
CANADA / JUDGMENT

ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)

2015 SCC 45

COURT

Supreme Court of Canada

DECIDED

25 September 2015

Source: decisions.scc-csc.ca · Research copy typeset by Esheria. Not court-issued or certified.

ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)

Collection

Supreme Court Judgments

Date

2015-09-25

Neutral citation

2015 SCC 45

Report

[2015] 3 SCR 219

Case number

35624

Judges

McLachlin, Beverley; Abella, Rosalie Silberman; Rothstein, Marshall; Cromwell, Thomas Albert; Moldaver, Michael J.; Karakatsanis, Andromache; Gascon, Clément

On appeal from

Alberta

Subjects

Public utilities

Notes

SCC Case Information: 35624

Decision Content

SUPREME COURT OF CANADA

Citation: ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission), 2015 SCC 45, [2015] 3 S.C.R. 219

Date: 20150925

Docket: 35624

Between:

ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd.

Appellants

and

Alberta Utilities Commission and

Office of the Utilities Consumer Advocate of Alberta

Respondents

Coram: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Gascon JJ.

Reasons for Judgment:

(paras. 1 to 66)

Rothstein J. (McLachlin C.J. and Abella, Cromwell, Moldaver, Karakatsanis and Gascon JJ. concurring)

ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission), 2015 SCC 45, [2015] 3 S.C.R. 219

ATCO Gas and Pipelines Ltd. and

ATCO Electric Ltd. Appellants

v.

Alberta Utilities Commission and

Office of the Utilities Consumer Advocate of Alberta Respondents

Indexed as: ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)

2015 SCC 45

File No.: 35624.

2014: December 3; 2015: September 25.

Present: McLachlin C.J. and Abella, Rothstein, Cromwell, Moldaver, Karakatsanis and Gascon JJ.
on appeal from the court of appeal for alberta

Public utilities — Gas — Electricity — Rate-setting decision by utilities regulator — Utilities seeking to recover pension costs in utility rates set by Alberta Utilities Commission — Whether regulatory framework prescribes certain methodology in assessing whether costs are prudent — Whether Commission's interpretation and exercise of its rate-setting authority was reasonable — Electric Utilities Act, S.A. 2003, c. E-5.1, ss. 102, 121, 122 — Gas Utilities Act, R.S.A. 2000, c. G-5, s. 36.

The Alberta Utilities Commission denied the request by ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd. (the “ATCO Utilities”) to recover, in approved rates, certain pension costs related to an annual cost of living adjustment (“COLA”) for 2012. Instead of approving recovery for an adjustment of 100 percent of annual consumer price index (“CPI”) (up to a maximum COLA of 3 percent), the Commission ruled that recovery of only 50 percent of annual CPI was reasonable. The Alberta Court of Appeal dismissed the ATCO Utilities’ appeal from the decision of the Commission.

Held: The appeal should be dismissed.

A key principle in Canadian regulatory law is that a regulated utility must have the opportunity to recover its operating and capital costs through rates. This requirement is reflected in the Electric Utilities Act and the Gas Utilities Act of Alberta, as these statutes refer to a reasonable opportunity to recover costs and expenses so long as they are prudent. The Commission must therefore determine whether a utility’s costs warrant recovery on the basis of their reasonableness — or, under the Electric Utilities Act and the Gas Utilities Act, their “prudence”. Where costs are determined to be prudent, the Commission must allow the opportunity to recover them through rates.

The prudence requirement is to be understood in the sense of the ordinary meaning of the word: for the listed costs and expenses to warrant a reasonable opportunity of recovery, they must be wise or sound; in other words, they must be reasonable. Nothing in the ordinary meaning of the word “prudent” or the use of this word in the statute as a stand-alone condition says anything about the time at which prudence must be evaluated. Thus, neither the ordinary meaning of “prudent” nor the statutory language indicate that the Commission is bound by the legislative provisions to apply a no-hindsight approach to the costs at issue, nor is a presumption of prudence statutorily imposed in these circumstances. In the context of utilities regulation, there is no difference between the ordinary meaning of a “prudent” cost and a cost that could be said to be reasonable. It would not be imprudent to incur a reasonable cost, nor would it be prudent to incur an unreasonable cost. Further, the burden of establishing that the proposed tariffs are just and reasonable falls on public utilities, which necessarily imposes on them the burden of establishing that the costs are prudent. The impact of increased rates on consumers cannot be used as a basis to disallow recovery of such costs. This is not to say that the Commission is not required to consider consumer interests. These interests are accounted for in rate regulation by

limiting a utility's recovery to what it reasonably or prudently costs to efficiently provide the utility service. That is, the regulatory body ensures that consumers only pay for what is reasonably necessary.

