Canadian Natural Resources Limited

Determination of Compensation for 9L66/9L32 Transmission Line Relocation

August 16, 2016

Alberta Utilities Commission
Decision 21306-D01-2016
Canadian Natural Resources Limited
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Proceeding 21306

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1 Introduction

1. On February 2, 2016, Canadian Natural Resources Limited (CNRL) filed an application under Section 17 of the *Hydro and Electric Energy Act*, which requested that the Commission issue a determination with respect to the costs of relocating portions of existing ATCO Electric Ltd. (ATCO) transmission lines 9L66 and 9L32 approved by the Commission in Decision 20698-D01-2015[1] (9L66/9L32 line move project). Notice of the application was issued on February 4, 2016.

2. In its application, CNRL indicated that it was in discussions with ATCO regarding certain issues raised by the application and requested that the application be held in abeyance for three weeks to allow these discussions to proceed. The Commission set a March 9, 2016 deadline for parties to submit statements of intent to participate (SIPs) to accommodate CNRL's request.

3. The Commission received a SIP from ATCO. On February 17, 2016, the Commission issued a ruling[2] on standing for Proceeding 21306, which determined that ATCO may be directly and adversely affected by the application. On the same date, the Commission filed other correspondence[3] that sought additional information from CNRL related to the status of the 9L66/9L32 line move project by February 23, 2016. CNRL provided the additional information requested on February 23, 2016.[4]

4. The Commission also received SIPs from the Alberta Electric System Operator (AESO) and from the Consumers' Coalition of Alberta (CCA) by the March 9, 2016 deadline. Following the receipt of SIPs, the Commission set out an updated process and schedule for Proceeding 21306 on March 11, 2016, which set a deadline of March 21, 2016 for information requests (IRs) to CNRL and ATCO, and a deadline of April 4, 2016 for the filing of responses by CNRL and ATCO.

5. On March 22, 2016, ATCO filed a request for an extension to April 11, 2016 to file its responses to the Commission's IRs.[5] On March 23, 2016, the Commission extended the deadlines for IR responses for both CNRL and ATCO.[6]

6. As part of the IRs filed on March 21, 2016, the Commission sought confirmation from both CNRL[7] and ATCO[8] that they did not object to the inclusion of the records of

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1 Decision 20698-D01-2015: ATCO Electric Ltd., Relocation of a Portion of Transmission Lines 9L66 and 9L32, Proceeding 20698, Applications 20698-A001 and 20698-A002, December 4, 2015.
2 Exhibit 21306-X0009.
3 Exhibit 21306-X0008.
4 Exhibit 21306-X0011.
5 Exhibit 21306-X0019.
6 Exhibit 21306-X0020.
7 Exhibit 21306-X0016, CNRL-AUC-2016MAR21-001.

Proceeding 20698 (the original facility applications for the approval of the relocation of transmission lines 9L66 and 9L32) and Proceeding 21333 (an application that sought time extensions for permits and licences issued in conjunction with Decision 20698-D01-2015). Both CNRL and ATCO confirmed that they did not object to the inclusion of the records of Proceeding 20698 and Proceeding 21333 in the current proceeding.[9]

7. The Commission issued a further update to the process schedule in correspondence dated April 18, 2016,[10] which set a deadline of April 22, 2016, for interested parties to advise of their intent to file intervener evidence. In the event that no parties indicated an intention to file intervener evidence by that date, the Commission set deadlines of May 4, 2016, and May 11, 2016, for written argument and reply argument, respectively. No party to the proceeding filed a submission indicating an intent to file intervener evidence.

8. On April 26, 2016, counsel for CNRL filed correspondence[11] that advised it was filing supplemental information to its IR responses previously filed on April 11, 2016.[12]

9. Also on April 26, 2016, CNRL filed a document dated January 31, 2013, prepared by ATCO entitled "Connection Options Investigation and Analysis,"[13] which discussed options assessed by CNRL and ATCO prior to entering into contractual arrangements related to the 9L66/9L32 line move project.[14]

10. In light of the CNRL filings dated April 26, 2016, the Commission amended the process schedule for its consideration of the application.

11. In accordance with the dates set in the amended process schedule, the Commission received argument submissions on May 11, 2016, from CNRL, the CCA, ATCO, and the AESO and received reply argument submissions from CNRL, the CCA, and ATCO on May 18, 2016.

12. The Commission considers the record for Proceeding 21306 to have closed on May 18, 2016.

2 Background

13. On August 11, 2015, ATCO filed applications 20698-A001 and 20698-A002, which requested approval for the 9L66/9L32 line move project. As described above, the 9L66/9L32 line move project consisted of moving a segment of an existing double-circuit 240-kilovolt (kV) transmission line designated as Transmission Line 9L66/9L32. In applications 20698-A001 and 20698-A002, ATCO explained that the 9L66/9L32 line move project consisted of salvaging approximately 5.9 kilometres of the existing Transmission Line 9L66/9L32, and constructing

[8] Exhibit 21306-X0017, ATCO-AUC-2016MAR21-001.
[9] Exhibit 21306-X0024 and Exhibit 21306-X0021.
[10] Exhibit 21306-X0030.
[11] Exhibit 21306-X0031.
[12] Exhibits 21306-X0032, 21306-X0033, 21306-X0034.
[13] Exhibit 21306-X0035. (CNRL's description of the purpose of this document described in Exhibit 21306-X0031).
[14] Exhibit 21306-X0035.

and operating approximately 6.3 kilometres of new double-circuited transmission line, approximately 800 metres to the south of the existing alignment.[15]

14. Applications 20698-A001 and 20698-A002 proposed to use RC22 transmission line structures for the relocated portion of the transmission lines instead of the existing K-tower structures. ATCO provided that a typical K-tower structure is 38 metres in height with a typical span between structures of 240 metres to 300 metres. A typical RC22 structure is 45 metres in height with a typical span between structures of 300 metres to 370 metres.[16]

15. CNRL owns and operates the Horizon Mine located in northeast Alberta within the regional municipality of Wood Buffalo. After the proposed move, the transmission line would be located on Crown land within an existing mineral surface lease area held by Total E&P Canada Ltd. (Total) and would require an overlapping disposition and right-of-way.[17] ATCO stated that the transmission line would be offset on the right-of-way, with 25 metres on the north and 20 metres on the south, due to a south adjacent distribution line.[18] ATCO stated that it filed the application because CNRL had requested that a segment of the transmission lines in question should be relocated to accommodate its future mine development plans.[19]

16. The costs of the 9L66/9L32 line move project would be $23,027,306, subject to an accuracy range for the estimate between plus 20 and minus 10 per cent. In applications 20698-A001 and 20698-A002, ATCO indicated that all of the costs would be paid by CNRL and, thus, would be customer costs rather than system costs.

17. In Decision 20698-D01-2015, the Commission approved ATCO's applications for the 9L66/9L32 line move project.[20]

18. In response to questions from the Commission dated February 17, 2016, CNRL explained that, as at the date of CNRL's response on February 23, 2016:

- The overall project consisted of the relocation of two 25-kV distribution lines and the relocation of a dual circuit 240-kV transmission line.
- The new distribution lines had been built and old distribution lines had been salvaged.
- The new transmission line structures were in place and most of the stringing was complete.
- Commissioning of the transmission line was anticipated to occur in the week following CNRL's response.

[15] Decision 20698-D01-2015, paragraph 7.
[16] Exhibit 20698-X0027, IR response (final) 2015.09.24
[17] Decision 20698-D01-2015, paragraph 12.
[18] Exhibit 20698-X0001, 20698 application, paragraph 16.
[19] Decision 20698-D01-2015, paragraph 8.
[20] The following approvals were granted:
- Permit and Licence 20698-D02-2015 to alter and operate transmission line 9L66.
- Permit and Licence 20698-D03-2015 to alter and operate transmission line 9L32.
- Approval 20698-D04-2015 to salvage a portion of transmission line 9L66.
- Approval 20698-D05-2015 to salvage a portion of transmission line 9L32.

- As Shell Muskeg River would be disconnected from the grid during cutover from the old lines to the new lines, this work was scheduled to commence on April 15, 2016, to coincide with a Shell Muskeg River plant shutdown.
- Salvage of the old 240-kV transmission line was anticipated to occur during January 2017.[21]

19. CNRL also filed the following information with respect to costs:

- The estimated cost of the 9L66/9L32 line move project totalled $23,027,306, and was to be paid to ATCO through progress payments, as follows:
  - CNRL made a first progress payment to ATCO on September 15, 2015, and a second progress payment on January 4, 2016, in the amounts (not including goods and services tax (GST)) of $3,770,618 and $16,915,278, respectively.[22]
  - CNRL anticipated making a third progress payment to ATCO by April 1, 2016, in the amount (not including GST) of $2,341,401.
- The project to relocate the two 25-kV distribution lines, including the salvage of the old lines, was complete at the date of CNRL's response.
- Actual payments to ATCO's distribution and transmission divisions pursuant to applicable agreements were understood to be as follows, as at the date of CNRL's response:
  - Distribution division: $2,483,250 ($2,365,000 plus $118,250 GST).
  - Transmission division: $21,720,200.25 ($20,685,905 plus $1,034,295.25 GST).[23]
- CNRL anticipated that any payment made to ATCO for the relocation of the transmission facilities would be subject to adjustment to reflect ATCO's final project costs as determined at project completion.[24]

20. On April 26, 2016, CNRL advised that it and ATCO had made a *pro forma* contract amendment to its September 1, 2015 agreement dated March 9, 2016, that reflected a lower expected cost for the project.[25] Under the revised agreement, CNRL's estimated capital contribution for the 9L66/9L32 line move project was revised to $20,725,657 plus applicable GST, representing a reduction of $2,301,649 from the initial (pre-GST) forecast of $23,027,306.[26]

[21] Exhibit 21306-X0011.
[22] Exhibit 21306-X0008, paragraph 3.
[23] Note: In Exhibit 21306-X0011, CNRL provided a copy of ATCO's invoice for the second progress payment due January 4, 2016, in the amount of $17,761,051.25 comprised of the pre-GST second installment amount of $16,915,287.00 and $845,764.35. Based on the treatment in this statement, the Commission assumes that CNRL would also have paid five per cent GST on the pre-GST first installment of $3,770,618.00.
[24] Exhibit 21306-X0011.
[25] Exhibit 21306-X0031.
[26] Exhibit 21306-X0034.

