

Notice of variance of decision

June 4, 2020

Variance of Decision 22742-D02-2019

Please be advised that the Alberta Utilities Commission's Decision 22742-D02-2019 has been varied with the release of Decision 25139-D01-2020.

Decision 22742-D02-2019 should be read together with Decision 25139-D01-2020 for completeness.

Douglas A. Larder, QC
General Counsel



ATCO Electric Ltd.

2018-2019 Transmission General Tariff Application

October 2, 2019

Alberta Utilities Commission

Decision 22742-D02-2019

ATCO Electric Ltd.

2018-2019 Transmission General Tariff Application

Proceeding 22742

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Eau Claire Tower
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Telephone: 310-4AUC (310-4282 in Alberta)
1-833-511-4AUC (1-833-511-4282 outside Alberta)

Email: info@auc.ab.ca

Website: www.auc.ab.ca

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1 Decision summary

1. This decision reflects the Alberta Utilities Commission’s determinations on utility asset disposition and other matters pertaining specifically to the Fort McMurray wildfire, filed as part the 2018-2019 transmission general tariff application (GTA) of ATCO Electric Ltd. (AET). In this decision, a majority of the Commission panel finds the retirement of assets destroyed in the Fort McMurray wildfire to be an ordinary retirement and, therefore, the undepreciated capital costs of the destroyed assets are for the account of customers. In a concurring decision, these costs are also found to be for the account of customers for reasons different from that of the majority.

2 Introduction and background

2. In its application, AET stated that it experienced “losses” to overhead transmission facilities, substations and telecommunication facilities due to the Fort McMurray wildfire that destroyed transmission assets, i.e., poles and fixtures, and resulted in capital repairs and replacements in 2016 and 2017.

3. In Decision 22742-D01-2019,¹ issued July 4, 2019, the Commission deferred its findings related to the Fort McMurray wildfire. The Commission stated it would issue its decision on those matters contemporaneously with Proceeding 21609 for ATCO Electric Ltd.’s distribution (AED) Z factor application related to the Fort McMurray wildfire. As a result, certain aspects of AET’s application remained outstanding and were treated as placeholder amounts until the Commission rendered its decision. These placeholders were enumerated in Section 8.2 of Decision 22742-D01-2019, as follows:

- (a) The proposed capital addition in 2017 of Transmission Capital Maintenance - Fort McMurray Wildfire Transmission Asset Restoration - Project 00073 (TCM Project 00073) in the amount of \$7.6 million for assets damaged and requiring restoration as a result of the wildfire.
- (b) The proposed retirement of the original historical cost of AET’s asset Account 453 (USA Account 355; AET Account 453) – Poles and fixtures destroyed and retired from service in the amount of \$1.899 million.
- (c) The proposed recovery of \$0.664 million through AET’s amortization of reserve differences mechanism, of the net book value of AET’s USA Account 355 – Poles and fixtures destroyed and retired from service.

¹ Decision 22742-D01-2019: ATCO Electric Ltd., 2018-2019 Transmission General Tariff Application, Proceeding 22742, July 4, 2019.

- (d) The recovery of \$0.321 million through AET's RID [reserve for injuries and damages] account, for power restoration efforts related to damage caused by the Fort McMurray wildfire.
4. In Decision 22742-D01-2019, the Commission similarly deferred making a finding on an issue raised by the Office of the Utilities Consumer Advocate (UCA) of cross-subsidization of Fort McMurray wildfire-related expenditures between ATCO Electric's distribution and transmission functions.

3 Fort McMurray wildfire considerations

5. In Decision 2013-417, the utility asset disposition (UAD decision), the Commission confirmed that ordinary retirements result from causes reasonably assumed to have been anticipated or contemplated in prior depreciation provisions, and may normally be expected to occur when plant reaches the end of its expected service life.² Under-recovery or over-recovery of capital investment on ordinary retirements are for the account of customers.³ The Commission also summarized the basis upon which it would determine whether an extraordinary retirement had taken place and the consequences of such a finding, as follows:

In order to give effect to the court's guidance that the "rate-regulation process allows and compels the Commission to decide what is in the rate base, i.e. what assets (still) are relevant utility investment on which the rates should give the company a return," the Commission directs each of the utilities to review its rate base and confirm in its next revenue requirement filing that all assets in rate base continue to be used or required to be used (presently used, reasonably used or likely to be used in the future) to provide utility services. Accordingly, the utilities are required to confirm that there is no surplus land in rate base and that there are no depreciable assets in rate base which should be treated as extraordinary retirements and removed because they are obsolete property, property to be abandoned, overdeveloped property and more facilities than necessary for future needs, property used for non-utility purposes, property that should be removed because of circumstances including unusual casualties (fire, storm, flood, etc.), sudden and complete obsolescence, or un-expected and permanent shutdown of an entire operating assembly or plant. As stated above, these types of assets must be retired (removed from rate base) and moved to a non-utility account because they have become no longer used or required to be used as the result of causes that were not reasonably assumed to have been anticipated or contemplated in prior depreciation or amortization provisions...⁴

6. With respect to the Fort McMurray wildfire, AET provided the following summary of the event in its 2018-2019 GTA:

In May of 2016, sustained strong winds fueled a series of wildfires in the vicinity of the community of Fort McMurray. Over the course of several days, fueled by strong winds, the fire grew to approximately 590,000 hectares. The fire spread through the city of Fort McMurray, impacted operations in the Athabasca Oil Sands, and threatened several transmission substations and powerline facilities in the area. During this period of time it destroyed thousands of homes within the city and is estimated to have cost \$3.58 billion

² Decision 2013-417: Utility Asset Disposition, Proceeding 20, Application 1566373-1, November 26, 2013, paragraph 295, footnote 362.

³ Decision 2013-417, paragraph 304.

⁴ Decision 2013-417, paragraph 327.

in insurable damages. Roughly 88,000 people were evacuated in the municipality of Wood Buffalo.⁵

7. As a result of the wildfire, AET experienced what it described as “losses”⁶ to overhead transmission facilities, substations and telecommunication facilities. AET described TCM Project 00073 entitled “Fort McMurray Wildfire Transmission Asset Restoration” for which it forecast \$7.8 million⁷ for 2016 and 2017. The project description included “... activities associated with ensuring public safety from electrical hazards during and following evacuations, all activities associated with replacement and investigation of damaged transmission substations, overhead powerlines and telecommunications infrastructure.”⁸ The actual capital amounts incurred in connection with the project in 2016 and 2017 were \$7.0 million and \$0.6 million,⁹ respectively.

8. The \$7.8 million forecast and \$7.6 million actual amounts included costs for both capital replacements and capital repairs. In its evidence, AET did not provide a separate accounting of capital asset repair costs versus replacement costs for transmission assets damaged by the Fort McMurray wildfire. Mr. Goguen, witness for AET, also confirmed in testimony:

In respect to substation and telecommunications, there were capital repairs only. We did not lose assets. Only the poles that are listed or the various lines that were listed above were impacted and destroyed by the fire. The substations and telecommunication had various damage, contamination damage, et cetera, that we needed to do some capital repair work, if you will, but not replace. So there's no retirements in those categories.¹⁰

9. AET proposed to recover the remaining net book value (NBV) of the poles and fixtures, destroyed by the wildfire and retired from USA Account 355, in the amount of \$0.664 million, through AET's amortization of reserve differences mechanism. This account was last examined in AET's 2014 depreciation study¹¹ (2014 depreciation study) and was approved in Decision 20272-D01-2016.¹²

10. AET stated that it was required to undertake emergency power restoration efforts stemming from the Fort McMurray wildfire, the cost of which it intended to recover through its established RID account in the amount of \$0.321 million.¹³ AET proposed that in 2017 an amount of \$0.321 million be recovered through its RID account (minimum filing requirement Schedule 29-2) for costs related to the Fort McMurray wildfire.

11. In the following table, the Commission has summarized key financial evidence from AET related to the Fort McMurray wildfire event:

⁵ Exhibit 22742-X0171.04, Fort McMurray Wildfire Transmission Asset Restoration, Project Number: 00073, PDF pages 1068-1077.

⁶ Exhibit 22742-X0171.04, PDF pages 1069-1070.

⁷ Exhibit 22742-X0171.04, PDF page 1069.

⁸ Exhibit 22742-X0171.04, PDF page 1069.

⁹ Exhibit 22742-X0001.02, Table 10.6, PDF page 344, and Table 10.14, PDF page 357.

¹⁰ Transcript Volume 5, page 835, lines 16-24.

¹¹ Proceeding 20272, Exhibit 20272-X0587.01, Attachment 9, Gannett Fleming, 2014 Depreciation Study submitted in AET's 2015-2017 GTA.

¹² Decision 20272-D01-2016: ATCO Electric Ltd., 2015-2017 Transmission General Tariff Application Proceeding 20272, August 22, 2016.

¹³ Exhibit 22742-X0001.02, PDF page 714.

Table 1. Fort McMurray wildfire – key financial details of wildfire event

Original historical cost of assets destroyed and retired from service	Accumulated depreciation of assets destroyed and retired from service	NBV of assets destroyed and retired from service	Claimed through RID for restoration of power	Notes	Cost of capital replacements and repairs to assets damaged or destroyed by the wildfire event in TCM Project 00073
\$1,898,646	\$1,234,304	\$664,342	\$0.321 million for damages caused by Fort McMurray wildfires related to the restoration of power.	All destroyed assets within USA Account 355 – Poles and fixtures (or AET Account 453 – Poles and fixtures).	Forecast: \$7.0 million 2016 \$0.8 million 2017 Actual: \$7.0 million 2016 \$0.6 million 2017
Reference: Exhibit 22742-X0237.01, AET-CCA-2017AUG30-053(c), PDF page 110	Calculation: historical cost less net book value	Reference: Exhibit 22742-X0237.01, AET-CCA-2017AUG30-051(a), PDF page 104.	Reference: Exhibit 22742-X0001.02, PDF page 714. Exhibit 22742-X0709, Undertaking to detail RID events.	Reference: Exhibit 22742-X0237.01, AET-CCA-2017AUG30-051(a), PDF page 104.	Reference: Exhibit 22742-X0171.04, PDF page 1073. Exhibit 22742-X0001.02, Table 10.6, PDF page 344, and Table 10.14, PDF page 357.

