



**ATCO Pipelines, a division of ATCO Gas and  
Pipelines Ltd.**

**2024-2026 General Rate Application Negotiated Settlement  
Agreement and Excluded Matters**

**March 27, 2024**

**Alberta Utilities Commission**

Decision 28369-D01-2024

ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd.

2024-2026 General Rate Application Negotiated Settlement Agreement and Excluded Matters

Proceeding 28369

March 27, 2024

Published by the:

Alberta Utilities Commission  
Eau Claire Tower  
1400, 600 Third Avenue S.W.  
Calgary, Alberta T2P 0G5

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

Email: [info@auc.ab.ca](mailto:info@auc.ab.ca)

Website: [www.auc.ab.ca](http://www.auc.ab.ca)

The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

**Contents**

**1 Decision summary..... 1**

**2 Introduction and background..... 1**

**3 Excluded matters ..... 4**

**4 Negotiated settlement ..... 8**

**4.1 Requirements governing negotiated settlements ..... 8**

**4.2 Review of the NSP..... 10**

**4.3 Review of the NSA ..... 11**

**5 Compliance with Commission directions ..... 13**

**6 Order..... 13**

**Appendix 1 – Proceeding participants ..... 15**

**Appendix 2 – Summary of Commission directions..... 16**

**Appendix 3 – Significant process steps ..... 17**

**Appendix 4 – NSA..... 19**

**List of tables**

**Table 1. Impact to revenue requirement of agreed reductions ..... 11**

**ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd.**  
**2024-2026 General Rate Application**  
**Negotiated Settlement Agreement**  
**and Excluded Matters**

**Decision 28369-D01-2024**  
**Proceeding 28369**

---

**1 Decision summary**

1. In this decision, the Alberta Utilities Commission approves a Negotiated Settlement Agreement (NSA) in respect of ATCO Pipelines' general rate application (GRA) for 2024-2026, and denies the matters excluded by the Commission from the negotiated settlement process (NSP). In accordance with the terms of the NSA, the effect of denying these matters is that the GRA test period is limited to 2024 and 2025 and excludes 2026. ATCO Pipelines' approved revenue requirements are \$362,852,000 for 2024 and \$374,488,000 for 2025.

**2 Introduction and background**

2. ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., is a natural gas transmission utility that provides regulated gas transmission service in Alberta. ATCO Pipelines recovers the costs of providing gas transmission service through its revenue requirement, which must be approved by the Commission. Once approved, ATCO Pipelines recovers its revenue requirement through a monthly charge to NOVA Gas Transmission Ltd. (NGTL), in accordance with the Alberta System Integration Agreement<sup>1</sup> between ATCO Pipelines and NGTL.

3. On July 31, 2023, ATCO Pipelines filed its 2024-2026 GRA, seeking Commission approval of the amount of revenue it requires to provide safe and reliable gas transmission service for the 2024, 2025 and 2026 test years. ATCO Pipelines' applied-for revenue requirement comprised all costs forecast to be incurred by ATCO Pipelines, including operating costs and a return of, and a fair return on, its investment in its transmission assets necessary to provide regulated gas transmission service to ratepayers.

4. ATCO Pipelines' requested approvals include:

- Revenue requirements of approximately \$358.62 million for 2024, \$371.37 million for 2025 and \$388.13 million for 2026.
- Compliance with Commission directions.

---

<sup>1</sup> The Alberta System Integration Agreement was intended to streamline the provision of natural gas transmission services in Alberta. The rates paid by all customers connected to the Alberta Integrated System are those applied for by NGTL and approved by the Canada Energy Regulator. NGTL's rates comprise ATCO Pipelines' Commission-approved revenue requirements and NGTL's own revenue requirements.

- The continued use of certain deferral and reserve accounts, and the creation of the Information Technology (IT) Transition Temporary deferral account, and the discontinuation of the Pandemic Cost deferral account.
- Establishing the NGTL Identified Growth deferral account and a zero-dollar placeholder for construction work in progress (CWIP) in rate base for the Yellowhead Mainline Project.<sup>2</sup>

5. The Commission issued notice of the application on August 1, 2023. The notice required interested parties to submit a statement of intent to participate (SIP) by August 21, 2023.<sup>3</sup> The following parties filed SIPs:

- Consumers' Coalition of Alberta (CCA)
- Office of the Utilities Consumer Advocate (UCA)
- The City of Calgary
- Tenaska Marketing Canada
- Canadian Association of Petroleum Producers (CAPP)
- Industrial Gas Consumers Association of Alberta (IGCAA)
- Cenovus Energy Inc.
- Air Products Canada Ltd.
- NGTL

6. In its GRA, ATCO Pipelines explained that the NGTL Identified Growth deferral account and the zero-dollar placeholder for CWIP in rate base for the Yellowhead Mainline Project requests are required to allow for a three-year test period forecast. If the Commission had material concerns regarding these requests, ATCO Pipelines stated that it would prefer to amend the application to reflect a two-year test period.<sup>4</sup>

7. In a ruling dated August 14, 2023, the Commission concluded that there was insufficient evidence to provide a preliminary approval for the NGTL Identified Growth deferral account and CWIP in rate base related to the Yellowhead Mainline Project. In addition, ATCO Pipelines was directed to identify and remove certain costs related to hydrogen studies from its GRA.<sup>5</sup>

8. On August 18, 2023, ATCO Pipelines requested that the Commission reconsider its August 14, 2023, ruling.<sup>6</sup>

---

<sup>2</sup> ATCO Pipelines explained that the Yellowhead Mainline Project is “anticipated to include approximately 200 km [kilometres] of 914 mm diameter pipeline and a 5-10 MW [megawatt] compressor.”

<sup>3</sup> Exhibit 28369-X0015.

<sup>4</sup> Exhibit 28369-X0002.02, PDF page 4, paragraphs 6-7.

<sup>5</sup> Exhibit 28369-X0016.

<sup>6</sup> Exhibit 28369-X0019.

9. The Commission declined ATCO Pipelines' request and directed ATCO Pipelines to advise whether it wanted to continue its GRA, and have the Commission make a final decision on the NGTL Identified Growth deferral account after the conclusion of the argument portion of the proceeding, or if it wanted to adjust the GRA test period.<sup>7</sup>

10. On August 30, 2023, ATCO Pipelines confirmed that it wished to continue with its GRA.<sup>8</sup> The Commission advised that it considered August 30, 2023, as the application filing date for the purposes of this proceeding.<sup>9</sup>

11. ATCO Pipelines requested Commission approval to explore the possibility of reaching an NSA.<sup>10</sup> On September 8, 2023, the Commission issued its notice of hearing and directions on procedure,<sup>11</sup> which contained the Commission's approval of ATCO Pipelines' request to enter into an NSP with interveners, pursuant to Section 4 of Rule 018: *Rules on Negotiated Settlements*. On September 18, 2023, the Commission determined that ATCO Pipelines' requests to: (i) establish the NGTL Identified Growth deferral account with a zero-dollar placeholder for the Yellowhead Mainline Project; and (ii) include CWIP in rate base for the Yellowhead Mainline Project with a zero-dollar placeholder; were excluded from the NSP (the excluded matters).<sup>12</sup>

12. On December 7, 2023, ATCO Pipelines indicated that it had reached a unanimous NSA in principle with interveners settling all matters arising from its 2024-2026 GRA, with the exception of the excluded matters.<sup>13</sup> On January 5, 2024, ATCO Pipelines filed the 2024-2026 GRA NSA.<sup>14</sup>

13. The NSA reached by ATCO Pipelines and parties who participated in the NSP (the parties) reduces ATCO Pipelines' applied-for 2024-2026 revenue requirements from \$358.62 million to \$353.53 million for 2024, \$371.37 million to \$365.18 million for 2025 and \$388.13 million to \$381.07 million for 2026.<sup>15</sup>

14. The parties also reached an agreement with respect to the test period of the NSA. ATCO Pipelines explained that the parties acknowledged its concerns regarding the risk to both ATCO Pipelines and customers with a three-year test period in the event the Commission denies the excluded matters and agreed to the following:

- The test period shall be three years (2024, 2025 and 2026) in the event the Commission approves the excluded matters.
- The test period shall be two years (2024 and 2025) in the event the Commission denies the excluded matters, and the portion of the NSA that relates to 2026 shall be severed and will be of no force and effect, while the remainder of the NSA will remain valid.<sup>16</sup>

---

<sup>7</sup> Exhibit 28369-X0028.

