and benefits arising from the relationship between ATCO Ltd. and the applicants. The fact that the existence of lower costs associated with the provision of one type of service or activity does not relieve the applicant utilities of the requirement to demonstrate that the net benefits for the utilities, across all operations of the utilities, are positive, as a result of the utilities association with ATCO Ltd. This means that, if the utilities provide benefits to ATCO Ltd., then these too must be part of the net benefit calculation, as the interveners have pointed out. Absent a complete picture of the costs and benefits accruing to the ATCO Utilities from their relationship with ATCO Ltd., there is a strong likelihood that the inclusion of the licence fee would not result in just and reasonable rates. Consequently, the Commission is unwilling to accept the utilities' conclusion that the existence of what they refer to as group economies justifies the amounts proposed to be included in a licence fee.

5.2 Benefits incident to corporate structure and the stand-alone principle

116. The Commission finds merit in the CCA's argument[98] that the corporate structure chosen by ATCO Ltd. benefits both the regulated and unregulated companies and, furthermore, is not strictly a benefit derived from the coordinating function that Mr. Grattan, the ATCO Utilities witness, argues is performed by ATCO Ltd. Mr. Grattan stated that "… the premise of this application, the heart of this application, is all about the creation of coordinating activities that

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96 *Canada v. GlaxoSmithKline Inc.*, 2012 SCC 52, [2012] 3 S.C.R. 3 at paragraph 63.
97 Exhibit 21029-X0119, AET and AP argument, paragraph 32.
98 Exhibit 21029-X0033, CCA evidence.

ATCO Limited has done to create that environment where we do have the benefits associated with group economies."[99]

> 42. ATCO indicated that no analysis had been undertaken to "consider how much of the benefit of group purchasing is coming from the ATCO companies regulated by the Alberta Utilities Commission.19 As shown above, the regulated companies have approximately 75% of the assets (which have to be purchased) and will have a majority of the sales (and presumably the majority of the associated purchases) therefore the bulk of the benefits from group purchasing must come from the regulated utilities, not the unregulated companies and ATCO Ltd.
>
> 43. Similarly, ATCO has not done any analysis "to determine whether in fact the name recognition comes from the AUC regulated businesses rather than the unregulated businesses" However, as noted earlier, S&P did observe that the regulated utilities "are very closely linked to the group's brand and reputation." "[C]losely linked" is interpreted as being the linkage akin to a two-way street – ATCO Ltd. also benefits from the name recognition of its unregulated utilities. For example, the bulk of the regulated utilities' customers are likely unfamiliar with the ATCO Ltd. structure apart from their exposure to ATCO Gas and ATCO Electric which are monopoly providers of essential services. [footnotes omitted] [100]

117. The Commission's predecessor, the Alberta Energy and Utilities Board (the Board), has previously determined that ratepayers are entitled to benefit from reduced costs arising from a parent's increased size and diversification, which is often considered to be group economies:

> The Board notes that its position in Decision 2003-061[[101]] allows for the possibility of a parent utility charging a higher rate than its cost to the subsidiary utility in order to prevent a lower risk parent from subsidizing a higher risk utility subsidiary. However, in the Board's view this situation should only apply where the utility subsidiary has been shown to be clearly and materially more risky than the parent or if the applicant otherwise provided sufficient evidence that justified a higher rate. For example, if the parent's borrowing costs were lower by virtue of size and diversification, it would generally be appropriate for the utility to benefit from the parent's lower borrowing costs, since the utility contributes to that size and diversification.[102] [Emphasis in original.]

118. In this proceeding, interveners argued that the applicants' stand-alone assessment of its licence fee application was at odds with prior Commission findings with respect to stand-alone principles and the responsibilities of a parent organization when in control of the management of a subsidiary utility. Specifically, the CCA reference Decision 2008-100, the ATCO Electric Ltd. Stand Alone Study, in which the Commission stated:[103]

> **3.2 Stand Alone Study**

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99 Transcript, Volume 1, page 96, lines 20-25.