12. AET responded to a series of information requests (IRs) and undertakings in which it addressed certain aspects of the Fort McMurray wildfire event, including its requested regulatory treatment of various costs within the context of the UAD decision. Specific details of the wildfire event are summarized by the Commission below:

- (a) AET confirmed that the capital additions related to TCM Project 00073: Fort McMurray Wildfire Transmission Asset Restoration were specific to rebuilding damaged assets and there were no asset retirements associated with this project other than poles and fixtures.¹⁴
- (b) As part of AET's 2016-2017 TCM Project 00073, the actual costs of \$7.0 million for 2016 and \$0.6 million for 2017 for capital repairs were proposed to be capitalized as plant additions and included in AET's 2018 opening rate base.¹⁵
- (c) AET confirmed that it intended to record as an ordinary retirement the \$1.9 million historical cost of the assets destroyed by the fire, and would seek recovery of the remaining NBV of those assets in the amount of \$0.664 million, within its approved amortization of reserve differences mechanism.¹⁶ AET stated that since the retirement of the assets was less than one per cent of AET's accumulated depreciation balance for USA Account 355, there was no undue depletion¹⁷ of the reserve, and it should therefore be considered an ordinary retirement, consistent with the Commission's findings in Decision 2738-D01-2016.¹⁸

¹⁴ Transcript, Volume 5, page 835, lines 6-25.

¹⁵ Exhibit 22742-X0001.02, Table 10.6 – 2015-2019 TCM Program, Fort McMurray Fire Restoration (Expenditures), PDF pages 343-344; Table 10.14 – TCM Program Opening Rate Base, Fort McMurray Fire Restoration (Project 00073), PDF page 357.

¹⁶ Exhibit 22742-X0221.01, AET-CCA-2017AUG30-137(a), PDF page 66.

¹⁷ Exhibit 22742-X0237.01, AET-CCA-2017AUG30-054(b), PDF page 118.

¹⁸ Decision 2738-D01-2016: ATCO Gas and Pipelines Ltd., Z Factor Application for Recovery of 2013 Southern Alberta Flood Costs, Proceeding 2738, March 16, 2016.

- (d) AET clarified that its proposed recovery of costs associated with the wildfire event in the current proceeding differs from the regulatory treatment it would have proposed prior to the UAD decision and the Slave Lake decision, Decision 2014-297 (Errata).¹⁹ This is illustrated in the Commission-prepared summary of AET responses to the related IRs in the following table:^{20 21}

Table 2. Summary of RID account – regulatory treatment before UAD decision and as proposed by AET

Regulatory treatment before UAD decision and Decision 2014-297 (Errata)	Regulatory treatment after UAD decision and Decision 2014-297 (Errata) as proposed by AET in Proceeding 22742
<p>“Under the scenario for AET’s RID account that existed previous to the UAD Decisions and Decision 2014-297, AET would have collected the \$7.8 million in rebuild costs in revenue requirement through the RID account evenly over the 2018 and 2019 test periods and the destroyed assets would not have been retired.” (Exhibit 22742-X0221.01, PDF page 66)</p>	<p>AET will capitalize and include in rate base the rebuild costs of \$7.0 million incurred in 2016 and \$0.8 million forecast to be incurred in 2017: “In accordance with Decision 2014-297, AET’s 2018-2019 GTA requests to include in rate base the rebuild costs of \$7.0 million incurred in 2016 and an additional \$0.8 million forecast to be incurred in 2017. The impact of this \$7.8 million addition to rate base will be included in revenue requirement over the life of the rebuilt assets... as opposed to over the 2018-2019 time period.” (Exhibit 22742-X0221.01, PDF page 66)</p> <p>With respect to the \$1.9 million in assets destroyed and the \$0.664 remaining NBV: “AET will retire these assets in the ordinary course. Any remaining net book value will be recovered via the amortization of reserve differences mechanism in AETs next full depreciation study tentatively scheduled to take place in the 2020 GTA.” (Exhibit 22742-X0237.01, PDF page 104)</p>
<p>“For the \$0.3 million included in AET’s RID account for this 2018-2019 GTA relating to power restoration efforts as a result of the fire, there is no change in treatment. These costs incurred due to sudden and accidental events are insurable and continue, therefore, to be eligible for recovery through the RID.” (Exhibit 22742-X0221.01, PDF page 66)</p>	<p>“For the \$0.3 million included in AET’s RID account for this 2018-2019 GTA relating to power restoration efforts as a result of the fire, there is no change in treatment. These costs incurred due to sudden and accidental events are insurable and continue, therefore, to be eligible for recovery through the RID.” (Exhibit 22742-X0221.01, PDF page 66)</p>

- (e) AET’s historical practice was to include in its actuarial records details of previous fires for incorporation into its depreciation studies. However, AET clarified that its past approved practice was to not retire assets that were lost due to RID-type events such as fires. Therefore, within AET’s recent depreciation studies, it was not possible to mathematically include RID-type events in the determination of its depreciation parameters, notwithstanding that fires and similar events had occurred

¹⁹ Decision 2014-297 (Errata): ATCO Electric Ltd., 2012 Distribution Deferral Accounts and Annual Filing for Adjustment Balances, Proceeding 2682, January 8, 2015.

²⁰ Summary prepared by the Commission based on: Exhibit 22742-X0221.01, AET-CCA-2017AUG30-137(d)-(e), PDF pages 66-67.

²¹ Exhibit 22742-X0237.01, AET-CCA-2017AUG30-051(d), PDF page 104.

in the past within its service territory.²² In argument, AET referred to Mr. Kennedy's confirmation that through to the end of 2001 (after 2001, RID account treatment commenced) the data used in AET's depreciation studies included events such as "wildfires, floods, lightning strikes, ice storms and wind storms, which have occurred in Alberta for the entire existence of the AET system and have all been a cause of retirements for many decades."²³

- (f) AET retained Larry Kennedy of Concentric Advisors whose opinion supported "... AET's position that the destroyed assets were included in AET's current depreciation parameters approved in its 2015-2017 GTA."²⁴
- (g) In response to an undertaking, Mr. Kennedy stated that he performed an actuarial analysis that resulted in the plotting of actual service life statistics against the currently approved service life statistics (an average service life and Iowa curve of 60-R2) for USA Account 355 – Poles and fixtures. The actual service life data was plotted both before and after the retirement of the destroyed assets was layered into the data. It was Mr. Kennedy's opinion that the layering of the wildfire actuarial data had no impact: "... the selection of the Iowa 60-R2 would not have affected my decision on the resultant parameter selection."²⁵ Mr. Kennedy concluded that "[b]ased on this analysis and results, even if the specific timing of the events of the 2016 Ft. McMurray fires were known for AET's 2015-2017 depreciation study, their effect on the depreciation parameter recommendations would have been nil."²⁶
- (h) Also in response to an undertaking, AET provided a summary of the 2005-2017 claims made through its RID account, as illustrated in the following table:

Table 3. Reserve for injuries and damages – claim details 2005-2017

	Actuals	Decision	NBV of destroyed assets
	(\$ million)		
2005			
Fox Lake Plant pipeline expansion joint failure	(3.6)	2006-024 ²⁷	< \$0.1
2006	(0.1)	2009-087 ²⁸	< \$0.1
Palisades generating station	(0.1)	2009-087	< \$0.1
Little Horse (Sequoia Battery)			
2007			
Oyen substation transformer failure	(0.1)	2009-087	< \$0.1

²² Exhibit 22742-X0237.01, AET-CCA-2017AUG30-051(d), PDF page 104.

²³ Exhibit 22742-X0725, AET argument, paragraph 153.

²⁴ Exhibit 22742-X0237.01, AET-CCA-2017AUG30-053, Attachment 1: Response of Larry Kennedy of Concentric Advisors, ULC, PDF pages 111-116; and Exhibit 22742-X0705, Response to undertakings 57 and 58, taken at Transcript, Volume 6, pages 1021-1022: Statistical data supporting response to IR AET-CCA-2017AUG30-053, Attachment 1.

²⁵ Exhibit 22742-X0237.01, AET-CCA-2017AUG30-053, Attachment 1: Response of Larry Kennedy of Concentric Advisors, ULC, PDF page 114.

²⁶ Exhibit 22742-X0237.01, AET-CCA-2017AUG30-053, Attachment 1: Response of Larry Kennedy of Concentric Advisors, ULC, PDF page 114.

²⁷ Decision 2006-024: ATCO Electric Ltd., 2005-2006 General Tariff Application, Proceeding 14712, Application 1399997-1, March 17, 2006.

²⁸ Decision 2009-087: ATCO Electric Ltd., 2009-2010 General Tariff Application – Phase I, Proceeding 86, Application 1578371-1, July 2, 2009.

	Actuals	Decision	NBV of destroyed assets
	(\$ million)		
Sarah Lake substation voltage regulator failure	(0.1)	2009-087	< \$0.1
Mannix Mine transformer failure	(0.1)	2009-087	< \$0.1
Ethel Lake substation transformer failure	(0.1)	2009-087	< \$0.1
Mannix Mine transformer failure	(0.1)	2009-087	< \$0.1
2008			
Edith Lake transformer failure	(0.1)	2011-134 ²⁹	Note 1
2009			
Mahihkan 702T transformer failure	(0.1)	2011-134	Note 1
Hanna windstorm	(0.1)	2011-134	Note 1
2010			
CUL 190 Jasper Palisades	(0.1)	2013-358 ³⁰	0.1
Poplar Hill substation voltage regulator	(0.1)	2013-358	Note 1
Flying Shot substation transformer and LTC failure	(0.1)	2013-358	0.1
Donnelly substation	(0.1)	2013-358	0.2
Vegreville windstorm damage	(0.3)	2013-358	Note 1
2011			
Slave Lake Region fires – direct costs	(0.9)	2013-358	< 0.1
Slave Lake Region fires – allocated common costs	(0.2)	2013-358	Note 1
2012			
Big Knife substation	(0.1)	20272-D01-2016	Note 1
Melito substation	(0.1)	20272-D01-2016	Note 1
Sarah Lake substation	(0.1)	20272-D01-2016	< 0.1
2013			
Jasper Palisades CUL 198 engine failure	(0.1)	20272-D01-2016	Note 1
Jasper Palisades CUL 191 engine failure	(0.1)	20272-D01-2016	Note 1
2014			
Ruth Lake substation	(0.1)	20272-D01-2016	Note 1
Valleyview telecom tower failure	(0.1)	20272-D01-2016	Note 1
Hines Creek transformer failure	(0.1)	20272-D01-2016	Note 1
Garden River CUL 437 engine failure	(0.1)	20272-D01-2016	Note 1
Windstorm – Peace region	(0.7)	20272-D01-2016	< 0.1
2015			
Mannix Mine substation transformer failure	(0.1)	Note 2	< 0.1
2016			
Damages caused by Fort McMurray fires	(0.3)	Note 2	0.7
Water damage	(0.1)	Note 2	Note 1
2017			
Astoria Hydro penstock expansion joint failure	(0.3)	Note 2	0.6
Mannix Mine drive shaft failure	(0.1)	Note 2	Note 1

²⁹ Decision 2011-134: ATCO Electric Ltd., 2011-2012 Phase I Distribution Tariff, 2011-2012 Transmission Facility Owner Tariff, Proceeding 650, Application 1606228-1, April 13, 2011.