<sup>8</sup> Exhibit 28369-X0031.

<sup>9</sup> Exhibit 28369-X0034.

<sup>10</sup> Exhibit 28369-X0001.01.

<sup>11</sup> Exhibit 28369-X0038.

<sup>12</sup> Exhibit 28369-X0045.

<sup>13</sup> Exhibit 28369-X0163.

<sup>14</sup> Exhibit 28369-X0167.

<sup>15</sup> Exhibit 28369-X0170.

<sup>16</sup> Exhibit 28369-X0167, PDF page 17, paragraph 44.

15. ATCO Pipelines submitted that the NSA was negotiated on the basis that the Commission must either approve the entire settlement or refuse it,<sup>17</sup> in accordance with Section 28.6 of the *Gas Utilities Act*.<sup>18</sup> Accordingly, the Commission will proceed on that basis for the purposes of this decision.

16. On January 5, 2024, ATCO Pipelines corrected certain errors identified during the information request (IR) process and removed the Cloverbar Hydrogen Delivery – Installation Project from its application, in response to the Commission rulings dated November 2, 2023,<sup>19</sup> and November 7, 2023.<sup>20</sup> In addition, in accordance with Decision 28585-D01-2023,<sup>21</sup> ATCO Pipelines updated its return on equity (ROE) from 8.5 per cent to 9.28 per cent for 2024 as final and for 2025 and 2026, as placeholder amounts, to be updated and trued up in future applications.<sup>22</sup> The combined impact of these adjustments increases ATCO Pipelines' 2024-2026 revenue requirements to \$362.85 million for 2024, \$374.50 million for 2025 and \$390.54 million for 2026.<sup>23</sup>

17. The Commission considers the record of this proceeding to have closed on February 26, 2024, the date the virtual hearing for oral argument and reply argument on the excluded matters concluded.

18. A timeline of significant steps in this proceeding is attached as [Appendix 3](#).

19. The remainder of this decision comprises of three main sections: Section 3 addresses the excluded matters; Section 4 addresses matters related to the NSA; and Section 5 addresses ATCO Pipelines' compliance with Commission directions.

### **3 Excluded matters**

20. The Commission excluded ATCO Pipelines' requests for approval of a NGTL Identified Growth deferral account and the inclusion of CWIP in rate base for the Yellowhead Mainline Project from the NSP. During the NSP process, parties to the NSA agreed that a denial of the excluded matters would revise the test period from a three-year to a two-year test period. As a result, a determination on the excluded matters is required before considering the merits of the NSA.

21. ATCO Pipelines requested the establishment of the NGTL Identified Growth deferral account to track capital expenditures associated with growth capital projects.<sup>24</sup> In the GRA, ATCO Pipelines introduced the Yellowhead Mainline Growth Project, which would involve constructing approximately 200 km of large diameter pipeline from an interconnect close to NGTL's January Creek Interconnect with a terminus close to ATCO Pipelines' Cloverbar

---

<sup>17</sup> Exhibit 28369-X0167, PDF page 18, paragraph 47.

<sup>18</sup> Section 28.6 of the *Gas Utilities Act* states: "If the parties negotiate a settlement on the basis that the settlement is contingent on the Commission's accepting the entire settlement, the Commission must either approve the entire settlement or refuse it."

<sup>19</sup> Exhibit 28369-X0119.

<sup>20</sup> Exhibit 28369-X0129.

<sup>21</sup> Decision 28585-D01-2023: 2024 Return on Equity, Proceeding 28585, November 20, 2023.

<sup>22</sup> Exhibit 28369-X0167, PDF page 2.

<sup>23</sup> Exhibit 28369-X0170.

<sup>24</sup> Exhibit 28369-X0002.02, PDF page 10, paragraph 6.

Transmission system.<sup>25</sup> ATCO Pipelines' initial cost estimate for the project was "more than \$1 billion."<sup>26</sup> Because scope, costs and timing of the Yellowhead Mainline Project remain uncertain, ATCO Pipelines requested a zero-dollar placeholder for the Yellowhead Mainline Project within the NGTL Identified Growth deferral account, to be updated when the need for the project is established in a future proceeding.<sup>27</sup> ATCO Pipelines also stated that, if the Yellowhead Mainline Project does not proceed as planned, the NGTL Identified Growth deferral account is still required because the demand that the project intends to meet would need to be served by one or more different, unidentified growth projects.<sup>28</sup>

22. ATCO Pipelines also requested a zero-dollar placeholder for CWIP in rate base for the Yellowhead Mainline Project, which would be included in the NGTL Identified Growth deferral account, to be updated in a future application. ATCO Pipelines explained that without the zero-dollar placeholder for CWIP in rate base, it and CU Inc. (ATCO Pipelines' parent company) would not be able to maintain strong credit metrics during the Yellowhead Mainline Project construction period, when ATCO Pipelines would be required to take on additional debt to fund the project.<sup>29</sup> ATCO Pipelines submitted that poor credit rating metrics would reduce CU Inc.'s flexibility in the marketplace and increase ATCO Pipelines' costs for debt, increasing costs to customers.<sup>30</sup>

23. In oral argument and reply argument, the CCA,<sup>31</sup> the UCA<sup>32</sup> and Calgary<sup>33</sup> submitted that the information on the record with respect to the excluded matters was deficient and they opposed the approval of the excluded matters. Both NGTL<sup>34</sup> and CAPP<sup>35</sup> supported the approval of the NGTL Identified Growth deferral account but CAPP took no position on ATCO Pipelines' request to include a zero-dollar placeholder for CWIP in rate base for the Yellowhead Mainline Project.<sup>36</sup>

24. For the reasons set out below, the Commission denies the establishment of the NGTL Identified Growth deferral account and the request to include a zero-dollar placeholder for CWIP in rate base.

25. In accordance with sections 4(b)(ii) and 4(c) of the NSA,<sup>37</sup> and as described in paragraph 14 above, the Commission's denial results in ATCO Pipelines withdrawing its request for Commission approval of the 2026 test year revenue requirement. Consequently, in accordance with the terms of the NSA, the portions of the NSA that address 2026 are hereby severed and are of no force and effect.

---

<sup>25</sup> Exhibit 28369-X0002.02, PDF page 66, paragraph 4.

<sup>26</sup> Exhibit 28369-X0002.02, PDF pages 3-4, paragraph 5.

<sup>27</sup> Exhibit 28369-X0002.02, PDF pages 66-67, paragraph 4.

<sup>28</sup> Exhibit 28369-X0002.02, PDF pages 67-68, paragraph 6.

<sup>29</sup> Exhibit 28369-X0002.02, PDF page 68, paragraphs 8-9.

<sup>30</sup> Exhibit 28369-X0002.02, PDF page 69, paragraph 10.

<sup>31</sup> Transcript, Volume 1, page 49, lines 23-25 and page 51, lines 19-24.

<sup>32</sup> Transcript, Volume 1, page 84, lines 5-25 and page 85, line 1.

<sup>33</sup> Transcript, Volume 1, page 100, lines 17-22.

<sup>34</sup> Transcript, Volume 1, page 73, lines 9-15.

<sup>35</sup> Transcript, Volume 1, page 45, lines 13-14.

<sup>36</sup> Transcript, Volume 1, page 48, lines 3-5.

<sup>37</sup> Exhibit 28369-X0167, PDF pages 27-28.



26. While, historically, the Commission and its predecessor have declined to establish a definitive policy regarding the use of deferral accounts,<sup>38</sup> the Commission has articulated factors that it considers in its evaluation of a requested deferral account. These factors are: (i) materiality of the forecast amount; (ii) uncertainty regarding accuracy and ability to forecast the amount; (iii) factors affecting the forecasts are beyond the utility's control; and (iv) whether or not the utility is typically at risk for the forecast amount. In addition, the Commission will consider what has been referred to as the symmetry factor, which is that symmetry should exist between costs and benefit for both the company and its customers. Ultimately, however, these factors are not exhaustive nor does meeting these factors necessarily mean that a deferral account will automatically be granted. The Commission has emphasized its discretion to assess each applied-for deferral account on its individual merits.