3 Legislative scheme

Introduction

21. The Commission regulates the construction and operation of transmission lines in Alberta. The 9L66/9L32 line move project comprises "transmissions lines" as that term is defined in Section 1 of the *Hydro and Electric Energy Act.*

22. The application was brought under Section 17 of the *Hydro and Electric Energy Act* entitled "Relocation," which provides:

> **17(1)** The Commission may, on any terms and conditions it considers proper, direct a permittee or licensee to alter or relocate any part of the permittee's or licensee's transmission line if in the Commission's opinion the alteration or relocation would be in the public interest.
>
> **(2)** The Commission may, in an order under subsection (1), provide for the payment of compensation and prescribe the persons by whom and to whom the compensation is payable.
>
> **(3)** When an order under this section provides for the payment of compensation, the Commission may at any time provide that if agreement on the amount of compensation cannot be reached between the parties, the amount is to be determined by the Alberta Utilities Commission on the application of either party.

23. Section 8 of the *Alberta Utilities Commission Act* confers authority upon the Commission to do all things that are necessary for or incidental to the exercise of its powers and the performance of its duties and functions. Section 11 of the *Alberta Utilities Commission Act* is to similar effect as Section 8. Section 11 confers upon the Commission all the powers, rights, privileges and immunities that are vested in a judge of the Court of Queen's Bench for all matters necessary or proper for the Commission to exercise its jurisdiction or carrying any of its powers into effect.

24. The Commission's public interest mandate is located within Section 17 of the *Alberta Utilities Commission Act*, which states:

> **Public interest**
> **17(1)** Where the Commission conducts a hearing or other proceeding on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, it shall, in addition to any other matters it may or must consider in conducting the hearing or other proceeding, give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.

25. The purposes of the *Hydro and Electric Energy Act*, as described in Section 2, include:

- Orderly and efficient development of electric generation, transmission and distribution.

- Observance of safe and efficient practices.[27]

26. Parties to this proceeding also made submissions on the *Oil Sands Conservation Act* administered by the Alberta Energy Regulator (AER) because CNRL, as operator of the Horizon Mine, submitted that it is subject to this legislation.

27. The purposes of the *Oil Sands Conservation Act* set out in Section 3 include the following:

> (a) to effect conservation and prevent waste of oil sands resources of Alberta
> (b) to ensure orderly, efficient, and economical development of oil sands in the public interest …
> …
> (g) to ensure the observance, in the public interest, of safe and efficient practices in the exploration for and the recovery, storing, processing and transporting of oil sands, discard, crude bitumen, derivatives of crude bitumen and oil sands products.[28]

28. Section 27 of the *Oil Sands Conservation Rules* requires that mine operators carry out their operations in a manner that:

- Does not make recovery of other oil sands more difficult.
- Maximizes recovery within the mine site.
- Complies with AER Directive 082.[29]

Views of CNRL regarding statutory framework for transmission line relocation applications

29. In the application, CNRL requested that the Commission determine, pursuant to Section 17(3) of the *Hydro and Electric Energy Act*, that the cost of the 9L66/9L32 line move project be allocated to ratepayers through the designation of the project costs as system-related costs, in accordance with the framework provided by the legislation cited above. CNRL noted that Section 17(3) of the *Hydro and Electric Energy Act* provides that, when an order provides for the payment of compensation, in the absence of agreement between the parties, the amount of compensation is to be determined by the Commission following the receipt of an application.

30. CNRL submitted that the treatment of relocation costs is clearly within the Commission's jurisdiction pursuant to Section 17 of the *Hydro and Electric Energy Act*. CNRL reproduced Section 17 of the *Hydro and Electric Energy Act* in its argument, and placed emphasis on specific aspects of this section by underlining certain passages. CNRL emphasized:

- The Commission is to determine compensation if agreement cannot be reached.
- The Commission's determination on compensation can be made at any time.[30]

[27] Exhibit 21306-X0038, CNRL argument, paragraphs 19 and 44.
[28] Exhibit 21306-X0038, CNRL argument, paragraph 45.
[29] Exhibit 21306-X0038, CNRL argument, paragraph 46.
[30] Exhibit 21306-X0038, CNRL argument, paragraph 18.

31. Accordingly, CNRL requested pursuant to Section 17(3) of the *Hydro and Electric Energy Act* that compensation for the costs of the 9L66/9L32 line move project should properly be designated as system costs.

32. In the view of CNRL, the designation of the 9L66/9L32 line move project costs as system costs is consistent with Alberta's regulatory framework and the broader public interest. In this regard, CNRL submitted that the Commission's obligations under Section 2 of the *Hydro and Electric Energy Act* are nearly identical to the public interest mandate of the AER under the *Oil Sands Conservation Act*.[31]

33. CNRL noted that Section 17 of the *Alberta Utilities Commission Act* sets out the Commission's public interest mandate in granting approval and that Section 8 of that same act provides overarching powers to the Commission to do all things necessary in the exercise of its powers.[32] CNRL then discussed its obligations under Section 27 of the *Oil Sands Conservation Rules* and stated that it is subject to AER Directive 082, which stipulates that the AER's objective is to minimize sterilization of the oil sands. The AER requires mine operators to apply for approval in all cases of potential sterilization. To further its argument, CNRL noted that Alberta courts have confirmed that one of the purposes of Alberta energy statutes is to prevent waste of oil and gas resources.[33]

34. Based on the above, CNRL submitted that it is clear that the underlying theme of the statutory framework for energy described above is to protect the public's interest in the development of Alberta's energy resources. Accordingly, as the sterilization of mineable ore could jeopardize economic, orderly and efficient energy development in the public interest, the overlapping jurisdictions of the Commission and the AER must be interpreted together to preserve the integrity of both statutory schemes.[34]

35. CNRL added that the public interest of Albertans generally is at stake in the current proceeding, and not just CNRL's private convenience or desire for profit.[35]

36. Furthermore, citing a passage from "The Interpretation of Legislation in Canada," CNRL submitted that interpretations of statutes that provide harmony should be used over those that conflict.[36]

37. CNRL concluded that, in light of the preference for statutory interpretations that promote harmony, and given that the extraction of a significant quantity of an additional mineable ore will only be possible by the relocation of the transmission lines, the classification of the 9L66/9L32 line move project costs as system costs is appropriate given Alberta's regulatory framework and the broader public interest at stake.[37]

[31] Exhibit 21306-X0038, CNRL argument, paragraph 45.
[32] Exhibit 21306-X0038, CNRL argument, paragraph 21.
[33] Exhibit 21306-X0038, CNRL argument, paragraph 47.
[34] Exhibit 21306-X0038, CNRL argument, paragraph 48.
[35] Exhibit 21306-X0045, CNRL reply, paragraph 27.
[36] Exhibit 21306-X0038, CNRL argument, paragraph 48.
[37] Exhibit 21306-X0038, CNRL argument, paragraph 49.

Views of the CCA regarding the statutory framework

38. The CCA took note of CNRL's statements[38] that it is in the business of mining to make a profit, and that the relocation of the transmission lines makes this possible.[39] The CCA also noted that CNRL indicated that its oil sands operations are unique and different from other profit or non-profit enterprises because it provides benefits to Alberta through various royalties and taxes that may fund public services, in addition to providing significant employment opportunities.[40]

39. The CCA submitted that while companies such as CNRL pay royalties and taxes, it is not clear in the circumstances why all customers should be required to pay CNRL's costs to obtain a profit. In particular, the CCA submitted that if the Commission were to support the principles suggested by CNRL, it could set precedents whereby other companies that provide jobs, develop resources and pay taxes would also claim exemptions.[41]

40. In reply, CNRL submitted that the CCA's concern that a Commission decision supporting the treatment of the 9L66/9L32 line move project costs as system costs would set a precedent encouraging others to claim similar exemptions is both misguided and irrelevant.[42]

Commission findings

41. The Commission agrees with CNRL that the provisions of the *Hydro and Electric Energy Act* and the *Oil Sands Conservation Act* should be interpreted in a manner that provides for harmonization. However, the Commission disagrees that the Commission's mandate pursuant to the *Hydro and Electric Energy Act* and the AER's mandate as set out in the *Oil Sands Conservation Act* and associated AER rules and directives would be in conflict with each other if the Commission were to allocate the costs of the 9L66/9L32 line move project wholly as a customer cost to be paid by CNRL.

42. Based on the legislative framework, the Commission's interpretation is that the legislation cited above, administered by the AER, and the Commission's duty to promote orderly and efficient transmission system development may be interpreted so that they are not in conflict.

43. The Commission retains discretion whether to approve, to approve with conditions or deny each application before it, including applications brought under Section 17 of the *Hydro and Electric Energy Act* to relocate transmission lines because they may sterilize mineable ore. As will be discussed in the following sections of this decision, when considering any application, the Commission takes into account the specific circumstances of the application that may lead the Commission to either approve (with or without conditions) or deny the application. In reviewing an application for a transmission line move, the Commission would balance all relevant factors with a view to addressing any specific challenges that may arise such as the sterilization of mineable ore.

44. Based on its review of the prior decisions cited by the parties, the Commission finds that these decisions do not specify that in each instance where a transmission line move is proposed

[38] Exhibit 21306-X0026, CNRL-CCA-2016MAR21-002.
[39] Exhibit 21306-X0039, CCA argument, paragraph 13.
[40] Exhibit 21306-X0039, CCA argument, paragraph 15.
[41] Exhibit 21306-X0039, CCA argument, paragraph 15.
[42] Exhibit 21306-X0045, CNRL reply, paragraph 26.

to avoid sterilization, the cost of the transmission line move would necessarily be borne by ratepayers.

45. With respect to CNRL's submission about private interests versus the public interest, the Commission considers that Section 17(1) of the *Hydro and Electric Energy Act* does not prescribe how the Commission should carry out its obligation to make decisions on requested line relocations in the public interest and Section 17 of the *Alberta Utilities Commission Act* does not apply any limits on the Commission's discretion to make a distinction between private and public benefits. To determine the application before it, the Commission has not been required to make a determination on the weighting of "private" benefits that would accrue primarily to an entity such as a mine operator rather than to the public "at large." This is because the Commission is not deciding whether the transmission lines should be relocated. Rather, the Commission is determining how to allocate costs given that benefits to the public have already occurred from the 9L66/9L32 line move project previously approved by the Commission.