Though the Electric Utilities Act and the Gas Utilities Act do contain language allowing for the recovery of “prudent” costs, the statutes do not explicitly impose an obligation on the Commission to conduct its analysis using a particular methodology any time the word “prudent” is used. Thus, the Commission is free to apply its expertise to determine whether costs are prudent (in the ordinary sense of whether they are reasonable), and it has the discretion to consider a variety of analytical tools and evidence in making that determination so long as the ultimate rates that it sets are just and reasonable to both consumers and the utility.

The standard of review of the Commission's decision in applying its expertise to set rates and approve payment amounts is reasonableness. Under this standard of review, the Commission's interpretation of its home statute is entitled to deference. In this case, it was not unreasonable for the Commission to decide, without applying a no-hindsight analysis, that 50 percent of CPI (up to a maximum COLA of 3 percent) represented a reasonable level for setting the COLA amount for the purposes of determining the pension cost amounts for regulatory purposes: the Commission was not statutorily bound to apply a particular methodology to the costs at issue in this case; the use of the word “prudent” in the Electric Utilities Act and the Gas Utilities Act cannot by itself be read to impose upon the Commission a specific no-hindsight methodology; and the disallowed costs were forecast costs. Accordingly, it was reasonable for the Commission to evaluate the ATCO Utilities' proposed revenue requirement in light of all relevant circumstances. Further, because the Commission did not use impermissible methodology, it was not unreasonable for the Commission to direct the ATCO Utilities to reduce their pension costs incorporated into revenue requirements by restricting the annual cost of living adjustment.

Cases Cited

Referred to: Ontario (Energy Board) v. Ontario Power Generation Inc., 2015 SCC 44, [2015] 3 S.C.R. 147; Northwestern Utilities Ltd. v. City of Edmonton, [1929] S.C.R. 186; Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190; ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board), 2006 SCC 4, [2006] 1 S.C.R. 140; Shaw v. Alberta Utilities Commission, 2012 ABCA 378, 539 A.R. 315; ATCO Gas and Pipelines Ltd. v. Alberta Utilities Commission, 2009 ABCA 246, 464 A.R. 275; Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association, 2011 SCC 61, [2011] 3 S.C.R. 654; Power Workers' Union, Canadian Union of Public Employees, Local 1000 v. Ontario Energy Board, 2013 ONCA 359, 116 O.R. (3d) 793; Enbridge Gas Distribution Inc. v. Ontario Energy Board (2006), 210 O.A.C. 4; McLean v. British Columbia (Securities Commission), 2013 SCC 67, [2013] 3 S.C.R. 895; Rizzo & Rizzo Shoes Ltd. (Re), [1998] 1 S.C.R. 27; TransCanada Pipelines Ltd. v. National Energy Board, 2004 FCA 149, 319 N.R. 171.

Statutes and Regulations Cited

Electric Utilities Act, S.A. 2003, c. E-5.1, ss. 102, 121, 122.

Employment Pension Plans Act, R.S.A. 2000, c. E-8, ss. 13, 14, 48(3).

Employment Pension Plans Act, S.A. 2012, c. E-8.1, ss. 13, 35(2), 52(2)(b).

Employment Pension Plans Regulation, Alta. Reg. 35/2000, ss. 9, 10, 48(3).

Employment Pension Plans Regulation, Alta. Reg. 154/2014, ss. 48, 49, 60(2)(b), (3).

Gas Utilities Act, R.S.A. 2000, c. G-5, ss. 36, 37(3), 44(1), (3).

Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sch. B.

Roles, Relationships and Responsibilities Regulation, Alta. Reg. 186/2003, s. 4(3).