27. In its August 22, 2023, ruling, the Commission stated that deferral account applications are considered on a case-by-case basis, and found the information provided to support the establishment of the NGTL Identified Growth deferral account to be "materially deficient, considering the magnitude of the project, need and forecasted costs." It declined to approve the deferral account at that early stage of the proceeding.<sup>39</sup>

28. After the Commission's August 22, 2023, ruling, the only new information on the record related to this excluded matter was filed by ATCO Pipelines on January 5, 2024. ATCO Pipelines advised that: (i) NGTL confirmed the commercial underpinning for the Yellowhead Mainline Project; and (ii) the cost estimate for the Yellowhead Mainline Project was revised from "more than \$1 billion" to \$1.5 to \$2.5 billion.<sup>40</sup> After the close of the evidentiary and argument portions of the proceeding, the Commission maintains the view that the information ATCO Pipelines has provided regarding scope, timing, forecast demand, costs and other key factors on the Yellowhead Mainline Project, or any other project proposed to be included in the NGTL Identified Growth deferral account, is materially deficient.

29. With respect to the deferral account assessment, factor (i) (the materiality of the forecast amount), the Commission finds that the updated cost estimate of \$1.5 to \$2.5 billion for the project is material. However, the Commission also finds the updated cost estimate for the project to be a substantial and unsupported increase from the original estimate, which occurred over a period of only seven months. This sudden and unsupported increase in the Yellowhead Mainline Project cost estimate contributes to the Commission's view that the record on the excluded issues is materially deficient in that any detail with respect to this material increase in estimated costs was not provided.

30. In contrast, given the terms of the NSA, which include the option to exclude the 2026 test year, coupled with ATCO Pipelines' statement that it expects to commence construction for the Yellowhead Mainline Project in 2026,<sup>41</sup> the Commission finds that ATCO Pipelines has not established that any costs related to the Yellowhead Mainline Project forecast that may be incurred in 2024-2025, will be material.

31. Regarding factors (ii) (uncertainty regarding accuracy and ability to forecast the amount) and (iii) (factors affecting the forecasts are beyond the utility's control), ATCO Pipelines

---

<sup>38</sup> Decision 2010-189: ATCO Utilities, Pension Common Matters, Proceeding 226, Application 1605254, April 30, 2010, paragraphs 71-72.

<sup>39</sup> Exhibit 28369-X0028, paragraph 12.

<sup>40</sup> Exhibit 28369-X0167, PDF page 3, and Transcript, Volume 1, page 38, lines 18-25 and page 39, lines 1-9.

<sup>41</sup> Transcript, Volume 1, page 14, lines 1-4.

previously stated, when it applied to discontinue its NGTL Directed Growth deferral account in its 2019-2020 GRA, that it was able to forecast growth projects to a higher degree of accuracy.<sup>42</sup> ATCO Pipelines stated that it and NGTL would “work closely together in the initial assessment of facilities required to serve a customer expressed interest” and, consequently, ATCO Pipelines would not characterize said projects as being outside of its control.<sup>43</sup>

32. Assessing these past statements with the Commission’s findings that information concerning the NGTL Identified Growth deferral account is materially deficient, and that added details regarding the scope, timing and forecast costs of the Yellowhead Mainline Project will be filed in a future needs application,<sup>44</sup> the Commission finds ATCO Pipelines’ request for this deferral account to be premature. Additionally, the Commission finds that the information provided by ATCO Pipelines is insufficient to properly assess factors (ii) and (iii). The Commission expects that if the Yellowhead Mainline Project proceeds, ATCO Pipelines’ ability to forecast costs related to the project, or any other project in lieu of the Yellowhead Mainline Project, should improve in the near future.

33. With respect to factor (iv) (whether or not the utility is typically at risk for the forecast amount), the Commission accepts that ATCO Pipelines is subject to additional risk for growth projects identified by NGTL within ATCO Pipelines’ geographical footprint. ATCO Pipelines may be exposed to additional forecast risk with respect to any variance between forecast and actual capital expenditures. However, the Commission finds that a significant amount of the incremental risk relates to the premature nature of the NGTL Identified Growth deferral account request. Accordingly, the weight that the Commission attaches to this factor is limited for the purposes of this GRA.

34. ATCO Pipelines also argued<sup>45</sup> that the applied-for deferral account is similar both in nature and in terms of the level of information provided for the NGTL Directed Growth deferral account,<sup>46</sup> approved in Decision 2013-430.<sup>47</sup> However the Commission considers that the factual circumstances are dissimilar in key respects. ATCO Pipelines identified forecast costs for projects approved to be included in the NGTL Directed Growth deferral account ranged from \$275,000 to \$64.36 million.<sup>48</sup> In contrast, by ATCO Pipelines own estimates, the Yellowhead Mainline Project alone could cost approximately 39 times more than the highest cost capital project included in the NGTL Directed Growth deferral account. For context, ATCO Pipelines’ 2023 mid-year rate base is approximately \$2.6 billion<sup>49</sup> – the Yellowhead Mainline Project alone could double ATCO Pipelines’ rate base.

35. In addition, the Commission finds that the request for the NGTL Identified Growth deferral account appears inconsistent with the expected evolution of the working dynamics of the Alberta Integrated System. The onus rests with ATCO Pipelines to justify its forecasts, and

---

<sup>42</sup> Proceeding 23793, Exhibit 23793-X0001, application, PDF pages 12-13, paragraph 15.

<sup>43</sup> Proceeding 23793, Exhibit 23793-X0025, AP-AUC-2018SEP06-004(a)-(b), PDF page 18.

<sup>44</sup> Transcript, Volume 1, page 18, lines 1-5.

<sup>45</sup> Exhibit 28369-X0002.02, PDF pages 11-12, paragraph 9; Transcript, Volume 1, pages 10-11, 14.

<sup>46</sup> The NGTL Directed Growth deferral account was discontinued by the Commission on the basis it no longer met the materiality factor for deferral account treatment. See Decision 23793-D01-2019, ATCO Pipelines 2019-2020 General Rate Application, Proceeding 23793, June 25, 2019, paragraph 387.

<sup>47</sup> Decision 2013-430: ATCO Pipelines 2013-2014 General Rate Application, Proceeding 2322, Application 1609158, December 4, 2013.

<sup>48</sup> Exhibit 28369-X0062.02, AP-AUC-2023OCT02-003(e), PDF page 178.

<sup>49</sup> Transcript, Volume 1, page 39, lines 14-15.

integration should not act as an impediment to properly scrutinize proposed capital projects that will ultimately go into rate base. ATCO Pipelines stated it is still unsure whether the Yellowhead Mainline Project will proceed as planned, even with commercial underpinning confirmed.<sup>50</sup> If a particular project, such as the Yellowhead Mainline Project, is uncertain, such that ATCO Pipelines cannot justifiably include it in its forecast for the test period and allow it to be properly tested by the Commission, the Commission is not persuaded it is symmetrical and in the public interest to approve a deferral account for that project. ATCO Pipelines represented that, in the event the Yellowhead Mainline Project were cancelled, it could recover costs related to it as operating and maintenance expenses in its next GRA.<sup>51</sup> Therefore, the Commission finds that the requested deferral account and the related uncertainty associated with the project and its costs, shifts a disproportionate amount of risk onto ratepayers. This is particularly concerning to the Commission given the magnitude of the potential costs and risks to be borne by ratepayers whether the project proceeds or not.

36. Turning to ATCO Pipelines' zero-dollar placeholder for CWIP in rate base request, the Commission finds that ATCO Pipelines only provided a cursory level of information on its concerns on credit rating metrics. Absent more information on the project, such as a business case and tangible annual cost forecasts for the project, as well as related credit rating metric impacts, the Commission considers the information on the record insufficient to warrant a zero-dollar placeholder for CWIP in rate base.

37. Weighing the above factors, the Commission is not persuaded that ATCO Pipelines has met its burden of proof to show that the approval of the excluded matters is just and reasonable. ATCO Pipelines' requests are denied.

## **4 Negotiated settlement**

### **4.1 Requirements governing negotiated settlements**

38. Sections 28.53 and 28.6 of the *Gas Utilities Act* authorize the Commission, with some limitations, to approve a negotiated settlement. For example, if the parties negotiate a settlement on the basis that the settlement is contingent on the Commission accepting the entire settlement (as it was in this case), the Commission must either approve the entire settlement or refuse it.

39. Section 28.51(1) of the *Gas Utilities Act* requires that the Commission recognize or establish rules, practices and procedures to facilitate a negotiated settlement. Section 6 of Rule 018 sets out requirements for the contents of an NSA and provides that the onus is on the applicant to provide sufficient evidence to support the application and NSA. Section 7 of Rule 018 includes requirements for the Commission's assessment of the NSA. The Commission structured the NSP in this proceeding in accordance with Rule 018.

