



**Second Stage Review Proceeding to Consider the
Concepts and Principles of an Anomaly Adjustment**

**Review of Decision 22394-D01-2018:
Rebasing for the 2018-2022 PBR Plans for
Alberta Electric and Gas Distribution Utilities
First Compliance Proceeding**

January 30, 2020

Alberta Utilities Commission

Decision 24325-D01-2020

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Proceeding 24325

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1 Decision summary

1. In this decision, the Alberta Utilities Commission determines whether to confirm, rescind or vary Decision 22394-D01-2018¹ as it relates to the concept of anomalies in the context of rebasing for the 2018-2022 performance-based regulation (PBR) plans for AltaGas Utilities Inc., ATCO Electric Ltd. (distribution), ATCO Gas and Pipelines Ltd. (distribution), ENMAX Power Corporation (distribution), EPCOR Distribution & Transmission Inc. (distribution) and FortisAlberta Inc., collectively referred to as the distribution utilities. For the reasons that follow, the Commission has decided to vary Decision 22394-D01-2018 as follows:

- Rescinding the five criteria articulated at paragraph 65 that the Commission indicated must all be met in order to qualify as an anomaly for rebasing purposes.²
- Providing additional clarification in this decision regarding the concept of an anomaly adjustment for the purposes of rebasing and the principles that will apply.

2. The Commission confirms Decision 22394-D01-2018 as it relates to the placeholder treatment for certain costs of the ATCO Utilities identified in that decision.³

3. All interested parties will be provided an opportunity to apply for anomaly adjustments in accordance with the clarification provided in this decision. The Commission will consider all applied-for anomaly adjustments in a single proceeding. The Commission intends to finalize all of the distribution utilities' going-in rates as soon as practicable and, in the absence of procedural or other delays outside of the Commission's control, intends to complete the proceeding and issue a decision addressing the applied-for anomalies in advance of the filing deadline for the distribution utilities' 2021 annual PBR rate adjustment applications. However, the Commission will provide parties with an opportunity to comment on the time required to prepare any applications for anomaly adjustments in accordance with the clarification provided in this decision prior to establishing a process schedule. Any party wishing to comment on the deadline for the filing of anomaly adjustment applications should do so by filing correspondence on the record of this proceeding by way of a post-disposition document. After considering all comments, the Commission will establish a separate proceeding with a process schedule, including the filing deadline, for anomalies applications.

¹ Decision 22394-D01-2018: Rebasing for the 2018-2022 PBR Plans for Alberta Electric and Gas Distribution Utilities, First Compliance Proceeding, Proceeding 22394, February 5, 2018.

² Strike last sentence and bullets (i) – (v) that follow in paragraph 65.

³ Decision 22394-D01-2018, Section 6.4.1.

2 Procedural summary

4. On February 5, 2018, the Commission issued Decision 22394-D01-2018 addressing the rebasing applications submitted by the distribution utilities for their 2018-2022 PBR terms. Each of the ATCO Utilities, ENMAX and Fortis applied to review and vary Decision 22394-D01-2018 alleging a number of errors of fact, law or jurisdiction in accordance with Section 10 of the *Alberta Utilities Commission Act* and Rule 16: *Review of Commission Decisions* (collectively, the review and variance (R&V) applications). The Commission considered the R&V applications in Proceeding 23479.⁴

5. On October 30, 2018, the Commission issued Decision 23479-D02-2018 (the review decision).⁵ In the review decision, the Commission granted, in part, the R&V applications as they related to the concept of anomaly adjustments for the purposes of rebasing. Specifically, the Commission panel assigned to Proceeding 23479 (the review panel) accepted the submissions in the R&V applications that the test to be applied in respect of anomaly adjustments was not clearly evident to the distribution utilities in advance of filing their rebasing applications and was not fully understood by parties until the decision denying all of the applied-for anomalies was issued.

6. Pursuant to Decision 23479-D02-2018, the Commission commenced this second stage review proceeding to consider the concept of an anomaly and to consider the type(s) of anomaly adjustment(s) to be permitted, in accordance with Decision 20414-D01-2016 (Errata).⁶ Specifically, the Commission indicated it would consider:

- (i) The definition of an anomaly, having regard for Decision 20414-D01-2016 (Errata).
- (ii) The applicable criteria that may be used to assess applied-for anomaly adjustments for the purposes of establishing 2018 going-in rates.

7. The Commission also advised that after clarifying the concepts and principles to be applied, it would provide parties an opportunity to apply for anomaly adjustments in accordance with the clarification provided.⁷

8. The Commission pre-registered the distribution utilities as participants in this proceeding. The Commission also pre-registered intervening parties that actively participated in proceedings 22394 and 23479; namely, the Commission pre-registered The City of Calgary, the Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA).

⁴ Proceeding 23479, Applications for Review and Variance of Decision 22394-D01-2018.

⁵ Decision 23479-D02-2018: The ATCO Utilities (ATCO Electric Ltd. and ATCO Gas and Pipelines Ltd.), ENMAX Power Corporation, FortisAlberta Inc., Decision on Preliminary Question, Applications for Review of Decision 22394-D01-2018, Rebasing for the 2018-2022 PBR Plans for Alberta Electric and Gas Distribution Utilities, First Compliance Proceeding, October 30, 2018.

⁶ Decision 20414-D01-2016 (Errata): 2018-2022 Performance-Based Regulation Plans for Alberta Electric and Gas Distribution Utilities, Proceeding 20414, February 6, 2017.

⁷ Exhibit 24325-X0005, paragraph 4.

9. To aid the record development of this proceeding, the Commission provided a list of questions to the parties to be considered and addressed in evidence.⁸ The Commission received written evidence from each of the pre-registered parties,⁹ following which the Commission hosted a two-day roundtable meeting during which parties' representatives were given an opportunity to discuss their views on the concept of anomalies with the Commission panel and certain staff members assigned to this proceeding.

10. After the completion of the roundtable meeting, the Commission released draft minutes to parties for review.¹⁰ On October 10, 2019, the Commission released the final minutes from the roundtable session and issued a list of questions to be addressed by parties in final argument.¹¹ Parties were provided an opportunity to file written argument on October 22, 2019, followed by oral reply submissions on November 1, 2019.

11. The Commission considers the date of the oral reply argument as the close of record date for this proceeding.

12. In reaching the determinations set out within this decision, the Commission has considered all relevant materials and submissions comprising the record of this proceeding. Accordingly, reference in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to a particular matter.

3 Background

13. In Decision 20414-D01-2016 (Errata), the Commission set out the parameters of the 2018-2022 PBR plans for the distribution utilities. Many parameters of this PBR framework are the same or similar to the parameters of the prior generation PBR plans adopted by the Commission in Decision 2012-237¹² for AltaGas, ATCO Gas, ATCO Electric, and Fortis for the years 2013-2017 and in Decision 21149-D01-2016 (Errata)¹³ for ENMAX for the years 2015-2017. Decision 20414-D01-2016 (Errata) addressed four main parameters for the 2018-2022 PBR plans: (i) rebasing¹⁴ and the going-in rates for the 2018-2022 PBR term; (ii) the X factor; (iii) the treatment of capital additions; and (iv) the calculation of the return on equity (ROE) for reopener purposes. This decision is concerned with rebasing and the method established by the Commission to calculate going-in rates for the 2018-2022 PBR term.

⁸ Exhibit 24325-X0005, Appendix A. The Commission indicated that while it expected parties to consider and address the identified issues in evidence, the list was not exhaustive and parties were invited to address additional issues not covered by the list that may assist the Commission in considering the concepts and principles to be applied in the identification of an anomaly.

⁹ ATCO Gas and ATCO Electric Distribution collectively participated in this proceeding as the ATCO Utilities.

¹⁰ Exhibit 24325-X0059, AUC draft roundtable minutes.

¹¹ Exhibit 24325-X0068, AUC letter - Finalized meeting minutes and issues list for argument.

¹² Decision 2012-237: Rate Regulation Initiative Distribution Performance-Based Regulation, Proceeding 566, Application 1606029-1, September 12, 2012.

¹³ Decision 21149-D01-2016 (Errata): ENMAX Power Corporation, Distribution 2015-2017 Performance-Based Regulation – Negotiated Settlement Application and Interim X Factor, Proceeding 21149, October 3, 2016.

¹⁴ Refers to the exercise of generally realigning revenues and costs in anticipation of, or at the end of, a PBR term, in order to establish new going-in rates for the next PBR term.

14. The Commission determined in Decision 20414-D01-2016 (Errata) that the going-in rates for the 2018-2022 PBR plans would be set on the basis of a notional 2017 revenue requirement developed using actual, pre-2017 costs that the distribution utilities incurred during the years of the preceding 2013-2017 PBR plans (2015-2017 for ENMAX). The notional 2017 revenue requirement, comprising operations and maintenance (O&M) and capital costs, is not charged to customers, but rather is used for the sole purpose of establishing the going-in rates for the next generation PBR plans commencing in 2018. Decision 20414-D01-2016 (Errata) contemplated two components of the notional 2017 revenue requirement that may be adjusted for anomalies, each of which is discussed below.

15. The Commission determined that the O&M component of the notional 2017 revenue requirement would be based on the distribution utility's lowest O&M cost year during the preceding PBR term, excluding the last year of the term, restated to 2017 dollars, with adjustments as necessary to account for material anomalies. The calculation of the capital component of the notional 2017 revenue requirement uses the distribution utility's 2016 actual closing rate base as a starting point and adds the 2017 capital additions, divided into those capital additions covered by the I-X mechanism¹⁵ in 2017 and those that were subject to capital tracker¹⁶ treatment in 2017, and then applies 2017 depreciation and 2017 notional retirements. The 2017 notional retirements are based on the average actual retirements and contributions from the preceding PBR term, excluding the last year of the term, restated to 2017 dollars. The Commission also indicated it would consider whether any adjustments to the actual retirements to be averaged is warranted.

16. To reflect the aforementioned rebasing approach, as well as the other parameters for the 2018-2022 PBR plans and the overall framework, the Commission directed the distribution utilities to file a rebasing application by way of a compliance filing in accordance with the directions set out in Decision 20414-D01-2016 (Errata). The rebasing applications were assessed by the Commission in Proceeding 22394 and considered in Decision 22394-D01-2018, which is the decision that is the subject of this review proceeding.

17. While the Commission accepted the general rebasing approach undertaken by the majority of the distribution utilities in Decision 22394-D01-2018, it denied all of the anomaly adjustments proposed. In doing so, the Commission stressed that it was necessary to read all of the criteria articulated by the Commission with respect to anomalies in Decision 20414-D01-2016 (Errata) together, rather than favouring or disregarding certain components. The Commission further explained that in order to qualify as an anomaly for rebasing purposes, a proposed cost adjustment must have exhibited all of the following characteristics:

- (i) be specific and identifiable;
- (ii) be required to account for unique existing or anticipated costs;
- (iii) be material;
- (iv) not reflect actual or forecast 2017 costs; and

¹⁵ ¹⁶ These items are further discussed in Section 4.3.

- (v) not be costs that each distribution utility, operating under the incentives of the PBR mechanism, unencumbered by incentives inconsistent with the PBR incentives, would have incurred in 2017.

18. The Commission assessed all of the applied-for anomaly adjustments against these five criteria and ultimately concluded that none qualified. Accordingly, all of the distribution utilities were directed to remove their applied-for anomaly adjustments from their notional 2017 revenue requirement calculations in a subsequent compliance proceeding.