³⁰ Decision 2013-358: ATCO Electric Ltd., 2013-2014 Transmission General Tariff Application, Proceeding 1989, Application 1608610-1, September 24, 2013.

	Actuals	Decision	NBV of destroyed assets
	(\$ million)		
Leming Lake substation transformer failure	(0.1)	Note 2	Note 1
Note 1 – RID event resulted in costs incurred to restore or repair damaged assets, but no assets were destroyed			
Note 2 – To be approved as part of 2018-2019 GTA (Proceeding 22742)			

Source: Extracted from Exhibit 22742-X0709, Undertaking 61 – Mr. Hoshowski to Ms. Sabo – Transcript, Volume 6, page 1029, lines 12-17.

13. In its evidence submitted on behalf of the Consumers’ Coalition of Alberta (CCA), Bema Enterprises Ltd. (Bema) maintained that AET’s current depreciation rates had not contemplated asset retirements such as those caused by the Fort McMurray wildfire. Bema noted that AET described the Fort McMurray wildfire as “the worst natural disaster in Canadian History”³¹ and that it was, therefore, unlike any previous wildfire. Given these two factors, Bema’s opinion was that the Fort McMurray wildfire resulted in an “extraordinary retirement of assets as defined under the UAD Decision and the net book value of the assets should be removed from rate base,” to the account of shareholders.³²

14. Bema was asked in an IR³³ to reconcile its views on the impact of the Fort McMurray wildfire on AET with the Commission’s findings in Decision 21608-D01-2018 addressing the impact of the same wildfire on ATCO Gas and Pipelines Ltd. (ATCO Gas). In that decision, the Commission determined that “the characteristics of the wildfire were of a similar nature and magnitude to the nature-related events identified in ATCO Gas’s 2009 depreciation study, and has concluded that the wildfire did not give rise to an extraordinary retirement of the destroyed assets. Therefore, the depreciation expense associated with the assets that were replaced will continue to be recovered from ratepayers ...”³⁴

15. Bema responded that there are two distinct considerations in determining whether a retirement is extraordinary as defined in the UAD decision. First, there must be a retirement of a similar nature included in a previous depreciation study to compare against and, second, the retirement being assessed must be deemed to be extraordinary compared to the other retirements included in the previous depreciation study.

16. According to Bema, the key distinction between the circumstances in the ATCO Gas Z factor proceeding, Proceeding 21608, and the current application is that AET has not included within its depreciation studies any previous retirements that are of a similar nature to the Fort McMurray wildfire retirements and, therefore, the current depreciation rates do not factor in such retirements.³⁵

³¹ Exhibit 22742-X0001.02, ATCO Electric application, PDF page 715.

³² Exhibit 22742-X0592, CCA evidence, paragraphs 652-657.

³³ Exhibit 22742-X0612, CCA-AUC-2018DEC19-002, PDF pages 4-6.

³⁴ Decision 21608-D01-2018, ATCO Gas, a division of ATCO Gas and Pipelines Ltd., Z Factor Application for Recovery of 2016 Regional Municipality of Wood Buffalo Wildfire Costs, Proceeding 21608, June 5, 2018, paragraph 1.

³⁵ Exhibit 22742-X0612, CCA-AUC-2018DEC19-002(c), PDF pages 5-6.

17. In further support of its position that the wildfire event should be found to have caused an extraordinary retirement, Bema referred³⁶ to the Commission's finding in Decision 2014-297 (Errata) dealing with the impact of the Slave Lake fire on AED:

69. Relying on its review of this history of losses and of the entire record of this proceeding, the Commission makes a finding of fact that the characteristics of the Slave Lake fires which destroyed the ATCO Electric assets are sufficiently different from the characteristics of the fires and natural disaster events that have occurred over the past ten years and the events upon which the Board made its RID account assessments in Decision 2007-071.^[37] Consequently, the Commission also finds that these fires could not reasonably have been anticipated or contemplated in the determination of the parameters used in the previous depreciation study dated as at December 31, 2008. Accordingly, for regulatory purposes the Slave Lake fires give rise to an extraordinary retirement of the destroyed assets. As a result of this finding of fact, the principles established by Stores Block and the related Court of Appeal decisions dictate that the \$400,000 notional net book value of the destroyed assets must be for the account of the ATCO Electric shareholders. The Commission has no discretion to do otherwise.^[38] [footnotes removed]

18. Bema asserted that the circumstances being considered in the current application are almost identical to those considered with respect to AED and the 2011 Slave Lake fire. Bema stated as follows: "Specifically, the Fort McMurray wildfire 'could not reasonably have been anticipated or contemplated in the determination of the parameters used in the previous depreciation study,' and as a result the 'notional net book value of the destroyed assets must be for the account of the ATCO Electric shareholders,' given that the 'Commission has no discretion to do otherwise.'"³⁹

19. In rebuttal evidence, AET expanded on the concept of "depreciation parameters [that] fully contemplated and accounted for future forces of nature events"⁴⁰ and referred to its 2014 depreciation study in Proceeding 20272, where Mr. Kennedy's average service life analysis "included a review of the impact of large retirements caused by forces of nature."⁴¹ AET indicated that, given the Commission's treatment of the remaining NBV of the AED assets destroyed in the 2011 Slave Lake fire as constituting an extraordinary retirement, AET held discussions with Gannett Fleming during the preparation of AET's 2014 depreciation study "to ensure the depreciation parameters fully contemplated and accounted for future forces of nature events."⁴² AET disagreed with the CCA's conclusion that AET had no past practice of including the impact of wildfires in its depreciation parameters stating that "during the RID period no retirements were processed as a result of wildfires; however, prior to the inception of the RID account all retirements were included in the formation of AET's depreciation parameters.

³⁶ Exhibit 22742-X0612, CCA-AUC-2018DEC19-002(d), PDF page 6.

³⁷ Decision 2007-071: ATCO Electric Ltd., 2007-2008 General Tariff Application – Phase I, Proceeding 15835, Application 1485740-1, September 22, 2007.

³⁸ Decision 2014-297 (Errata), PDF page 27.

³⁹ Exhibit 22742-X0612, CCA-AUC-2018DEC19-002, PDF page 6, referring to Decision 2014-297 (Errata), PDF page 27.

⁴⁰ Exhibit 22742-X0618, AET rebuttal, PDF page 182.

⁴¹ Exhibit 22742-X0618, AET rebuttal, PDF page 182, referring to Proceeding 20272, Exhibit 20272-X0587.01.

⁴² Exhibit 22742-X0618, AET rebuttal, PDF page 182.

AET did not track retirements by the detail[ed] causes pre-RID, however wildfires are a common event in AET's service territory and retirements due to them have always occurred."⁴³

20. The CCA argued⁴⁴ that the application of professional judgment referred to by Mr. Kennedy in AET's 2014 depreciation study was arbitrary at best. The CCA took issue with Mr. Kennedy's statement that his "professional judgement is inclusive of the actuarial study (in particular, the weighting of the results of the actuarial study) and all other factors"⁴⁵ and with AET's view that this was an indication that the analysis performed was based on actual retirement data followed by the application of professional judgment. The CCA argued that "the analysis performed by AET was based on an actual retirement date and it is only through the application of professional judgment that AET has allegedly updated its depreciation parameters to consider the extraordinary retirements,"⁴⁶ and should be given little weight by the Commission.

21. In examining the plots for USA Account 355 – Poles and fixtures⁴⁷ revised to reflect the assets destroyed in the Fort McMurray wildfire, the CCA argued that including the actual retirement data would have had a significant impact on the depreciation parameters for this account. Furthermore, the CCA questioned whether AET had continued to include forecast retirements in its retirement data. This was a practice proposed by AET in its 2014 depreciation study, but was denied by the Commission in Decision 20272-D01-2016. The CCA also stated that the approved 60-R2 curve (as revised) no longer closely fit the plotted actuarial data and suggested that there may be superior curves. The CCA concluded that the revised data differed sufficiently from the observed data to allow the Commission to find that AET's applied-for depreciation parameters did not properly contemplate the retirements from the Fort McMurray wildfire.⁴⁸

22. In contrast, AET argued that the same principled approach used in Decision 2738-D01-2016, in which the Commission found the ATCO Gas assets destroyed by extensive flooding in Southern Alberta to be ordinary retirements, should be applied to AET's assets destroyed in the Fort McMurray wildfire. AET also argued that since the \$1.898 million magnitude of the Fort McMurray wildfire retirements represented less than one per cent of AET's total accumulated depreciation balance, there would be no undue depletion of accumulated depreciation.⁴⁹ AET submitted that these two factors, in combination with Mr. Kennedy's testimony that "the retirements resulting from the Fort McMurray Fire, by age interval, are well within the expected retirement activity for virtually all of the age intervals impacted by the fire activity and, therefore, were considered in the depreciation parameters approved in AET's 2015-2017 GTA,"⁵⁰ should result in treating any asset retirements as having occurred in the ordinary course.

23. AET contested the CCA's suggestion that the updated comparison of plotted actuarial data prepared by Mr. Kennedy to reflect the assets destroyed in the wildfire event showed that the approved 60-R2 curve no longer closely fits the plotted data. AET asserted there was

⁴³ Exhibit 22742-X0618, AET rebuttal, PDF pages 182-183.

⁴⁴ Exhibit 22742-X0722, CCA argument, paragraph 724.

⁴⁵ Exhibit 22742-X0679, Undertakings 43 and 44, Mr. Palladino to Ms. Graham, PDF page 6.

⁴⁶ Exhibit 22742-X0722, CCA argument, paragraph 724.

⁴⁷ Exhibit 22742-X0705, Undertakings 57 and 58, Mr. Palladino to Ms. Sabo, PDF page 6.

⁴⁸ Exhibit 22742-X0722, CCA argument, paragraph 727.

⁴⁹ Exhibit 22742-X0618, AET rebuttal, PDF page 183.

⁵⁰ Exhibit 22742-X0725, AET argument, paragraph 154.

virtually no difference in the updated plot of the actuarial data resulting from the wildfire retirement activity through to age 29.5 and minimal differences at subsequent age intervals. AET also argued there was no basis to support the CCA's statement that there may be superior curves having a better fit to the profile of retirement data after including the assets destroyed in the wildfire event.⁵¹

24. The CCA rejected AET's suggestion that the Commission's determinations in Decision 2738-D01-2016 for the Southern Alberta floods should apply to AET in the aftermath of the Fort McMurray wildfire. The CCA stated that Decision 2738-D01-2016 was irrelevant because, in contrast to ATCO Gas's practice of including retirements of a similar nature to that of the Southern Alberta flood in its depreciation studies, AET's practice was to not record equivalent retirement data. The CCA argued that the circumstances of the Fort McMurray wildfire are identical to those discussed in Decision 2014-297 (Errata) in relation to the Slave Lake fire for AED, which found the remaining NBV of the retired assets to be to the account of the shareholder.⁵²

25. In evidence, Mr. Bell, on behalf of the UCA, expressed concern about possible cross-subsidization between AED and AET of costs incurred in relation to the Fort McMurray wildfire. Mr. Bell elaborated that while AET's transmission costs are billed to the AESO and recovered from all Alberta customers, AED's distribution costs are only recovered from customers within the AED service territory; therefore, there must be assurance that "the correct utility incur the correct cost ..."⁵³ Further, Mr. Bell asserted that incremental costs related to the wildfire should be recovered only once and, to the extent costs are included in rate base, there should be no further recovery in an RID account or through a Z factor.