40. The Commission has previously considered negotiated settlements in rate cases where there has been unanimous agreement and has consistently indicated that the test requires consideration of three factors: (i) was the negotiation process fair, including with respect to notice and the conduct of the process itself; (ii) will the settlement result in just and reasonable rates; and (iii) are any of the settlement provisions, individually or collectively, patently against

---

<sup>50</sup> Transcript, Volume 1, page 15, lines 18-22.

<sup>51</sup> Transcript, Volume 1, page 147, lines 10-25 and page 148, lines 1-10.

the public interest or contrary to law?<sup>52</sup> Performing this assessment requires the Commission to review both the individual provisions of the NSA and the NSA as a whole.

41. In considering these requirements, the Commission has taken into account the direction of the Alberta Court of Appeal as set out in *ATCO Electric Limited v Alberta (Energy and Utilities Board)*<sup>53</sup> (ATCO Electric decision). In that decision, the court found that the ultimate responsibility for approving negotiated settlements resides with what is now the AUC. The Commission proceeds on that basis in this decision, as it has in the past, with a view to ensuring that the NSA will result in just and reasonable rates, that none of the NSA provisions, individually or collectively, are patently against the public interest or contrary to law, and that the process used to arrive at the NSA was fair.

42. In assessing a settlement, the Commission is aware that, while one or more of the interested parties to a settlement may represent certain stakeholders, none will represent all stakeholders. Further, as noted by the court at paragraph 138 of the ATCO Electric decision, "... even a broad range of Interveners will not necessarily translate into a wide spectrum of positions since parties may make trade-offs which leave other issues unresolved, unaddressed or compromised."<sup>54</sup> Consequently, the NSP and NSA do not replace a full and informed review by the Commission as to what is in the overall public interest. Because ATCO Pipelines requested and received Commission approval to negotiate a settlement; subsequently negotiated with parties representing ratepayers; executed the NSA; and then applied to the Commission for approval of the NSA in its entirety, the Commission has proceeded on the basis that the NSA satisfies ATCO Pipelines' interests and only assessed the NSA from the point of view of ratepayers. This is consistent with the ATCO Electric decision.<sup>55</sup>

43. Given the statutory requirements, Rule 018 and the relevant case law, the Commission has considered the following factors in making its determination on whether the NSA should be accepted or rejected in its entirety:

- **Review of the NSP:**
  - Was the NSP procedurally fair, both with respect to adequate notice having been served and with respect to the conduct of the negotiation process itself?
- **Review of the NSA:**
  - Does the settlement result in rates, and terms and conditions that are just and reasonable?
  - Is the settlement patently against the public interest or contrary to law?

---

<sup>52</sup> See, for example, 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, paragraph 29; Decision 25726-D01-2021: ENMAX Power Corporation, 2021-2022 General Tariff Application Negotiated Settlement Agreement and Excluded Matters, Proceeding 25726, June 16, 2021, paragraph 23; Decision 23966-D01-2020 (Corrigenda): ENMAX Power Corporation, 2018-2020 General Tariff Application Negotiated Settlement Agreement and Excluded Matters, Proceeding 23966, July 30, 2020; and Decision 26207-D01-2021: Direct Energy Regulated Services, 2020-2022 Default Rate Tariff and Regulated Rate Tariff – Negotiated Settlement Agreement, Proceeding 26207, June 4, 2021, paragraph 18.

<sup>53</sup> *ATCO Electric Limited v Alberta (Energy and Utilities Board)*, 2004 ABCA 215.

<sup>54</sup> ATCO Electric decision, paragraph 138.

<sup>55</sup> ATCO Electric decision, paragraph 146.

44. The Commission’s findings on the NSP and on the specific provisions of the NSA, apart from the excluded matters, are discussed below.

#### 4.2 Review of the NSP

45. The first factor that the Commission considers is whether the NSP that resulted in the NSA was fair.

46. Starting with the conduct of the negotiation process, ATCO Pipelines submitted that the settlement negotiations were fair,<sup>56</sup> and that all parties were well-informed and able to fully participate.<sup>57</sup> Interveners also filed correspondence with the Commission attesting to the fair and open manner in which the negotiations were conducted.<sup>58</sup> The Commission notes that the interveners are sophisticated parties with significant experience in rate-related matters and negotiated settlements, and considers that they represent a reasonable cross-section of ratepayers.

47. The CCA indicated that the “diversity of views across the non-ATCO participants” in the NSP “may have created a structural issue around how different views were shared with or conveyed to and dealt with by AP [ATCO Pipelines],”<sup>59</sup> and Calgary raised concerns with some parties attending the NSP virtually and other parties attending in-person, and that some parties “filed extensive evidence and have extensive history contesting ATCO Pipe’s costs, whereas other parties had virtually none of those attributes.”<sup>60</sup> Ultimately, the CCA concluded that it was not aware that its concern impacted the fairness of the NSP, and Calgary indicated it was “prepared to rely upon the representations and good faith of ATCO Pipe” from a fairness perspective. ATCO Pipelines responded to both the CCA<sup>61</sup> and Calgary.<sup>62</sup>

48. The Commission notes that, despite raising the comments above, both the CCA and Calgary have executed the NSA and did not request any additional relief or suggest that the Commission should refrain from approving the NSA. Accordingly, the Commission is satisfied that parties had the opportunity to participate meaningfully and that the negotiations were conducted in an open and fair manner.

49. Turning to the issue of adequate notice, Section 3 of Rule 018 deals with the provision of notice by a utility to parties who may be interested in participating in negotiations. Under Section 3, the Commission requires a statement in a settlement agreement confirming that proper notice was provided by the applicant to all interested parties. ATCO Pipelines submitted that adequate notice was provided to parties, noting that the Commission’s approval of the NSP was filed on the public record of the proceeding, and that the NSA included a statement confirming that ATCO Pipelines provided proper notice to all interested parties.<sup>63</sup> The Commission finds that ATCO Pipelines provided adequate notice to parties.

50. Finally, Section 6(1) of Rule 018 provides that, when an agreement is reached on all or some of the issues, the text of the agreement, including a representation that no party has withheld relevant information, must be circulated to all parties to the agreement. ATCO

---

<sup>56</sup> Exhibit 28369-X0167, PDF page 19, paragraph 54.

<sup>57</sup> Exhibit 28369-X0167, PDF page 20, paragraphs 55-56.

<sup>58</sup> Exhibits 28369-X0164, 28369-X0166, 28369-X0172 to 28369-X0174, 28369-X0176 and 28369-X0179.

<sup>59</sup> Exhibit 28369-X0164.

<sup>60</sup> Exhibit 28369-X0176.

<sup>61</sup> Exhibit 28369-X0167, PDF pages 2-3.

<sup>62</sup> Exhibit 28369-X0178.

<sup>63</sup> Exhibit 28369-X0167, PDF page 10, paragraphs 20-22.

Pipelines addressed this requirement under Section 10(a) of the NSA.<sup>64</sup> The Commission accepts that Section 6(1) of Rule 018 has been met.

51. In view of the above and having considered the parties’ submissions with respect to the NSP, the Commission is satisfied that the NSP was fair and that ATCO Pipelines has complied with the requirements set out in sections 3, 6(1) and 6(3) of Rule 018.

### 4.3 Review of the NSA

52. The second factor that the Commission considers is whether the NSA is in the public interest, including whether it will result in just and reasonable rates. The Commission is guided by the *Gas Utilities Act* and Rule 018, and in particular Section 8(2) of Rule 018, which states that the Commission must intervene if it determines that a unanimous NSA is patently against the public interest or contrary to law.

53. In conducting the public interest assessment, the Commission considered each element of the NSA and the NSA as a whole. As to what constitutes the public interest when assessing the attributes and merits of an NSA, the Commission followed the guidance provided by the Alberta Court of Appeal in the ATCO Electric decision discussed above. That is, it considered the public interest from the perspective of ratepayers. In arriving at its findings, the Commission reviewed each of the material provisions of the NSA to determine if any of these provisions appears to be unusual, contrary to accepted regulatory practices, or could result in undue rate effects, service concerns, preferences or other concerns in future rate applications. The Commission has also considered whether the effect of the NSA would lead to rates and terms and conditions of service that are just and reasonable.