19. As noted in the procedural summary, the ATCO Utilities, ENMAX and Fortis all applied for an R&V of Decision 22394-D01-2018. These applications were considered by the Commission in Proceeding 23479, wherein the Commission granted a review as it relates to the concept of anomaly adjustments.¹⁷

20. Pursuant to Decision 23479-D02-2018, the Commission commenced Proceeding 24325 to consider the concept of an anomaly adjustment and to consider the type(s) of anomaly adjustment(s) to be permitted, having regard for the Commission's intent in Decision 20414-D01-2016 (Errata). The present decision sets out the Commission's determinations on these issues.

4 Anomaly adjustments

21. In the context of rebasing for the 2018-2022 PBR plans, adjustments may be used to modify the actual costs in a distribution utility's lowest cost O&M year or in its projected level of retirements built into the capital portion of the notional 2017 revenue requirement. The Commission determined in Decision 20414-D01-2016 (Errata) that these type of adjustments are warranted if required to account for anomalies.

4.1 The concept of an anomaly

22. In explaining the process of setting the going-in rates for the 2018-2022 PBR plans, the Commission stated the following in Decision 20414-D01-2016 (Errata):¹⁸

46. ... The Commission's focus in setting the 2017 going-in rates for each distribution utility will be on using its judgement to estimate the costs that each distribution utility operating under the incentives of the PBR mechanism, unencumbered by incentives inconsistent with the PBR incentives, would have incurred in 2017. It agrees with those parties who submitted using actual pre-2017 costs to develop a notional 2017 revenue requirement, adjusted as required for anomalies, best reflects expected revenues and costs without the **distorting influence of the incentives** which arise during the last year of a PBR term. [emphasis added]

23. As emphasized by the Commission in prior correspondence, the intent of a PBR plan is to break the linkage between a utility's revenues and costs of providing utility service. This affords the distribution utility the flexibility to manage its business in an environment that fosters incentives to seek out and realize process, operational, capital and financial improvements, so as to reduce costs, while maintaining existing service levels. The PBR plans also provide additional

¹⁷ Decision 23479-D02-2018, paragraph 125.

¹⁸ Decision 20414-D01-2016 (Errata), paragraph 46.

specific adjustment mechanisms throughout the term, if necessary, to ensure that the distribution utility retains a reasonable opportunity to earn a fair rate of return.

24. The Commission considers that an anomaly is something that should be accounted for in a distribution utility's going-in rates, to enable that utility to provide safe and reliable service to its customers and give the utility a reasonable opportunity to earn a fair rate of return (no more or less than the deemed rate of return, unless the utility fails to achieve or exceeds the productivity factor in its PBR plan). In the context of rebasing, the need for an anomaly adjustment may arise in the event that distorting influences on the incentives of PBR, those that promote long-term and permanent productivity improvements, were present during the utility's lowest cost O&M year. However, the Commission does not consider a distribution utility's past decision, which appears suboptimal in hindsight, to constitute an anomaly.

25. Conceptually, in the event that distribution utilities face the same operating circumstances, while employing the same level of effort, and are of equal ability, then those utilities operating within a PBR regime should be expected to earn the same relative amount of profit. If utilities exhibit the same level of effort, and are of equivalent ability, but earn different relative amounts of profit because of differences in circumstances, then a PBR regime that does not account for these differences in circumstances may not be providing all of the utilities with a reasonable opportunity to earn a fair rate of return.

26. Conversely, if utilities face the same circumstances but employ different levels of effort or are of different ability, then those utilities operating within a PBR regime should not be expected to earn the same relative amount of profit. Notionally, this means that some utilities could earn less than the deemed rate of return for a particular time period, if they employ lower effort levels or abilities, and some could earn more than the deemed rate of return, if they employ higher effort levels or abilities. Thus, even if a distribution utility is earning less than the deemed rate of return, that utility still has had a reasonable opportunity to earn a fair rate of return, because compensation is given to ensure that the utilities' opportunity sets (i.e., the circumstances they face) have been equalized. Therefore, where any observed discrepancies in earned rates of return are due to differences in effort, they are the responsibility of the utility.

4.2 Commission discretion

27. While parties offered differing opinions on the concept of anomalies and the principles to be applied in determining whether an anomaly adjustment should be made, a common theme emerged regarding the need for the Commission to retain discretion in assessing applied-for anomaly adjustments. All parties agreed that the Commission must retain a degree of discretion in assessing whether adjustments (positive or negative) to one or more of the distribution utility's notional 2017 revenue requirements are required to meet the objectives of rebasing. Several parties emphasized that it will be for the Commission, using its expertise, to evaluate the specific evidence in support of any applied-for anomalies to determine whether these adjustments are required.

28. In the issues list prepared by the Commission in advance of argument, the Commission asked as follows:

Should an anomaly be defined narrowly with a list of criteria that must be met in order to justify an anomaly adjustment? If so, how would this more prescriptive approach assist

the Commission in evaluating a proposed anomaly and satisfy the parties that the proposed anomaly is valid and that the proposed anomaly adjustment is required?

Alternatively, should an anomaly be defined broadly, without a list of criteria? If so, how would this less prescriptive approach assist the Commission in evaluating a proposed anomaly and satisfy the parties that the proposed anomaly is valid and that the proposed anomaly adjustment is required?¹⁹

29. No party favoured the Commission adopting a narrow list of criteria by which to assess all applied-for anomalies.

30. Fortis submitted that a balance must be struck that generates predictable outcomes while ensuring flexibility to avoid the arbitrary exclusion of identifiable, material and prudently incurred costs from consideration in rebasing.²⁰ Fortis argued against establishing a rigid formula and submitted that anomalies should be assessed by the Commission on a more principled basis using its discretion.²¹

31. EPCOR stated that it is important for the Commission to exercise its discretion when assessing anomalies; however, that discretion should be anchored in the intention of the Commission in Decision 20414-D01-2016 (Errata), specifically in regard to the chosen rebasing methodology concerning rebasing O&M costs, and in the five PBR principles.²² Counsel for EPCOR explained: “So, not: ‘you’ll know it if you see it in a vacuum,’ but: ‘you’ll know it when you see it in a framework that gives you discretion to exercise reason/judgment based on the evidence in front of you.’”²³ Similarly, ENMAX’s proposed definition of an anomaly included the Commission’s discretion to adjust costs to ensure the going-in rates are “right” and that the utility has a reasonable opportunity to earn a fair return.²⁴

32. The ATCO Utilities stated that the Commission is required to use its discretion because adherence to an input, especially if that input is deemed, or ought to be deemed incorrect, would result in an arbitrary and unreasonable result.²⁵ The ATCO Utilities claimed that by not using the conversion factor they put forth as an anomaly, the Commission would be fettering its discretion in the face of compelling factual evidence.²⁶

33. AltaGas submitted that it is appropriate for the Commission to tailor its evaluation to the type of anomaly that is presented by either the utility or the intervener. AltaGas noted that while a more prescriptive, checklist approach might be easier to implement, there is a risk that it inappropriately truncates important and necessary analysis.²⁷

34. The UCA also opposed an approach that included additional rules or a more prescriptive or checklist approach to defining an anomaly. In the UCA’s view, such an approach may only serve to limit the Commission’s discretion, either in approving a cost that is truly an anomaly

¹⁹ Exhibit 24325-X0068, Appendix B.

²⁰ Exhibit 24325-X0072, paragraph 16.

²¹ Transcript, Volume 1, lines 16-18, page 43 (Mr. Hunter).

²² Transcript, Volume 1, page 71.

²³ Transcript, Volume 1, page 82.

²⁴ Exhibit 24325-X0071, paragraph 69.

²⁵ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 29.

²⁶ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 29.

²⁷ Exhibit 24325-X0077, paragraph 18.

that may not “check all the boxes,” or denying a proposed anomaly that checks the boxes but is not really an anomaly at all.²⁸ The UCA supported a framework that provides the Commission retaining discretion in determining what an anomaly is within a set framework.²⁹

35. The CCA submitted that since an anomaly is something unusual or deviates from what is expected, it is difficult to see how the definition could be narrow because that would mean one could define the unusual or unexpected things that were going to occur.³⁰ In the process of oral reply argument, the CCA stated that it was unconvinced with the ATCO Utilities’ claim that disallowing its proposed inflationary anomaly would fetter the Commission’s discretion in defining an anomaly.³¹

36. Calgary reiterated its position that the objective of rebasing was to ensure that going-in rates were set correctly. To ensure that going-in rates are set correctly, it stated that the Commission must retain discretion in approving or denying anomalies.³²

37. The Commission is persuaded that the mandatory, exhaustive list of criteria by which all anomaly adjustments were measured in Decision 22394-D01-2018 may not provide the Commission with the necessary degree of discretion to evaluate properly whether or not adjustments are required to a distribution utility’s 2017 notional revenue requirement which, in turn, forms the distribution utility’s 2018 going-in rates for the 2018-2022 PBR term. The Commission accepts that the exhaustive list articulated by the Commission in Decision 22394-D01-2018 could risk excluding an adjustment that is reasonable and necessary because it fails to meet all of the criteria or, conversely, require the Commission to include an adjustment that is not necessary because it meets all of the criteria. This could circumscribe the discretion that the Commission indicated in Decision 20414-D01-2016 (Errata) it retained to determine what it considers to be reasonable going-in rates for each distribution utility.³³ Accordingly, the Commission rescinds the five mandatory criteria articulated at paragraph 65 of Decision 22394-D01-2018 that the hearing panel indicated must all be met in order for an applied-for anomaly to qualify for an adjustment. The Commission will adopt a more holistic approach to assessing anomalies that takes into account a number of considerations, including the considerations from Decision 20414-D01-2016 (Errata) that were used to inform the five criteria, discussed in more detail in the sections that follow.

38. As urged by several parties to this proceeding, the Commission ultimately will retain the discretion to approve or deny applied-for anomaly adjustments based on its assessment of whether one or more adjustments (positive or negative) are required to both enable that utility to provide safe and reliable service to its customers and provide it with a reasonable opportunity to earn a fair rate of return. The onus rests with the party applying for an anomaly adjustment to satisfy the Commission that the adjustment is required, taking into account the guidance from Decision 20414-D01-2016 (Errata) and the discussion in this decision.

²⁸ Exhibit 24325-X0075, paragraph 20.

²⁹ Transcript, Volume 1, page 33.

³⁰ Exhibit 24325-X0069, paragraph 23.

³¹ Transcript, Volume 1, pages 150-151.

³² Transcript, Volume 1, page 160, lines 4-7 (Mr. Evanchuk).

³³ Decision 20414-D01-2016 (Errata), paragraph 52.

4.3 Not accounted for elsewhere in the PBR plans

39. The 2018-2022 PBR framework approved in Decision 20414-D01-2016 (Errata) established a rate-setting mechanism for the distribution utilities that is based on a formula that adjusts rates by means of an indexing mechanism, I-X, where the I factor represents a rate of inflation that is applied to the prices of inputs the utilities use, less an X factor that captures a productivity offset. In general, the X factor, combined with the I factor, is designed to resemble the pressures of competitive market forces and is imposed to ensure that short-run fluctuations that occur on a day-to-day basis are not built into the levels of total factor productivity growth that are expected of distribution utilities in Alberta. The underlying data set behind the X factor represents the short-term, temporary business cycle fluctuations that similar electric and gas utilities would have faced while pursuing productivity improvements that are in line with the Commission-approved X factor.