46. The Commission has discretion under Section 17(1) of the *Hydro and Electric Energy Act* to direct a permittee or licensee to alter or relocate the permittee's or licensee's transmission line on any terms and conditions it considers proper. The Commission's prerogative to impose conditions could include a requirement that the altered or the relocated transmission facilities have different characteristics or specifications than originally proposed. Section 17(2) of that same act provides authority for the Commission to determine compensation under an application by either party. For example, the Commission could order the party requesting the relocation to pay some or all of the costs.

4 Principles for consideration of line relocation applications

47. In past decisions, the Commission provided guidance regarding considerations to be taken into account when determining whether ratepayers should bear relocation costs. In Decision 2003-043,[43] the Commission's predecessor, the Alberta Energy and Utilities Board (the board), stated that customers should be required to incur relocation costs, as a system cost, when there is reasonable cause to move a system transmission line, provided that:

- A valid mineral lease existed prior to the construction of the transmission line.
- A practical alternative route is available.
- There are no unusual negative impacts on the AIES (Alberta Interconnected Electric System) that cannot be reasonably addressed.
- The cost of relocating a local transmission line required to serve the party requesting the relocation should be the responsibility of that party.

(collectively, the 2003 relocation principles)

48. The Commission provided further guidance in Decision 2011-520 where it stated:

[43] Decision 2003-043: ATCO Electric Ltd., Fort McMurray/Crow Lake Areas, 240 kV Transmission Facilities Application, Dover to McMillan, Phase II Part A Decision – Routing, Application 1284230-1, June 3, 2003.

45. Notwithstanding the finding, the board described these broad principles as the 2003 Relocation Principles. Those principles were intended to assist commercial parties in arranging their affairs by way of commercial agreements.[44]

4.1 Parties' submission regarding the 2003 relocation principles

49. In the application, CNRL noted that it and ATCO had originally agreed that CNRL would be responsible for the relocation costs, as reflected in the agreement in place at the time ATCO applied for approval of the 9L66/9L32 line move project in the application that led to Decision 20698-D01-2015.[45] Since Decision 20698-D01-2015 was issued, CNRL indicated that it had determined that the 2003 relocation principles set out by the Commission's predecessor, and followed in subsequent decisions, should apply, with the effect that the 9L66/9L32 line move project costs should be classified as system costs.[46]

50. CNRL noted that the determinations of the Commission's predecessor set out in Decision 2003-043 have been upheld and applied by the board and the Commission in subsequent proceedings. For example, CNRL noted that in Decision 2011-520, which considered the AESO's and ATCO's applications for the North Fort McMurray Transmission Development, in response to concerns of certain parties that the applied-for transmission lines would need to be moved to access mineable ore, the Commission stated that the 2003 relocation principles provided guidance but could not be imposed to compel parties to enter into a commercial agreement consistent with those principles.[47]

51. In its argument, ATCO also took note that the 2003 relocation principles were repeated in Decision 2011-520 in respect to the North Fort McMurray Transmission Development.[48]

52. In its argument, the AESO stated that it takes no position as to whether the 9L66/9L32 line move project satisfies the 2003 relocation principles, or whether those principles remain appropriate.[49]

53. In reply, CNRL submitted that it is notable that the AESO took no position on whether the 2003 relocation principles continue to apply and only took issue with the recoverability of costs related to distribution facilities and the incremental costs associated with the use of the RC22 structures.[50]

Commission findings

54. It is notable that in the proceeding that led to Decision 2003-043, the Commission's predecessor was asked to provide definitive assurance regarding the recovery of future transmission line relocation costs for the Fort McMurray/Crow Lake Areas 240-kV transmission facilities then under consideration, but declined to do so.[51] Instead, the Commission's predecessor indicated that consideration of relocation costs should be deferred to a point in time

[44] Decision 2011-520: ATCO Electric Ltd., North Fort McMurray Transmission Development, Proceeding 774, Application 1606550-1, December 23, 2011, paragraph 45.
[45] Exhibit 21306-X0003, paragraph 2.
[46] Decision 2003-043, paragraph 3.
[47] Exhibit 21306-X0003, paragraph 37, referencing Decision 2011-520 at paragraph 46.
[48] Exhibit 21306-X0040, ATCO argument, paragraph 9.
[49] Exhibit 21306-X0041, AESO argument, paragraph 2.
[50] Exhibit 21306-X0045, CNRL reply, paragraph 13.
[51] Decision 2003-043, Section 5.

in the future when an application pursuant to Section 17 of the *Hydro and Electric Energy Act* could be assessed having regard to the specific set of facts that might exist at the time of such application.[52] The board set out principles that it considered could guide it in determining cost responsibility for relocation costs and to assist parties in coming to commercial agreements, should they so desire.[53]

55. The discussion of the 2003 relocation principles in the proceeding leading to Decision 2011-520 came about due to the desire of some participants to obtain certainty with respect to compensation for future transmission line moves proposed to avoid sterilization of mineable ore.[54] Significantly, consistent with the findings of the board in Decision 2003-043, the Commission, likewise,[55] only indicated that the 2003 relocation principles would be considered as and when future applications pursuant to Section 17 of the *Hydro and Electric Energy Act* were received.

56. The Commission also takes note that in the proceeding considered in Decision 2011-520, parties were concerned that the 2003 relocation principles could be changed over time and might not be upheld by future Commission panels.[56] The Commission considers the fact that several parties supportive of the 2003 relocation principles participated in the proceeding leading to Decision 2011-520, coupled with the reluctance of the board to provide definitive assurance regarding the recovery of future transmission line relocation costs, provides a clear indication of a general awareness that the 2003 relocation principles could be altered over time.

57. It is accordingly notable that subsequent to Decision 2011-520, in Decision 2014-242,[57] in respect of the AESO's 2014 tariff application, the Commission rejected certain changes proposed by the AESO with respect to the criteria for classifying certain types of transmission facility projects as system-related costs for the purposes of the AESO's contribution policy.[58] Furthermore, in Decision 3473-D02-2015,[59] in respect of the AESO's compliance filing application, pursuant to Decision 2014-242, the Commission established a Commission-initiated proceeding[60] that will include investigation into the principles to be applied in determining whether the costs of transmission projects should be classified as system-related.

58. In the Commission's view, the forthcoming review of system-related costs in the aforementioned Commission-initiated proceeding, is a further indication that the 2003 relocation principles may be modified in future applications for a transmission line move where a transmission line would sterilize mineable ore. The Commission, therefore, finds the 2003 relocation principles may evolve or change over time.

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52 Decision 2003-043, page 13.
53 Decision 2003-043, page 14.
54 Decision 2011-520, Section 4.3.1.
55 Decision 2011-520, paragraphs 81-83.
56 Decision 2011-520, paragraph 48.
57 Decision 2014-242: Alberta Electric System Operator, 2014 ISO Tariff Application and 2013 ISO Tariff Update, Proceeding 2718, Application 1609765-1, August 21, 2014.
58 Decision 2014-242, paragraphs 459-482.
59 Decision 3473-D02-2015: Alberta Electric System Operator, Compliance with Directions 5 through 8 from Decision 2014-242, Module 2, Proceeding 3473, Application 1610935-1, August 26, 2015.
60 Decision 3473-D02-2015, paragraph 46.

4.2 Application of the 2003 relocation principles to 9L66/9L32 line move project

59. In the application, CNRL submitted that, in accordance with the 2003 relocation principles, the categorization of the 9L66/9L32 line move project's costs as system costs should occur because:

- An appropriate balance exists between the public interest and the interests of affected parties.
- There was and is a direct and unavoidable conflict between the transmission line infrastructure and CNRL's line development and advancement plans.
- Absent a relocation of the transmission lines, the sterilization of a significant portion of the mineable ore within CNRL's Horizon oil sands project would occur.
- There is reasonable cause to move the transmission lines in light of the fact that:
  - Valid mineral leases existed prior to the construction of the transmission lines.
  - A practical alternative route is available.
  - The relocation will not create any unusual negative effects on the AIES that cannot be reasonably addressed.
- A valid mineral lease and an applied for/approved mine plan existed at the time of the relocation request.
- The transmission lines, which form part of the North East Fort McMurray Transmission Development project, are currently classified as system, not local, lines.

60. CNRL provided additional detail on why the application has complied with each of the 2003 relocation principles in argument.[61] It added that because the 9L66/9L32 line move project clearly meets all the criteria set out in the 2003 relocation principles, all associated costs should be categorized as system costs.[62]

61. In addition, CNRL addressed the application of each of 2003 relocation principles, which are discussed below.

Balance between public interest and interest of any affected party

62. CNRL submitted that in Decision 20698-D01-2015, the Commission had already determined the 9L66/9L32 line move project to be in the public interest pursuant to Section 17 of the *Alberta Utilities Commission Act*.[63] In addition, CNRL submitted that the relocation is in the public interest in consideration of the applicable statutory framework mandating the economic, orderly and efficient development of a resource and the potential sterilization of mineable ore. Given this framework, CNRL stated that classifying the 9L66/9L32 line move project costs as system costs creates the appropriate balance between the public interest of all parties and parties affected, including CNRL.[64]

[61] Exhibit 21306-X0003, paragraphs 17-30.
[62] Exhibit 21306-X0038, CNRL argument, paragraph 33.
[63] Exhibit 21306-X0038, CNRL argument, paragraph 34, citing Decision 20698 at paragraph 30.
[64] Exhibit 21306-X0038, CNRL argument, paragraph 35.

Sterilization of mineable ore and unavoidable infrastructure conflict a cause for relocation

63. CNRL submitted that the Commission's approval of the of the 9L66/9L32 line move project, requested in the facility applications approved in Decision 20698-D01-2015, reflected the fact that the original transmission lines were interfering with opportunities for development and advancement at the Horizon Mine.[65]

Existence of valid mineral lease and applied-for/approved mine plan

64. CNRL noted that both it and Total had valid and subsisting mineral leases for the lands affected by the relocated transmission lines at the time of ATCO's application to the Commission. Accordingly, CNRL submitted that this condition is satisfied.[66]

Classification as system cost when reasonable cause to move transmission line

65. CNRL submitted the following three criteria are met, namely:

- The existence of a valid mineral lease prior to construction.
- The availability of a practical alternative route.
- No unusual negative impacts to the AIES that cannot be addressed.