54. In conducting its public interest analysis, the Commission takes into account all information on the record. The NSA reflects information filed in this proceeding prior to the commencement of negotiations. This information provided the Commission with an additional basis upon which to conduct its public interest analysis.

55. ATCO Pipelines submitted that the NSA results in just and reasonable rates for 2024 and 2025, is in the public interest and is not contrary to law.<sup>65</sup>

56. ATCO Pipelines provided a summary of the revenue requirement reductions agreed upon in the NSA as follows:

**Table 1. Impact to revenue requirement of agreed reductions**

Item	2024	2025
	(\$ million)	
<b>Applied-for Revenue Requirement</b>	<b>358.62</b>	<b>371.37</b>
<b>O&amp;M [operations and maintenance] Negotiated Items</b>		
Defined Benefit Pension Plan	0.2	0.2
Adjusting the GCA [general cost allocation] Formula for Partial Affiliate		
FTE [full-time equivalent]/Labour	0.3	0.3
Reduce Transmission O&M	1.4	2.3
IT – Transition costs	2.7	0.7
Reduce O&M General costs	0.3	0.3
<b>Total O&amp;M Reductions</b>	<b>4.8</b>	<b>3.7</b>

<sup>64</sup> Exhibit 28369-X0167, PDF page 20, paragraph 56, and PDF page 31.

<sup>65</sup> Exhibit 28369-X0167, PDF page 6, paragraph 4.

Item	2024	2025
	(\$ million)	
<b>Capital Negotiated Items</b>		
Contributions Error for Relocations	0.2	0.3
Improvement and Replacement Expenditures (excluding General)	0.2	0.7
General Improvement and Replacement Expenditures	0.2	0.6
Growth Expenditures	0.0	0.1
IT – Capital Expenditures	(0.6)	0.1
IT – Opening 2024 Rate Base	0.2	0.5
Relocation Expenditures	0.0	0.1
<b>Total Capital Reductions</b>	<b>0.2</b>	<b>2.5</b>
<b>Total Negotiated Reductions</b>	<b>5.1</b>	<b>6.2</b>
<b>NSA Revenue Requirement</b>	<b>353.53</b>	<b>365.18</b>

Source: Exhibit 28369-X0167, PDF page 13, Table 4.1.

57. Parties to the NSA also agreed to implement a new deferral account in the test period, the IT Transition Temporary deferral account.<sup>66</sup> The NSA also includes commitments made by ATCO Pipelines to provide certain information in its next GRA. These commitments are included in Section 6 of the NSA, attached as [Appendix 4](#) to this decision.

58. The scope of this proceeding is ATCO Pipelines’ forecast revenue requirement for the 2024-2025 test period. In the Commission’s view, the NSA represents a unanimous agreement reached as a result of a successful negotiation that typically reflects a number of compromises of different interests and positions of the parties. The signatories to the NSA represent a constituent group of Albertans that has historically participated in the testing of ATCO Pipelines’ GRAs, which supports a finding that the NSA is in the public interest.

59. On the basis of the Commission’s assessment of provisions of the NSA as described above, along with the detailed analysis of the application and IR responses, the Commission finds that the NSA, taken as a whole, is not patently against the public interest or contrary to law, and finds that the NSA results in rates and terms and conditions that are just and reasonable, as required by Section 8 of Rule 018. Accordingly, the Commission approves the NSA as filed, applicable only to the 2024 and 2025 test years.

60. The Commission approves ATCO Pipelines’ revenue requirement amounts of \$362,852,000 for 2024 and \$374,488,000 for 2025<sup>67</sup> (which includes ATCO Pipelines’ revision of certain errors identified during the IR process, the removal of the Cloverbar Hydrogen Delivery – Installation Project from the application, and the update of its ROE to 9.28 per cent as final for 2024 and as a placeholder for 2025) on a final basis, subject to the true-up of any placeholders.

61. ATCO Pipelines is currently providing gas transmission service under its 2024 interim revenue requirement of \$362,852,000, as approved by the Commission in Decision 28764-D01-2024.<sup>68</sup> The 2024 interim revenue requirement amount is the same as the 2024 final revenue requirement amount, as approved in this decision. No revenue requirement true-up is necessary.

<sup>66</sup> Exhibit 28369-X0167, PDF page 28.

<sup>67</sup> Exhibit 28369-X0169, Schedule 4.1-1.

<sup>68</sup> Decision 28764-D01-2024: ATCO Pipelines 2024 Interim Revenue Requirement Application, Proceeding 28764, January 23, 2024.

62. The Commission directs ATCO Pipelines to provide, as a post-disposition filing, updated schedules reflecting the removal of the 2026 test year and the zero-dollar placeholders for expenditures related to the Yellowhead Mainline Project, within 30 days of the issuance of this decision.

## 5 Compliance with Commission directions

63. In its application, ATCO Pipelines responded to five directions from Decision 25663-D01-2021, one direction from Decision 26443-D01-2021,<sup>69</sup> three directions from Decision 23793-D01-2019 and one direction from Decision 22011-D01-2017.

64. The Commission has determined that ATCO Pipelines has complied with the directions given and that no further action is required. ATCO Pipelines must still comply with all directions that require information to be provided in future GRA filings.<sup>70</sup>

## 6 Order

65. It is hereby ordered that:

- (1) ATCO Pipelines' revenue requirements are approved in the amount of \$362,852,000 for the year 2024 and \$374,488,000 for the year 2025, subject to the true-up of any placeholders.

Dated on March 27, 2024.

### Alberta Utilities Commission

*(original signed by)*

Douglas A. Larder, KC  
Vice-Chair and Panel Chair

*(original signed by)*

Kristi Sebalj  
Vice-Chair

---

<sup>69</sup> Decision 26443-D01-2021, ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., 2021-2023 General Rate Application Compliance Filing, Proceeding 26443, June 24, 2021.

<sup>70</sup> Directions 2, 7 and 9 from Decision 25663-D01-2021: ATCO Pipelines 2021-2023 General Rate Application, Proceeding 25663, March 1, 2021; directions 32, 33 and 34 from Decision 23793-D01-2019; and Direction 23 from Decision 22011-D01-2017: ATCO Pipelines 2017-2018 General Rate Application, Proceeding 22011, August 29, 2017. See Exhibit 28369-X0002.02, application, PDF pages 256-258.



*(original signed by)*

Matthew Oliver, CD  
Commission Member

**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation) Company name of counsel or representative</b>
ATCO Pipelines Bennett Jones LLP
Consumers' Coalition of Alberta (CCA)
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP Russ Bell & Associates Inc.
The City of Calgary (Calgary) McLennan Ross Barristers & Solicitors
Tenaska Marketing Canada, a division of TMV Corp.
Canadian Association of Petroleum Producers (CAPP)
Industrial Gas Consumers Association of Alberta (IGCAA)
NOVA Gas Transmission Ltd. (NGTL)
Air Products Canada Ltd. Reynolds, Mirth, Richards & Farmer LLP
Cenovus TL ULC

<p>Alberta Utilities Commission</p> <p>Commission panel                      D.A. Larder, KC, Vice-Chair and Panel Chair                      K. Sebalj, Vice-Chair                      M. Oliver, CD, Commission Member</p> <p>Commission staff                      J. Graham (Commission counsel)                      O. Anozie (Articling student)                      F. Alonso                      M. McJannet                      C. Strasser                      V. Wang                      K. O'Neill                      A. Hollis</p>
---

## 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. The Commission directs ATCO Pipelines to provide, as a post-disposition filing, updated schedules reflecting the removal of the 2026 test year and the zero-dollar placeholders for expenditures related to the Yellowhead Mainline Project, within 30 days of the issuance of this decision. .... paragraph 62

### Appendix 3 – Significant process steps

[\(return to text\)](#)

Date	Description
July 31, 2023	ATCO Pipelines files its 2024-2026 GRA.
August 1, 2023	The Commission issues notice of application.
August 14, 2023	The Commission rules on consideration of and questions on Yellowhead Mainline Project and NGTL Identified Growth deferral account and hydrogen-related costs.
August 18, 2023	ATCO Pipelines responds to the Commission’s August 14, 2023, ruling.
August 22, 2023	The Commission rules on ATCO Pipelines’ August 18, 2023, request to reconsider its August 14, 2023, ruling.
August 30, 2023	ATCO Pipelines files a revision to its GRA and confirms that it wishes to continue with its GRA amended to remove certain costs related to hydrogen studies.
September 5, 2023	The Commission confirms August 30, 2023, as the new application filing date.
September 8, 2023	The Commission issues notice of hearing and directions on procedure, and approves ATCO Pipelines to enter into an NSP with interveners.
September 18, 2023	The Commission confirms matters excluded from the NSP.
October 2, 2023	The Commission and interveners issue IRs to ATCO Pipelines.
October 16, 2023	ATCO Pipelines file IR responses.
October 23, 2023	The UCA and Calgary file motions for further and better IR responses.
October 30, 2023	The Commission rules on the UCA and Calgary motions.
November 2, 2023	The Commission requests ATCO Pipelines to address errors identified in IR responses by January 5, 2024.
November 3, 2023	ATCO Pipelines files further and better IR responses.
November 7, 2023	The Commission advises that the need and costs for the Cloverbar Hydrogen Delivery – Installation Project would be tested in Proceeding 28555 <sup>71</sup> and requires ATCO Pipelines to remove all costs related to the project from its GRA by January 5, 2024.
November 14, 2023	The CCA, the UCA and Calgary file intervener evidence.
December 7, 2023	ATCO Pipelines files a letter indicating it reached an NSA in principle with interveners.
January 5, 2024	ATCO Pipelines files the NSA.