40. It is common for PBR plans to make special provision to reflect the cost effect of significant unforeseen events that are outside the ability of the regulated entity to control.³⁴ In Decision 20414-D01-2016 (Errata), the Commission approved the continuation of rate adjustments in the 2018-2022 PBR plans to enable recovery of specific costs where certain criteria have been satisfied to demonstrate that those costs cannot be managed under the I-X mechanism. These include an adjustment for certain flow through costs that are recovered from, or refunded to, customers directly (represented as a Y factor), and an adjustment to account for the effect of exogenous and material events for which a distribution utility has no other reasonable cost recovery or refund mechanism within its PBR plan (represented as a Z factor).

41. As was the case in previous generation PBR plans in Alberta, in Decision 20414-D01-2016 (Errata), the Commission determined that a capital funding mechanism, in addition to revenue provided under I-X, is required for the 2018-2022 PBR plans. Specifically, the Commission determined that capital funding would be divided into two categories: Type 1 and Type 2 capital. Type 1 capital is funded by way of a modified capital tracker mechanism with narrow eligibility criteria, whereby revenue requirement associated with approved amounts is collected from ratepayers by way of a “K factor” adjustment to the annual PBR rate-setting formula. All other capital, or Type 2 capital, is funded by revenue from I-X or from the Commission-approved K-bar mechanism that provides an amount of capital funding for each year of the next generation PBR plans based on capital additions made during the previous PBR term.³⁵ The revenue requirement associated with qualifying Type 2 K-bar mechanism programs is collected from ratepayers by way of a “K-bar factor” adjustment to the annual PBR rate-setting formula.

42. As addressed elsewhere in this decision, the going-in rates for the 2018-2022 PBR plans are based on notional 2017 revenue requirements which, in turn, are based on actual costs incurred during the preceding PBR term. For example, the O&M component of the notional revenue requirement for a particular distribution utility is based on that utility’s lowest cost O&M year from its preceding PBR term (excluding the last year of the PBR term). As a result, a distribution utility’s notional revenue requirement should already reflect the business environment specific to that utility’s circumstances, unless those circumstances have materially changed between the utility’s lowest cost O&M year and the 2018-2022 PBR term. For example,

³⁴ As noted by the Commission in Decision 2012-237, paragraph 516.

³⁵ Decision 20414-D01-2016 (Errata), sections 6.4.2 (Type 1: Capital trackers) and 6.4.3 (Type 2: K-bar).

distribution utilities under the 2018-2022 PBR plans are of different sizes, and any individual distribution utility may experience different costs (relative to its peers) as a result. However, as each distribution utility's notional revenue requirement incorporates its actual experienced costs as the starting point for its going-in rates, this utility's size (relative to its peers) is already accounted for in its going-in rates and should not be the basis for an anomaly adjustment.

43. Finally, the 2018-2022 PBR plans incorporate the Commission-approved (deemed) ROE and deemed equity ratios (also known as capital structure). These values are determined in a stand-alone generic cost of capital proceeding by considering, and accounting for, particular business risks and economic conditions faced by the utilities.

44. The PBR plans were adopted by the Commission with a view to providing each distribution utility with the flexibility to manage its business and the opportunity to earn a fair return, while significantly enhancing the incentives for the utility to pursue productivity enhancements that lower costs during the 2018-2022 term and to maintain existing service levels. To the extent the plans do not function as intended and, thereby, result in a utility earning significantly less than its deemed ROE (or, conversely, earning significantly more than its deemed ROE), the Commission reserved an ROE-based reopener provision. The reopener provision serves as a safeguard for the utilities and customers in the event that there is a problem with the design or operation of a plan that cannot be resolved through another parameter of the plan (e.g., Z factor, Y factor, K factor) and that makes the plan's continued operation untenable.

45. The Commission queried parties in this proceeding for their views on how the Commission should consider the concept of an anomaly within the overall context of the 2018-2022 PBR plans and their corresponding parameters, such as the I and X factors and adjustments to rates outside the I-X mechanism (e.g., Y and Z factors, K-bar, Type 1 capital). The majority of parties recognized the potential for anomaly adjustments to result in double counting. For example, AltaGas,³⁶ ENMAX,³⁷ the ATCO Utilities,³⁸ the UCA³⁹ and the CCA⁴⁰ each submitted that anomaly adjustments should not create instances of double counting for any costs that are recovered through other parameters of the PBR plans. EPCOR, conceptually, also agreed that double recovery is an issue that needs to be considered.⁴¹

46. During oral reply argument, the UCA highlighted the role of the X factor when considering the issue of double counting, as follows:

At a minimum, any proposed changes should not be able to be included in the I factor or contemplated in the data underlying the X factor. Given that the data underpinning the X factor is representative of a broad industry sample of cost drivers and productivity shocks, it is incumbent on the utility to clearly demonstrate that there is no cost driver or productivity shock, similar to the proposed anomaly that is already included in the data underpinning the X factor. Absent such evidence, there's a risk that the X factor already

³⁶ Transcript, Volume 1, page 218, lines 2-10 (Ms. Lozynsky).

³⁷ Exhibit 24325-X0071, paragraphs 70-71.

³⁸ Exhibit 24325-X0073, paragraph 41.

³⁹ Exhibit 24325-X0075, paragraphs 33-34.

⁴⁰ Transcript, Volume 1, page 133, lines 8-9 (Mr. Wachowich).

⁴¹ Transcript, Volume 1, page 73, lines 17-18 (Mr. Liteplo).

includes a similar item and there is double counting, and the utility is compensated twice for the same type of item.⁴²

47. The Commission agrees with those parties that maintained that double counting must be avoided and adjustments for anomalies should not apply when the costs to be adjusted are already accounted for in some other fashion, whether through a parameter of the PBR plans (e.g., going-in rates, X, I, Y, Z, K, K-bar) or through some other feature (e.g., elements of the generic cost of capital determination). The Commission confirms paragraph 71 from Decision 22394-D01-2018, which provided as follows:

71. In addition, other elements within the plan as a whole, such as annual parameter adjustments embedded in the determination of supplemental K-bar capital funding, move to accommodate short-term shocks that may occur within a PBR term, so that firms continue to be provided with a reasonable opportunity to earn a fair rate of return, both in the short-term and long-term within a given PBR term, and, in view of the long-run perspective, even across a sequence of PBR terms, should that occur.

48. Avoiding double counting, is an important factor in the determination of just and reasonable rates and for ensuring that customers share adequately in the benefits associated with any productivity enhancements achieved by the distribution utility during the preceding PBR term.⁴³ In this regard, any application for an anomaly adjustment must clearly demonstrate how the applied-for anomaly adjustment is not already captured in the mechanisms used to set the distribution utility's rates.

4.4 Consistent with PBR principles

49. At paragraph 22 of Decision 20414-D01-2016 (Errata), the Commission outlined the five PBR principles that the Commission adopted in the 2013-2017 PBR plans⁴⁴ and confirmed that it continues to support these principles for the 2018-2022 PBR plans for all electric and gas distribution utilities under its jurisdiction. Those principles are:

Principle 1. A PBR plan should, to the greatest extent possible, create the same efficiency incentives as those experienced in a competitive market while maintaining service quality.

Principle 2. A PBR plan must provide the company with a reasonable opportunity to recover its prudently incurred costs including a fair rate of return.

Principle 3. A PBR plan should be easy to understand, implement and administer, and should reduce the regulatory burden over time.

Principle 4. A PBR plan should recognize the unique circumstances of each regulated company that are relevant to a PBR design.

Principle 5. Customers and the regulated companies should share the benefits of a PBR plan.

⁴² Transcript, Volume 1, page 23, lines 10-25, and page 24, lines 1-2 (Mr. Marriott).

⁴³ See, for example, the discussion at paragraph 13 of the Commission's correspondence dated August 21, 2015, attached as Appendix 4 to Decision 20414-D01-2016 (Errata).

⁴⁴ Decision 2012-237, paragraph 28.

50. No party disputed that the evaluation of anomalies should be consistent with the Commission's PBR principles established in Decision 2012-237 and confirmed in Decision 20414-D01-2016 (Errata).⁴⁵ For example, EPCOR submitted that consistency with the Commission's five PBR principles should be one of the axioms that form a foundation for the definition of and criteria for an anomaly adjustment.⁴⁶

51. The Commission agrees that any permitted anomaly adjustments must be consistent with the Commission's five PBR principles. The concept of an anomaly adjustment, as it is addressed in this decision, arises in the context of rebasing. Rebasing is a component of the 2018-2022 PBR regime, which the Commission confirmed in Decision 20414-D01-2016 (Errata) would be continued in accordance with the five PBR principles that the Commission adopted in relation to the 2013-2017 PBR plans.⁴⁷

4.5 Accounted for in going-in rates

52. In Decision 20414-D01-2016 (Errata), the Commission recognized the importance of going-in rates to the overall success of the PBR plans. The Commission accepted the unanimous view of all parties on the need to ensure that the going-in rates are not too high or too low, in the sense that they would be sufficient only for the utility to earn the deemed rate of return, if the utility achieves the I and X factors set out in the PBR plans. To achieve this balance, the Commission adopted a methodology of rebasing based on a notional revenue requirement, with the possibility of one or more adjustments to account for any anomalies.

53. Costs that are not required for the prudent provision of utility service do not belong in a utility's revenue in the 2018-2022 PBR term and will not qualify as an anomaly. This is consistent with PBR Principle 2, referred to above. A similar view was articulated by the CCA during the oral reply argument, quoting the judgement of Chief Justice Fraser of the Alberta Court of Appeal, as follows:

The general concept is that in return for the undertaking to serve all customers in a defined service area, the utility is granted an opportunity both to earn a reasonable return on its prudent investment and to recover its prudently incurred expenses. However, the regulatory compact was never an arrangement under which utility companies were entitled to find pockets deeper than their own, their ratepayers, in order to recover every expense incurred in pursuit of their corporate and shareholders' interest. Put simply, **the regulatory compact did not confer on the utilities an absolute guarantee they would be entitled to recover all incurred costs and expenses, reasonable or otherwise.**⁴⁸
[emphasis added]

54. All parties to this proceeding highlighted various aspects of the significance of the going-in rates and the role of an anomaly within this context. For example, ENMAX focused on the

⁴⁵ Exhibit 24325-X0077, AltaGas argument, paragraphs 4 and 8; Exhibit 24325-X0011, ATCO Utilities evidence, PDF pages 11-12; Exhibit 24325-X0073, ATCO Utilities argument, paragraphs 33-34, 40 and 43; Exhibit 24325-X0013, CCA evidence, paragraphs 20, 43-44, 82; Exhibit 24325-X0012, Calgary evidence, paragraphs 34 and 46-47; Transcript, Volume 1, page 97, lines 21-25 (Mr. Wood); Transcript, Volume 1, page 69, lines 5-9 and 18-22, and page 71, lines 17-19 (Mr. Liteplo); Exhibit 24325-X0076, EPCOR argument, paragraph 14; Transcript, Volume 1, page 40, lines 5-8 (Mr. Hunter); Exhibit 24325-X0018, UCA evidence, paragraph 16; Exhibit 24325-X0075, UCA argument, paragraph 12.

⁴⁶ Exhibit 24325-X0076, paragraph 14.

⁴⁷ Decision 20414-D01-2016 (Errata), paragraphs 9 and 22.