26. Mr. Bell had examined AET's IR response in which AET indicated it had incurred \$0.733 million in costs related to AED work, of which \$0.346 million was capital-related and \$0.387 million was to be recovered through AET's RID account. In his examination of Proceeding 21609 for AED's Z factor application for the Fort McMurray wildfire, it was not clear to Mr. Bell that AED had correspondingly recorded its share of those same costs.^{54 55}

27. For this reason, Mr. Bell recommended that AET be directed to provide a detailed analysis of all costs related to the wildfire event separating not only incremental costs from costs included in base rates, but also identifying those costs incurred by the transmission function and subsequently allocated to the distribution function. Mr. Bell stated that the analysis must also show whether and, if so, where, any credits have been recorded by the transmission function related to the recovery of costs from the distribution function.⁵⁶ In argument, Mr. Bell reiterated this position, recommending that the analysis should "focus on the costs attributed to AET and AED to ensure that the costs attributed to each entity are properly accounted for, and truly represent incremental costs,"⁵⁷ and "until that analysis is provided, all costs of AET to work on the AED fire recovery should be removed from AET's costs."⁵⁸

⁵¹ Exhibit 22742-X0727, AET reply argument, paragraphs 151-154.

⁵² Exhibit 22742-X0726, CCA reply argument, paragraph 93.

⁵³ Exhibit 22742-X0599, UCA evidence, Q&A 30, PDF page 18.

⁵⁴ Exhibit 22742-X0554, AET-UCA-2018OCT05-009(b), PDF page 34.

⁵⁵ Exhibit 22742-X0599, UCA evidence, Q&A 30, PDF page 18.

⁵⁶ Exhibit 22742-X0599, UCA evidence, Q&A 31, PDF page 19.

⁵⁷ Exhibit 22742-X0724, UCA argument, last bullet, paragraph 108.

⁵⁸ Exhibit 22742-X0724, UCA argument, paragraph 106.

28. With respect to the concerns of Mr. Bell and the UCA about cross-subsidization between ATCO Electric's distribution and transmission functions, AET stated in rebuttal that its accounting approach was consistent with industry best practices. Further, a coordinated response by both distribution and transmission personnel was managed through the use of a series of separate distribution and transmission accounts to track costs appropriately: independent capital project numbers, corresponding to the specific transmission or distribution facility being repaired, were set up for each of the two operating functions to manage both the RID and capital accounting of the corresponding recovery and restoration projects. AET submitted that the UCA's concerns about cross-subsidization were unfounded,⁵⁹ and that no action was required by the Commission in this regard.⁶⁰

4 Commission findings (Acting Commission Member Romaniuk (panel chair) and Commission Member Sebalj)

29. The UAD decision reviewed the fundamental corporate and property law principles established by the legislation and the courts in the Supreme Court of Canada's *Stores Block* and subsequent Alberta Court of Appeal line of cases, and provided direction for identifying and allocating undepreciated capital costs associated with ordinary and extraordinary retirements. The decision was subsequently upheld by the courts.⁶¹ In the UAD decision, the Commission noted that the courts used these fundamental principles in determining entitlements, risks and burdens associated with the ownership and utilization of utility assets. The *Stores Block* decision confirmed that the assets used for utility service are the property of the utility service provider. Customers pay for utility services, which are priced to recover the reasonable costs (including a return on investment) associated with the assets providing those services. However, in paying for utility services, customers do not acquire an ownership interest in the underlying assets. Further, these property and corporate law principles symmetrically allocate to the utility the benefits and risks of property ownership. A literal application of these fundamental principles, as subsequently directed by the courts, would allocate all benefits and risks to the utility shareholder in a symmetrical manner with the shareholder retaining all gains on sale and any benefits from the redeployment of utility property for non-utility purposes as well as absorbing any losses on sale and the costs of any unrecovered capital associated with assets that cease to be used or required to be used in providing utility service. Any gain or risk of loss with respect to the utility's original investment would be for the account of the owner of the property in a symmetrical manner consistent with the principles of property ownership and corporate law.

30. In the Slave Lake decision, the Commission summarized the findings and guidance provided by the courts as reviewed in the UAD decision as follows:

52. ... It is the fundamental principles of corporate law and private property law that the Supreme Court of Canada used in assessing the facts, interpreting the *Gas Utilities Act* and in determining entitlements, risks and burdens in the *Stores Block* decision. The principles that informed the court were, first, that the assets used for utility service are the property of the company. Customers do not acquire an interest in the property merely by

⁵⁹ Exhibit 22742-X0618, AET rebuttal, PDF pages 208-210.

⁶⁰ Exhibit 22742-X0727, AET reply argument, paragraphs 216-217.

⁶¹ *FortisAlberta Inc. v Alberta (Utilities Commission)*, 2015 ABCA 295, 389 DLR (4th) 1, leave to appeal refused, SCC File No. 36728.

paying for the services provided through the assets. And second, along with property ownership comes the right to any gain and the risk of any loss....

56. The Commission found in the UAD decision that where the *Electric Utilities Act* defines an “electric utility” in part, as an “electric distribution system” that is “used” to provide utility services and an electric distribution system as the “plant, works, equipment, systems and services necessary to distribute electricity in a service area,” the words are to the same effect as the words “used or required to be used” employed in the *Gas Utilities Act* to define facilities to be included in rate base. Application of these fundamental principles requires that the costs associated with assets that are sold or lost due to any cause (and therefore no longer necessary to provide service) be removed from the calculation of rates and the risk of the loss (or the benefit of any gain) be for the account of the owner of the property... [footnotes omitted]

31. Starting with the fundamental principles identified by the courts, the UAD decision reviewed the applicable legislative provisions setting out the Commission’s main function of setting just and reasonable rates while protecting the integrity and dependability of the utility service delivery system. In this context, the Commission observed that the legislative provisions relating to the recovery by utilities of prudently incurred costs, including provisions relating to the ability of the Commission to approve methods of depreciation and to set a return on equity, together with the *Uniform Classification of Accounts for Natural Gas Utilities Regulation*, and the Uniform System of Accounts (USA) approved for electric utilities, provide a framework for the recovery of utility investment and return on that investment.⁶² In examining whether this framework, including traditional methods of depreciation approved by the Commission, conflicted with the court enunciated principles, the Commission found no conflict. To the contrary, the Commission observed that these fundamental principles “had been built into these instruments and, it appears, informed their development” because the depreciation methods approved by the Commission were designed to recover the costs of prudent investment over the useful life of the assets while employed in providing utility service. Further, “[t]he effect of this depreciation method is to remove from rate base and customer rates depreciable assets that are no longer used or required to be used to provide utility service.”⁶³

32. Had the Commission found that traditional depreciation methods were in conflict with the *Stores Block* line of decisions, then utilities would be required to separately account for each asset with the risk of under recovery of capital if an asset was retired prior to being fully depreciated. The Commission noted this effect in the *Slave Lake* decision as follows:

In the absence of such an approach, under the *Stores Block* principles and the Alberta Court of Appeal decisions that followed, if an asset ceased to be used for utility service before being fully depreciated, the undepreciated investment in that asset would be removed from the calculation of rates and that undepreciated amount would be transferred to the account of the shareholder.⁶⁴

33. Having found traditional depreciation methods were designed to recover the costs of prudent investment over the useful life of the assets while employed in providing utility service and, thus, in conformity with the principles laid down by the courts, the UAD decision next reviewed the manner in which depreciation parameters were determined. The Commission made

⁶² Decision 2013-417, paragraphs 296 and 304.

⁶³ Decision 2013-417, paragraphs 296 and 334.

⁶⁴ Decision 2014-297 (Errata), paragraph 62.

a distinction between asset retirement causes or events that had been considered in the determination of the depreciation parameters, which were referred to as “ordinary retirements,” and those that had not been considered, which were referred to as “extraordinary retirements.”

34. Any unrecovered utility investment in an asset taken out of service as the result of an ordinary retirement would be for the account of customers because the type of retirement had been factored into the determination of the useful life of the applicable class of assets, the depreciation parameters and the resulting rates. The Commission referred to the definition of “ordinary retirement” in the *Uniform Classification of Accounts for Natural Gas Utilities Regulation* as follows:

... Section 8 states that “ordinary retirements result from causes reasonably assumed to have been contemplated in prior depreciation provisions, and normally may be expected to occur when plant reaches the end of its expected service life.” [footnote omitted]⁶⁵

35. An asset taken out of service as the result of an extraordinary retirement would be for the account of the utility shareholders because the nature of that retirement had not been factored into the determination of the depreciation parameters. What is important in determining whether a retirement event is ordinary or extraordinary, is whether it is reasonable to assume that the causes of the retirement event have been anticipated or contemplated in the determination of the depreciation parameters, not the impact that the retirement event may or may not have had on those parameters. The UAD decision refers to an extraordinary retirement with reference to Section 8 of the *Uniform Classification of Accounts for Natural Gas Utilities Regulation* as follows:

The UCAGU [*Uniform Classification of Accounts for Natural Gas Utilities Regulation*] also makes provision for “extraordinary retirements” defined as retirements “from causes not reasonably assumed to have been anticipated or contemplated in prior depreciation or amortization provisions.” ... Under-recovery or over-recovery of capital investment on extraordinary retirements (as is the case with assets disposed of outside of the ordinary course of business or moved to a non-utility account) are for the account of the utility. The treatment of retirements for electric utilities is to the same effect under the USA Electric Plant Instructions.⁶⁶

36. Having found that traditional depreciation methods accorded with the legislation and the *Stores Block* line of decisions, the Commission in the UAD decision summarized the applicable principles at paragraph 327 of that decision, quoted at paragraph 5 above. The Commission confirmed that rate base and, therefore, customer rates should not include costs associated with assets that are subject to an extraordinary retirement. Such assets include obsolete property, property to be abandoned, overdeveloped property and more facilities than necessary for future needs, property used for non-utility purposes, property that should be removed because of circumstances including unusual casualties (fire, storm, flood, etc.), sudden and complete obsolescence, or un-expected and permanent shutdown of an entire operating assembly or plant. These types of assets must be retired (removed from rate base) and moved to a non-utility account because they have become no longer used or required to be used as the result of causes

⁶⁵ Decision 2013-417, paragraph 304.