<sup>71</sup> Proceeding 28555, ATCO Gas and Pipelines Ltd. – Lic 16723 – Install Lines 222, 223 and 224.

<b>Date</b>	<b>Description</b>
January 15, 2024	The Commission requests parties' submissions on the need for further process.
January 19, 2024	Parties file comments on the need for further process.
February 26, 2024	The Commission holds a virtual hearing for oral argument and reply argument on the excluded issues.

## Appendix 4 – NSA

[\(return to text\)](#)



Appendix 4 - NSA

(consists of 17 pages)

## NEGOTIATED SETTLEMENT AGREEMENT

### ATCO PIPELINES 2024-2026 GENERAL RATE APPLICATION

**THIS NEGOTIATED SETTLEMENT AGREEMENT** for the negotiated settlement of the ATCO Pipelines 2024-2026 General Rate Application, which is the subject of Alberta Utilities Commission Proceeding No. 28369, is made and entered into as of December 22, 2023.

AMONG:

**ATCO PIPELINES ("AP")**

- and -

**CONSUMERS' COALITION OF ALBERTA (the "CCA")**

- and -

**OFFICE OF THE UTILITIES CONSUMER ADVOCATE (the  
"UCA")**

- and -

**THE CITY OF CALGARY ("Calgary")**

- and -

**INDUSTRIAL GAS CONSUMERS ASSOCIATION OF ALBERTA  
("IGCAA")**

- and -

**CANADIAN ASSOCIATION OF PETROLEUM PRODUCERS  
("CAPP")**

- and -

**AIR PRODUCTS CANADA LTD. ("Air Products")**

- and -

**NOVA GAS TRANSMISSION LTD. ("NGTL")**

each, a "**Party**" and collectively, the "**Parties**"

WHEREAS:

- A. AP submitted its 2024-2026 General Rate Application ("**Application**") to the Alberta Utilities Commission ("**AUC**" or "**Commission**") on July 31, 2023, for the purpose of obtaining approval

- 2 of 8 -

for its revenue requirement for the 2024-2026 Test Period, which is the subject of AUC Proceeding No. 28369;

- B. Concurrent with the Application, AP requested approval from the Commission to enter into a negotiated settlement process ("NSP") with interested parties for the purposes of settling matters applied-for in the Application;
- C. On August 1, 2023, the Commission issued a Notice of Application informing potentially interested parties that it would be considering the Application, and inviting submissions for participation in AUC Proceeding 28369;
- D. The CCA, the UCA, Calgary, IGCAA, CAPP, Air Products, NGTL, Tenaska Marketing Canada ("**Tenaska**"), and Cenovus TL ULC ("**Cenovus**") (collectively, the "**Interveners**") are participants in Proceeding 28369;
- E. In the Application, AP introduced the Yellowhead Mainline Project, which is a new growth project identified by NGTL to be constructed and operated by AP in accordance with the Alberta System Integration Agreement dated April 7, 2009 between ATCO Gas and Pipelines Ltd. and NGTL, with a projected in-service date of 2027 and a forecast cost of over \$1 billion;
- F. In the Application, AP applied to establish a NGTL Identified Growth deferral account with a zero-dollar placeholder in order to address what it submits are risks of uncertainty of scope, costs and timing associated with the Yellowhead Mainline Project, and for approval to include construction work in progress ("**CWIP**") in rate base with a zero-dollar placeholder to address what it submits are risks to AP's credit metrics associated with significant cash requirements for the project. AP indicated in the Application that if the NGTL Identified Growth deferral account, the inclusion of the Yellowhead Mainline Project in that account, and a placeholder for CWIP in rate base for the Yellowhead Mainline Project are not approved, AP would request a two-year Test Period instead of a three-year Test Period as explained in paragraph 4 below;
- G. In a ruling dated August 14, 2023, the Commission stated that the Application contained insufficient evidence to support AP's request to establish the NGTL Identified Growth deferral account and directed AP to advise whether it wished to proceed or withdraw and refile the Application with a shorter Test Period. In the same ruling, the Commission directed AP to remove hydrogen-related costs from the Application;
- H. In a letter dated August 18, 2023, AP requested that the Commission reconsider its August 14 ruling, and allow AP to proceed to have the NGTL Identified Growth deferral account and the hydrogen-related costs tested as part of Proceeding 28369 along with the rest of the Application;
- I. In a ruling dated August 22, 2023, the Commission confirmed its direction to AP to remove hydrogen-related costs from the Application. The Commission also requested AP to advise whether it wanted to continue with the Application and have the Commission make a final decision on the NGTL Identified Growth deferral account after the conclusion of the argument portion of the proceeding, or if it wanted to adjust the Test Period. AP complied with this ruling on August 30, 2023, by removing all hydrogen-related costs from the Application and advising the Commission



that it wished to have the NGTL Identified Growth deferral account tested as part of the Application with a final decision to be made after the argument portion of the proceeding;

- J. On September 8, 2023, the Commission issued a notice of hearing and directions on procedure for Proceeding 28369 and provided its approval for AP and Interveners to enter into a NSP under AUC Rule 018;
- K. On September 18, 2023, the Commission issued a statement on the issues list and matters excluded from the NSP. The Commission determined that it would not set an issues list prior to the NSP and directed the following issues to be excluded from the NSP:
  - (i) Request to establish the NGTL Identified Growth deferral account; and
  - (ii) Request for construction work in progress in rate base for the Yellowhead Mainline Project.
- L. AP responded to information requests from the Commission and the Interveners on October 16, 2023,<sup>1</sup> with further responses provided on October 23, October 25, November 3, 8, and 24, 2023;<sup>2</sup>
- M. On November 7, 2023, the Commission determined that the Cloverbar Hydrogen Delivery – Installation Project was to be removed from the scope of the Application and the NSP, as the project's need and costs are to be determined in Proceeding 28555;<sup>3</sup>
- N. The CCA, the UCA and Calgary filed evidence on November 14, 2023;<sup>4</sup>
- O. AP, the CCA, the UCA, Calgary, IGCAA, CAPP, Air Products and NGTL entered into the NSP with settlement negotiations taking place from November 20 through December 4, 2023;
- P. On December 4, 2023, the Parties reached an agreement in principle for a negotiated settlement on all elements of AP's 2024-2026 general rate application ("GRA"), except for specifically excluded matters identified in section 2 below.
- Q. Cenovus and Tenaska were invited to participate in the negotiated settlement process. Cenovus advised that it did not intend to participate in negotiation discussions and that CAPP would represent its interests. AP is not aware of any concerns from Cenovus with respect to the final agreement in principle. While Tenaska did not participate directly in negotiation discussions, a representative of Tenaska confirmed its agreement with the final agreement in principle.

**IN CONSIDERATION** of the mutual promises made in this negotiated settlement agreement ("**Settlement Agreement**") and for other good and valuable consideration, the receipt and sufficiency of which is hereby expressly acknowledged by each of the Parties, and subject to the conditions hereinafter set out, the Parties agree as follows:

---

<sup>1</sup> Exhibit 28369-X0061 to Exhibit 28369-X0093

<sup>2</sup> Exhibit 28369-X0093 to Exhibit 28369-X0094, Exhibit 28369-X0101, Exhibit 28369-X0102, Exhibit 28369-X0107 to Exhibit 28369-X0115, Exhibit 28369-X0121 to Exhibit 28369-X0126, Exhibit 28369-X0131 to Exhibit 28369-X0132, Exhibit 28369-X0160.