66. CNRL submitted that the three specified criteria have been met, as evidenced by:

- The fact that confirmation of valid mineral leases is on the record of the current proceeding.[67]
- The fact that Decision 20698-D01-2015 approved ATCO's facility applications for the alternative route, thereby definitively confirming that the alternate route is a "practical alternative route" as contemplated by the 2003 relocation principles.[68]
- The fact that Decision 20698-D01-2015 would not have approved ATCO's facility applications if there were negative impacts to the AIES that could not be addressed to the Commission's satisfaction.[69]

Requesting party's cost responsibility for relocation of local transmission line

67. In the facility applications for the 9L66/9L32 line move project considered in Decision 20698-D01-2015, ATCO confirmed that the transmission lines that provide electricity to the Horizon Mine also form a part of the North East Fort McMurray Transmission Development. Accordingly, CNRL submitted that it has satisfied this criterion because the transmission lines in question are not local lines.[70]

68. In summary, CNRL submitted that, as it has satisfied all of the 2003 relocation principles and criteria, the costs of the 9L66/9L32 line move project should be classified as system costs.[71]

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65 Decision 20698-D01-2015 at paragraph 8, cited at Exhibit 21309-X0038, CNRL argument, paragraph 36.
66 Exhibit 21306-X0038, CNRL argument, paragraph 37.
67 Exhibit 21306-X0038, CNRL argument, paragraph 39, referencing Exhibit 21306-X0004.
68 Exhibit 21306-X0038, CNRL argument, paragraph 40.
69 Exhibit 21306-X0038, CNRL argument, paragraph 41.
70 Exhibit 21306-X0038, CNRL argument, paragraph 42.
71 Exhibit 21306-X0038, CNRL argument, paragraph 43.

69. In its argument, ATCO noted that in response to an IR from the Commission, which requested a description of ATCO's position on the relief requested by CNRL,[72] ATCO indicated that the 2003 relocation principles provide acceptable criteria when evaluating whether relocation costs should be allocated to the system or be treated as customer specific.[73]

70. In ATCO's view, relocation of the transmission lines was required in order to facilitate CNRL's mining activities in an orderly and economic way. In addition, ATCO submitted that it is important that an oil sands leaseholder be afforded fair treatment with respect to relocation costs where system transmission lines are located on its property.[74] However, ATCO indicated that, had CNRL known that it would ultimately bear the 9L66/9L32 line move project costs, the original lines may not have been routed and constructed at the lowest cost option.[75]

71. In assessing whether the 2003 relocation principles have been met, ATCO considered that:

- CNRL had valid mineral leases in place at the time transmission lines 9L66 and 9L32 were initially approved in 2002.[76]
- Prior consultation with stakeholders regarding development in the northeast area of the province suggests that the 2003 relocation principles provide a reasonable balance.[77]
- The AESO's July 15, 2015 letter in respect of the transmission lines' 9L66/9L32 relocation indicated that it would have a minimal effect on the AIES.[78]
- The transmission lines affected by the line move are currently classified as system lines.[79]

72. In light of the above-noted considerations, ATCO submitted that it would be appropriate to treat the costs of the 9L66/9L32 line move project as system related *in lieu* of the consenting leaseholder, namely CNRL, incurring these costs.[80]

73. In reply, CNRL submitted that the application deals with a factual scenario involving the potential sterilization of a significant quantity of mineable ore that is exactly comparable to the circumstances contemplated by the Commission's predecessor when it established the 2003 relocation principles.[81]

74. In its reply argument, ATCO submitted that it agreed with CNRL's view that the 2003 relocation principles apply to the current proceeding. Furthermore, ATCO submitted that, when evaluating the public interest in light of the criteria for determining whether to allocate relocation

[72] Exhibit 21306-X0040, ATCO argument, paragraph 3, referencing Exhibit 21306-X0021, ATCO-AUC-2016MARCH21-002.
[73] Exhibit 21306-X0040, ATCO argument, paragraph 4.
[74] Exhibit 21306-X0040, ATCO argument, paragraph 5.
[75] Exhibit 21306-X0040, ATCO argument, paragraph 5.
[76] Exhibit 21306-X0040, ATCO argument, paragraph 6.
[77] Exhibit 21306-X0040, ATCO argument, paragraph 7.
[78] Exhibit 21306-X0040, ATCO argument, paragraph 8.
[79] Exhibit 21306-X0040, ATCO argument, paragraph 10.
[80] Exhibit 21306-X0040, ATCO argument, paragraph 10.
[81] Exhibit 21306-X0045, CNRL reply, paragraph 4(d).

costs between the system or customers, the 2003 relocation principles support the classification of the costs of the 9L66/9L32 line move project as system costs.[82]

Commission findings

75. Section 17(1) of the *Hydro and Electric Energy Act* grants the Commission discretion to direct a permittee or licensee to relocate a transmission line on any terms and conditions it considers proper. In deciding whether to approve an application for a transmission line relocation, the Commission considers the environmental, economic and social effects of the relocation. A number of factors are included in this analysis, including identification of alternative routes and different technical solutions to relocate the transmission line as well as costs associated with potential route options.

76. As the Commission understands it, CNRL's primary justification for why it should be considered to have satisfied the conditions for relocation is:

- That the public interest has already been demonstrated by virtue of the approval of the line 9L66/9L32 line move project in Decision 20698-D01-2015.
- The relocation of the line is necessary to promote Alberta energy resource conservation legislation goals by preventing the sterilization of mineable ore.

77. As discussed in Section 5 below, in Proceeding 20698 the Commission was unable to weigh the costs to ratepayers against the benefits of the project, including its benefits to avoid sterilization of mineable ore. Accordingly, of itself, the prior approval of the 9L66/9L32 line move project does not demonstrate a balance between the public interest and the interests of the party requesting the line move, such that ratepayers should be required to pay the costs of the line move.

78. The Commission must decide if CNRL has demonstrated that the relocation at ratepayer cost is in the public interest. The Commission has taken into account both the record of this proceeding as well as that of Proceeding 20698 (which was incorporated into this proceeding). In making its decision, the Commission has considered all of the above factors as well as other potentially adverse effects that parties requested the Commission to consider. The Commission must consider all relevant factors and the potentially conflicting interests of the ratepayers and the interests of Albertans as a whole to arrive at a decision. As the Commission stated in Decision 2012-327,[83] the Commission does not weigh specific criteria individually. Rather, it weighs all of the criteria together and considers both the potential effect on the larger community and other parties affected by the application.

79. Based on the evidence filed, the Commission finds that the 2003 relocation principles, while informative, must be weighed against the other public interest factors. The relocation principles are only one set of criteria that the Commission must consider.

[82] Exhibit 21306-X0045, ATCO reply, paragraph 9.

[83] Decision 2012-327: AltaLink Management Ltd., Western Alberta Transmission Line Project, Proceeding 1045, Application 1607067-1, December 6, 2012.

5 Effect of agreement and consideration of 9L66/9L32 line move project in an earlier proceeding

80. CNRL and ATCO entered into an agreement dated September 1, 2015, under which CNRL agreed to pay a capital contribution estimated at the time of the agreement to be $23,027,306 plus GST. Under the agreement, the $23,027,306 was to be paid as set out in the payment schedule.[84]

81. Decision 20698-D01-2015, which approved the 9L66/9L32 line move project, relied on ATCO's submission that the costs, estimated at the time to be $23,027,306, would be considered a customer cost, as opposed to a system cost.[85]

82. In the application, CNRL explained that while it and ATCO had initially agreed that CNRL would be responsible for the relocation costs and executed an agreement to this effect,[86] since that time CNRL has considered the 2003 relocation principles and has proposed that, in the circumstances at hand, the costs of the 9L66/9L32 line move project should properly be considered system costs.[87]

83. In argument, CNRL noted that discussions between CNRL, the predecessor of Total (Deer Creek Energy Limited) and the predecessor of the AESO (ESBI Alberta Ltd. or ESBI) on cost-sharing arrangements for future line relocations predated both ATCO's original application to construct the transmission lines 9L66 and 9L32 and the Commission's determination in Decision 2003-043.[88]

84. CNRL indicated that because conflicts between the transmission lines and operations at Horizon Mine were imminent, it initiated discussions with Total in the fall of 2011 regarding the relocation of the transmission lines. Specifically, the 9L66/9L32 line move project was required for the following two reasons:

- There was a need to construct a dike on the Total side of the boundary between CNRL and Total's leased areas for tailings management purposes.
- The transmission lines had to be moved to maximize the recovery of Horizon's oil sands resource.[89]

85. CNRL submitted that it had to obtain Total's consent before working with ATCO on ATCO's facility application for the 9L66/9L32 line move project.[90]

86. Due to the combination of both an imminent need and the lengthy negotiation process, CNRL entered into an agreement with ATCO on September 1, 2015, where it agreed to bear the costs of the relocation.[91] CNRL submitted that the decision to enter into an agreement with ATCO to absorb the cost arising from the 9L66/9L32 line move project was primarily due to the critical implications of a delay that would prevent the relocation of the lines during the

[84] Exhibit 21306-X0033.
[85] Decision 20698-D01-2015, paragraph 24.
[86] Exhibit 21306-X0003, paragraph 2.
[87] Exhibit 21306-X0003, paragraph 3.
[88] Exhibit 21306-X0038, CNRL argument, paragraph 11.
[89] Exhibit 21306-X0038, CNRL argument, paragraph 12.
[90] Exhibit 21306-X0038, CNRL argument, paragraph 12.
[91] Exhibit 21306-X0038, CNRL argument, paragraph 16.