⁶⁶ Decision 2013-417, paragraph 304.

that were not reasonably assumed to have been anticipated or contemplated in prior depreciation or amortization provisions approved by the Commission.⁶⁷

37. In the Slave Lake decision, the Commission referred to the review it conducted in the UAD decision. The Commission then engaged in an assessment of whether the AED asset retirements resulting from the Slave Lake fires could be said to have been caused by a type of event that could reasonably be assumed to have been anticipated or contemplated in prior depreciation or amortization provisions approved by the Commission. If it could be determined, based on the evidence of the specific circumstances of the event, that the event itself or a similar event could be reasonably assumed to have been anticipated or contemplated in a prior depreciation study, then the consequences of such an event would have been factored into the resulting depreciation parameters and rates at that time, whether the impact was positive, negative or of no effect. The Commission summarized this position at paragraph 66, stating:

The UAD decision recognized the concepts underlying the currently-used depreciation methods as being consistent with the *Stores Block* principles because they are intended to recover the costs of assets used in utility service over their service lives in ordinary circumstances, recognizing that retirements outside of the relevant scope of considered retirement events, regardless of the effect on depreciation parameters, would be classified as extraordinary retirements and, in accordance with the *Stores Block* principles, would be for the shareholder's account.

38. In undertaking its analysis in the Slave Lake decision, the Commission determined that it is the "characteristics of the event" that are relevant to the determination of whether the retirement event could be reasonably assumed to have resulted from causes contemplated or anticipated by a prior depreciation study. If the characteristics of a particular retirement event are sufficiently different from the characteristics of previous events causing retirements, then it cannot be reasonably assumed that the particular retirement event resulted from causes anticipated or contemplated in a previous depreciation study and factored into the derivation of the existing depreciation parameters. The Commission summarized this position as follows:

66. ... it is the characteristics of the event that are relevant to the determination of whether the event had been contemplated or anticipated by a prior depreciation study. If the characteristics of the Slave Lake fires event are sufficiently different to distinguish the Slave Lake fires from the events considered in the previous depreciation study such that the characteristics of the Slave Lake fires cannot be said to have been reasonably contemplated or anticipated in the determination of the depreciation parameters in that study, then the Commission would consider the event to give rise to an extraordinary retirement. [footnotes removed]⁶⁸

39. In the Slave Lake decision, the Commission considered the fact-specific information relating to the Slave Lake fires and the evidence proffered with respect to prior nature-related retirement events to determine if the retirement event was ordinary or extraordinary. AED noted factors such as the physical cause, frequency and materiality of the event as relevant when considering whether an event was typical or non-typical.⁶⁹ The Commission reviewed the entire record of the proceeding including evidence with respect to the history of nature-related events causing retirements experienced by AED over a 10-year period. Based on this review, the

⁶⁷ Also see paragraphs 304-305 of Decision 2013-417.

⁶⁸ Decision 2014-297 (Errata), paragraph 66.

⁶⁹ Decision 2014-297 (Errata), paragraphs 29 and 64.

Commission determined that the characteristics of these past nature-related retirement events, including asset replacement costs in the range of \$1 million to \$2 million, were sufficiently different from the characteristics of the Slave Lake region fire, which included replacement costs of assets of \$23.7 million to distinguish the Slave Lake fires retirement event from retirement events that could have been considered in the previous depreciation study. Therefore, the Commission concluded that it could not be demonstrated that retirements caused by events similar to the Slave Lake retirements had been reasonably contemplated or anticipated in the determination of the depreciation parameters in that previous study. On this basis, the Commission made the following determination with respect to AED:

Accordingly, for regulatory purposes the Slave Lake fires give rise to an extraordinary retirement of the destroyed assets. As a result of this finding of fact, the principles established by *Stores Block* and the related Court of Appeal decisions dictate that the \$400,000 notional net book value of the destroyed assets must be for the account of the ATCO Electric shareholders. The Commission has no discretion to do otherwise.⁷⁰
[footnotes omitted]

40. In making this determination, the Commission considered arguments put forward by AED that the Slave Lake fires should be considered to have resulted in the ordinary retirement of assets because the Slave Lake fires and other prior fires would not have made a material impact on net rate base or depreciation rates and, therefore, would not have resulted in an extraordinary retirement.⁷¹ The Commission rejected this position, stating:

The Commission does not accept ATCO Electric's submission that an event that could not have been reasonably contemplated in establishing the depreciation parameters cannot cause an extraordinary retirement unless its occurrence had a material impact on net rate base or on depreciation rates.⁷²

41. AED also argued that since traditional depreciation methods were found by the Commission to comport with the *Stores Block* line of cases, and that these methods provided for the recovery of unrecovered investment through the reserve amortization process, it therefore followed that the losses associated with the Slave Lake fires should be recoverable from customers through the amortization of reserve differences. The Commission stated that it could not "reconcile the *Stores Block* principles of property ownership and symmetrical benefits and risk of loss" with AED's position.⁷³

42. The Commission has continued to apply the principles reviewed in the UAD decision to the facts associated with the retirement of a specific group of assets when considering whether the retirement should be treated as an ordinary retirement or as an extraordinary retirement. In decisions 2738-D01-2016 and 21608-D01-2018, the Commission followed the analysis conducted in the AED Slave Lake decision, basing its findings on the characteristics of the retirement event under consideration to determine whether ATCO Gas assets destroyed by the 2013 Southern Alberta flood and the 2016 Regional Municipality of Wood Buffalo wildfire were removed from service as the result of an ordinary or an extraordinary retirement. Similarly, in

⁷⁰ Decision 2014-297 (Errata), paragraph 69.

⁷¹ Decision 2014-297 (Errata), paragraphs 44 and 63.

⁷² Decision 2014-297 (Errata), paragraph 65.

⁷³ Decision 2014-297 (Errata), paragraph 65.

Decision 24369-D01-2019,⁷⁴ the Commission considered the treatment of assets that were retired by FortisAlberta Inc. after they were destroyed by a windstorm and fires in southern Alberta. In that decision, the Commission referred to earlier decisions in which it considered UAD issues and emphasized that each situation is unique and must be evaluated on its individual facts. The Commission stated the following:

118. From these decisions, it is clear that a determination of whether an event is an extraordinary retirement is fact-specific to the particular characteristics of that event and to a particular utility. If the current retirement event exhibits characteristics sufficiently similar to prior events incorporated into the last approved depreciation study for the utility, the retirement events could be considered ordinary retirements. If the current retirement events exhibit sufficiently dissimilar characteristics, the retirement events could be considered extraordinary retirements.⁷⁵

43. AET submitted in the current proceeding that the Commission should consider Mr. Kennedy's evidence that, in preparing AET's 2014 depreciation study, he took the events of the Slave Lake fire into consideration, including the Commission's finding of an extraordinary retirement of AED assets in the Slave Lake decision. Mr. Kennedy having done so, AET concluded that the average service life analysis conducted in its 2014 depreciation study "included a review of the impact of large retirements caused by forces of nature."⁷⁶

44. In response to a CCA IR (AET-CCA-2017AUG30-053), Mr. Kennedy confirmed that in his 2014 depreciation study he considered similar events to the Fort McMurray wildfire, including the Slave Lake fire, as follows:

Prior to the current ATCO Electric Transmission ("AET" or "the Company") request to assist in their response to AET-CCA-2017AUG30-053 on the issue of destroyed assets in their depreciation study, I prepared a depreciation study related to the AET assets (the "Gannett Fleming Study") in the ATCO Electric 2015-2017 GTA. This response confirms that the natural disaster retirements similar to the above Ft. McMurray wildfire were contemplated within the aforementioned depreciation study.

...

Prior to the study performed for the 2015-2017 GTA, the historical practice of ATCO Electric was to exclude historical fires and similar events in its historical retirement database. During the 2015-2017 GTA study, the events of the Slave Lake fire and specifically the disallowance of ATCO Electric Distribution (AED's) application for recovery of AED's asset losses was factored into my decision processes ...⁷⁷

45. AET also confirmed that the aggregate effect of the 2016 wildfire-related retirements, including the Fort McMurray wildfire, on the accumulated depreciation accounts amounted to less than one per cent which, in its view, did not represent an undue depletion of accumulated depreciation accounts.⁷⁸

⁷⁴ Decision 24369-D01-2019: FortisAlberta Inc., 2017 Capital Tracker True-Up Compliance Filing to Decision 23649-D01-2019, Proceeding 24369, June 19, 2019.

⁷⁵ Decision 24369-D01-2019 at paragraph 25 referring to Decision 23649-D01-2019, paragraph 118.

⁷⁶ Exhibit 22742-X0618, PDF page 182.

⁷⁷ Exhibit 22742-X0237.01, AET-CCA-2017AUG30-053(a), PDF page 112.

⁷⁸ Exhibit 22742-X0237.01, AET-CCA-2017AUG30-054(b), PDF page 118.

46. AET also provided an analysis performed by Mr. Kennedy that layered the aged retirements from the Fort McMurray wildfire onto the retirement database assuming that the retirements had occurred in 2013, which would have resulted in the fire being considered in the 2014 depreciation study. In Mr. Kennedy's view, his analysis confirmed that the retirements associated with the Fort McMurray wildfire fell within the range of expected retirement activity for virtually all of the age intervals affected by the fire activity, and that this range of activity was therefore contemplated in the previous depreciation study.⁷⁹

47. Further, Mr. Kennedy indicated that, had the retirements from the 2016 Fort McMurray wildfire been known at the time of AET's 2014 depreciation study, they would have had little or no effect on his depreciation parameter recommendations. He concluded that the retirements associated with the Fort McMurray wildfire should be considered to be ordinary retirements.

48. As noted above, the Commission considered and rejected similar arguments from AED in the Slave Lake decision, namely, that unless it could be demonstrated that a retirement event would have a material impact on net rate base or on depreciation rates it cannot be said to be extraordinary. The Commission also emphasized that a UAD analysis must demonstrate whether the causes of the subject retirement event or a similar event can reasonably be assumed to have been anticipated or contemplated at the time the prior depreciation study that generated the current depreciation rates was prepared. An ex-post analysis is insufficient to demonstrate that the causes of the retirement event can be reasonably assumed to have been factored into the analysis including the judgment of the depreciation consultants when determining the depreciation parameters in the circumstances existing at the time of the prior study.