<sup>3</sup> Exhibit 28369-X0129

<sup>4</sup> Exhibit 28369-X0133, Exhibit 28369-X0134, Exhibit 28369-X0137 to Exhibit 28369-X0140

1. **Scope of this Settlement Agreement**

- (a) This Settlement Agreement settles all aspects of and relief requested in the Application (including revised revenue requirements for 2024, 2025 and 2026), except for the Excluded Matters identified in section 2 below.
- (b) Unless otherwise agreed by the Parties in writing, if the AUC declines to approve this Settlement Agreement in its entirety, the Settlement Agreement will be of no force and effect, in accordance with Section 28.6 of the *Gas Utilities Act*.

2. **Excluded Matters**

- (a) The Parties agree that the following matters are specifically excluded from this Settlement Agreement:
  - (i) Request to establish the NGTL Identified Growth deferral account;
  - (ii) Request for CWIP in rate base for the Yellowhead Mainline Project;
  - (iii) Cloverbar Hydrogen Delivery – Installation Project;collectively referred to herein as the "**Excluded Matters**".

3. **Revised Revenue Requirement**

- (a) The overall revenue requirement adjustments agreed to in this Settlement Agreement are set out in Schedule 4.1-1 attached hereto as Appendix "**A**".
- (b) A Summary of Changes to AP's Revenue Requirement is attached hereto as Appendix "**B**".
- (c) Except for the Excluded Matters, the Parties agree that the AUC should approve the Application, with the specific adjustments and modifications identified in this Settlement Agreement and in Appendix "**A**" hereto. The Parties agree to support AP's application to the AUC for approval of this Settlement Agreement.

4. **Test Period**

- (a) Due to current uncertainty regarding the final scope, costs and timing of the Yellowhead Mainline Project, AP considers that there is a risk to AP and customers associated with a three-year Test Period in the event the Commission denies one or both of AP's requests:
  - (i) to establish the NGTL Identified Growth deferral account with a zero-dollar placeholder for the Yellowhead Mainline Project; or
  - (ii) for CWIP in rate base for the Yellowhead Mainline Project with a zero-dollar placeholder(together, the "**Test Period Requests**").
- (b) In recognition of AP's concern noted in Section 4(a), the Parties agree that the applicable Test Period shall be determined as follows:

- 5 of 8 -

- (i) in the event the Test Period Requests are approved, the Test Period shall be three years, or
  - (ii) in the alternative, in the event one or both of the Test Period Requests is denied, the Test Period shall be two years.
- (c) In the event the Commission denies one or both of the Test Period Requests, resulting in a two-year Test Period in accordance with Section 4(b)(ii), the portions of this Settlement Agreement that address 2026 will be severed and will be of no force and effect. The remainder of this Settlement Agreement will not be affected thereby and will remain valid and in full force and effect.
- (d) Nothing in the Settlement Agreement in any way limits the participation by the Interveners, or the positions that may be taken by the Interveners before the Commission with respect to either of the Test Period requests.

## 5. Specific Adjustments and Modifications

- (a) **Defined Benefits Pension:** AP shall reduce revenue requirement by \$150,000 per year for each of 2024, 2025 and 2026 in accordance with the results of ATCO's most recent actuarial study.
- (b) **Contributions Error for Relocations:** Forecast contributions for Relocations capital expenditures shall be increased by \$1.8 million for 2024, \$1.9 million for 2025 and \$1.9 million for 2026.<sup>5</sup>
- (c) **Partial vs full-time equivalents ("FTEs") in General Cost Allocator ("GCA"):** AP shall remove \$0.3 million per year from revenue requirement to account for the use of full FTEs versus partial FTEs in the GCA.
- (d) **Transmission Operations & Maintenance ("O&M"):** Forecast transmission O&M costs shall be reduced by \$1.4 million in 2024, \$2.3 million in 2025, and \$1.3 million in 2026.
- (e) **Information Technology ("IT") Transition Costs:** Forecast IT transition costs of \$2.7 million and \$0.7 million shall be removed from revenue requirement in 2024 and 2025, respectively. The Parties agree to the implementation of a temporary deferral account for potential IT transition costs following a competitive bidding process for IT managed services in advance of the expiry of the current IBM/Kyndryl Master Service Agreement ("MSA") in 2025 as described in the Application, with a placeholder amount of \$0 for such costs in the Test Period. The deferral account will have an opening balance of \$0 and the disposition of any non-zero balance in this deferral account will be reviewed as part of AP's next general rate application, including the prudence and recovery of any such costs incurred in AP's revenue requirement.
- (f) **General Reductions in Operating Costs:** AP's applied-for forecast operating costs shall reflect a reduction in the amount of \$0.25 million in each of 2024, 2025, and 2026. This reduction is not tied to any specific expense or account but is a holistic reduction that AP may apply to any operating expense, prime account or accounts as it sees fit. For

---

<sup>5</sup> Exhibit 28369-X0062.02 pdf page 373

- 6 of 8 -

presentation purposes, AP has included this adjustment within its operations and maintenance schedules (4.2.1-3 & 4.2.1-4).

- (g) **Improvements and Replacement Expenditures (excluding General Category):** Forecast Improvements and Replacement capital expenditures (excluding General Category) shall be reduced by \$5.7 million in 2024, \$5.9 million in 2025 and \$5.7 million in 2026.
- (h) **General Improvements and Replacement Expenditures:** Forecast General Improvements and Replacements capital expenditures shall be reduced by \$5.0 million in 2024, \$4.2 million in 2025 and \$7.5 million in 2026.
- (i) **Growth Expenditures:** Forecast Growth capital expenditures shall be reduced by \$1.1 million in 2024, \$0.9 million in 2025 and \$0.3 million in 2026.
- (j) **IT Capital Expenditures:** Forecast IT capital expenditures shall be reduced by \$4.6 million in 2024, \$2.5 million in 2025 and \$1.0 million in 2026.
- (k) **Adjustments to 2024 Opening Rate Base for IT Capital:** Forecast 2024 opening rate base shall be adjusted to account for a \$2.6 million reduction in IT capital expenditures from the prior test period (2021-2023).
- (l) **Relocation Expenditures:** Forecast Relocation capital expenditures shall be reduced by \$1.7 million in 2024, \$1.8 million in 2025 and \$1.8 million in 2026.
- (m) AP has assessed and confirms that the reductions in revenue requirement identified herein, according to the facts currently known by AP and to the best of AP's knowledge, will not compromise the provision of safe and reliable transmission service during the Test Period.

## 6. **Non-Financial Commitments**

- (a) AP commits to filing its most recent actuarial study in Proceeding 28369 and will file its most recent actuarial study (at the time) in its next GRA.
- (b) AP commits to filing, in any future applications, the Decision Summary documents used by AP and NGTL for the projects, that provide detailed information confirming the need, scope, timing and forecast costs of all NGTL identified projects in accordance with the Integration Agreement, including confirmation from NGTL that incremental contracts (if applicable) underpinning the construction of the project have been executed.
- (c) In its next GRA, AP will file a report of an independent expert advising on the IT spend levels of AP, comparing the spend against what the expert considers to be all relevant comparators.
- (d) For the contract to replace the IBM/Kyndryl MSA, AP will endeavor to obtain prices which are at or below the first quartile as determined from the Benchmark to be conducted under the terms of the current IBM/Kyndryl MSA (Schedule R) in X\_0101-C, subject to meeting AP's requirements to provide safe and reliable service.

- (e) All business cases to support capital projects (IT or otherwise) will include a quantification of any claimed benefits where such benefits are the driver for the project and can be reasonably quantified.
- (f) AP confirms that all costs for hydrogen initiatives have been removed from the applied-for revenue requirement for the Test Period. AP agrees to execute an affidavit attesting to the truth and accuracy of the Settlement Agreement and the application for approval of the Settlement Agreement. AP agrees to file the affidavit on the record of Proceeding 28369 forthwith after filing the application for approval of the Settlement Agreement.

**7. Prudence**

- (a) The Parties agree that nothing in this Settlement Agreement, including the reductions to the 2024-2026 GRA revenue requirement, is an admission by AP that those revenue requirement amounts are imprudent nor is it an admission by the Interveners that those revenue requirement amounts are prudent. The Parties further agree that no Party may rely on anything in this Settlement Agreement as evidence in any future proceeding that any revenue requirement amounts are either prudent or imprudent.