Authors Cited

Concise Oxford English Dictionary, 12th ed., by Angus Stevenson and Maurice Waite, eds. Oxford: Oxford University Press, 2011, “prudent”.

Driedger, Elmer A. Construction of Statutes, 2nd ed. Toronto: Butterworths, 1983.

Merriam-Webster’s Collegiate Dictionary, 11th ed. Springfield, Mass.: Merriam-Webster, 2003, “prudent”.

Oxford English Dictionary, 2nd ed. Oxford: Clarendon Press, 1989, “prudent”.

Reid, Laurie, and John Todd. “New Developments in Rate Design for Electricity Distributors”, in Gordon Kaiser and Bob Heggie, eds., Energy Law and Policy. Toronto: Carswell, 2011, 519.

APPEAL from a judgment of the Alberta Court of Appeal (Costigan, Martin and Slatter JJ.A.), 2013 ABCA 310, 93 Alta. L.R. (5th) 234, 556 A.R. 376, 584 W.A.C. 376, 7 C.C.P.B. (2d) 171, [2013] A.J. No. 989 (QL), 2013 CarswellAlta 1984 (WL Can.), affirming a decision of the Alberta Utilities Commission, [2011] A.E.U.B.D. No. 506 (QL), 2011 CarswellAlta 1646 (WL Can.). Appeal dismissed.

John N. Craig, Q.C., Loyola G. Keough and E. Bruce Mellett, for the appellants.

Catherine M. Wall and Brian C. McNulty, for the respondent the Alberta Utilities Commission.

Todd A. Shipley, C. Randall McCreary, Michael Sobkin and Breanne Schwanak, for the respondent the Office of the Utilities Consumer Advocate of Alberta.

The judgment of the Court was delivered by

[1] Rothstein J. — In its decision of September 27, 2011, the Alberta Utilities Commission denied the request by ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd. (collectively the “ATCO Utilities”) to recover, in approved rates, certain pension costs related to an annual cost of living adjustment (“COLA”) for 2012. Instead of approving recovery for an adjustment of 100 percent of the annual consumer price index (“CPI”) (up to a maximum COLA of 3 percent), the Commission ruled that recovery of only 50 percent of annual CPI (up to a maximum COLA of 3 percent) was reasonable. The Alberta Court of Appeal dismissed the ATCO Utilities’ appeal from the decision of the Commission. The ATCO Utilities now appeal to this

Court.

- [2] This matter was heard together with *Ontario (Energy Board) v. Ontario Power Generation Inc.*, 2015 SCC 44, [2015] 3 S.C.R. 147 (“OEB”), which also concerns the review of a rate-setting decision by a utilities regulator. Although the facts of the cases are different, both involve issues of methodology, and, in particular, when — if ever — a regulator is required to apply a particular regulatory tool known as the “prudent investment test” in assessing a utility’s costs.
- [3] The ATCO Utilities submit that the Commission is bound to first assess costs put forward by a utility for prudence, and that prudently incurred costs must be approved for inclusion in the utility’s “revenue requirement”. This term refers to “the total revenue that is required by the company to pay all of its allowable expenses and also to recover all costs associated with its invested capital”: L. Reid and J. Todd, “New Developments in Rate Design for Electricity Distributors”, in G. Kaiser and B. Heggie, eds., *Energy Law and Policy* (2011), 519, at p. 521. The approved revenue requirement is then to be allocated to customers in the form of just and reasonable rates. The ATCO Utilities argue that the Commission failed to properly address the prudence of such costs. They say that in the absence of an explicit contrary finding, costs are presumed to be prudent. Further, the ATCO Utilities assert that prudence is to be established based on circumstances as of the date of the cost decision — not based on hindsight and the use of information not available to the utility when the decision to incur the cost was made.
- [4] The Office of the Utilities Consumer Advocate of Alberta argues that the Alberta regulatory framework does not impose a specific rate-setting methodology on the Commission; it falls to the Commission to decide upon the specific test and methodology to employ. Specifically, the Consumer Advocate argues that there is no obligation on the Commission to utilize a particular prudence test methodology when reviewing costs on a forecast basis. Nor is there a presumption of prudence. On the contrary, the onus is on the utility to demonstrate that the tariff it proposes is just and reasonable.
- [5] As in OEB, the relevant statutory framework does not impose upon the Commission the “prudence” methodology urged by the ATCO Utilities. Further, following the approach set out in OEB, the methodology adopted by the Commission and its application of this methodology were reasonable in view of the nature of the costs in question. I would dismiss the appeal.