49. In Decision 2738-D01-2016 dealing with a Z factor application by ATCO Gas relating to the 2013 Southern Alberta floods, the Commission again reviewed evidence supporting the following two propositions. First, that had the retirement events caused by the floods been anticipated or contemplated in the previous study, there would not have been any impact on the resulting depreciation parameters. And second, that the retirements resulting from the floods did not unduly deplete the accumulated depreciation accounts.⁸⁰ In its decision, the Commission gave no weight to either of these arguments. Instead, the Commission applied a UAD/Slave Lake analysis based on the specific facts of the retirement event, to determine that the characteristics of the event were similar in nature to earlier nature-related events included in a prior depreciation study so as to characterize the retirement event arising from the floods as an ordinary retirement.⁸¹

50. Again in Decision 21608-D01-2018 dealing with the ATCO Gas Z factor application relating to the retirement of assets as the result of the Regional Municipality of Wood Buffalo wildfire, ATCO Gas raised similar arguments relating to the non-material impact to accumulated depreciation accounts and to depreciation parameters had the fire been anticipated or contemplated in the previous depreciation study.⁸² As before, the Commission rejected both of these arguments. Instead, the Commission arrived at its finding of an ordinary retirement on a

⁷⁹ Exhibit 22742-X0237.01, AET-CCA-2017AUG30-053, Attachment 1: Response of Larry Kennedy of Concentric Advisors, ULC, PDF pages 112-114.

⁸⁰ Decision 2738-D01-2016, paragraphs 79-80.

⁸¹ Decision 2738-D01-2016, paragraph 93.

⁸² Decision 21608-D01-2018, paragraph 33.

basis consistent with the Slave Lake decision and the 2013 Southern Alberta floods decision, both of which were premised on the characteristics of the retirement event.⁸³

51. Similar to its findings outlined above with respect to decisions 2738-D01-2016 and 21608-D01-2018, the Commission remains unpersuaded in this proceeding that there is any basis, whether founded on past precedent or otherwise, to attribute any weight to (i) Mr. Kennedy's evidence on the layering exercise he performed; (ii) Mr. Kennedy's ex-post findings on depreciation parameter impacts assuming that the Fort McMurray wildfire had occurred in 2013; or (iii) AET's analysis relating to the depletion of accumulated depreciation accounts.

52. The Commission next reviews the characteristics of the Fort McMurray wildfire retirement event to determine whether the asset retirements should be characterized as an ordinary or as an extraordinary retirement, consistent with the principles established in the UAD decision and subsequent Commission decisions.

53. As a preliminary matter, the Commission notes that the continued use of traditional depreciation methods to recover utility capital investment accords with the *Stores Block* line of cases as reviewed by the Commission in the UAD decision precisely because these methods are intended to result in depreciation parameters and depreciation rates that will recover the utility's investment over the period of time that the associated class of assets is anticipated to be used or required to be used in providing utility service. If events of dissimilar characteristics to those considered when a depreciation study was prepared occur, they cannot be said to have resulted from causes that were reasonably anticipated or contemplated in the analysis undertaken at the time the study was done.

54. In this proceeding, the Fort McMurray wildfire resulted in a loss associated with destroyed transmission poles in USA Account 355 that had to be retired. The destroyed assets had a remaining NBV of \$0.664 million. AET's first Commission-approved depreciation study after the Commission issued its AED Slave Lake decision was filed by AET as part of its 2015-2017 GTA, resulting in Decision 20272-D01-2016. The study analyzed historical data up to December 31, 2013.

55. The Commission must assess whether the characteristics of the Fort McMurray wildfire retirement event, as it affected AET, are similar to the characteristics of previous retirement events and, if so, whether these previous retirement events were considered in the 2014 depreciation study. If these events were considered, then the impact of the Fort McMurray wildfire retirement event can be reasonably assumed to have been anticipated or contemplated in the determination of the parameters used in AET's 2014 depreciation study.

56. In conducting its assessment, the Commission has considered the information provided by AET and reproduced in Table 3 above on the history of nature-related events causing asset retirements experienced by AET over a 13-year period. Table 3 shows that there were a number of nature-related events, such as windstorms and wildfires, including the Slave Lake region fire, resulting in asset repairs and replacements recorded through the RID. Further, Mr. Kennedy confirmed that through to the end of 2001, at which time RID account treatment commenced, the

⁸³ Decision 21608-D01-2018, paragraph 47.

data used in AET's depreciation studies included events such as "wildfires, floods, lightning strikes, ice storms and wind storms."⁸⁴

57. The Commission observes that the repair/replacement costs due to the nature-related events listed in Table 3 range from \$0.1 million to \$3.6 million with minimal residual book value. In the current case, the Commission finds there is no evidence to suggest a significant portion of the \$7.8 million total forecast costs under AET's "Fort McMurray Wildfire Transmission Asset Restoration" project were related to replacement costs. Rather, the evidence suggests that a significant portion of that forecast is attributable to the repair costs of the damaged facilities as outlined in the Fort McMurray wildfire business case.⁸⁵ Further, the residual book value of the destroyed assets is relatively low. Accordingly, the Commission considers the characteristics of the retirements caused by the Fort McMurray wildfire to be similar to retirements caused by other nature-related events that were recorded through AET's RID account. The Commission is therefore able to reasonably conclude that the retirement of the destroyed assets resulting from the Fort McMurray fire resulted from causes similar in nature to previous retirements.

58. In terms of whether these similar nature-related events and associated retirement events can reasonably be assumed to have been contemplated in a prior AET depreciation study, the Commission accepts Mr. Kennedy's response in AET-CCA-2017AUG30-053 and AET's rebuttal evidence that Mr. Kennedy took the events of the Slave Lake fire and other similar nature-related events into account in preparing the 2014 depreciation study. Based on this evidence, the Commission concludes that it can be reasonably assumed that the information included in Table 3 above relating to events occurring up to the point in time that the depreciation study was prepared would have been known by AET management and available to Mr. Kennedy for his consideration at the time he prepared his 2014 depreciation study. Further, Mr. Kennedy's evidence is that he specifically considered the Slave Lake decision and its impacts on AED in preparing his depreciation study demonstrating that he turned his mind to the possibility that a nature-related retirement event of similar magnitude should be considered in making his assessment of the appropriate depreciation parameters for AET.

59. Based on the above, the Commission determines as a finding of fact that the characteristics of the Fort McMurray wildfire retirement event are sufficiently similar in nature to the characteristics of retirement events that can be reasonably assumed to have been anticipated or contemplated in the preparation of AET's 2014 depreciation study and, as a result, were factored into the derivation of the existing depreciation parameters. Accordingly, the Commission finds that the Fort McMurray wildfire gives rise to an ordinary retirement of the destroyed assets because the retirements resulted from causes reasonably assumed to have been anticipated or contemplated in AET's 2014 depreciation study.

60. As a result of these findings, the principles established by *Stores Block* and the related Court of Appeal decisions dictate that the remaining NBV of the destroyed assets associated with the Fort McMurray wildfire in the amount of \$0.664 million, will continue to be recoverable through AET's depreciation provisions.

⁸⁴ Exhibit 22742-X0725, AET argument, paragraph 153.

⁸⁵ Exhibit 22742-X171.04, ATCO Electric 2018-2019 General Tariff Application 00073 – Fort McMurray Wildfire Transmission Asset Restoration Business Case, Section 2.0, pages 2-4.

61. With respect to the TCM Project 00073 required for the repair or replacement of assets damaged or destroyed as a result of the Fort McMurray wildfire, the Commission has examined the associated business case and the record of this proceeding, and finds the costs to be prudent. For this reason, the program and its associated actual expenditures of \$7.6 million are approved.

62. The Commission also finds that AET's actual power restoration costs of \$0.321 million were incurred due to sudden and accidental events. These costs continue to be eligible for recovery through the RID mechanism. The Commission therefore approves AET's proposed treatment of these costs through its RID account.

63. Having found the retirement (\$1.9 million) of the assets destroyed in the Fort McMurray wildfire to be an ordinary retirement, and having approved both AET's actual TCM Project 00073 (\$7.6 million) and its proposed RID treatment of power restoration costs (\$0.321 million), it is not necessary for AET to change the established RID treatment. The Commission therefore directs AET to collect both the power restoration costs in the amount of \$0.321 million and the \$7.6 million in actual asset repair and replacement costs (TCM project 00073) through its RID account.

64. As a result of the Commission's findings and direction, and consistent with the established RID mechanism, the destroyed assets (\$1.9 million) will not be retired from AET's accounting records, nor will the actual repair and replacement costs (\$7.6 million) be capitalized. The Commission directs AET in its compliance filing to the 2018-2019 GTA in Proceeding 24805, to update its RID account and supporting schedules in accordance with these findings.

65. Notwithstanding the above, the Commission considers that the use of the RID account as a mechanism for the recovery of capital costs, in circumstances such as those associated with events like the Fort McMurray wildfire, should be re-examined by AET. In particular, the Commission wishes to consider the continued reasonableness of recovering large capital amounts through this account in light of cost causation and intergenerational matching principles. It also wishes to review the long-term impacts of maintaining an RID account, which excludes physical asset retirements handled through the RID account from direct inclusion in depreciation studies. The Commission directs AET in its next GTA to file with the Commission the findings of its examination of this issue, AET's recommendation on the continuation of its current RID account, and the corollary impacts on AET's depreciation studies of maintaining this account.

66. With respect to the UCA's concerns about potential cross-subsidization of the Fort McMurray wildfire-related expenditures between ATCO Electric's distribution and transmission functions, the Commission is generally satisfied with the level of separation in light of the evidence demonstrating that these expenditures were tracked by way of separate work orders. However, the Commission considers it would be beneficial for AET to confirm that the amounts have been correspondingly recorded by each of the distribution and transmission functions to address the concerns raised by the UCA. AET is therefore directed to provide this confirmation in an update to its compliance filing to the 2018-2019 GTA in Proceeding 24805 and, specifically, to identify and provide, on a cost-category basis, the quantum and nature of the work performed and associated expenditures as between AET and AED to confirm that there is consistent treatment and reporting of these cost categories for the Fort McMurray wildfire-related expenditures.

5 Concurrence with the decision to have customers responsible for the Fort McMurray wildfire retirements for different reasons (Acting Commission Member Lyttle)

67. The continued treatment of ordinary retirements and extraordinary retirements in accordance with the UAD decision will eventually erode the symmetry of gains and losses underlying the principles of property ownership and corporate law applicable to Alberta utilities as established by the Supreme Court in the *Stores Block* decision.⁸⁶

68. I agree to have customers responsible for the Fort McMurray wildfire losses and damages, but for different reasons, set out below.

69. Depreciation allocations were applied in the regulatory scheme as a “profit sharing” tool before the *Stores Block* decision where there was a gain above original cost upon the disposition of utility property.⁸⁷

70. The *Stores Block* decision overturned this approach and directed that all net proceeds of the sale of assets be allocated to the utility. At paragraph 67 of the *Stores Block* decision, the Supreme Court of Canada determined that “... ownership of the assets is clearly that of the utility; ownership of the asset and entitlement to profits or losses upon its realization are one and the same.”