100 Exhibit 21029-X0115, CCA argument, paragraph 51.

101 Decision 2003-061: AltaLink Management Ltd. and TransAlta Utilities Corporation, Transmission Tariff for May 1, 2002 – April 30, 2004, TransAlta Utilities Corporation, Transmission Tariff for January 1, 2002 – April 30, 2002, Applications 1279345-1, 1279347-1, and 1287507-1, August 3, 2003.

102 EUB Decision 2006-049: AltaGas Utilities Inc., Request for Approval of Debenture Issue, Proceeding 15057, Application 1426643-1, May 24, 2006, page 4.

103 Decision 2008-100, page 6.

> … With respect to a stand alone utility, the directors and management have responsibilities to ratepayers that include the following:
>
> - Capturing all efficiencies that will reduce the cost of utility service to ratepayers.
> - Accessing the lowest cost financing at the best terms available to finance utility operations.
> - Maintaining the safe, efficient and reliable operation of the utility.
>
> If a parent organization assumes control of the management of its subsidiary utility, it also assumes management's responsibilities to ratepayers.

119. The Commission does not find that the parent organization has assumed control of the management of the applicants in regard to the provision of the services that are the focus of this application and has consequently not applied this principle. The Commission considers that the applicants do receive services from the parent for which they are compensated through head office cost allocation methodologies. The quantum of the allocated costs is tested and approved in a general tariff application.

120. The Commission also considers that the lack of independent legal advice and representation with respect to licence fee agreements, amendments and assessment of the licence fee is problematic when a utility is requesting customers to pay for a cost between a regulated utility and affiliated company on a purportedly "stand-alone" basis.

5.2.1 Corporate signature rights

121. In Decision 2013-430,[104] citing prior decisions, the Commission denied the inclusion of signature rights in ATCO Pipelines' 2013-2014 revenue requirement:

> 293. Signature rights are similar to corporate advertising, inclusion of which has recently been rejected by the Commission in Decision 2013-111, where it stated:
>
> > 50. In connection with the corporate communications function, the Commission has also reviewed the items included in corporate advertising costs and is not persuaded that these costs are necessary for the provision of utility service. This is consistent with the Commission's finding in paragraph 780 of Decision 2011-450[105] on the ATCO Gas 2011-2012 Phase I General Rate Application. The Commission directs the ATCO Utilities, in the compliance filing pursuant to this decision, to exclude any and all costs that relate to corporate advertising that are included in the $45.3 million total requested forecast corporate costs for 2012. [Footnote removed.][106]

[104] Decision 2013-430: ATCO Pipelines, 2013-2014 General Rate Application, Proceeding 2322, Application 1609158-1, released December 4, 2013.

[105] Decision 2011-450: ATCO Gas (a Division of ATCO Gas and Pipelines Ltd.), 2011-2012 General Rate Application Phase I, Proceeding 969, Application 1606822-1, December 5, 2011.

[106] Decision 2013-111: The ATCO Utilities, Corporate Costs, Proceeding 1920, Application 1608510-1, March 21, 2013, paragraph 50.

294. Further in Decision 2002-069, the Commission stated:

> The Board notes FIRM's suggestion that fees pursuant to the use of the ATCO name are inappropriate for current and future test periods. The Board also notes that ATCO voluntarily removed this item from the GRA Amounts, with the expectation that it could be re-introduced at a future proceeding. The Board expects that, at that time, ATCO would provide further justification for its application. The Board accepts ATCO's withdrawal of this amount from the Application and the Board directs ATCO, in future Filings (GRA, Statutory Review, Annual Report of Finances and Operations, etc.) to treat any amounts paid for signature rights as a non-utility expense, consistent with utility reporting (i.e. reconciling items between corporate financial and utility income). [Footnote removed.][107]