I. Regulatory Framework

- [6] In Alberta, the Commission sets “just and reasonable” tariffs for electric and gas utilities seeking recovery of their prudent costs and expenses: s. 121(2)(a) of the *Electric Utilities Act*, S.A. 2003, c. E-5.1 (“EUA”); and s. 36(a) of the *Gas Utilities Act*, R.S.A. 2000, c. G-5 (“GUA”).

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

II. Facts

A. The Pension Plan

- [8] Employees of the ATCO Utilities benefit from the Retirement Plan for Employees of Canadian Utilities Limited (“Canadian Utilities”), the parent company of the ATCO Utilities, and Participating Companies (the “Pension Plan”). The Pension Plan is administered by Canadian Utilities, which is not itself regulated by the Commission. As the Pension Plan administrator, Canadian Utilities acts in a fiduciary capacity in relation to Plan members and other Plan beneficiaries: s. 13(5) of the *Employment Pension Plans Act*, R.S.A. 2000, c. E-8.[1]
- [9] The Pension Plan includes a defined benefit plan (the “DB plan”), which was closed to new employees on January 1, 1997, and a defined contribution plan. The COLA applies only to the DB plan. The *Employment Pension Plans Act* requires that the DB plan be subject to actuarial calculations filed periodically with the Superintendent of Pensions for Alberta: ss. 13 and 14;[2] and ss. 9 and 10 of the *Employment Pension Plans Regulation*, Alta. Reg. 35/2000.[3] Actuarial calculations determine, inter alia, the contributions that an employer must make to cover a DB plan’s liabilities.
- [10] The assets of the Canadian Utilities Pension Plan are pooled between all Canadian Utilities member companies, regardless of whether they are regulated utility companies (like the ATCO Utilities) or not. The required employer funding is determined on an aggregate basis. If special payments must be made to address unfunded liabilities, the aggregate funding requirement is apportioned among the member entities of the Pension Plan.
- [11] No employer contributions to the Pension Plan were required between 1996 and the end of 2009 because the Pension Plan was in surplus position, and thus the ATCO Utilities did not have to include such contributions in their revenue requirement applications to the Commission. In the wake of the 2008 financial crisis, the market value of the Pension Plan’s assets dropped and a large unfunded liability resulted, forcing the employers participating in the Pension Plan, including the ATCO Utilities, to resume making employer contributions in 2010.

B. The Pension Plan Funding Obligations

- [12] Section 48(3) of the Employment Pension Plans Act (2000)[4] requires that the Pension Plan be funded in accordance with actuarial valuation reports. The actuarial valuation report relevant to this appeal (the “2009 Actuarial Report”) was filed with the Superintendent of Pensions for Alberta on June 29, 2010 by Mercer (Canada) Limited, the Pension Plan’s actuary. The report indicated that two types of payments were required. First, it determined the estimated payments required to address the projected benefits owed to beneficiaries for 2010, 2011 and 2012. These are also called “current service costs”. Second, it determined that the DB plan had an unfunded liability of \$157.1 million across all Canadian Utilities entities, requiring all the employers participating in the Pension Plan, including the ATCO Utilities, to make minimum annual special payments in the aggregate amount of \$16.4 million until December 31, 2024 to address the liability. The ATCO Utilities alone were liable for approximately \$13.9 million of the annual aggregate special payment amount.
- [13] The cost of living adjustment issues in this case involve both the contributions that the ATCO Utilities must make into the DB plan and the benefits paid to retirees out of the plan. With regard to the ATCO Utilities’ contributions into the plan, the 2009 Actuarial Report included a provision for “post retirement pension increases” that is based on the DB plan’s COLA formula and the actuarial report’s assumption for inflation. This provision affects the payments that the ATCO Utilities are required to make into the DB plan for the three-year period covered by the report. In this case, this increase was 2.25 percent per year for all three years.
- [14] With regard to the payment of benefits to retirees under the DB plan, the ATCO Utilities’ parent company Canadian Utilities sets the COLA annually. Sections 6.9(a) and 6.12(a) of the DB plan prescribe that Canadian Utilities determines the COLA by taking into consideration annual percentage changes in the CPI for Canada and any previous adjustments paid. These provisions cap the adjustment set by Canadian Utilities at 3 percent per annum.