2015-2016 winter season. Accordingly, CNRL submitted there was a need for the relocation to proceed on an expedited basis.[92]

87. CNRL noted that in Decision 2012-333,[93] the Commission made it clear that Section 17 of the *Hydro and Electric Energy Act* empowers it to decide who should be responsible to pay for the costs of a transmission line relocation or alteration when the party requesting the alteration and the transmission facility owner cannot reach a cost-sharing agreement.[94] Accordingly, despite the fact that CNRL entered into an agreement with ATCO, as it no longer agrees with the terms of the arrangement reflected in the agreement, it has chosen to seek relief from the Commission pursuant to the Commission's powers under Section 17 of the *Hydro and Electric Energy Act*.[95]

88. According to CNRL, in Decision U99035,[96] the board determined that it may override contracts as appropriate when discharging its mandate to fix just and reasonable tolls.[97] CNRL also noted that the Commission has a rate setting role, and in *TransCanada Pipeline Ventures Ltd. v Alberta Utilities Commission,* the Commission found that it could change rates in a contract if it finds them unjust, discriminatory, or unduly preferential.[98] CNRL noted that this decision was upheld by the Alberta Court of Appeal.[99]

89. As explained in the application, CNRL submitted that it had based its decision to enter into an agreement with ATCO on the circumstances it faced at the time and the imminent need for approval of the relocation in light of the operational risks.[100] CNRL submitted that neither the execution of the agreement nor the timing of the present application should bar the relief it has requested because:

- The Commission's general and supervisory powers under the *Alberta Utilities Commission Act* are comprehensive, and include the authority to do all things necessary for, or incidental to, the exercise of its powers and performance of duties.
- In the present circumstances, the Commission is required to act in accordance with a public interest mandate despite the presence of a private agreement, particularly when one of the parties no longer agrees with its terms.
- The designation of relocation costs as system costs is a rate matter that triggers the Commission's statutory jurisdiction to interfere with a private contract where necessary.[101]

90. CNRL submitted that the application should not be denied on the basis that it did not raise the issue of recovery of relocation costs as a system-related costs prior to the issuance of Decision 20698-D01-2015.[102] In this regard, CNRL submitted that determining that the costs of

92 Exhibit 21306-X0038, CNRL argument, paragraph 17.
93 Decision 2012-333: Area Council 17, Request to alter the Heartland Transmission Line under Section 17 of the *Hydro and Electric Energy Act,* Proceeding 1850, Application 1608375-1, December 11, 2012.
94 Exhibit 21306-X0038, paragraph 31, referencing Decision 2012-333 at paragraph 24.
95 Exhibit 21306-X0038, CNRL argument, paragraph 32.
96 Decision U99035: TransAlta Utilities Corporation, 1996 General Rate Application–Phase II, August 10, 1999.
97 Exhibit 21306-X0038, CNRL argument, paragraph 29.
98 Exhibit 21306-X0038, CNRL argument, paragraph 27.
99 Exhibit 21306-X0038, CNRL argument, paragraph 28.
100 Exhibit 21306-X0038, CNRL argument, paragraph 50.
101 Exhibit 21306-X0038, CNRL argument, paragraph 51.
102 Exhibit 21306-X0038, CNRL argument, paragraph 52.

the 9L66/9L32 line move project should be classified as system-related does not prejudice any party, and is consistent with the findings in Decision 2011-520, which indicated that the Commission expected that the prudency of any expenses would be examined at the time costs are incurred. As the costs of the 9L66/9L32 line move project are not final at the current stage and will be treated no differently than any other system costs incurred by ATCO, the timing of the application does not provide a basis for denying the relief requested by CNRL.[103]

91. CNRL noted that in Decision 2012-333, regarding an application pursuant to Section 17 of the *Hydro and Electric Energy Act* filed by an area council affected by the Heartland project, which sought the substitution of the approved lattice towers with monopole structures, the Commission's findings clarified that Section 17 of the *Hydro and Electric Energy Act* essentially empower the Commission to:

- Direct a transmission facility owner (TFO) to alter or relocate an approved transmission line when doing so is in the public interest.
- Decide who should be responsible for paying for the relocation if the requesting party and the TFO cannot reach a cost-sharing agreement.[104]

92. CNRL also referenced the following finding from Decision 2012-333:

> When the Commission receives an application to alter or relocate a previously approved transmission line under Section 17, that application relates to a transmission line that the Commission has already determined to be in the public interest. Accordingly, for the alteration or relocation proposed in a Section 17 application to be in the public interest, the proposed alteration or relocation must necessarily be premised upon changed circumstances, which could include the existence of new, material information, since the transmission line was approved.[105]

93. Having regard for the above-noted finding in Decision 2012-333, CNRL also noted that the Commission cited findings in Decision 2009-028[106] that recognized the potential for cost-sharing to be a "changed circumstance" that could be used to find that an alteration or relocation of a previously approved line was in the public interest.[107]

94. In its argument, the CCA submitted that it is evident from CNRL's descriptions in the application that the decision to enter into the agreement under which it bore the cost of the 9L66/9L32 line move project was a matter of convenience, reflecting CNRL's view that absorbing the costs was necessary in light of the critical need to complete the 9L66/9L32 line move project during the winter 2015-2016 season.[108] However, the CCA submitted that CNRL's explanation is troubling because:

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[103] Exhibit 21306-X0038, CNRL argument, paragraph 53.
[104] Exhibit 21306-X0038, CNRL argument, paragraph 24, referencing paragraph 24 of Decision 2012-333.
[105] Decision 2012-333, paragraph 27, cited at Exhibit 21306-X0038, CNRL argument, paragraph 25.
[106] Decision 2009-028: AltaLink Management Ltd., Transmission Line from Pincher Creek to Lethbridge, Proceeding 19, Application 1521942-1, March 10, 2009.
[107] Exhibit 21306-X0038, CNRL argument, referencing Decision 2012-333 at paragraph 30, and Decision 2009-028 at paragraphs 213-214.
[108] Exhibit 21306-X0039, CCA argument, paragraph 3.

- Despite the fact that CNRL appears to have been involved in the mine lease since 2002, it chose to agree to absorb the costs rather than applying to the Commission for approval earlier.[109]

- Even if time is of the essence, it is not clear why the parties could not have agreed that CNRL would pay for the costs while concurrently applying to the Commission for a determination that the relocation would be at a system cost.[110]

- It is not clear why the parties in the current proceeding should now be second guessing an agreement arising from a long-term contractual process involving all of CNRL, the AESO, ATCO and Total.[111]

- The AESO made it clear in correspondence regarding the 9L66/9L32 line move project that it was relying on ATCO's representation that the line relocation would be at the full cost of CNRL, as determined in accordance with its tariff.[112]

- In discussing the 2003 relocation principles in Decision 2003-043, the Commission's predecessor indicated that it looked favourably on parties settling issues through negotiations outside of the hearing process.[113]

95. In reply, CNRL submitted that discussions between Total, CNRL, the AESO and ATCO followed a typical course and took place over a reasonable time frame. Responding to the AESO's suggestion[114] that CNRL has not explained how construction one-year later would interfere with the Horizon Mine's operations, CNRL submitted that a one-year delay would have deferred the extraction of oil sands. Specifically, such a delay would have postponed construction of Dike 22, which, in turn, would likely have limited the capacity of its tailing pond.[115]

96. CNRL added that, as a participant in the negotiations, the AESO would have been aware of the effect that a one-year delay would have caused on its operations.[116]

97. In response to the CCA's suggestion that CNRL has not explained why it chose to come to an agreement to absorb the 9L66/9L32 line move project costs rather than applying earlier for approval, CNRL noted that:

- It was required to come to an agreement with Total before it could proceed with the relocation.[117]

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109 Exhibit 21306-X0039, CCA argument, paragraph 4.
110 Exhibit 21306-X0039, CCA argument, paragraph 4.
111 Exhibit 21306-X0039, CCA argument, paragraphs 5-6.
112 Exhibit 21306-X0039, CCA argument, paragraph 7.
113 Exhibit 21306-X0039, CCA argument, paragraph 9.
114 At paragraph 4 of its reply argument, CNRL addressed AESO arguments submissions presented in support of the AESO's position on the use of RC22 towers. This part of the AESO's argument is discussed in greater detail in Section 6.2 below.
115 Exhibit 21306-X0045, CNRL reply, paragraph 4(c).
116 Exhibit 21306-X0045, CNRL reply, paragraphs 19-20.
117 Exhibit 21306-X0045, CNRL reply, paragraph 16.

- The length of the negotiation process was not driven by CNRL alone, and instead reflected the fact that the negotiations involved a lengthy and comprehensive planning process that involved four different parties.[118]

98. In summary, given the critical need to avoid disruptions to its mining plan that would have arisen if the transmission lines were not relocated during the 2015-2016 winter season, CNRL submitted that it would not be reasonable to deny the relief requested in the application on the basis of questions about the reasonableness of entering into an agreement with ATCO to avoid these significant mining plan disruptions.[119]

99. ATCO submitted in its reply that, contrary to the view of the CCA, no significance should be attached to the fact that the AESO's July 15, 2015 letter[120] indicated that the AESO relied on the parties' representations that CNRL was to pay the cost of the 9L66/9L32 line move project.[121] ATCO noted that the July 15, 2015 letter had other purposes, such as outlining that the relocation would not significantly affect line length, that it would have minimal effect on the operation of the AIES, and would not result in an expansion of the capability of the transmission system.[122]

100. In its reply, the CCA submitted that it is very unusual for parties (i.e., ATCO and CNRL) who stand to benefit from a Commission decision, to first negotiate an agreement where ATCO is reimbursed for its costs and then do an about-face and apply to have the costs treated as system costs.[123] In the CCA's view, the approval of the application would create a perverse incentive for parties to negotiate private agreements to "fast track" utility service, and then present the Commission with a complaint of sunk costs.[124]

101. The CCA submitted that the existence of the agreement indicates that both parties sought to benefit, and that CNRL was clearly prepared to pay for the service. In addition, to the extent that ATCO, the AESO, and CNRL were involved in a three-year negotiation process, parties in the current proceeding should not be second-guessing the details of the negotiation process by varying the results.[125]

Commission findings

102. The Commission understands the foundation of CNRL's argument that the Commission should not base a decision to deny its request for compensation pursuant to Section 17(3) of the *Hydro and Electric Energy Act* on either the existence of its agreement with ATCO or the prior approval of the 9L66/9L32 line move project in Decision 20698-D01-2015 to be as follows:

(i) Wording used in Section 17(3) of the *Hydro and Electric Energy Act* indicates that either the permittee/licensee or the proponent of the line relocation can apply to the Commission to determine compensation and the Commission may make its determination on such compensation "at any time."

[118] Exhibit 21306-X0045, CNRL reply, paragraph 17.
[119] Exhibit 21306-X0045, CNRL reply, paragraph 23.
[120] Exhibit 21306-X0021, ATCO-AUC-2016MARCH21-002(b), Attachment 1.
[121] Exhibit 21306-X0046, ATCO reply, paragraph 6.
[122] Exhibit 21306-X0046, ATCO reply, paragraph 7.
[123] Exhibit 21306-X0045, CCA reply, paragraph 5.
[124] Exhibit 21306-X0045, CCA reply, paragraph 4.
[125] Exhibit 21306-X0045, CCA reply, paragraph 7.