71. After the *Stores Block* decision and related cases, the Commission sought to implement and give effect to the direction of the courts by noting that a utility continues to recover its investment through rates if the asset remains in utility service but bears the risk of profit or loss on that investment should it dispose of an asset outside of the ordinary course of business or withdraw an asset from utility service as noted in the following extract from the UAD decision:

... the Commission also applies the principle that it is the utility that has the property interest in depreciable assets and in normal circumstances has the right to make the business decision of whether to remove the property from utility service (and therefore rate base and customer rates) prior to the end of its useful life as a utility asset or to leave the asset in utility service (and therefore in rate base and customer rates) until retirement at the end of its service life. In the case of a removal of a depreciable asset prior to the end of its service life (by moving it to a non-utility account or through a disposition outside of the ordinary course of business), the utility bears the risk of any loss and the benefit of any gains on the future use of the property.⁸⁸

⁸⁶ *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, [2006] 1 SCR 140, 2006 SCC 4.

⁸⁷ *Transalta Utilities Corporation v Alberta (Public Utilities Board)*, 1986 ABCA 64, paragraphs 43-44 and 46. The court stated at paragraph 44, “The effect of the depreciation allowance is to permit the investor a surcharge beyond the approved rate of return because this deemed depreciation is treated as a cost for accounting purposes.” Further, the Court of Appeal of Alberta in *TransAlta* directed that the purchase price paid to *TransAlta* for the partial loss of a franchise area and associated facilities should be allocated among shareholders and customers. *TransAlta* received an amount in excess of original cost. The court directed that shareholders should receive an amount equal to net book value adjusted for present value. Customers were allocated an amount based on the depreciation paid to date by customers adjusted for present value with the court directing that “the present value of the depreciation allowance should be accounted for as revenue” to the utility, thereby offsetting revenue requirement and decreasing rates. The court in effect, approved a form of “profit sharing” between the utility and customers where there was a gain on sale above original cost.

⁸⁸ Decision 2013-417, paragraph 301.

72. Applying the UAD decision, an asset retirement due to extraordinary circumstances must be removed from rate base and moved to a non-utility account because it is no longer used or required to be used as the result of causes not reasonably assumed to have been anticipated or contemplated in prior depreciation or amortization provisions. Therefore, any unrecovered capital investment is for the account of the shareholder.

73. The application of the UAD decision has resulted in the Commission determining, based on the evidence, if depreciation experts have anticipated a particular retirement event when they completed their last depreciation study. If there are similar events that can be said to have been reasonably assumed to have been anticipated or contemplated in the previous depreciation study, then the retirement is an ordinary retirement and customers continue to pay the undepreciated costs of the retired asset. If the event has not been so contemplated, then the unrecovered costs are for the account of the shareholder. The next depreciation study, however, will now incorporate this new event in the determination of depreciation parameters so that if a similar event occurs thereafter, the resulting retirements will no longer be considered extraordinary. In other words, a nature-related event that might have been considered extraordinary in the past would now be considered ordinary because the opportunity to have contemplated the event in a depreciation study has now occurred. This exercise is likely to lead to inconsistent regulatory treatment over time of similar nature-related events in determining what constitutes ordinary and extraordinary retirements of utility assets. The ultimate logical outcome of this iterative process is that, eventually, all retirement events will be considered ordinary. As detailed in paragraph 19 above, AET in rebuttal evidence argued that Mr. Kennedy's average service life analysis "fully contemplated and accounted for future forces of nature events." Ultimately, with no extraordinary retirements, shareholder losses would never occur, an outcome at odds with principles detailed in the *Stores Block* decision. This is problematic when the courts have indicated that the regulatory framework is "meant to balance the need to protect consumers as well as the property rights retained by owners."⁸⁹ Any risk of loss with respect to the utility's original investment would not be for the account of the owner of the property. Instead, losses would be borne asymmetrically by customers, which is inconsistent with the principles of property ownership and corporate law.

74. Ultimately, as natural events are considered ordinary in all, or virtually all, circumstances, the UAD test for extraordinary retirement versus ordinary retirement will be moot.

75. In this proceeding, the Slave Lake fire, a devastating event, has since been eclipsed by the Fort McMurray wildfire, which AET described as "the worst natural disaster in Canadian History."⁹⁰ Whereas the 2011 Slave Lake fire was deemed by the Commission to be extraordinary for AED, now a much larger and more destructive fire might be considered either ordinary or extraordinary. In fact, the Commission can consider the same event to be ordinary for one utility and extraordinary for a different utility, depending on the characteristics of the event including the damage suffered by each utility, the date of each utility's previous depreciation study and the factors considered when each study was prepared.

76. Regrettably, there is the possibility that a future tragic event could be even larger. Is it in the interests of the public to perpetuate unpredictable, but potentially financially devastating,

⁸⁹ *Stores Block*, page 142.

⁹⁰ Exhibit 22742-X0001.02, ATCO Electric application, PDF page 715.

regulatory outcomes for utilities arising from fire, flood, earthquake, wind, or freezing rain at a time when we need their services most? Is this a practical public policy position?

77. Retirements under normal accounting depreciation rules⁹¹ as detailed above are only considered extraordinary when they cause undue depletion of the accumulated depreciation account. Under the regulatory UAD-related decisions, by comparison, undue depletion was not included as a factor that the Commission considered in determining whether an event would be extraordinary. In my view, the depreciation conventions are not uniformly applied within the regulatory construct.

78. If an extraordinary or ordinary retirement analysis is not employed by the Commission, the proper test would be the test confirmed by the courts in the UAD context for whether assets are to be included in rate base, namely, whether an asset is “used or required to be used for the provision of utility service.” Utilities must remove from rate base any asset included in rate base, if the asset is no longer used or required to be used for the provision of utility service. The *Stores Block* line of cases included the court’s findings on corporate and property law principles and the “used or required to be used to provide service to the public” test in Section 37(1) of the *Gas Utilities Act*. The requirement that assets be used or required to be used to provide service to the public was discussed for all Alberta gas and electric utilities in the UAD decision. For example, this principle is detailed in paragraph 303 of the UAD decision: “The Commission remains of the view that it is required to remove from rate base and customer rates assets that are not presently used, are not reasonably used and are unlikely to be used in the future to provide utility services.”

79. In the UAD decision, the Commission also cited the case law in the *Carbon*,⁹² *Harvest Hills*,⁹³ and *Salt Caverns*⁹⁴ decisions and provided detailed examples of assets that are required to be removed from rate base, such as “obsolete property, property to be abandoned, overdeveloped property and facilities for future needs, and property used for non-utility purposes and surplus land.” This list, though not exhaustive, includes only assets that would typically fail a used to provide utility service test using the principle in paragraph 303 of the UAD decision, i.e., a used or required to be used test.

80. AET’s assets in Fort McMurray were already in rate base and had been deemed prudent by the Commission’s predecessor. The actual assets are poles, wires, transformers, meters, conductors, concrete foundations, rights-of-way, etc. These assets form an electricity delivery mechanism that satisfies a need for utility service. The fire did not extinguish that need for electricity service in Fort McMurray. The services provided by the assets that were damaged or destroyed are still required, with the result that these assets must be retired and rebuilt or repaired.

81. In my view, to remove the undepreciated costs of the destroyed assets from rate base, one would need to find that the assets were no longer used and required to be used for the provision

⁹¹ *Uniform Classification of Accounts for Gas Utilities*, now titled *Uniform System of Accounting for Natural Gas Utilities*, AR, 546/63, Section 8.

⁹² *ATCO Gas and Pipelines Ltd. v Alberta (Energy and Utilities Board)*, 2008 ABCA 200, leave to appeal to Supreme Court of Canada refused, 32761 (December 4, 2008).

⁹³ *ATCO Gas and Pipelines Ltd. v Alberta (Energy and Utilities Board)*, 2009 ABCA 171, leave to appeal to Supreme Court of Canada refused, 33269 (January 28, 2010).

⁹⁴ *ATCO Gas and Pipelines Ltd. v Alberta (Utilities Commission)*, 2009 ABCA 246, leave to appeal to the Supreme Court of Canada refused, 33366 (January 28, 2010).

of utility service. The fire that devastated Fort McMurray did not destroy the need for the assets, nor the requirement for service.

82. At paragraph 67 of *Stores Block*, reproduced in paragraph 24 of *Harvest Hills*, the court cites Phillips, *The Regulation of Public Utilities*.⁹⁵ On page 325 under the “Used and Useful” section, it begins: “For decades, used and useful referred to needed capacity – that is, a determination as to whether a plant was actually used in service and was useful in providing service.”

83. The capacity needed to operate the electric transmission facility in Fort McMurray is still required for utility service. In my view, to assign the loss to the account of shareholders, as detailed in the UAD decision, the event would have had to also eliminate or alter the need to provide the service, not just destroy the individual components of the electricity delivery mechanism. The need for the utility to have the capacity to deliver the service in Fort McMurray continues. The utility service remains used or required to be used by the public. Accordingly, the undepreciated capital costs of the destroyed assets continue to be associated with a service that is used or required to be used by the public and should continue to be recovered from customers.

84. The corollary to the above also applies. If an event removed the continuing need for service, this then could lead to a decision to remove destroyed and, in addition, surviving assets from rate base as both were no longer used nor required to be used for the provision of utility service.

85. An electric facility on a spur line could be shut down due to fire, flood or just due to economic considerations, and if this resulted in the spur line no longer being used to provide service, then shareholders should be responsible for the decommissioning of that spur line and any resultant losses. This methodology would give effect to the principle that profits and losses for such assets be borne by the utility as espoused in the *Stores Block* decision and still allow the Commission regulatory oversight as to whether assets are used or required to be used for utility service, i.e., the utility is at risk for stranded assets. The Commission has examined this concept in Decision 2011-474⁹⁶ and determined “that utility shareholders rather than ratepayers, are at risk with respect to stranded transmission facility owner (TFO) assets (paragraphs 251 and 252 of Decision 2011-474), and extended these comments to any stranded gas or electric transmission or distribution assets (paragraphs 542 to 545).”⁹⁷

6 Future considerations

86. In the previous section of this decision, the entirety of the Commission panel reviewed the circumstances of this proceeding and determined that the unrecovered capital investment in the retired assets is for the account of the customers of AET.

87. The Commission’s finding that costs of the retirement event should be allocated to customers results in just and reasonable rates. This finding is consistent with the governing legislation, the fundamental property and corporate law principles established by the courts and

⁹⁵ *The Regulation of Public Utilities: Theory and Practice*, Charles F. Phillips, 1993, Public Utilities Reports, Inc., Arlington, Virginia.

⁹⁶ Decision 2011-474: 2011 Generic Cost of Capital, Proceeding 833, Application 1606549-1, December 8, 2011.