⁴⁸ Transcript, Volume 1, page 123, lines 5-23 (Mr. Wachowich).

objective of rebasing being the re-establishment of a connection between costs and rates, and noted the cumulative effect that an anomaly adjustment (whether present or not) has in each year of the PBR term.⁴⁹ AltaGas stressed that the adjustment must not negate the inherent efficiency incentives in the lowest actual O&M cost year.⁵⁰ Fortis commented on the essence of having a reasonable balance between the prudent costs incurred to provide utility service and the rate revenue that the utility is approved to collect.⁵¹ In Calgary's view, central to the inclusion of anomalies is the exercise of the Commission's discretion in setting going-in rates.⁵²

55. The ATCO Utilities submitted that the going-in rates represent the most efficient behaviour of a utility and are based on a utility's actual results.⁵³ The UCA pointed to the difficult task before the Commission of evaluating each request for anomaly treatment and deciding if it is required to prevent rates from being too high or too low. In the absence of a mechanistic evaluation approach, the UCA suggested the development of a robust set of principles that can be applied prospectively.⁵⁴ EPCOR provided its interpretation of the Commission's intent in Decision 20414-D01-2016 (Errata) that a key focus for an anomaly adjustment should be on Principle 1, that is based on the stated intention that going-in rates seek to emulate the same efficiency incentives as those experienced in a competitive market.⁵⁵

56. The Commission considers that parties have adequately recognized the fundamental attributes of an anomaly adjustment in relation to the going-in rates. In particular, the Commission acknowledges the effect an anomaly adjustment can have on the revenue of a utility, given the cumulative effect of the going-in rates throughout the 2018-2022 PBR term. In this regard, the Commission does not consider an anomaly adjustment to represent an isolated cost-event. Rather, a positive adjustment may be required to a utility's going-in rates if, in addition to the other considerations discussed in this decision, it can be demonstrated that the anomaly adjustment accounts for a cost that repeats throughout the 2018-2022 PBR term. Alternatively, a negative adjustment may be warranted in circumstances where it can be demonstrated, in addition to addressing the other considerations in this decision, that a cost in going-in rates should not reasonably be included in a utility's revenues over the 2018-2022 PBR term. As stated in Decision 20414-D01-2016 (Errata), during a PBR term, the linkage between a utility's revenues and costs of providing utility service is intentionally broken to provide the distribution utility with the flexibility to manage its business in an environment that fosters incentives to seek out and realize process, operational, capital and financial efficiencies that reduce costs while maintaining existing service levels.⁵⁶ Given this approach, the nature of the PBR plans and their various parameters, the Commission expects distribution utilities to manage their short-term business cycle fluctuations within the overall established framework of the 2018-2022 PBR plans.

57. While the Commission acknowledges that an important objective of rebasing is to establish a link between a utility's costs and rates, the Commission implemented a rebasing methodology in Decision 20414-D01-2016 (Errata) that sought to avoid setting going-in rates

⁴⁹ Exhibit 24325-X0010, paragraph 35.

⁵⁰ Exhibit 24325-X0022, paragraphs 17 and 19.

⁵¹ Exhibit 24325-X0072, paragraph 19.

⁵² Exhibit 24325-X0070, paragraph 17.

⁵³ Exhibit 24325-X0073, paragraph 13.

⁵⁴ Exhibit 24325-X0075, paragraphs 26-27.

⁵⁵ Exhibit 24325-X0076, paragraph 27.

⁵⁶ Decision 20414-D01-2016 (Errata), paragraph 26.

based on a forecast cost of service year: “Having considered the evidence and argument of the parties and after applying its judgement in light of the objectives and purposes of rebasing as described earlier in this section, the Commission does not consider it necessary or desirable to employ a 2018 forecast COS [cost of service] year in order to set going-in rates.”⁵⁷ Anomaly adjustments should be assessed accordingly; they do not present an opportunity to determine 2018 rates retroactively using a selective cost-of-service methodology.

4.6 Exogenous versus endogenous

58. In Decision 20414-D01-2016 (Errata), the Commission reaffirmed that a key reason for implementing PBR for the distribution utilities in Alberta, was its desire to ensure that the decision-making and outcomes achieved by regulated distribution utilities emulated, to the extent possible, the decision making and outcomes that would have arisen had the decision makers in those firms been subject to the incentives found in competitive markets.⁵⁸ This is reflected in the Commission’s PBR Principle 1, discussed above. In considering the concept of an anomaly adjustment in the present proceeding, the Commission explored the extent to which the effect of an anomaly should be allowed to be influenced by the decisions of the distribution utility. If the extent of the effect of an anomaly can be influenced by the utility decision maker, then the extent of the effect is endogenously determined. Alternatively, if the extent of the effect cannot be influenced by the utility decision maker, then the extent of the effect is exogenously determined.

59. The Commission shares EPCOR’s view that in a competitive market, a firm would be rewarded or penalized for factors within its control, but would not necessarily be unduly punished or rewarded for factors that are outside of its control because it would be able to make adjustments to its offerings in the market.⁵⁹ EPCOR observed that a “necessary condition” for an anomaly adjustment appears to be that the extent of the cost effect should be exogenous to the utility. In EPCOR’s submission, endogenous cost shocks do not qualify for treatment as anomalies because this would be contrary to PBR Principle 1. This approach ensures that a distribution utility operating in this proxy for a competitive market would be unable fully to recover its inefficient costs, but would benefit from efficiencies and productivity improvements until such time as its competitors achieve similar efficiencies and improvements, at which point it would reduce its prices to remain competitive.⁶⁰ Nonetheless, EPCOR acknowledged the possibility that there might be circumstances where an endogenous cost shock could be considered anomalous under conditions in which the exogenous constraint is too severe and risks jeopardizing the financial viability of a utility, although such circumstances would be rare.⁶¹

60. AltaGas and ENMAX expressed concern with imposing a criterion that would always require an anomaly to be exogenous or outside the control of utility management.⁶² In AltaGas’s view, this may prematurely limit evaluation of the eligibility of a cost that a utility may view as necessary. AltaGas also observed that it would be difficult for the Commission to determine

⁵⁷ Decision 20414-D01-2016 (Errata), paragraph 46.

⁵⁸ Decision 20414-D01-2016 (Errata), paragraph 109.

⁵⁹ Exhibit 24325-X0016, paragraph 44.

⁶⁰ Exhibit 24325-X0076, paragraphs 21 and 17.

⁶¹ Exhibit 24325-X0076, paragraph 22.

⁶² Exhibit 24325-X0071, paragraph 66.

whether a cost is a result of an actual exogenous event or utility management's response to that exogenous event, potentially resulting in the rejection of qualifying anomaly adjustments.⁶³

61. From Fortis's perspective, understanding whether, and to what extent, a cost is controllable by management is integral to assessing whether an anomaly-related adjustment may be required. Fortis stated that in cases where a material and prudently incurred cost can be demonstrated to have been excluded from consideration in rebasing due to factors beyond management's control, an anomaly adjustment would be warranted to achieve the primary goal of rebasing. In contrast, no adjustment may be warranted in cases where it can be demonstrated that the timing or size of a controllable cost was not reasonably managed by a utility, where opportunities to mitigate such costs existed, but were not exercised.⁶⁴

62. The ATCO Utilities asserted that an anomaly does not have to be an exogenous event or one outside the control of management, but rather, should be a systemic macro adjustment that applies to all of the utilities.⁶⁵ The CCA also shared the view that an anomaly must affect all utilities, while characterizing an anomaly as being "something external."⁶⁶

63. The UCA submitted that an anomaly should be outside the control of management. Otherwise, a utility would be in position to inflate such costs artificially at customers' expense and then retain some of the cost by choosing not to spend the funds, provided the Commission approves an adjustment.⁶⁷

64. The Commission considers that all parties, to a greater or lesser degree, brought forward valid issues and identified legitimate concerns with requiring an anomaly adjustment to be exclusively exogenous. The Commission acknowledges a possibility of neglecting a justifiable endogenous anomaly adjustment. However, the Commission is also cognizant of the concerns expressed by the UCA regarding the effects of information asymmetry, should a distribution utility be permitted to apply for an endogenous anomaly and of Fortis's proposal that unreasonable behaviour on the part of the utility should not be rewarded.

65. While the Commission generally expects an anomaly to be exogenous (outside the control of management), the Commission will not make this a necessary criterion for an anomaly to qualify for an adjustment. Any party applying for an endogenous anomaly will be required to satisfy the Commission that the adjustment is reasonable and necessary in the circumstances. Suboptimal behaviour or decision-making on the part of a utility will not qualify for an anomaly adjustment. Given that each distribution utility may encounter unique circumstances in its business cycle, the Commission does not consider the applicability of an anomaly to *all* utilities, as suggested by the ATCO Utilities and the CCA, to be a necessary criterion for an anomaly adjustment.

66. During oral reply argument, Mr. Liteplo, on behalf of EPCOR, responded as follows to the Commission's question on ways to distinguish a utility's response to a shock:

⁶³ Exhibit 24325-X0077, paragraphs 25-26.

⁶⁴ Exhibit 24325-X0072, paragraph 22.

⁶⁵ Exhibit 24325-X0073, paragraph 40.

⁶⁶ Exhibit 24325-X0069, paragraph 70.

⁶⁷ Exhibit 24325-X0075, paragraph 31.

It's a matter of evidence. And I don't know what else I can tell you. I mean, I'm trying to keep the example sort of at a very high level to illustrate something, but I think that's what it would come down to. It would come down to the evidence. The Commission would have to hear the evidence, weigh the evidence in front of it, and make those kinds of decisions.

So I assumed those away, right, those concerns. But we're not saying they aren't concerns. Obviously they are, and that would have to be a matter for the Commission's judgment based on the evidence.

67. The Commission agrees that consideration of an anomaly adjustment, regardless of its nature, ultimately, will be a matter of evidence.⁶⁸ The Commission further agrees with those parties who highlighted the importance of the Commission's discretion in assessing applied-for adjustments, given potential intricacies surrounding the cause of an event that leads to an anomaly and a utility's response to it.

4.7 Specific, identifiable and unique

68. At paragraph 52 of Decision 20414-D01-2016 (Errata), the Commission stated:

... The Commission is prepared to adjust the 2017 notional revenue requirement estimate obtained by utilizing prior lowest actual O&M expenditures for a particular distribution utility should the distribution utility or interveners provide evidence demonstrating to the satisfaction of the Commission that specific and identifiable adjustments are required to account for unique existing or anticipated material cost anomalies.

69. The foregoing is not subject to review and remains part of the framework within which applied-for anomalies will be assessed.

70. In Decision 22394-D01-2018, the Commission articulated the following two characteristics of an anomaly: (i) that it must be specific and identifiable; and (ii) that it must be required to account for unique existing or anticipated costs. All parties in this proceeding agreed that anomalies should exhibit these characteristics.⁶⁹ However, the Commission observes that the magnitude and nature of the applied-for anomalies in Proceeding 22394 suggest that many parties did not appreciate the *unique* quality of anomalies.

71. For the UCA, Mr. Bell described another feature of an anomaly that specifically resonated with the Commission. He stated that anomalies "should not be hard to find, as they should stand out in the utility's internal reporting as dominating variances from the prior year or budget. Anomalies should be of such import, that they cannot be offset by other efficiencies."⁷⁰

72. The Commission considers that anomalies should be rare and that related adjustments will be required only in unique cases. Anomaly adjustments are not intended to "true up" a utility's lowest cost O&M year to a forecast of what it would have spent in any particular year if

⁶⁸ See, for example, Transcript, Volume 1, page 81, lines 7-18 (Mr. Liteplo).