(ii) Prior decisions cited by CNRL, specifically Decision 2012-333 with respect to a request to alter the Heartland project to direct the use of monopole structures on a portion of the line, and Decision 2009-028, which is cited in Decision 2012-333, grant authority to the Commission to consider requests to alter or relocate transmission lines pursuant to Section 17 of the *Hydro and Electric Energy Act* on the basis of "changed circumstances."

(iii) The key changed circumstance in the present case is that both CNRL and ATCO no longer wish to adhere to the agreement and, instead, would prefer that the Commission apply the 2003 relocation principles for the purposes of allowing the cost of the 9L66/9L32 line move project to be classified as a system-related cost.

(iv) CNRL was not aware of the 2003 relocation principles when it decided to enter into the September 1, 2015 agreement with ATCO. However, even if CNRL had been aware, it was effectively compelled by the circumstances of the prior agreement to act in the manner it did, i.e., CNRL entered into the agreement because of the urgent need to complete the relocation by a deadline that would maintain a complex critical path of activities that needed to be completed to avoid disruption to its mining activities.

(v) In light of the complex critical path of activities, and CNRL's dependency on obtaining the consent of a third party (Total) before it could apply, CNRL could not have avoided the expedited regulatory approach it followed in Proceeding 20698 to get the relocation approved.

(vi) Decision 2009-065 issued in respect of the Ventures pipeline case and a decision of the court of appeal that upheld that decision establishes a relevant precedent for the fact that the Commission is not required to defer to a commercial agreement when necessary to protect the public interest in avoiding rates that are unjust or unreasonable, unjustly discriminatory or unduly preferential.

103. The Commission has addressed each of CNRL's considerations under separate subheadings below.

Precedents established by Decision 2012-333 and Decision 2009-028

104. While CNRL cites Decision 2012-333 and Decision 2009-028 primarily in support of its proposition that the Commission can take into account "changed circumstances," the Commission considers that CNRL's submissions have not presented all relevant information from those decisions, some of which is particularly pertinent to the Commission's consideration of the present application.

105. The Commission's findings in Decision 2012-333 elaborated on the purpose of Section 17 of the *Hydro and Electric Energy Act* by referencing the Alberta Hansard as follows:

> 28. This interpretation of Section 17 is consistent with comments about that section when it was amended in 1977:
>
> > … the transmission and distribution systems need to relate more closely to electric power generation in their planning and operations. <u>These need to relate to some of the changes now coming about with the rapid growth and more severe</u>

> land use conflicts often involving the movement of transmission lines from one location to another. Presently in those instances there is not a good way to settle the compensation in terms of those changes. Bill 34 will provide the necessary changes that will be ordered by the Energy resources Conservation Board. In the event the participating parties are unable to negotiate a settlement satisfactory to all sides, it can be referred to the Public Utilities Board for review and final judgment. Mr. Speaker, this is because the Public Utilities Board already has the capacity to deal with these kinds of items, particularly the cost analysis that would be necessary to strike a fair settlement. [emphasis added]
>
> 29. The Hansard quotation above suggests that one type of changed circumstances contemplated by Section 17 is a land use conflict that arises after the approval of a transmission line. Such a conflict could result from urban growth or the need for other infrastructure in the area.[126]

106. To the extent that the changed circumstance addressed in Decision 2012-333 was referring to the emergence of a land-use conflict after the transmission line was approved, the reference to the phrase "changed circumstance" in Decision 2012-333 is different from CNRL's context in the present proceeding, where the changed circumstance is the desire for the parties to change the agreed-upon cost-sharing arrangement.

107. Having regard for how "changed circumstance" was used in Decision 2012-333 and how CNRL has applied this term in the present context, the Commission understands that CNRL bases its interpretation that a relevant changed circumstance could also be a desire to alter the cost-sharing arrangement on the fact that in a footnote in Decision 2012-333, the Commission referenced findings at paragraphs 213 and 214 of Decision 2009-028.[127] These paragraphs are reproduced below:

> 213. The Commission asked AltaLink if the question of sharing the cost of placing a portion of the line underground had been discussed with the City of Lethbridge and was advised that it had not. In this respect the Commission notes that section 17 of the *HEE Act* [*Hydro and Electric Energy Act*] states:
>
> > 17(1) The Commission may, on any terms and conditions it considers proper, direct a permittee or licensee to alter or relocate any part of the permittee's or licensee's transmission line if in the Commission's opinion the alteration or relocation would be in the public interest.
> >
> > (2) The Commission may, in an order under subsection (1), provide for the payment of compensation and prescribe the persons by whom and to whom the compensation is payable.
> >
> > (3) When an order under this section provides for the payment of compensation, the Commission may at any time provide that if agreement on the amount of compensation cannot be reached between the parties, the amount is to be determined by the Alberta Utilities Commission on the application of either party.

[126] Decision 2012-333, paragraphs 28-29. Underlining of Hansard passage was done in Decision 2012-333.

[127] The linkage between Decision 2012-333 and Decision 2009-028 is set out at paragraph 26 of CNRL's Argument (Exhibit 21306-X0038). Footnote 15 of CNRL's argument references paragraphs 213-214 of Decision 2009-028.

> 214. Therefore, if the City of Lethbridge is interested in pursuing an underground option through the Oldman River valley, it could bring an application under section 17, including a proposal for cost sharing.

108. It is evident that the Commission's finding at paragraph 214 of Decision 2009-028 represented an attempt to convey the Commission's willingness to examine a potential alteration of an existing transmission line if the City of Lethbridge were to propose an acceptable cost-sharing arrangement to fund an underground option. Conversely, in the present case, CNRL's proposal is to change the cost-sharing arrangement so that ratepayers pay for a completed transmission line simply because the parties wish it. However, when deciding the application before it, the Commission is mindful of its obligation to establish rates that are just, reasonable and not unduly discriminatory, unreasonable or excessive.

109. The manner in which a willingness of the customer to pay for the cost of the relocation of transmission facilities affects the depth of the Commission's need to examine proposed expenditures is set out in the following findings from Decision 2014-283:[128]

> 113. Certain end-use customer connection projects that ATCO included for consideration within the application experienced significant variances attributed to cost line items such as construction management or project management. While the increases attributed to such line items were significant in some instances, the Commission is not concerned by such increases in circumstances where the costs were incurred primarily to meet an end-use customer's need for timely service, and the end-use customer that ultimately benefited pays for the associated incremental costs through an increased contribution.
>
> 114. Accordingly, the Commission has, as and when appropriate, taken into account the existence and amount of a customer contribution in its assessment of the prudence of amounts sought by ATCO in relation to certain projects.

110. The above passage clearly indicates that contributions of end-use customers "matters" when the Commission reviews transmission project expenditures. It follows that a proposal to withdraw a contribution matters as well, and would affect how the Commission looks at the reasonableness of transmission project expenditures.

Prerogative to request compensation after the fact

111. Notwithstanding CNRL's observation that applications under Section 17(3) of the *Hydro and Electric Energy Act* can be filed at "any time," CNRL has not addressed the most important effect of the fact that the relocation of transmission lines 9L66 and 9L32 was considered first in the proceeding leading to Decision 20698-D01-2015, namely that actions were taken on the basis of the information presented in the proceeding that led to that decision which cannot now be undone.

112. In this regard, in Proceeding 20698, the Commission made its determination on the basis of a project that was represented as being fully contributed by CNRL. When assessing the public

[128] Decision 2014-283: ATCO Electric Ltd., 2012 Transmission Deferral Account and Annual Filing for Adjustment Balances, Proceeding 2683, Application 1609720-1, October 2, 2014.

interest the Commission will generally weigh the benefits of a proposed project against the costs to be incurred by ratepayers.

113. Having regard to Section 17 of the *Hydro and Electric Energy Act*, if ATCO had presented the applications reviewed in Proceeding 20698 as a project to be funded by ratepayers, the Commission would have had the opportunity to assess the relative merits of the project in light of its benefits, which could include the relative merits of promoting the policy goals of energy resource conservation legislation in light of the cost of the project to ratepayers.

114. Furthermore, as the Commission was not made aware of the possibility of a net cost to ratepayers until after the project was completed, the Commission was unable to exercise its discretion under Section 17 of the *Hydro and Electric Energy Act* to condition its approval of the relocation on considerations such as the specifications of the relocated facilities or order the payment of a contribution. To complete such an analysis at this stage would amount to a collateral attack on the original decision approving the 9L66/ 9L32 line move project.

Urgency to complete 9L66/9L32 line move project

115. CNRL's evidence[129] is that CNRL's consideration of the applicability of 2003 relocation principles to its circumstance did not occur until after it had entered into the agreement with ATCO to pay for the cost of the relocation. Accordingly, for the purposes of this decision, the Commission accepts that CNRL's ultimate decision to file the present application reflected CNRL's ignorance of information CNRL now considers to be pertinent.

116. As CNRL had its mining lease prior to 2002,[130] and given CNRL's evidence that discussions on eventual relocation occurred around that time,[131] the Commission has no reason to believe that the time compression concerns CNRL has outlined in in its argument could not have been overcome by starting earlier.

117. Notwithstanding, the Commission considers that whether or not CNRL could not have avoided the time compression problem is irrelevant. What matters is that CNRL, for reasons of its own, entered into an agreement with ATCO that led ATCO to file applications 20698-A001 and 20698-A002 on the basis of the set of facts presented in Proceeding 20698. That set of facts, including most critically, the representation that CNRL would be contributing the full costs of the 9L66/9L32 line move project, caused the Commission to evaluate applications 20698-A001 and 20698-A002 in a substantially different manner than if ATCO had indicated that it was seeking treatment of the relocation costs as system costs.

Ventures Pipeline decision

118. The Commission does not agree with CNRL's suggestion that the findings set out in Decision 2009-065 in the matter of the dispute between Suncor Energy Inc. and TransCanada Pipeline Ventures Limited Partnership as to whether the *Gas Utilities Act* should apply in determining the services and tolls of a pipeline sets a relevant precedent in support of CNRL's contention that the agreed-upon terms of the agreement that CNRL entered into with ATCO can be overridden.