III. Decisions Below

A. Alberta Utilities Commission: ATCO Utilities, Re (2010), 84 C.C.P.B. 89 (“Decision 2010-189”)

- [15] On July 10, 2009, the ATCO Utilities filed an application with the Commission to determine, inter alia, the amount of employer pension contributions that would be included in their revenue requirements in 2010. The ATCO Utilities’ proposed contributions reflected a COLA set at 100 percent of annual Canada CPI (up to a maximum of 3 percent), as Canadian Utilities had used for a number of years. However, in the Commission’s view, setting COLA at 100 percent of CPI year after year was not required by the wording of the Pension Plan. It concluded “that ratepayers should not bear any incremental pension funding costs” that arise from Canadian Utilities’ practice of setting COLA “where it [was] demonstrated that such incremental costs prove to be unreasonable or imprudent in the circumstances”: para.

118.

- [16] However, the Commission did not find the evidence filed in this application to be sufficient to draw conclusions with respect to whether the COLA was prudent. As a result, it did not reduce the COLA of 100 percent of annual CPI (up to a maximum of 3 percent) for the ATCO Utilities' 2010 revenue requirements. Nonetheless, the Commission stated that it "would like to investigate the possibility of adjusting COLA as a mechanism in prudently managing utility pension expense" for the years 2011 onward: para. 123. It directed the ATCO Utilities to prepare a 2011 pension common matters application to address issues related to COLA and Canadian Utilities' discretion in setting COLA.

B. Alberta Utilities Commission: 2011 CarswellAlta 1646 (WL Can.) ("Decision 2011-391")

- [17] On December 15, 2010, the ATCO Utilities filed a pension common matters application pursuant to the Commission's direction in Decision 2010-189. The Commission published its Decision 2011-391 on September 27, 2011. It is this decision that is the subject of appeal in this Court.
- [18] In reviewing the COLA included in the ATCO Utilities' revenue requirement application, the Commission wrote that the reasonableness of setting it at 100 percent of CPI had to be evaluated "in the circumstances applicable at the time that ATCO Utilities apply to include pension expense in revenue requirement": Decision 2011-391, at para. 87. The significant unfunded liability of the Pension Plan was such a circumstance. The Commission was of the view that the DB plan permitted Canadian Utilities to exercise its discretion in setting the COLA, and that this discretion was "an available tool" for Canadian Utilities to actively manage the DB plan unfunded liability as it carried out its fiduciary and contractual obligations: para. 83. "[T]he availability of that discretion and the exercise, or lack thereof, of that discretion [was] a relevant and material consideration" in determining whether the ATCO Utilities' pension expenses were reasonable and should be included in revenue requirements: *ibid.*
- [19] The Commission found that the ATCO Utilities' practice of awarding an annual COLA of 100 percent of CPI every year was not "an acceptable standard practice", in light of benchmark evidence showing a wider range of COLA percentages used by defined benefit pension plans among other entities in a comparator group: Decision 2011-391, at para. 87. The majority of these other entities set COLA between 50 percent and 75 percent of CPI. The Commission also found that a reduction in COLA would not undermine ATCO Utilities' ability to attract new employees, nor would it encourage current employees to leave.
- [20] The Commission concluded that the COLA included in current service costs to be recovered through tariffs after January 1, 2012 and until the next actuarial valuation should be 50 percent of the annual Canada CPI, to a maximum of 3 percent. The ATCO Utilities' revenue requirements for 2012 were to be reduced accordingly.