**8. Confidentiality and Without Prejudice**

- (a) The negotiated settlement reflected in this Settlement Agreement is a compromise and was reached in part as a result of the desire of the Parties to avoid the significant resources associated with a fully litigated process. This Settlement Agreement is for the purpose of AP's 2024-2026 GRA only, unless expressly stated otherwise, and it is without prejudice to the positions that any of the Parties may take in any subsequent negotiations and regulatory proceedings. For greater clarity, the Parties' decision to not expend resources on advancing the preparation and filing of information requests or information request responses and rebuttal evidence on the issues included in this Settlement Agreement, does not constitute an admission by any Party that it accepts or agrees with the positions or evidence advanced in intervener evidence or information requests.
- (b) All discussions among the Parties during the NSP are privileged and confidential, and no matter discussed, and no information provided during the NSP may be disclosed to any person or to the AUC without the express written consent of all Parties.

**9. Costs of the CCA**

- (a) Within 30 days following the receipt of an invoice from the CCA, net of any funds received as Advance Funds, AP will pay the CCA, on a refundable basis, the reasonable costs and expenses incurred by the CCA in connection with retaining consultants and counsel in relation to the 2024-2026 GRA and the related negotiated settlement process to and including the point of the Settlement Agreement and approval of the same. In the event of any difference between the costs paid to the CCA consultants by AP and the cost claim approved by the Commission, the CCA or its counsel or consultants, as the case may be, will refund to AP within 30 days of the date of the Commission's decision approving the CCA's cost claim.
- (b) AP will, in any event, pay to the CCA the amount of costs and expenses incurred by the CCA in connection with this Settlement Agreement and the related negotiated settlement

process within 30 days of the date of the Commission's decision approving the CCA's cost claim.

10. **General**

- (a) Each Party represents that it has not withheld relevant information.
- (b) The Parties agree that proper notice of the NSP was provided to all interested parties.
- (c) AP represents to each of the other Parties that:
  - (i) All negotiations conducted by AP were with all Parties present except where a Party was invited to attend and chose not to do so, whether or not that Party advised in advance that it would not attend; and
  - (ii) No information that is relevant and material to the outcome of the negotiated settlement reflected in the Settlement Agreement was shared by AP with one or more Parties to the exclusion of one or more other Parties.
- (d) The Parties further agree:
  - (i) The division of this Settlement Agreement into headings and paragraphs is for convenience and reference only and should not affect the interpretation or construction of this Settlement Agreement.
  - (ii) This Settlement Agreement sets out the entire understanding and agreement of the Parties and there are no representations, warranties, covenants, conditions or other agreements, express or implied, collateral, statutory or otherwise, among the Parties in connection with the subject matter of this Settlement Agreement except as specifically set out herein.
  - (iii) Any alteration or amendment of this Settlement Agreement must be in writing and signed by the Parties. This Settlement Agreement will be binding upon and inure to the benefit of the Parties and each of their respective successors and permitted assigns. A Party may not assign their rights and/or obligations under this Settlement Agreement without the consent of all other Parties, provided such consent is not unreasonably withheld. This Settlement Agreement may be executed in any number of counterparts.
  - (iv) This Settlement Agreement is to be interpreted pursuant to the laws of the Province of Alberta.
  - (v) If any provision of this Settlement Agreement is found to be invalid by a court of law, this Settlement Agreement will be read and interpreted as if the provision were omitted.
  - (vi) The failure of any Party to exercise any right, power or option given to it under this Settlement Agreement or to insist upon the strict compliance with any of the terms or conditions in this Settlement Agreement will not constitute a waiver of any provision with respect to any other or subsequent breach.

- 9 of 8 -

- (vii) Unless otherwise stated, any dollar amounts, prices or amounts stated in this Settlement Agreement are in the lawful currency of Canada.
  - (viii) Unless otherwise stated, all accounting matters or terms in this Settlement Agreement will be interpreted and construed in accordance with International Financial Reporting Standards.
  - (ix) References to any statute, legislation or regulation include all subsequent additions, amendments, re-enactments or replacements enacted from time to time during the period covered by this Settlement Agreement.
- (e) This Settlement Agreement may be executed in any number of counterparts (including by facsimile or other electronic means) with the same effect as if all signing Parties had signed the same document. All counterparts shall be construed together and constitute the same agreement.

*[Signature pages follow]*

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date set out above.

**ATCO PIPELINES**

**CONSUMERS' COALITION OF ALBERTA**

Per: *Lisa Brennand*  
Name: Lisa Brennand  
Title: Vice President, Regulatory ATCO Gas & Pipelines Ltd.

Per: \_\_\_\_\_  
Name:  
Title:

Per: *[Signature]*  
D. Jason Sharpe (Jan 4, 2024 22:31 MST)  
Name: D. Jason Sharpe  
Title: President

**OFFICE OF THE UTILITIES CONSUMER  
ADVOCATE**

**THE CITY OF CALGARY**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:



IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date set out above.

**ATCO PIPELINES**

**CONSUMERS' COALITION OF ALBERTA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name: *Larry Phillips*  
Title: *President CCA*  
*28369 - AP GRA NSP/NSA*

Per: \_\_\_\_\_  
Name:  
Title:

**OFFICE OF THE UTILITIES CONSUMER  
ADVOCATE**

**THE CITY OF CALGARY**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date set out above.

**ATCO PIPELINES**

**CONSUMERS' COALITION OF ALBERTA**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**OFFICE OF THE UTILITIES CONSUMER  
ADVOCATE**

**THE CITY OF CALGARY**

Per:           C. W. Hunt            
Name: Chris Hunt  
Title: Executive Director & Advocate

Per: \_\_\_\_\_  
Name:  
Title:

IN WITNESS WHEREOF, the Parties have duly executed this Settlement Agreement as of the date set out above.

**ATCO PIPELINES**

**CONSUMERS' COALITION OF ALBERTA**

Per: \_\_\_\_\_  
Name:  
Title:


Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**OFFICE OF THE UTILITIES CONSUMER  
ADVOCATE**

**THE CITY OF CALGARY**

Per: \_\_\_\_\_  
Name:  
Title:

Per:   
Name: David J. Lewis  
Title: Manager, Litigation & Expropriation

**INDUSTRIAL GAS CONSUMERS  
ASSOCIATION OF ALBERTA**

Per: \_\_\_\_\_

Name: Wilfred Berke  
Title: Executive Director

**AIR PRODUCTS CANADA LTD.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**CANADIAN ASSOCIATION OF  
PETROLEUM PRODUCERS**

Per: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**NOVA GAS TRANSMISSION LTD.**

Per: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Per: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**INDUSTRIAL GAS CONSUMERS  
ASSOCIATION OF ALBERTA**

Per: \_\_\_\_\_  
Name:  
Title:

**AIR PRODUCTS CANADA LTD.**

Per:  \_\_\_\_\_  
Name: Rachel Smith  
Title: Vice President & General Manager  
Air Products Canada Ltd

DEP  
Type text h

**CANADIAN ASSOCIATION OF  
PETROLEUM PRODUCERS**

Per: \_\_\_\_\_  
Name:  
Title:

**NOVA GAS TRANSMISSION LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:


**INDUSTRIAL GAS CONSUMERS  
ASSOCIATION OF ALBERTA**

**AIR PRODUCTS CANADA LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**CANADIAN ASSOCIATION OF  
PETROLEUM PRODUCERS**

Per:  \_\_\_\_\_  
Name: Greig Sproule  
Title: Vice President, Tolls & Tariffs

**NOVA GAS TRANSMISSION LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**INDUSTRIAL GAS CONSUMERS  
ASSOCIATION OF ALBERTA**

**AIR PRODUCTS CANADA LTD.**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**CANADIAN ASSOCIATION OF  
PETROLEUM PRODUCERS**

Per: \_\_\_\_\_  
Name:  
Title:

**NOVA GAS TRANSMISSION LTD.**

Per: Rosemary Stevens  
Name: Rosemary Stevens  
Title: VP Natural Gas Pipelines Law

Per: Andrea Jalbert  
Name: Andrea Jalbert  
Title: VP Regulatory Canada Gas

**Signature:** 

**Email:** rosemary\_stevens@tcenergy.com

**Signature:** 

**Email:** andrea\_jalbert@tcenergy.com