[129] Exhibit 21306-X0003, paragraph 3.
[130] Exhibit 21306-X0003, paragraph 24.
[131] Exhibit 21306-X0003, paragraph 55.

119. The Commission's findings in Decision 2009-065[132] involved a detailed examination of the terms of the commercial agreement in question, and considered the evolution of the relationship between the Ventures Pipeline and shippers between the time that it was first approved as an "at risk pipeline" under which the rates set out in the commercial contracts were not regulated rates of a gas utility and that the fact that, over time, the use of the Ventures Pipeline had changed.[133] CNRL has failed to demonstrate that a similar change in circumstances has occurred in the short time period between the September 1, 2015 date of the agreement between ATCO and CNRL and the date of CNRL's application on February 2, 2016.

120. The Commission's findings in Decision 2009-065 also reflected a key finding that the Ventures Pipeline was subject to the *Gas Utilities Act* and the *Public Utilities Act*. Further, as noted at paragraph 27 of CNRL's argument,[134] at paragraph 62 of Decision 2009-065, the Commission determined that it had a mandate, pursuant to the *Gas Utilities Act,* to balance competing interests, and upon making the determination that Ventures was a gas utility subject to the *Gas Utilities Act* and the *Public Utilities Act*, the Commission could override its natural reluctance to interfere in freely negotiated contracts if it were to find that the rates in the contract are unjust or unreasonable, unjustly discriminatory, or unduly preferential.[135]

121. Furthermore, to the extent that the Commission's findings in Decision 2009-065 took into account Section 81[136] of the *Public Utilities Act*, the Commission has also examined that provision, reproduced below, in CNRL's circumstances:

> **Rates established by agreement**
>
> **81** When, by a contract between an owner of a public utility and a municipality or person for the supply of a commodity or service by means of the public utility, a rate, toll or charge is agreed on either as a fixed or variable rate, toll or charge, or a maximum or minimum rate, toll or charge, and whether that rate, toll or charge is agreed on with respect to a present or future supply of an existing or non-existing commodity or service, then, notwithstanding anything in this Act, the Commission may, on the application of the owner, municipality or person and on it being shown on the hearing of the application that the rate, toll or charge is insufficient, excessive, unjust or unreasonable, change the rate, toll or charge to some other greater or lesser rate, toll or charge, that it considers fair and reasonable.

122. The Commission also considered that at paragraph 62 of Decision 2009-065:

> 62. Although the Commission is reluctant to interfere in freely negotiated contracts, the Commission is mindful of its mandate under the *Gas Utilities Act*, to protect the public interest by way of regulating public utilities. The *Gas Utilities Act* requires the Commission to balance competing interests. Once Ventures was declared a gas utility, the rates set in the contract of each shipper are subject to the provisions of the *Gas Utilities Act* and *Public Utilities Act* allowing the Commission to change rates in a contract if it finds that the rates are unjust or unreasonable, unjustly discriminatory or unduly preferential.

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132 Decision 2009-065: TransCanada Pipeline Ventures Ltd., Suncor Energy Inc., Application to Have the Ventures Pipeline (Oil Sands Pipeline) Regulated Under the Provisions of the Gas Utilities Act, Section 24 of the Gas Utilities Act – Investigation, Proceeding 27, Application 1568110-1, May 20, 2009.
133 Decision 2009-065, paragraph 61.
134 Exhibit 21306-X0038, CNRL argument, paragraph 27.
135 Decision 2009-065, paragraph 62.
136 Decision 2009-065, paragraph 60.

123. Given that no evidence has been provided to show that the relocation of the transmission facilities exceeded ATCO's estimated cost of performing this service and given that CNRL agreed to pay the full costs of the 9L66/9L32 line move project, the Commission finds no basis to warrant interference with the terms of the agreement. For the reasons given above, the Commission finds that CNRL has not demonstrated that the agreement pertaining to the 9L66/9L32 line move project results in a rate, toll or charge that is insufficient, excessive, unjust or unreasonable in the circumstances. Accordingly, the Commission will not employ the provisions of Section 81 of the *Public Utilities Act* to alter the terms of the agreement including the rate charged to CNRL for the 9L66/9L32 line move project.

6 Other matters

6.1 Relocated distribution voltage facilities

124. In argument, CNRL submitted that because the 2003 relocation principles are directly applicable to the facts outlined in the application, the costs of the 9L66/9L32 line move project should be designated as system costs[137] recoverable by ATCO in its transmission rates.[138]

125. However, the AESO noted that, in addition to approving the relocation of portions of transmission lines 9L66 and 9L32, the 9L66/9L32 line move project approved in Decision 20698-D01-2015 also involved the relocation of two 25-kV distribution lines.[139] Specifically, $2,483,250[140] was incurred to relocate the two 25-kV distribution lines and CNRL is seeking to have these costs classified as transmission system costs.[141]

126. The AESO submitted that, irrespective of the Commission's findings on whether the 2003 relocation principles remain intact, or, if so, whether the 9L66/9L32 line move project has satisfied those principles, the costs related to the movement of the 25-kV distribution lines are not transmission system costs and, therefore, should not be recovered through transmission rates.[142] The AESO provided the following rational to support its view that distribution costs should not be recovered through transmission rates:

- Section 37(1) of the *Electric Utilities Act* specifies that transmission facility owner tariffs are for the use of transmission facilities, which only includes facilities with a voltage greater than 25 kV.[143]
- While Section 30(2)(a)(iv) of the *Electric Utilities Act* provides a mechanism for including "any other prudent costs and expenses the Commission considers appropriate" the Commission, in Decision 2014-242, declined to allow recovery through the AESO of costs requested by FortisAlberta on behalf of an end-use customer on the basis that it was not appropriate to recovery distribution costs through a transmission tariff.[144]

[137] Exhibit 21306-X0038, CNRL argument, paragraph 54.
[138] Exhibit 21306-X0038, CNRL argument, paragraph 55.
[139] Exhibit 21306-X0041, AESO argument, paragraph 1.
[140] Exhibit 21306-X0041, AESO argument, paragraph 3.
[141] Exhibit 21306-X0041, AESO argument, paragraph 3.
[142] Exhibit 21306-X0041, AESO argument, paragraph 2(a).
[143] Exhibit 21306-X0041, AESO argument, paragraph 5.
[144] Exhibit 21306-X0041, AESO argument, paragraph 6.

127. To support its view, the AESO noted that CNRL acknowledged that distribution and transmission assets are treated separately from a regulatory perspective and that distribution costs may have to be considered in the context of a distribution system owner's tariff proceeding.[145]

128. In its argument, the CCA took note that in an information request response,[146] although taking the position that distribution and transmission assets should be treated similarly with respect to the 2003 relocation principles, CNRL acknowledged that transmission and distribution assets are treated differently from a regulatory perspective.[147] However, the CCA submitted that, as with other costs of the 9L66/9L32 line move project, the costs related to the relocation of distribution facilities should not be included in the rates of customers.[148]

129. In reply, CNRL submitted that despite its acknowledgment of the different regulatory treatment of distribution and transmission assets in an information request, it was unclear why the 2003 relocations principles would not apply to distribution costs in the same manner as transmission costs.[149] Costs related to the relocation of transmission and distribution facilities appear to be driven by the same need to maximize the recovery of oil sands resources, and the 2003 relocation principles do not differentiate between the two. CNRL noted that within the findings relating to the 2003 relocation principles, the Commission's predecessor used the general term "relocation costs" without specifying how these principles specifically apply to transmission or distribution voltage facilities.[150]

130. As such, CNRL sought guidance from the Commission as to how the 2003 relocation principles should apply to distribution related costs given the circumstances.[151] However, to the extent that the 2003 relocation principles are driven by the same general need to relocate transmission lines to maximize the recovery of oil sands, CNRL's position was that transmission and distribution facility relocation costs should be treated similarly.[152]

131. Contrary to the submissions of the AESO, CNRL submitted that the circumstances of the current proceeding are not comparable to those in effect in the AESO tariff proceeding considered in Decision 2014-242, which pertained to a FortisAlberta request for compensation on behalf of Kinder Morgan for incremental costs arising from the conversion of Kinder Morgan's connection facilities from 69-kV lines to 25 kV. In that case, the Commission determined that costs should not be recovered through the transmission tariff on the basis that distribution service was the lowest cost option. Conversely, the request in the application for compensation due to potential sterilization of mineable ore reflects the exact circumstances contemplated in Decision 2003-043, and is completely distinct from the facts considered by the Commission in Decision 2014-242.[153] Notwithstanding the above submission, CNRL deferred to the Commission's discretion and direction on this matter.[154]

145 Exhibit 21306-X0022, CNRL-AESO-2016MAR21-001.
146 Exhibit 21306-X0022, CNRL-AESO-2016MAR21-001.
147 Exhibit 21306-X0039, CCA argument, paragraph 16.
148 Exhibit 21306-X0039, CCA argument, paragraph 17.
149 Exhibit 21306-X0045, CNRL reply, paragraph 6.
150 Exhibit 21306-X0045, CNRL reply, paragraph 7.
151 Exhibit 21306-X0045, CNRL reply, paragraph 4(a).
152 Exhibit 21306-X0045, CNRL reply, paragraph 8.
153 Exhibit 21306-X0045, CNRL reply, paragraph 9.
154 Exhibit 21306-X0045, CNRL reply, paragraph 10.

132. In its reply, the CCA submitted that, notwithstanding the AESO's submission that costs of relocating distribution facilities should not be included in ATCO's transmission rates, the Commission should address the matter of who should cover the costs of both transmission and distribution facilities within the current decision rather than deferring to another proceeding the question of how costs related to distribution facilities should be handled.[155]

Commission findings

133. While the application indicates that CNRL is seeking to have the costs of the 9L66/9L32 line move project classified as system-related costs, there is no specific mention in the application that CNRL was also seeking to have the 2003 relocation principles applied to the costs of relocating distribution voltage facilities.

134. However, in its filing in response to additional information sought by the Commission in correspondence dated February 17, 2016,[156] CNRL indicated that in addition to the relocation of a dual circuit 240-kV transmission line, the project also consisted of the relocation of two 25-kV distribution lines. In the same filing, CNRL indicated that it had paid ATCO $2,483,250 (inclusive of GST) in relation to the relocation of the 25-kV distribution lines.[157]

135. The Commission finds that because the 25-kV distribution lines do not meet the definition of transmission facilities, these costs fall outside of the criteria required to be included in ATCO's transmission tariff and, therefore, they are also disqualified from being included in the AESO's tariff as wire costs. Accordingly, the only basis upon which the cost of relocating the 25-kV distribution lines could be recovered under the AESO's tariff would be pursuant to the authority set out in Section 30(2)(a)(iv) of the *Electric Utilities Act* to include any other prudent costs or expenses the Commission considers to be appropriate.