⁶⁹ Exhibit 24325-X0010, ENMAX submission, paragraph 66; Exhibit 24325-X0011, the ATCO Utilities submission, pages 10-11; Exhibit 24325-X0014, Fortis submission, paragraph 29; Exhibit 24325-X0016, EPCOR submission, paragraph 20; Exhibit 24325-X0022, AltaGas submission, paragraphs 14 and 33; Exhibit 24325-X0012, Calgary evidence, paragraph 40; Exhibit 24325-X0018, evidence of Mr. Bell on behalf of the UCA, paragraphs 7-8; Exhibit 24325-X0069, CCA argument, paragraphs 10-11.

⁷⁰ Exhibit 24325-X0018, evidence of Mr. Bell on behalf of the UCA, paragraph 30.

unconstrained by the incentive to lower costs and pursue operational efficiencies. Nor are anomalies intended to “correct” for one or more cost categories in the utility’s lowest cost O&M year that the utility submits do not match its actual costs in that category in a particular year, without recognizing the utility’s ability to achieve potentially offsetting cost savings in other areas. This was acknowledged by certain parties at the roundtable who recognized that a utility has levers⁷¹ that it can pull to manage its overall costs. Some specific costs may be higher and some may be lower, but it is up to the utility to manage its business in a least cost manner, subject to the requirement to provide safe and reliable service.

73. In this regard, the Commission confirms the following from Decision 22394-D01-2018, which it considers provides guidance in terms of the unique nature of anomalies:

67. ... Firms face constraints in many, if not most, of the day-to-day decisions that they make. Many of these arise in the short-run, and might be due to, for example, factors such as existing contracts or the amount and type of capital that is in place. In the long-run, many of these factors may be variable: contracts will come up for renewal, and capital can be changed. As a result, firms may make different decisions in the short-run compared to the long-run, and short-run decisions may not be optimal when viewed from a long-run perspective. However, the constraints themselves do not prevent the firm from acting competitively, reacting to incentives, minimizing costs, and achieving outcomes that are optimal in view of the constraints that they face. The fact that some elements are fixed, at least in the short-run, does not mean that the firm cannot implement decisions that are designed to raise productivity or lower costs, consistent with the incentives of PBR, whether or not these outcomes are ultimately achieved.

68. ... an anomaly does not refer simply to circumstances that limit the firm’s ability to have the outcome that might have resulted had those circumstances been absent. Constraints that are equivalent, or similar, to those that the distribution utilities are presenting as anomalies in this proceeding, were also present in the prior PBR term. Although that PBR term operated under some different requirements than the forthcoming term, such as in terms of supplementary capital funding, the outcomes that were observed during that term suggest that the firms maintained a reasonable opportunity to earn a fair rate of return despite the constraints that they faced. Firms were able to absorb the effects of long-term contracts, changes in input costs and a variety of other shocks largely because they had flexibility and the incentives to minimize costs across a variety of other cost-affecting and productivity-affecting dimensions within their purview.

69. Among the reasons that motivated the Commission Decision 2012-237 and again in Decision 20414-D01-2016 (Errata) to take a longer-term view of productivity when prescribing the X factor was to ensure that the short-run fluctuations that inevitably occur were not built into the levels of productivity growth that were expected of distribution utilities in Alberta. Short-term productivity shocks may inhibit the firm’s ability to earn high rates of return or even the allowed rate of return, but the Commission is confident that firms have a reasonable opportunity to earn a fair rate of return when they pursue productivity improvements in line with the Commission-approved productivity factor, as suggested by the ability of firms in the data set from which the X factor was determined, that also would have faced unexpected shocks, to achieve this longer-term productivity level.

74. The foregoing is consistent with the Commission’s view expressed in Decision 20414-D01-2016 (Errata):

⁷¹ Exhibit 24325-X0068, PDF page 10.

287. ... Nor can the distribution utilities assume that any decision of the Commission to provide less assurance of cost recovery for one discrete element than they may have requested amounts to a denial of a reasonable opportunity to earn the allowed rate of return over the next generation PBR plans. The reasonable opportunity to earn their allowed rate of return is premised not only on the Commission's duty to turn its mind to regulated revenue streams for the distribution utilities, it also includes a duty of the distribution utilities to conduct their business in a way that meets their obligations and to do so in a way that contributes to their own success in earning their allowed rate of return or better.

4.8 Relevance of the return on equity

75. The Commission must provide regulated utilities with a reasonable opportunity to earn a fair return.⁷² As noted above, this is recognized in the Commission's PBR Principle 2.⁷³

76. In Decision 20414-D01-2016 (Errata), parties and the Commission commented on the relationship between getting the going-in rates right (i.e., not too low or too high) and a utility's return:

34. **All parties agreed on the need to ensure that the going-in rates are not too high or too low, in the sense that they would be only sufficient for the utility to earn the allowed rate of return.** The Commission understands that getting the going-in rates correct is critical to the success of a PBR plan ...

35. ... **these observations during the proceeding about the importance of going-in rates being set to provide the distribution utilities with only a reasonable opportunity to earn their allowed rate of return has served to heighten the attention to the setting of going-in rates for the next generation PBR term.** [emphasis added]⁷⁴

77. While all parties agreed that providing a utility with a reasonable opportunity to earn a fair return is an important consideration in relation to anomaly adjustments, there was considerable disagreement as to whether and to what extent the Commission should consider the actual returns earned by a utility, as reported in its Rule 005 filings,⁷⁵ in assessing whether adjustments are required to that utility's notional revenue requirement. Decision 22394-D01-2018 was issued early in 2018 and, accordingly, a utility's reported earnings in 2018 were not available to be considered in the assessment of whether anomaly adjustments were required. However, given the time that has since elapsed to adjudicate the R&V applications submitted by the ATCO Utilities, ENMAX and Fortis, applications for anomaly adjustments will now be submitted in 2020 at which point at least one year of Rule 005 filings will be available from which some information regarding each of the distribution utility's actual earnings can be ascertained.

78. During the roundtable meeting, the Commission heard that ROE is just one element for consideration and can be affected by many things. According to certain parties, the Commission

⁷² *Electric Utilities Act*, sections 102, 121-122. *Gas Utilities Act*, sections 36-37.

⁷³ Bulletin 2010-20, Regulated Rate Initiative – PBR Principles, July 15, 2010, and Decision 2012-237, paragraph 28.

⁷⁴ Decision 20414-D01-2016 (Errata), paragraphs 34-35.

⁷⁵ Rule 005: *Annual Reporting Requirements of Financial and Operational Results*.

should not use a backward-looking approach to determine whether or not there was an anomaly that contributed to the actual, earned ROE.⁷⁶

79. The CCA was of the view that a proposed anomaly that may be material in the context of the overall operation of the utility should not qualify for an anomaly adjustment if it does not impair the utility's ability to earn a fair return.⁷⁷ EPCOR considered that it would be difficult to establish clearly defined ROE thresholds to determine whether a cost shock would deny the utility a reasonable opportunity to earn a fair return.⁷⁸ EPCOR indicated that focusing on the utility's actual return potentially penalizes efficient firms and rewards inefficient firms. EPCOR cautioned that this could easily devolve into a cost-of-service type analysis of the utility's actual return and to the second-guessing of management decisions, which is something that PBR is supposed to avoid.⁷⁹

80. The ATCO Utilities submitted that anomalies should be evaluated on their merits, not on the actual ROE performance after the fact, and that the actual ROE is used solely in the identification of whether the plans require further investigation to ensure they are not flawed when a reopener threshold is reached.⁸⁰ ENMAX considered that historical ROEs can be used as a measure of fairness of the going-in rates and may indicate a need for further investigation, but should be used with significant caution.⁸¹ In discussion with the Commission, ENMAX recommended using "something like actual O&M costs"⁸² to reduce the number of factors that go into a return.⁸³

81. To the contrary, the CCA submitted that, although one would want to understand whether there are factors that influenced the returns, actual returns would seem to be the ultimate test and anything else is conjecture: "There is simply no other measure to determine whether the utilities have had an opportunity to earn a fair return than the actual measure of fair return."⁸⁴ The CCA provided some statistics related to the earned versus deemed ROE for the six Alberta distribution utilities since the inception of PBR and noted that average earnings were above the deemed rate of return, which it said is evidence that the reasonable return standard has been achieved and is supported by the AUC's PBR framework.⁸⁵

82. AltaGas disagreed with the CCA and did not support using actual returns to evaluate the need for anomaly adjustments given a multitude of factors that may influence financial outcomes over the course of the PBR term.⁸⁶

83. The UCA submitted that the fact that only one of the utilities earned significantly below the deemed return constitutes evidence that there is no need to change the existing definition of an anomaly.⁸⁷ The UCA considered that "unless there is a preponderance of occurrences, one

⁷⁶ Exhibit 24325-X0068, Finalized roundtable meeting minutes, Question 7, PDF pages 16-17.

⁷⁷ Exhibit 24325-X0013, CCA evidence, paragraph 72.

⁷⁸ Transcript, Volume 1, pages 70-71.

⁷⁹ Transcript, Volume 1, pages 72-73.

⁸⁰ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 39.

⁸¹ Transcript, Volume 1, pages 104-105.

⁸² Transcript, Volume 1, page 120, lines 1-2.

⁸³ Transcript, Volume 1, pages 118-121.

⁸⁴ Exhibit 24325-X0069, CCA argument, paragraph 44.

⁸⁵ Transcript, Volume 1, pages 140 and 142.

⁸⁶ Transcript, Volume 1, pages 219-220.

⁸⁷ Exhibit 24325-X0068, Finalized roundtable meeting minutes, UCA opening statement, PDF page 6.

must conclude that the issue is with the particular utility, and not the plan. Further investigation may be required to determine if there was a particular anomaly, unique to that utility, that could be identified as the cause for the lower return.”⁸⁸

84. ENMAX disagreed with the use of a utility average in determining whether to grant an anomaly adjustment, submitting that whether a utility has a reasonable opportunity to recover its prudent costs and earn a fair return must both be determined on a utility-by-utility basis. ENMAX noted that its actual returns have been lower than those of other utilities and the CCA’s argument appears to suggest that EPC benefitted from the fact that the average utility ROE was higher than EPC’s.⁸⁹

85. Although there may be circumstances in which evidence of a utility’s actual earnings may be relevant to the assessment of a particular anomaly, the Commission is not persuaded that it can conclude from a utility’s earned ROE, as stated in its Rule 005 filings, whether or not an applied-for anomaly adjustment is required. Nor does the Commission find that examining or averaging the utilities’ ROEs as a group over prior PBR terms is of assistance in considering anomaly adjustments. The Commission does not wish to risk penalizing those utilities that achieve productivity improvements and lower costs by denying what might otherwise be an appropriate adjustment to their going-in rates or to risk rewarding those utilities that have not lowered costs and achieved the same productivity improvements by relying on their lower earnings to justify adjustments. Nor does the Commission wish to fetter the discretion of a future panel that will adjudicate the applied-for anomalies by declaring that any such evidence is irrelevant. It will be up to the party seeking to rely on any such evidence to demonstrate to the Commission how the evidence is relevant to assessing one or more applied-for anomalies.