122. Overall, the Commission is not persuaded that the licence fees payable by ATCO Electric and ATCO Pipelines constitute costs reasonably incurred in connection with the provision of utility services. The question of whether ATCO Ltd. is obliged to charge the licence fee to comply with Canadian tax law is not determinative of whether the amounts being paid by ATCO Electric and ATCO Pipelines should be included in their respective revenue requirements. The Commission is also concerned by the apparent divergence of opinion between Gowlings and the utilities with respect to the kinds of benefits realized by the utilities' association with ATCO Ltd. and how they are accounted for in the fee being charged. Finally, there appears to have been no effort on the part of either ATCO Electric or ATCO Pipelines to critically assess or otherwise understand their parent's valuation of the licence fee with a view to ensuring fair value was being obtained for the amounts paid. The Commission finds this behaviour to be inconsistent with what might reasonably be expected of standalone entities. The Commission finds that licence fee payments by the regulated utilities, and indirectly by customers, should not be included in revenue requirement.

123. ATCO Electric and ATCO Pipelines' licence fees application is therefore denied. ATCO Electric is directed to reflect the findings of this decision in the compliance filing to its 2015-2017 general tariff application, Proceeding 20272. ATCO Pipelines is directed to remove the licence fees placeholders from its next general rate application.

[107] Decision 2002-069: ATCO Group Affiliate Transactions and Code of Conduct Proceeding – Part A, July 26, 2002, page 73.

6 Order

124. It is hereby ordered that:

(1) ATCO Electric and ATCO Pipelines remove the licence fees costs/placeholders from their respective revenue requirements.

Dated on June 30, 2016.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

(original signed by)

Neil Jamieson
Commission Member

(original signed by)

Henry van Egteren
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) **Company name of counsel or representative**
ATCO Pipelines (AP) and ATCO Electric Transmission (AET) Bennett Jones LLP
Canadian Association of Petroleum Producers (CAPP)
Consumers' Coalition of Alberta (CCA)
Cenovus Energy Inc.
Encana Corporation
Nexen Energy ULC
NOVA Gas Transmission Ltd.
The City of Calgary (Calgary) McLennan Ross Barristers & Solicitors
Office of the Utilities Consumer Advocate (UCA) Bull, Housser and Tupper LLP
AltaLink Management Ltd.
Alberta Direct Connect Consumers Association
Industrial Power Consumers Association of Alberta

Alberta Utilities Commission Commission panel A. Michaud, Panel Chair N. Jamieson, Commission Member H. van Egteren, Commission Member Commission staff R. Finn (Commission counsel) M. McJannet S. Karim R. Armstrong, P.Eng. D. Cherniwchan

Appendix 2 – Oral hearing – registered appearances

Name of organization (abbreviation) **Company name of counsel or representative**	**Witnesses**
ATCO Electric Transmission and ATCO Pipelines L. Keough T. Myers	J. Grattan, ATCO Electric Transmission H. Procyshyn, ATCO Pipelines A. Miller, Aon Reed Stenhouse Inc. D. Hill, Gowling Lafleur Henderson LLP B. Allard, Ernst & Young
Consumers' Coalition of Alberta (CCA) J. Wachowich	J. Thygesen
Office of the Utilities Consumer Advocate (UCA) M. Keen	R. Bell P. Peters
The City of Calgary (Calgary) D. Evanchuk	

Alberta Utilities Commission Commission panel A. Michaud, Panel Chair N. Jamieson, Commission Member H. van Egteren, Commission Member Commission staff R. Finn (Commission counsel) M. McJannet S. Karim R. Armstrong, P.Eng.	

Appendix 3 – 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. ATCO Electric and ATCO Pipelines' licence fees application is therefore denied. ATCO Electric is directed to reflect the findings of this decision in the compliance filing to its 2015-2017 general tariff application, Proceeding 20272. ATCO Pipelines is directed to remove the licence fees placeholders from its next general rate application.
..... Paragraph 123