136. In this decision, the rationale for declining to treat the cost of the 25-kV distribution lines as costs recovered through the AESO tariff is substantially equivalent to the reasons that the request of FortisAlberta on behalf of Kinder Morgan was declined by the Commission in Decision 2014-242; the costs in question are not TFO tariff costs that could be recovered as AESO tariff wires costs. In addition, no strong rationale has been presented as to why an exception should be applied rather than including these costs within ATCO's distribution tariff.

137. While not discussed by the parties, it is also important to take note that Section 17(1) of the *Hydro and Electric Energy Act* refers specifically to transmission lines but makes no mention of distribution facilities. Accordingly, the Commission considers that the only manner by which an express allowance for the costs of altering or relocating distribution lines to accommodate a land-use conflict to be included in the distribution utility's tariff would be through the filing of an application by the distribution utility. However, no evidence has been provided in the current proceeding that ATCO either has, or intends to, file such an application. Instead, the evidence on the record of the present proceeding is that CNRL has previously agreed to pay for the relocation of the distribution facilities and has made payments relating to the same.[158]

[155] Exhibit 21306-X0045, CCA reply, paragraph 10.
[156] Exhibit 21306-X0011, PDF page 2.
[157] Exhibit 21306-X0011, PDF page 1.
[158] Exhibit 21306-X0011, PDF page 3.

6.2 Use of RC22 towers

138. As stated above, the 9L66/9L32 line move project used RC22 towers rather than the K towers originally used to construct transmission line 9L66/9L32.

139. In argument, the AESO submitted that, notwithstanding not having a position on the application of the 2003 relocation principles to the 9L66/9L32 line move project, if the Commission chose to apply the 2003 relocation principles in this case, the incremental cost related to the use of RC22 towers should be classified as a customer rather than a system cost.[159]

140. According to the AESO, ATCO's decision to use RC22 towers rather than K towers was estimated to have cost $779,000.[160] The AESO further noted that the rationale ATCO provided for selecting RC22 towers was:

- That the relocation was needed to permit CNRL's Dike 22 to be built.[161]
- That the use of towers in inventory was needed to complete the project in winter rather than under wet spring or summer conditions.[162]

141. However, while CNRL is claiming that it agreed to absorb the cost of the 9L66/9L32 line move project primarily on the basis of the critical implications of a delay and the consequential need for the 9L66/9L32 line move project to proceed on an expedited basis, to the extent that this reflects the three year time period taken to negotiate the construction of Dike 22 on Total's leased area, the AESO submitted that the incremental costs of using RC22 towers should be considered to have been caused by CNRL. Accordingly, the AESO submitted that these incremental costs should be classified as participant-related rather than system-related.[163] The AESO noted that classifying the incremental costs as participant-related costs would be consistent with the objectives outlined by the Commission in Decision 3473-D02-2015 to send better price signals to customers where striving to complete a project by a planned in-service date results in increased costs in comparison to the costs of meeting a later in-service date.[164]

142. In its argument, ATCO noted that it explained, in its response to ATCO-AUC-2016MARCH21-003 that during its initial planning, it determined that using K towers would not achieve the in-service date agreed to with CNRL.[165] In addition, the re-use of K towers would have required a three to four month outage of transmission line 9L66/9L32, which would have caused an unacceptable disruption of service to the Shell Albian oil sands facility.[166]

143. ATCO submitted that its selection of RC22 towers reflected the fact that they were already in its inventory and, therefore, did not involve delivery lags or testing. In contrast, a risk of a delayed in-service date would arise from the use of K towers because:

- K towers are not an ATCO standard tower.

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159 Exhibit 21306-X0041, AESO argument, paragraph 2.
160 Exhibit 21306-X0041, AESO argument, paragraph 9.
161 Exhibit 21306-X0041, AESO argument, paragraph 10.
162 Exhibit 21306-X0041, AESO argument, paragraph 9.
163 Exhibit 21306-X0041, AESO argument, paragraph 11.
164 Exhibit 21306-X0041, AESO argument, paragraph 12, referencing Decision 3473-D02-2015, paragraphs 160-162.
165 Exhibit 21306-X0040, ATCO argument, paragraph 11.
166 Exhibit 21306-X0040, ATCO argument, paragraph 14.

- K towers did not meet ISO requirements.
- K towers would involve long delivery and additional testing to confirm acceptability.[167]

144. ATCO also submitted that the higher costs associated with RC22 towers for materials and foundation construction was offset by the additional testing and rig mat costs that would have been involved if K towers were used.[168] To the extent that the use of RC22 towers was necessary to avoid various types of risks, and are functionally equivalent to the towers originally used to build the 9L66 and 9L32 lines, ATCO submitted that the tower substitution should be considered to be a "like for like" replacement.[169]

145. In reply, ATCO disagreed with the AESO's submission that the incremental costs arising from the use of RC22 towers rather than K towers should not be classified as system-related costs[170] on the basis that:

- Using non-standard K towers would have added significant risk to the project schedule.[171]
- RC22 towers are functionally equivalent to the towers used to build the 9L66 and 9L32 lines.[172]
- Because they were already in inventory, the use of RC22 towers provided greater certainty with respect to project material and construction costs.[173]
- The re-use of the existing towers would have caused an outage of 3 to 4 months, which would have caused an unacceptable disruption to the Shell Albian oil sands facility.[174]

146. CNRL disagreed in its reply with the submission of the AESO that the incremental cost of using RC22 towers rather than K towers of approximately $779,000 should not be classified as a system-related cost.[175]

147. CNRL noted that ATCO used a "like for like" replacement to relocate the transmission lines.[176] In addition, CNRL submitted that as ATCO has indicated:

- It considers RC22 towers to be "standard" towers while K towers are not.
- The RC22 towers were in stock, thereby reducing materials procurement and engineering time.
- Using RC22 towers avoided constructability risks that may have arisen if installation had occurred during wet spring and summer conditions.

As such, any incremental costs that may have arisen through the use of RC22 towers should be considered to have been prudently incurred.[177]

[167] Exhibit 21306-X0040, ATCO argument, paragraph 11.
[168] Exhibit 21306-X0040, ATCO argument, paragraph 12.
[169] Exhibit 21306-X0040, ATCO argument, paragraph 13.
[170] Exhibit 21306-X0046, ATCO reply, paragraph 2.
[171] Exhibit 21306-X0046, ATCO reply, paragraph 3.
[172] Exhibit 21306-X0046, ATCO reply, paragraph 4.
[173] Exhibit 21306-X0046, ATCO reply, paragraph 4.
[174] Exhibit 21306-X0046, ATCO reply, paragraph 4.
[175] Exhibit 21306-X0043, CNRL reply, paragraph 11.
[176] Exhibit 21306-X0043, CNRL reply, paragraph 4(b).
[177] Exhibit 21306-X0043, CNRL reply, paragraph 12.

148. In its reply, the CCA submitted that it agreed with the position of the AESO that the incremental costs related to the use of RC22 towers should not be classified as a system-related cost.[178] In response to ATCO's observation that it would not have been able to meet the in-service date target requested by CNRL without using RC22 towers,[179] as CNRL has been involved in lease discussions since 2002, and given that the negotiation process lasted three years,[180] the CCA submitted that it would not be reasonable for customers to pay incremental costs arising from a last minute rush that could have been prevented with better planning.[181]

Commission findings

149. In light of the Commission's determination in Section 5 that the costs of the 9L66/9L32 line move project should not be classified as system-related, the concerns raised by the AESO with respect to the treatment of any incremental costs arising from the use of RC22 towers rather than K towers in the event that the Commission determined that project costs should be classified as system-related costs is moot.

6.3 Accounting treatment of retired facilities

150. In a filing dated April 11, 2016, ATCO provided responses to the Commission's questions regarding the effect of the 9L66/9L32 line move project on its depreciation and salvage accounting for facilities removed as a result of the 9L66/9L32 line move project.[182]

151. ATCO submitted that the prudence of its expenditures on the 9L66/9L32 line move project and the treatment of any associated contributions should be considered and tested as part of its annual deferral account applications.[183]

Commission findings

152. Based on the evidence submitted by ATCO,[184] the Commission agrees with ATCO that the prudence of its expenditures on the 9L66/9L32 line move project and the treatment of any associated contributions should be considered and tested as part of its annual deferral account applications. The treatment of the assets to be retired and the allocation of revenue will be considered in a future ATCO rates proceeding.

[178] Exhibit 21306-X0043, CCA reply, paragraphs 13-14, citing Exhibit 21306-X0041, paragraphs 9-13.
[179] Exhibit 21306-X0043, CCA reply, paragraph 11, referencing Exhibit 21306-X0040, paragraph 11.
[180] Exhibit 21306-X0043, CCA reply, paragraph 12, referencing Exhibit 21306-X0039, paragraphs 4-5.
[181] Exhibit 21306-X0043, CCA reply, paragraph 13.
[182] Exhibit 21306-X0021, ATCO-AUCMARCH21-004.
[183] Exhibit 21306-X0040, ATCO argument, paragraph 15.
[184] Exhibit 21306-X0021.

7 Order

153. It is hereby ordered that:

(1) Canadian Natural Resources Limited shall pay to ATCO Electric Ltd. the costs associated with relocating portions of transmission lines 9L66 and 9L32 approved in Decision 20698-D01-2015.

Dated on August 16, 2016.

Alberta Utilities Commission

(original signed by)

Mark Kolesar
Vice-Chair

(original signed by)

Henry van Egteren
Commission Member

(original signed by)

Neil Jamieson
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) **counsel or representative**
Canadian Natural Resources Limited (CNRL) Lawson Lundell Barristers & Solicitors
ATCO Electric Ltd. (ATCO)
Consumers' Coalition of Alberta (CCA)
Alberta Electric System Operator (AESO)

Alberta Utilities Commission Commission panel M. Kolesar, Vice-Chair H. van Egteren, Commission Member N. Jamieson, Commission Member Commission staff S. Sinclair (Commission counsel) J. Halls T. Wilde