4.9 Materiality threshold

86. As explained by the Commission at paragraph 52 of Decision 20414-D01-2016 (Errata), anomalies are material:

52. In the Commission’s view, given the incentive properties of PBR, rebasing of O&M costs should be based on the lowest O&M cost year during the current generation PBR term, restated to 2017 dollars, with adjustments as necessary to **reflect material anomalies** specific to that year. Given that distribution utilities will respond differently to the incentives inherent in any PBR plan, the lowest cost year for a particular distribution utility, everything else equal, represents the largest response to the incentives faced by that distribution utility during the PBR term. The Commission is prepared to adjust the 2017 notional revenue requirement estimate obtained by utilizing prior lowest actual O&M expenditures for a particular distribution utility should the distribution utility or interveners provide evidence demonstrating to the satisfaction of the Commission that specific and identifiable adjustments are required to account for unique existing or **anticipated material cost anomalies**. Allowing for these adjustments that may result in the 2017 costs being lower or higher than they would otherwise be, permits the Commission to recognize the unique circumstances of each distribution utility. **The Commission retains its discretion to determine what it considers to be reasonable going-in rates for each distribution utility.** [emphasis added]

⁸⁸ Exhibit 24325-X0075, UCA argument, paragraph 40.

⁸⁹ Transcript, Volume 1, pages 105-106.

87. In response to the Commission's question 3⁹⁰ on whether there should be a materiality threshold for an anomaly adjustment and, if so, how the materiality of an anomaly adjustment should be determined, parties' positions were divided.

88. AltaGas, ENMAX, EPCOR, the UCA and the CCA supported a materiality threshold for anomaly adjustments.⁹¹ In Fortis's view, addressing anomalies requires reliance on some form of materiality assessment, although the design of such an assessment is complicated by the fact that direct comparisons to actual or forecast values may risk reimporting the very data that the Commission is seeking to exclude from rebasing considerations. Fortis suggested varying the application of a two-tiered materiality test similar to that previously approved by the Commission in respect of capital trackers, applied to both the input level and the aggregate level of particular costs.⁹² The CCA stated that there should be a materiality threshold in the context of the opportunity to earn a fair return; i.e., if a proposed anomaly does not impair the opportunity to earn a fair return, then it should not be an anomaly adjustment.⁹³ ENMAX proposed a threshold of \$0.1 million to satisfy PBR principles 2 and 3, while EPCOR suggested utilizing a minimum of four basis points of the equity-funded portion of rate base in 2017 with a cumulative minimum of 40 basis points for all anomalies of a distribution utility. The UCA supported applying the Commission's previously established materiality threshold for a Z factor.

89. The ATCO Utilities and Calgary stated that a materiality threshold is not required nor relevant. The ATCO Utilities explained that Decision 20414-D01-2016 (Errata) did not outline a detailed materiality threshold, nor did the Commission-generated rebasing template stipulate a provision for a materiality threshold. Further, because anomaly adjustments are not automatic, the ATCO Utilities concluded that a materiality threshold is not required.⁹⁴ Calgary referred to adjustments to information technology (IT) prices resulting from Proceeding 20514 and explained that "regardless of their amounts [any adjustments to IT prices] should be fully reflected as adjustments to the rebasing and base K-Bar placeholder amounts. If the Commission determines that the prices paid by the ATCO Utilities for IT services are unreasonable, a materiality threshold is irrelevant."⁹⁵

90. The Commission finds that those parties who favoured a materiality threshold did not provide adequate support for their positions, the chosen methodology for setting such thresholds or the reasons that the Commission should consider one proposed approach over another. For example, the Commission is unclear how ENMAX calculated its proposed minimum \$0.1 million threshold and the significance of that threshold or why EPCOR's suggested threshold approach is reasonable for an anomaly adjustment. The Commission also notes that irrespective of the chosen materiality threshold, some parties attached caveats to their positions on this topic, such as the need for the Commission to potentially adapt the threshold to individual

⁹⁰ Exhibit 24325-X0005, AUC letter.

⁹¹ Exhibit 24325-X0022, AltaGas evidence, paragraphs 27-28; Exhibit 24325-X0010, ENMAX evidence, paragraph 74; Exhibit 24325-X0016, EPCOR evidence, paragraph 46; Exhibit 24325-X0018, UCA evidence, paragraph 39; Exhibit 24325-X0013, CCA evidence, paragraphs 98-100.

⁹² Exhibit 24325-X0014, Fortis evidence, paragraphs 46-50.

⁹³ Exhibit 24325-X0013, paragraph 98.

⁹⁴ Exhibit 24325-X0011, ATCO Utilities evidence, PDF page 16.

⁹⁵ Exhibit 24325-X0012, Calgary evidence, paragraph 49.

utilities' circumstances depending on the nature and size of anomalies brought forward⁹⁶ or that the threshold consideration should only be in the context of the opportunity to earn a fair return.⁹⁷

91. The Commission is not persuaded that specifying a materiality threshold is reasonable or necessary in the circumstances. For an applied-for anomaly adjustment to be approved, it must be material. This was established in Decision 20414-D01-2016 (Errata) which, as noted above, is not subject to review. However, what constitutes a material adjustment may not be consistent across all anomalies and all distribution utilities. The Commission also wishes to avoid the possibility of preventing consideration of a legitimate anomaly adjustment due to the imposition of an arbitrary threshold. As such, the Commission will not establish a single threshold by which all anomaly applications will be measured. The onus rests with the party applying for an anomaly adjustment to satisfy the Commission that the applied-for adjustment is material, in the circumstances, and the Commission will use its discretion to assess whether this onus has been met.

4.10 Previously applied-for inflation anomaly

92. As discussed earlier in this decision, the approach to rebasing approved by the Commission in Decision 20414-D01-2016 (Errata) involves establishing a 2017 notional revenue requirement for each of the distribution utilities. This 2017 notional revenue requirement is not charged to customers, but is used for the sole purpose of establishing each of the distribution utilities' 2018 going-in rates for the 2018-2022 PBR term.

93. The O&M component of the notional 2017 revenue requirement is based on an individual distribution utility's lowest cost O&M year from its preceding PBR term (2013-2016 for AltaGas, the ATCO Utilities, EPCOR and Fortis; 2015-2016 for ENMAX), with the O&M costs escalated to 2017 dollars using the "respective approved I-X index and Q factor approved for each year ..."⁹⁸

94. In Proceeding 22394, the ATCO Utilities and Fortis applied for an inflation anomaly (also referred to as a conversion adjustment or conversion factor) to adjust the inflation factor used to convert the costs of their lowest cost (2016) O&M year for the purposes of establishing their notional 2017 revenue requirements. The ATCO Utilities noted that the 2017 approved inflation factor was negative 0.76 percent, and submitted that this was an anomaly when used to convert actual 2016 O&M costs to determine a reasonable notional 2017 revenue requirement.⁹⁹ In that proceeding, the ATCO Utilities and Fortis proposed an inflation factor of 1.78 percent in lieu of the negative 0.76 percent which, together with the approved X factor of 1.16 percent, would have resulted in the 2016 O&M costs being escalated by 0.62 percent as opposed to negative 1.92 per cent (the approved I-X index value for 2017). This applied-for adjustment was opposed by Calgary, the CCA and the UCA.

95. In Decision 22394-D01-2018, the Commission discussed several issues it found with the proposal to distinguish between the I factor used to convert 2016 costs for the notional 2017 revenue requirement and the I factor used to adjust rates within a PBR term:

⁹⁶ Exhibit 24325-X0030, paragraph 50.

⁹⁷ Exhibit 24325-X0013, paragraph 98.

⁹⁸ Decision 20414-D01-2016 (Errata), paragraph 53.

⁹⁹ See, for example, Proceeding 22394, Exhibit 22394-X0399, ATCO Argument, Section 2.1.1 – ATCO's Inflation Anomaly.

- First, if the actual calendar year inflation rate were used to convert 2016 costs to 2017, parts of this 2017 calendar year inflation rate will be used two additional times in subsequent PBR escalation factors due to the lagged nature of the calculation. Specifically, the 2018 I factor will include inflation in the first half of calendar year 2017, and the 2019 I factor will include inflation in the second half of calendar year 2017, even though both of these inflation values would have already been included in converting 2016 costs to 2017 under the ATCO Utilities and Fortis proposals. The Commission indicated it could not determine any principled basis under which inflation in one particular period could be used to represent inflation in multiple subsequent periods.¹⁰⁰
- Second, the balancing-out effects of the approved I factor differing from the calendar year inflation rate is a long-run concept that is not limited to the period covering any one PBR term. The Commission stated that it expected that there will continue to be opportunities during the 2018-2022 PBR term for the lag to correct itself or average out.¹⁰¹
- Third, the Commission indicated that had the actual and approved inflation rates occurred in a different order, it expected that the arguments concerning the problematic nature of the 2017 I factor understating the actual inflation rate might not be made, depending on the year in which O&M costs were the lowest. This suggested to the Commission that a motivation for replacing the approved I factor is to reflect actual or forecast 2017 costs, which conflicted with the Commission’s criterion (iv) for anomaly adjustments.¹⁰²
- Lastly, making an adjustment to the approach used to calculate the I factor for 2017, which is calculated as a percentage change in the underlying data from 2016, would introduce methodological inconsistencies in the conversion of amounts in earlier years, 2013, 2014 and 2015, to notional amounts expressed in 2017 dollars. Specifically, when calculating average capital additions for the previous generation PBR period, I factors for these years are used to convert amounts in those years to notional amounts expressed in 2017 dollars. If the I factor anomaly adjustment were approved, this would mean that a different methodological approach would underlie the conversion of 2016 amounts to 2017 dollars compared to converting amounts from other years to 2017 dollars.¹⁰³

96. In light of the foregoing, the Commission denied the applied-for inflation anomaly / conversion adjustment.

97. In this proceeding, the ATCO Utilities addressed how using a lagged conversion factor for the purposes of rebasing does not self-correct over the 2018-2022 PBR term. The ATCO Utilities submitted that actual indices, such as the inflation factor, should be eligible for adjustment where “anomalous results arise.”¹⁰⁴ At the Commission’s roundtable, the ATCO Utilities provided an example to illustrate that the conversion factor was not self-correcting.¹⁰⁵ In argument, the ATCO Utilities submitted that their previously applied-for conversion anomalies for inflation (I) and growth (Q) were intended to ensure that the conversion factors applied to

¹⁰⁰ Decision 22394-D01-2018, paragraph 104.

¹⁰¹ Decision 22394-D01-2018, paragraph 105.

¹⁰² Decision 22394-D01-2018, paragraph 106.

¹⁰³ Decision 22394-D01-2018, paragraph 112.

¹⁰⁴ Exhibit 24325-X0011, PDF page 22.

¹⁰⁵ Exhibits 24325-X0068 and 24325-X0055.

actual costs to obtain notional 2017 values used for rebasing reflected the actual changes in economic conditions from 2016 to 2017.¹⁰⁶ Certain other distribution utilities expressed some support for the ATCO Utilities' position.¹⁰⁷ The CCA argued that adjusting the I factor creates concerns with respect to double counting.¹⁰⁸

98. The Commission indicated that it would provide parties with an opportunity to apply for specific anomaly adjustments after issuing a decision in this proceeding, which clarified the concepts and principles to be applied. In advance of the Commission's roundtable, the Commission advised parties that specific anomaly adjustments for which parties may wish to apply would not be the focus of discussions, except to the extent that using illustrative examples facilitates a more meaningful dialogue. Accordingly, in this decision the Commission will not assess whether any previously applied-for anomalies, including the previously applied-for inflation anomaly / conversion adjustment, qualify for the purposes of adjusting the O&M component of the notional revenue requirement.