[21] However, with regard to the special payments addressing the unfunded liability for 2012, the Commission stated that it would not require that the ATCO Utilities file an updated actuarial report reflecting a lower COLA and that it would only begin disallowing a COLA of 100 percent of CPI with regard to special payment costs from 2013 onward. This decision resulted from the Commission's conclusion that filing a new actuarial report "would be costly, and consume an undue amount of company, intervener and Commission resources given the time remaining in 2011 to complete a new report and file it for approval with the Commission and subsequently with the Superintendent of Pensions", especially as a new report would be filed by January 1, 2013 as it stood: Decision 2011-391, at para. 99. The Commission did not reduce special payments to be recovered in 2012 because it was not "in the best interest of ATCO Utilities, ratepayers or pensioners to implement a change to the COLA calculation [at this time] given the uncertain pension funding impacts that may result from a new actuarial valuation and report": para. 100. Reductions in liability as a result of a reduction of COLA would be captured in ongoing special payments set for 2013 onward.

C. Alberta Utilities Commission: ATCO Utilities, Re (2012), 97 C.C.P.B. 298 ("Decision 2012-077")

- [22] On November 2, 2011, the ATCO Utilities filed a review and variance application of Decision 2011-391. The ATCO Utilities requested that the Commission vacate its direction to reduce the amount of COLA to 50 percent of CPI for regulatory purposes.
- [23] The Commission found that the arguments raised by the ATCO Utilities did not give rise to a substantial doubt as to the correctness of Decision 2011-391 and denied the ATCO Utilities' request for review and variance.

D. Alberta Court of Appeal: 2013 ABCA 310, 93 Alta. L.R. (5th) 234

- [24] The Alberta Court of Appeal granted leave to appeal Decision 2011-391. Conducting a reasonableness review, the court held it was open to the Commission to reduce the ATCO Utilities' revenue requirements to reflect a COLA of 50 percent of CPI. The Court of Appeal dismissed ATCO Utilities' appeal.

IV. Issues

[25] This appeal raises three issues:

1. What is the standard of review?
2. Does the regulatory framework prescribe a certain methodology in assessing whether costs are prudent?
3. Was it reasonable for the Commission to refuse to incorporate 100 percent of CPI to a maximum of 3 percent into the ATCO Utilities' COLA revenue requirements?

V. Analysis

A. Standard of Review

- [26] The standard of review of the Commission's decision in applying its expertise to set rates and approve payment amounts in accordance with the Electric Utilities Act and the Gas Utilities Act is reasonableness: OEB, at para. 73; see *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at paras. 53-54.
- [27] Nonetheless, the ATCO Utilities argue that the jurisprudence favours applying a standard of correctness. However, the cases they cite — *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140 ("Stores Block"), *Shaw v. Alberta Utilities Commission*, 2012 ABCA 378, 539 A.R. 315, and *ATCO Gas and Pipelines Ltd. v. Alberta Utilities Commission*, 2009 ABCA 246, 464 A.R. 275 — are not analogous to the matter at hand. They each were said to involve "true questions of jurisdiction", where the regulator was called on to determine whether it had the statutory authority to decide a particular question. This Court's recent jurisprudence has emphasized that true questions of jurisdiction, if they exist as a category at all, an issue yet unresolved by the Court, are rare and exceptional: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, [2011] 3 S.C.R. 654, at para. 34. In any event, this case involves ratemaking. As Bastarache J. noted in *Stores Block*, ratemaking is at the heart of a regulator's expertise and is therefore deserving of a high degree of deference: para. 30.
- [28] To the extent that an appeal also turns on the Commission's interpretation of its home statutes, a standard of reasonableness also presumptively applies: *Alberta Teachers' Association*, at para. 30. The presumption is not rebutted in this case.