⁹⁷ Decision 2013-417, paragraph 85.

the guidance of the courts on the allocation of risk and benefits associated with property ownership. This guidance was reviewed by the Commission in the UAD decision and subsequently upheld on appeal.⁹⁸ The guidance limits the Commission's flexibility in dealing with cost allocation upon the retirement of utility assets, both those reasonably anticipated and those that are unanticipated. The regulatory framework resulting from this guidance is bounded in part by the following findings by the courts:

The argument that assets purchased are reflected in the rate base should not cloud the issue of determining who is the appropriate owner and risk bearer...the utility absorbs losses and gains, increases and decreases in the value of assets, based on economic conditions and occasional unexpected technical difficulties ...⁹⁹

The concept of assets becoming “dedicated to service” and so remaining in the rate base forever is inconsistent with the decision in *Stores Block* (at para. 69). Such an approach would fetter the discretion of the Board in dealing with changing circumstances. Previous inclusion in the rate base is not determinative or necessarily important; as the Court observed in *Alberta Power Ltd. v Alberta (Public Utilities Board)* (1990), 72 Alta. L.R. (2d) 129, 102 A.R. 353 (C.A.) at p. 151: “That was then, this is now.”¹⁰⁰

Past or historical use of assets does not permit their inclusion in rate base unless they continue to be used in the system.¹⁰¹

Since the authorities have established that ratepayers cannot share in any of the sales of assets, it follows that holding property within the rate base, once its use has expired, works to the detriment of the ratepayer. ... since ratepayers cannot share in sale proceeds of utility assets, their protection for fair treatment lies in excluding assets not required for utility operations from the rate base.¹⁰²

... the terms of the regulatory compact have always been subject to evolution and the re-balancing of competing interests of consumers and utility companies when times and circumstances change. ... There is no industry today that is immune to change. Or that enjoys a right to be protected from the consequences of change, whether those arise from legislative choices, deregulation or court decisions.¹⁰³

The Commission provided a reasonable rationale for its conclusion that there is and should be a distinction between ordinary depreciation and unforeseen loss or obsolescence of capital, which was characterized as a form of extraordinary depreciation. I am persuaded that it was reasonable for the Commission to conclude that the extraordinary depreciation situations were outside the definition of what would be a reasonable opportunity of return for utility investors. The Commission, in its expert and policy role, could reasonably conclude that the legislation indicated that whereas ordinary depreciation is a legitimate matter for a form of shared risk between utilities and

⁹⁸ *FortisAlberta Inc. v Alberta (Utilities Commission)*, 2015 ABCA 295, 389 DLR (4th) 1, leave to appeal refused, SCC File No. 36728.

⁹⁹ *Stores Block* decision - *ATCO Gas and Pipelines Ltd. Alberta (Energy and Utilities Board)*, 2006 SCC 4, paragraph 69.

¹⁰⁰ *ATCO Gas and Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2008 ABCA 200, paragraph 29.

¹⁰¹ *ATCO Gas and Pipelines Ltd. v Alberta (Utilities Commission)*, 2009 ABCA 246, paragraph 14.

¹⁰² *ATCO Gas and Pipelines v Alberta (Utilities Commission)*, 2014 ABCA 28, paragraph 86.

¹⁰³ *ATCO Gas and Pipelines Ltd v Alberta (Utilities Commission)*, 2014 ABCA 397, paragraph 3, referred to in *FortisAlberta Inc. v Alberta (Utilities Commission)*, 2015 ABCA 295 at 13.

ratepayers, these forms of extraordinary depreciation of prudently acquired capital are not risks to be shared with ratepayers.¹⁰⁴

... In the absence of *Stores Block* and the subsequent jurisprudence from this Court, other policy choices would have been open to the regulator. Although it would be tempting to confine the application of these decisions only to gas utilities, (to minimize what I consider to be deleterious effects on the regulation of utilities in Alberta), the legal principles in *Stores Block* remain good law.¹⁰⁵

88. Although the Court of Appeal emphasized that the *Stores Block* line of cases remains good law, it also noted that more than a decade of incremental litigation on individual, fact-specific Commission decisions has arguably resulted in some “deleterious effects on regulation of utilities in Alberta.” In making this observation, the court indicated that the Commission would have greater flexibility to deal with UAD matters in the absence of this line of court decisions and reminded lawmakers that they have the ability to consider these issues from a broader public policy perspective should they wish to alter the status quo and provide the Commission with greater discretion in addressing UAD fact-specific issues as noted below:

Absent the pronouncements in *Stores Block*, the Commission would likely have greater flexibility on the issue of who bears the undepreciated cost of assets rendered useless as the result of extraordinary events.¹⁰⁶

The Commission, and this Court, are bound by *Stores Block* and the subsequent decisions from this Court. Only legislative amendment, reconsideration, or a reversal of *Stores Block* by the Supreme Court of Canada can change that.¹⁰⁷

89. The Commission appreciates the difficulty utilities face operating in an environment where they must anticipate reasonably foreseeable future events, not just to properly align depreciation parameters but also to reduce the risk of shareholder losses due to an extraordinary retirement. Notwithstanding these efforts, utilities recognize that shareholder losses are likely to occur despite having acted prudently in conducting their operations. Similarly, it is not in the interest of customers that they pay higher rates that reflect risk-adjusted returns or depreciation parameters and investment decisions that factor in every possible retirement contingency. It is also not in the interest of customers that utilities incur higher borrowing costs or that the delivery of safe and reliable service be compromised due to financial hardship resulting from an extraordinary retirement. Further, it is in the interest of neither utilities nor customers to engage in continual fractious debate in characterizing retirements. Again, no party benefits if utilities are compelled to respond to negative economic incentives by adopting risk-averse policies that impede regulatory efficiencies or improvements in service or reliability where prudent investment would otherwise occur. These are perhaps some of the possible deleterious effects on the regulation of utilities in Alberta noted by the courts.

90. UAD matters are complex and include not only the allocation of risk for ordinary and extraordinary retirements, but also involve the disposition of utility property, the withdrawal of utility property for non-regulated purposes, the underutilization of utility assets and the determination of a fair return on utility investment. Each aspect of these issues goes directly to

¹⁰⁴ *FortisAlberta Inc. v Alberta (Utilities Commission)*, 2015 ABCA 295, paragraph 144

¹⁰⁵ *FortisAlberta Inc. v Alberta (Utilities Commission)*, 2015 ABCA 295, paragraph 161.

¹⁰⁶ *FortisAlberta Inc. v Alberta (Utilities Commission)*, 2015 ABCA 295, paragraph 160.

¹⁰⁷ *FortisAlberta Inc. v Alberta (Utilities Commission)*, 2015 ABCA 295, paragraph 76.

the setting of just and reasonable rates in the context of the applicable law and the relevant circumstances.

91. The Commission makes the above comments in the expectation that they will encourage debate on the evolution of public utility regulation in Alberta while the Commission continues to carry out its “main function of fixing just and reasonable rates (‘rate setting’) and in protecting the integrity and dependability of the supply system”¹⁰⁸ as directed by the legislation as interpreted and applied by the courts.

7 Order

92. It is hereby ordered that:

- (1) ATCO Electric Ltd. shall file an update to its 2018-2019 transmission general tariff application compliance filing (Proceeding 24805) on the same date as the deadline to be confirmed in due course by the Commission for filing information request responses in Proceeding 24805, to reflect the findings, conclusions and directions in this decision.

Dated on October 2, 2019.

Alberta Utilities Commission

(original signed by)

Bohdan (Don) Romaniuk
Acting Commission Member

(original signed by)

Kristi Sebalj
Commission Member

(original signed by)

Bill Lyttle
Acting Commission Member

¹⁰⁸ *Stores Block*, paragraph 7.

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
ATCO Electric Ltd. – Transmission Bennett Jones LLP
AltaLink Management Ltd. (AltaLink or AML)
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP
Consumers' Coalition of Alberta (CCA)
Industrial Power Consumers Association of Alberta (IPCAA)
Alberta Direct Connect Consumers Association (ADC)
Direct Energy Marketing Limited

<p>Alberta Utilities Commission</p> <p>Commission panel</p> <ul style="list-style-type: none"> B. Romaniuk, Acting Commission Member K. Sebalj, Commission Member B. Lyttle, Acting Commission Member <p>Commission staff</p> <ul style="list-style-type: none"> A. Sabo (Commission counsel) D. Cherniwchan L. Mullen C. Strasser J. Cameron D. Ward A. Starkov
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Appendix 2 – Oral hearing – registered appearances

Name of organization (abbreviation) Name of counsel or representative	Witnesses
ATCO Electric Ltd. – Transmission L. Keough D. Sheehan	Main panel: P. Goguen P. Bothwell H. Goode D. Hoshowski R. Itiveh K. Moledina N. Palladino Compensation panel: P. Goguen K. Yung N. Palladino
Consumers' Coalition of Alberta (CCA) J. Wachowich, QC R. Lee	D. Madsen D. Levson
Office of the Utilities Consumer Advocate (UCA) T. Marriott, QC K. Rutherford	R. Bell

<p>Alberta Utilities Commission</p> <p>Commission panel</p> <ul style="list-style-type: none"> B. Romaniuk, Panel Chair K. Sebalj, Commission Member B. Lyttle, Acting Commission Member <p>Commission staff</p> <ul style="list-style-type: none"> A. Sabo (Commission counsel) J. Graham (Commission counsel) D. Cherniwchan L. Mullen C. Strasser J. Cameron D. Ward

Appendix 3 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. Having found the retirement (\$1.9 million) of the assets destroyed in the Fort McMurray wildfire to be an ordinary retirement, and having approved both AET’s actual TCM Project 00073 (\$7.6 million) and its proposed RID treatment of power restoration costs (\$0.321 million), it is not necessary for AET to change the established RID treatment. The Commission therefore directs AET to collect both the power restoration costs in the amount of \$0.321 million and the \$7.6 million in actual asset repair and replacement costs (TCM project 00073) through its RID account..... paragraph 63
2. As a result of the Commission’s findings and direction, and consistent with the established RID mechanism, the destroyed assets (\$1.9 million) will not be retired from AET’s accounting records, nor will the actual repair and replacement costs (\$7.6 million) be capitalized. The Commission directs AET in its compliance filing to the 2018-2019 GTA in Proceeding 24805, to update its RID account and supporting schedules in accordance with these findings. paragraph 64
3. Notwithstanding the above, the Commission considers that the use of the RID account as a mechanism for the recovery of capital costs, in circumstances such as those associated with events like the Fort McMurray wildfire, should be re-examined by AET. In particular, the Commission wishes to consider the continued reasonableness of recovering large capital amounts through this account in light of cost causation and intergenerational matching principles. It also wishes to review the long-term impacts of maintaining an RID account, which excludes physical asset retirements handled through the RID account from direct inclusion in depreciation studies. The Commission directs AET in its next GTA to file with the Commission the findings of its examination of this issue, AET’s recommendation on the continuation of its current RID account, and the corollary impacts on AET’s depreciation studies of maintaining this account.
..... paragraph 65