99. The Commission considered the example provided by the ATCO Utilities that sought to illustrate that the use of a negative I factor for the purposes of escalating the 2016 O&M costs to the notional 2017 revenue requirement does not self-correct over the 2018-2022 PBR term. The Commission's assessment was limited, however, to ascertaining whether its Decision 22394-D01-2018 should be confirmed, varied or rescinded, in accordance with the scope of this proceeding.

100. The Commission considers that the I factor used for the purposes of escalating a utility's lowest O&M year costs may not average or balance out over the 2018-2022 term in a manner similar to how it adjusts when used to escalate rates year-over-year within a PBR term. Accordingly, the Commission will rescind paragraph 105 of Decision 22394-D01-2018 (summarized above in the second bullet in paragraph 95). Whether or not the I factor does balance out is an issue of fact to be determined based on evidence, which the Commission may consider should the ATCO Utilities or any other party, choose to apply for this type of adjustment.

101. The illustrative example provided by the ATCO Utilities may be sensitive to the inputs, such as the applicable lowest cost O&M year, and to assumptions regarding inflation during the 2018-2022 term. Ultimately, parties, including the ATCO Utilities, may determine what, if any, anomaly adjustments to apply for based on the clarification provided in this decision and to provide evidence to support that any such adjustment qualifies as an anomaly in the circumstances. As it relates to the previously applied-for inflation anomaly, the Commission has not varied or rescinded the entirety of Decision 22394-D01-2018 and it will be up to the party applying for any such adjustment to satisfy the Commission that it is reasonable and necessary, in light of the remaining elements of Decision 22394-D01-2018, Decision 20414-D01-2016

¹⁰⁶ Exhibit 24325-X0073, paragraphs 17-19.

¹⁰⁷ For example, in Exhibit 24325-X0077, paragraph 21, AltaGas submitted: "... systemic factors such as the negative Alberta average weekly earnings index used as the inflation factor to escalate the lowest O&M cost year to 2017 dollars that results in a material divergence from expected costs, even when responding to the incentives of the PBR plan to the greatest extent possible, may qualify for anomaly treatment." In Exhibit 24325-X0072, paragraph 24, Fortis submitted that: "In the case of rebasing for the 2018-2022 PBR term, the I Factor may be subject to adjustment as an anomalous input, as it is part of the formula to convert historical costs into 2017 dollars in the determination of the Notional 2017 Revenue Requirement and so establish K-Bar additions."

¹⁰⁸ Exhibit 24325-X0069, Section 4.1.1.

(Errata) and the clarification provided in this decision. As with the adjudication of any other applied-for anomaly adjustments in a future proceeding, it will be for a future panel to assess, based on the evidence before it, whether the applied-for anomalies should result in adjustments in accordance with Decision 20414-D01-2016 (Errata), Decision 22394-D01-2018 and the clarifications provided herein.

4.11 Retirement anomalies

102. In addition to determining that the O&M component of the notional 2017 revenue requirement could be adjusted for an anomaly, in Decision 20414-D01-2016 (Errata), the Commission determined that it would consider whether any adjustments to the projected level of retirements built into the capital portion of the notional 2017 revenue requirement are warranted. In Decision 22394-D01-2018, the Commission agreed with ENMAX, the only party to apply for a retirement anomaly adjustment, that the same criteria that applied to an O&M anomaly should be applied to a retirement anomaly. In the present proceeding, the Commission sought parties' views on whether the concepts and principles to be applied in the identification of an O&M anomaly should equally apply to a retirement anomaly.

103. While no party objected to the notion of having a single set of principles apply to both O&M anomalies and retirement anomalies, Fortis and AltaGas each offered views on how considerations with respect to retirements may differ.

104. Fortis noted that the majority of the distribution utilities' 2017 capital costs were subject to capital tracker treatment and are, therefore, subject to a true up in the notional 2017 rate base. As such, the need to provide recourse to an adjustment mechanism to ensure adequate representation in base PBR rates is diminished, as compared to O&M inputs. In Fortis's view, K-bar funding for the 2018-2022 PBR period effectively incorporates a degree of normalization into the calculation of the capital-related revenue requirement by using an average of 2013-2016 additions to establish the required rebasing inputs. This has the effect of smoothing any effects related to the timing and magnitude of retirements undertaken during the same time period, further reducing the need to resort to anomaly-type considerations in the establishment of reasonably reflective base K-bar amounts.¹⁰⁹

105. AltaGas submitted that the concepts and principles applicable to the identification of a retirement anomaly may differ given the effects on rate base and the notional revenue requirement. Particularly, AltaGas suggested that the Commission should consider the need to address any implications on the overall PBR capital funding, including the Type 2 K-bar capital mechanism, and the overall rebasing process in setting the going-in rates.¹¹⁰

106. The Commission finds that an anomaly adjustment for retirements should be based on the same criteria as those for an O&M anomaly adjustment. In the Commission's view, assessment of a retirement anomaly for any particular distribution utility will be subject to the Commission's discretion in setting the going-in rates. The Commission acknowledges Fortis's position discussed above, but considers that this issue should be assessed in the context of a specific applied-for retirement anomaly adjustment to recognize the potentially unique circumstances of each utility. For these reasons, the Commission confirms paragraph 160, in which it determined

¹⁰⁹ Exhibit 24325-X0014, paragraphs 56-57.

¹¹⁰ Exhibit 24325-X0022, paragraph 36.

that the same criteria that apply to O&M anomaly adjustments should apply for the purposes of evaluating proposed capital retirement anomalies.

107. The Commission maintains the view expressed in paragraph 162 of Decision 22394-D01-2018 that cost changes associated with retirements are not different than other cost changes in the utility's operating environment and in particular, that such costs can be managed collectively with all other costs in accordance with the incentives inherent in the PBR plans. The onus will rest with any party who wishes to apply for one or more retirement anomalies to show that such an adjustment to notional revenue requirement is necessary in light of the foregoing principles and considerations established by the Commission. As with O&M anomalies, the Commission will use its discretion to assess each applied-for retirement anomaly on its merits.

5 The ATCO Utilities' placeholders

108. The Commission often approves placeholder treatment for specific costs that are not final because those costs are contingent upon some other event or ongoing proceeding. Placeholders are subsequently replaced with (or "trued up" to) actual or approved values once they are known. For example, in Decision 20414-D01-2016 (Errata), the Commission approved a number of placeholders for the distribution utilities in relation to amounts that would not yet be known or finalized as of the filing date for the 2018-2022 PBR rebasing applications.¹¹¹

109. In their rebasing applications, the ATCO Utilities requested several placeholders, including a placeholder for 2016 common group costs allocated to ATCO Electric Distribution as a result of certain changes being put forward in Proceeding 20701,¹¹² which was ongoing at that time.¹¹³ In rebuttal evidence, oral testimony and argument filed in Proceeding 22394, the ATCO Utilities addressed why the IT common costs being considered in Proceeding 20514 and the pension costs affected by Decision 21831-D01-2017,¹¹⁴ which was released subsequent to their rebasing applications, should not also be treated as placeholder amounts. Conversely, the ATCO Utilities argued that the common group allocation costs should be considered to be a placeholder for rebasing purposes. They argued that IT common costs and pension costs were managed under PBR incentives and, therefore, the related actual costs incurred should be used for rebasing purposes.¹¹⁵ Ultimately, the Commission was not persuaded to treat IT common costs and pension costs any differently from common group allocation costs for rebasing and K-bar calculation purposes and approved placeholder treatment for each of these costs.¹¹⁶

110. In Decision 23479-D02-2018, the review panel rejected the ATCO Utilities' request to withdraw its application for a common group allocation costs placeholder.¹¹⁷ The review panel

¹¹¹ For example, in Decision 20414-D01-2016 (Errata), the Commission directed the use of 2016 actual unaudited data as a placeholder for actual 2016 O&M costs and actual rate base for their applications to be filed by March 31, 2017. Each distribution utility was directed to update its application to reflect actual, audited data when it became available. See Decision 20414-D01-2016 (Errata), paragraph 50.

¹¹² Decision 21701-D01-2017: ATCO Electric Ltd., Transmission Common Group Application, Proceeding 21701, July 4, 2017.

¹¹³ Proceeding 22394, Exhibit 22394-X0014.01, paragraph 88 and footnote 33.

¹¹⁴ Decision 21831-D01-2017: ATCO Utilities (ATCO Gas and Pipelines Ltd., and ATCO Electric Ltd.), 2014-2018 Pension Application, Proceeding 21831, July 12, 2017.

¹¹⁵ Decision 22394-D01-2018, paragraphs 301-305.

¹¹⁶ Decision 22394-D01-2018, paragraphs 308-309.

¹¹⁷ Decision 23479-D02-2018, paragraphs 121 and 124.

considered ATCO Utilities' argument that the hearing panel's direction to treat common group allocation costs, IT common costs and pension costs as placeholders is inconsistent with the test for anomaly adjustments articulated in Decision 22394-D01-2018 and that the ATCO Utilities should therefore be permitted, conditionally, to withdraw their request for the ATCO Electric common group allocation costs placeholder. The ATCO Utilities argued that the conditional withdrawal of their request for a common group allocation costs placeholder is a changed circumstance that could lead the Commission to materially vary or rescind Decision 22394-D01-2018 pursuant to Section 4(d)(iii) of Rule 016. However, the ATCO Utilities also stated that their withdrawal request was conditional on the review panel varying Decision 22394-D01-2018 at the same time, in order to eliminate the placeholders for IT common costs and pension costs.¹¹⁸

111. As noted by the UCA in oral reply argument in this proceeding,¹¹⁹ the error alleged by the ATCO Utilities relating to changed circumstances, being the withdrawal of their request for a common group allocation costs placeholder, was rejected as a ground for review by the review panel in paragraph 121 of Decision 23479-D02-2018:

121. The arguments advanced by the ATCO Utilities require the review panel to accept that a party's reconsideration of its position in a proceeding following the issuance of the resulting decision constitutes a "changed circumstance material to the decision that could lead the Commission to materially vary or rescind the decision." Such a conclusion would be an unreasonable interpretation of Section 6(3)(b)(ii) of Rule 016 as it would allow parties an opportunity to reargue issues on the basis of positions they chose not to advance in the original proceeding. It would also be inconsistent with the important principle of finality in administrative decision making and ultimately undermine the integrity of the regulatory process.

112. A reconsideration of Decision 23479-D02-2018 is not before the Commission in this proceeding.

113. In this proceeding, the ATCO Utilities submitted that these placeholders are anomalies because placeholders replace an actual incurred cost that is embedded in the most efficient year of the utility with an amount (price and volume) that was determined on a cost-of-service basis for an affiliate company regulated under a cost-of-service framework. The ATCO Utilities argued that these types of adjustments are inappropriate because they alter, after the fact, only one selected component amongst all the interrelated decisions the utility made as a result of the incentive properties of PBR.¹²⁰ The ATCO Utilities explained that:

8. ... All three of these placeholders are for a rate, which then has to be applied to a volume in order to derive a cost. While these rates have been set on a cost of service basis during a cost of service proceeding of ATCO's transmission utilities, a corresponding volume has been neither tested nor approved for the distribution utilities under PBR. Whatever volume was actually used for these items, it was used based on the rate (or price) that was in place at the time, not the rate (or price) that was approved at a later date for the transmission utilities under cost of service.¹²¹

¹¹⁸ Decision 23479-D02-2018, paragraph 92.