B. Methodology for Determining Costs and Just and Reasonable Rates Under the Electric Utilities Act and the Gas Utilities Act

- [29] The application by the ATCO Utilities, one of which is an electric utility and the other a gas utility, involves both the EUA and the GUA. Both statutes direct the Commission to set just and reasonable rates. The EUA requires the Commission to "have regard for the principle that a tariff approved by it must provide the owner of an electric utility with a reasonable opportunity to recover" various "prudent" or "prudently incurred" costs: s. 122; see also s. 102. A gas utility, on the other hand, is "entitled to recover in its tariffs" costs that the Commission determines to be "prudent": s. 4(3) of the Roles, Relationships and Responsibilities Regulation, Alta. Reg. 186/2003 ("RRR Regulation"); see also s. 36 GUA.
- [30] The ATCO Utilities argue that the guarantee of a reasonable opportunity to recover their costs requires that the Commission must first examine whether the decisions to incur costs were prudent and must apply a presumption of prudence in favour of the utility. Unless these costs are found not to be prudent, they are to be included in the utility's revenue requirement. The ATCO Utilities say that in conducting its prudence inquiry, the Commission is required to use the prudence test as described by the Ontario Court of Appeal in *Power Workers' Union, Canadian Union of Public Employees, Local 1000 v. Ontario Energy Board*, 2013 ONCA 359, 116 O.R. (3d) 793, which is the subject of the

companion appeal to this case. In that case, the Ontario Court of Appeal relied on a formulation of prudence review set out in *Enbridge Gas Distribution Inc. v. Ontario Energy Board* (2006), 210 O.A.C. 4, at para. 10:

- Decisions made by the utility's management should generally be presumed to be prudent unless challenged on reasonable grounds.
- To be prudent, a decision must have been reasonable under the circumstances that were known or ought to have been known to the utility at the time the decision was made.
- Hindsight should not be used in determining prudence, although consideration of the outcome of the decision may legitimately be used to overcome the presumption of prudence.
- Prudence must be determined in a retrospective factual inquiry, in that the evidence must be concerned with the time the decision was made and must be based on facts about the elements that could or did enter into the decision at the time. [para. 16]

[31] The ATCO Utilities argue that the statutes' express use of the word "prudent" to qualify the costs and expenses that electric and gas utilities are entitled to recover necessarily mandates the use of that prudence test. I will refer to it as the "no-hindsight" test.

[32] The language of the relevant provisions of the EUA and GUA differs from the Ontario Energy Board Act, 1998, S.O. 1998, c. 15, Sch. B, in the companion OEB appeal. While the EUA and the GUA contain specific references to "prudence", the Ontario Energy Board Act, 1998 does not. Further, regulations passed under the Ontario Energy Board Act, 1998 expressly permit the Ontario Energy Board to establish a methodology to determine whether revenue requirements are just and reasonable. The EUA and GUA do not include a direct grant of methodological discretion. However, like the statutory scheme in OEB, neither the EUA nor the GUA impose a specific methodology[5] and, as will be explained, their references to "prudence" do not impose upon the Commission the specific methodology advanced by the ATCO Utilities.

(1) Prudence Under the EUA

[33] The question before this Court is whether the Commission's interpretation and exercise of its rate-setting authority was reasonable. The ATCO Utilities argue that the statutory framework supports its assertion that it was entitled to a no-hindsight prudence review. Under the reasonableness standard of review, the Commission's interpretation of its home statute is entitled to deference. In this case, the Commission did not expressly address the question of whether the statutory regime mandated a no-hindsight approach. Rather, its decision to proceed without using a no-hindsight prudence test implies that it understood the relevant statutes not to mandate the ATCO Utilities' desired methodology. It is thus necessary to examine the terms of the relevant statutes to determine whether the Commission's approach was reasonable. In doing so, this Court may make use of the traditional tools of statutory interpretation with the goal of determining whether the

Commission's approach was reasonable: see *McLean v. British Columbia (Securities Commission)*, 2013 SCC 67, [2013] 3 S.C.R. 895, at paras. 37-41.