¹¹⁹ Transcript, Volume 1, page 17, lines 8-13.

¹²⁰ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 7.

¹²¹ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 8.

114. The ATCO Utilities further explained that they rebased using the lowest cost year from 2013-2016 and managed all of their operating costs reacting to price signals, as intended under PBR, and that what was accomplished under PBR incentives should not now be undone. The ATCO Utilities were of the view that the regulatory principles relied on by the Commission, when it chose to set going-in rates and when it chose to preserve incentives for 2017, must be upheld in how the Commission chooses to define and implement anomaly adjustments, including placeholders.¹²² The ATCO Utilities submitted that the use of a cost-of-service style placeholder in the going-in rates of a distribution utility under PBR might impair the response to incentives and “just isn’t an appropriate feature of PBR.”¹²³

115. The ATCO Utilities also submitted that they are the only utilities to have any costs treated as placeholders for the purposes of rebasing and that the Commission’s treatment of the ATCO Utilities was “demonstrably inconsistent with other conclusions reached in the same Decision [Decision 22394-D01-2018] and in the Reopener Decision [Decision 23604-D01-2019¹²⁴].”¹²⁵ For example, the ATCO Utilities noted that the Commission rejected EPCOR’s proposed cost-of-service-based labour rate anomaly, yet directed the ATCO Utilities to create cost-of-service placeholders for the same type of costs.¹²⁶ The ATCO Utilities submitted that the Commission reached a similar conclusion in the reopener decision,¹²⁷ noting the difficulty of identifying and separating cost reductions of the ATCO Utilities as a result of Decision 2014-169 (Errata) (Evergreen II decision)¹²⁸ relative to additional measures taken as a result of PBR incentives.¹²⁹ The ATCO Utilities further cited correspondence from the Commission to AltaGas in Proceeding 22394, arguing that it was illustrative of the “inconsistent treatment of the ATCO Utilities.”^{130 131}

116. With respect to the ATCO Utilities’ IT common costs specifically, the UCA and Calgary both pointed out that in Decision 20514-D02-2019, the Commission disallowed IT costs because the ATCO Utilities had “failed to demonstrate that their IT services sourcing strategy was prudent” and that the ATCO Utilities did not satisfy the Commission that the costs “would result in just and reasonable rates if included in revenue requirement.”¹³² In Calgary’s and the UCA’s views, the ATCO Utilities’ position that the disallowed costs should be included in rates is “bold” and “somewhat shocking.”¹³³

¹²² Exhibit 24325-X0073, ATCO Utilities argument, paragraphs 20-21.

¹²³ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 22.

¹²⁴ Decision 23604-D01-2019: AUC-Initiated Review Under the Reopener Provision of the 2013-2017 Performance-Based Regulation Plan for the ATCO Utilities, Proceeding 23604, February 27, 2019.

¹²⁵ Exhibit 24325-X0073, ATCO Utilities argument, paragraphs 9-10.

¹²⁶ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 11.

¹²⁷ Decision 23604-D01-2019.

¹²⁸ Decision 2014-169 (Errata): ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.), 2010 Evergreen Proceeding for Provision of Information Technology and Customer Care and Billing Services Post 2009 (2010 Evergreen Application), Proceeding 240, Application 1605338-1, February 6, 2015.

¹²⁹ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 12.

¹³⁰ Exhibit 24325-X0073, ATCO Utilities argument, paragraph 14.

¹³¹ The ATCO Utilities filed their rebasing applications, including the applied-for placeholder for 2016 common group costs allocated to ATCO Electric Distribution on September 8, 2017. The correspondence from the Commission to AltaGas was filed on the record of the same proceeding on March 9, 2017.

¹³² Decision 20514-D02-2019: The ATCO Utilities (ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd.), Information Technology Common Matters Proceeding, Proceeding 20514, June 5, 2019, paragraph 96.

¹³³ UCA oral reply argument, Transcript, Volume 1, page 24, line 18 to page 25, line 7; Exhibit 24325-X0070, Calgary argument, paragraphs 65-67.

117. In its oral reply argument, Calgary noted a letter¹³⁴ filed in Proceeding 20514 in which the Commission referred to an acknowledgment by the ATCO Utilities, through counsel, that subject to the manner in which rebasing proceeded, the distribution utilities would be bound by the decisions rendered by the Commission in Proceeding 20514. This letter was also expressly acknowledged by the hearing panel in Decision 22394-D01-2018.¹³⁵ Calgary submitted that the ATCO Utilities were fully aware that the review of IT prices in Proceeding 20514 could be considered in future PBR proceedings and that the ATCO Utilities knew by June 9, 2015, that the next PBR term could be affected by the outcome of Proceeding 20514.¹³⁶

118. In Decision 20514-D01-2019, the Commission determined that the ATCO Utilities had failed to demonstrate that the IT pricing in the master services agreements would result in just and reasonable rates if included in revenue requirement and that the ATCO Utilities should only be permitted to recover IT costs that were prudent in the circumstances and that result in just and reasonable rates. The Commission finds that, regardless of the rebasing methodology chosen, the imprudent IT costs that were the subject of Proceeding 20514 should not be included in the notional 2017 revenue requirement and K-bar calculations. Accordingly, these costs are to remain as placeholders until any compliance filing(s) related to the disallowances confirmed by the Commission in Decision 20514-D02-2019 are concluded.

119. Further, the Commission agrees with Calgary that as early as June 2015, the ATCO Utilities were aware that the outcome of the IT common matters proceeding could have an effect on the next generation of PBR plans and rates, and may be considered in a future PBR proceeding. Therefore, the Commission finds that the ATCO Utilities had a fair and reasonable opportunity to make necessary operational adjustments to manage any effects arising from the findings in the IT common matters decision and, as such, the Commission is not persuaded that the ATCO Utilities' ability to pursue PBR incentives was impaired.

120. As indicated above, the Commission-approved placeholder treatment for specific costs that were not final at that time because those costs were contingent upon some other event or ongoing proceeding, which was the case with the ATCO Utilities' placeholders for the common group allocation costs, IT common costs and pension costs. Placeholder treatment of all these costs was confirmed in a number of previous decisions.¹³⁷ In contrast, EPCOR's proposed cost-of-service-based labour rate adjustment and AltaGas's shared services were not subject to an ongoing proceeding at that time.

121. For the foregoing reasons, the Commission is not persuaded to vary or rescind its earlier decision that the ATCO Utilities' common group allocation costs, pension costs and IT common costs should be treated as placeholders until the amounts are finalized in other proceedings. The Commission's original determinations in Decision 22394-D01-2018 in this regard are confirmed.

¹³⁴ Proceeding 20514, Exhibit 20514-X0056, paragraph 39.

¹³⁵ Decision 22394-D01-2018, paragraph 307.

¹³⁶ Calgary oral reply argument, Transcript, Volume 1, page 166, line 25 to page 167, line 7; Transcript, Volume 1, page 179, lines 10-17.

¹³⁷ Decision 22394-D01-2018, paragraphs 308-309; Decision 23355-D02-2018, paragraphs 149-151; Decision 23895-D01-2018, paragraphs 27-28; Decision 23894-D01-2018, paragraphs 27-28.

6 Conclusion

122. In this proceeding, the Commission has conducted a review of Decision 22394-D01-2018 as it relates to the hearing panel's interpretation and application of the definition of and criteria for anomaly adjustments for the purposes of establishing 2018 going-in rates, having regard for the Commission's intent in Decision 20414-D01-2016 (Errata). The scope of this review was based on the development of a comprehensive record comprising parties' written evidence, an open forum, two-day roundtable discussion, including the Commission panel, followed by written argument and oral submissions.

123. In consideration of the evidence, the views of parties and Decision 20414-D01-2016 (Errata), the Commission rescinds the five criteria articulated at paragraph 65 of Decision 22394-D01-2018 that the hearing panel stated must all be met in order to qualify as an anomaly for rebasing purposes.¹³⁸ The Commission also rescinds paragraph 105 of Decision 22394-D01-2018 in which it contemplated that the I factor used to convert lowest cost year O&M costs for the purposes of the notional 2017 revenue requirement may balance out over the 2018-2022 term in the same manner as it does when used to escalate rates year over year within a PBR term. The Commission also varies Decision 22394-D01-2018 by providing additional clarification in this decision regarding the concept of an anomaly adjustment for the purposes of rebasing and the principles that will apply.

124. Interested parties will be given an opportunity to apply for anomaly adjustments in accordance with Decision 20414-D01-2016 (Errata) and the clarification provided in this decision. To achieve efficient processing of the applications, the Commission will consider all submissions in a single proceeding. Accordingly, the Commission directs each interested party to inform the Commission by February 7, 2020, whether it plans to file an application and, if so, to indicate the length of time required to prepare its application. The Commission will endeavour to accommodate the requested timelines for filing.

125. Decision 20414-D01-2016 (Errata) considered that anomaly adjustments should be symmetrical, in that adjustments may result in the 2017 notional revenue being higher or lower than it would otherwise be.¹³⁹ The Commission considers that interveners may also submit applications for anomaly adjustments. As noted above, the onus rests with the party applying for an anomaly adjustment to satisfy the Commission that the adjustment is required, taking into account the guidance from Decision 20414-D01-2016 (Errata) and provided in this decision. The Commission also retains the discretion to determine that an adjustment to a distribution utility's notional revenue requirement may be required to account for an anomaly even where a party has not applied for such adjustment.

126. The Commission will pre-register in the subsequent anomaly adjustments proceeding all participating parties in the current proceeding, consisting of the six distribution utilities and three

¹³⁸ Strike last sentence and bullets (i)-(v) that follow in paragraph 65.

¹³⁹ Decision 20414-D01-2016 (Errata), paragraph 52.

intervening parties. If any pre-registered party does not wish to participate, it may change its status to “Inactive” in the eFiling System.

7 Order

127. It is hereby ordered that:

- (1) Decision 22394-D01-2018 is varied as provided for in this decision.

Dated on January 30, 2020.

Alberta Utilities Commission

(original signed by)

Mark Kolesar
Chair

(original signed by)

Henry van Egteren
Vice-Chair

(original signed by)

Kristi Sebalj
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
AltaGas Utilities Inc. (AltaGas or AUI)
ATCO Electric Ltd. (ATCO Electric) Bennett Jones LLP
ATCO Gas
The City of Calgary (Calgary) McLennan Ross Barristers & Solicitors
ENMAX Power Corporation (ENMAX or EPC)
EPCOR Distribution & Transmission Inc. (EPCOR or EDTI) Borden, Ladner Gervais LLP
FortisAlberta Inc. (Fortis or FAI)
Consumers' Coalition of Alberta (CCA)
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP

<p>Alberta Utilities Commission</p> <p>Commission panel M. Kolesar, Chair H. van Egteren, Vice-Chair K. Sebalj, Commission Member</p> <p>Commission staff K. Kellgren (Commission counsel) S. Sajnovics (Commission counsel) A. Jukov A. Corsi P. Howard E. Deryabina B. Edwards</p>
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Appendix 2 – 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. Interested parties will be given an opportunity to apply for anomaly adjustments in accordance with Decision 20414-D01-2016 (Errata) and the clarification provided in this decision. To achieve efficient processing of the applications, the Commission will consider all submissions in a single proceeding. Accordingly, the Commission directs each interested party to inform the Commission by February 7, 2020, whether it plans to file an application and, if so, to indicate the length of time required to prepare its application. The Commission will endeavour to accommodate the requested timelines for filing..... paragraph 124