- [34] The words of a statute are to be interpreted “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21, quoting E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87. Because, as will be discussed, the meaning of “prudence” is the focus of much of the debate in this case, it is helpful to start by examining the ordinary meaning of the word as a baseline for the subsequent analysis. Pertinent dictionary definitions give a range of meanings for “prudent”, including “having or exercising sound judgement in practical affairs” (*The Oxford English Dictionary* (2nd ed. 1989), at p. 729), “acting with or showing care and thought for the future” (*Concise Oxford English Dictionary* (12th ed. 2011), at p. 1156), or “marked by wisdom or judiciousness [or] shrewd in the management of practical affairs” (*Merriam-Webster's Collegiate Dictionary* (11th ed. 2003), at p. 1002). While these definitions may vary in their nuance, the ordinary sense of the word is such that a prudent cost is one which may be described as wise or sound.
- [35] However, these dictionary definitions are not so consistent and exhaustive as to provide a complete answer to the question of the meaning of “prudent” costs in the context of the Alberta utilities regulation statutes. As such, a contextual reading of the statutory provisions at issue provides further guidance. In the context of utilities regulation, I do not find any difference between the ordinary meaning of a “prudent” cost and a cost that could be said to be reasonable. It would not be imprudent to incur a reasonable cost, nor would it be prudent to incur an unreasonable cost.
- [36] The EUA provides that an “owner of an electric distribution system must prepare a distribution tariff for the purpose of recovering the prudent costs of providing electric distribution service by means of [its] electric distribution system”: s. 102(1). To receive approval for the distribution tariff, the owner must apply to the Commission: s. 102(2). When considering a tariff application, the Commission must ensure, inter alia, that the tariff is “just and reasonable” (s. 121(2)(a)), a requirement for which the burden of proof “is on the person seeking approval of the tariff” (s. 121(4)).
- [37] Section 122(1) of the EUA provides that the Commission “must have regard for the principle that a tariff approved by it must provide the owner of an electric utility with a reasonable opportunity to recover” a series of eight types of costs and expenses:
- (a) the costs and expenses associated with capital related to the owner's investment in the electric utility, . . .
 - . . .
 - if the costs and expenses are prudent . . .

- (b) other prudent costs and expenses associated with isolated generating units, transmission, exchange or distribution of electricity . . . if, in the Commission's opinion, they are applicable to the electric utility,
- (c) amounts that the owner is required to pay under this Act or the regulations,
- (d) the costs and expenses applicable to the electric utility that arise out of obligations incurred before the coming into force of this section and that were approved by the Public Utilities Board, the Alberta Energy and Utilities Board or other utilities' regulatory authorities if, in the Commission's opinion, the costs and expenses continue to be reasonable and prudently incurred,
- (e) its prudent costs and expenses of complying with the Commission rules respecting load settlement,
- (f) its prudent costs and expenses respecting the management of legal liability,
- (g) the costs and expenses associated with financial arrangements to manage financial risk associated with the pool price if the arrangements are, in the Commission's opinion, prudently made, and
- (h) any other prudent costs and expenses that the Commission considers appropriate, including a fair allocation of the owner's costs and expenses that relate to any or all of the owner's electric utilities.

[38] Section 122 refers to prudence in two different ways. Most frequently, the adjective “prudent” qualifies the expression “costs and expenses”, which indicates that a utility enjoys a reasonable opportunity to recover costs and expenses that are prudent. Absent a definition of the word “prudent” or a clear inference that it refers to a no-hindsight rule as described in *Enbridge*, this prudence requirement is to be understood in the sense of the ordinary meaning of the word: for the listed costs and expenses to warrant a reasonable opportunity of recovery, they must be wise or sound; in other words, they must be reasonable.

[39] By contrast, certain provisions use the adverb “prudently” to qualify the utility's decision to incur costs: s. 122(1)(d) speaks of costs and expenses that are “reasonable and prudently incurred” and s. 122(1)(g) refers to costs and expenses associated with financial arrangements that were “prudently made”. Though this case does not call upon this Court to evaluate the types of expenses covered by s. 122(1)(d) or (g), statutory language referring to “prudently incurred” costs appears to speak more directly to a utility's decision to incur costs at the time the decision was made. Such language may more directly implicate the no-hindsight approach urged by the ATCO Utilities in this case than language that merely speaks of “prudent costs”. This issue is further complicated for costs arising under s. 122(1)(d), where costs must both “continue to be reasonable and prudently incurred”. The proper interpretation of these provisions is a question best left for a case in which the issue arises.

- [40] In their submissions, the ATCO Utilities do not parse the different contexts in which the word “prudent” is used in s. 122. They argue more generally that the references to “prudence” imply that a no-hindsight test is required, and that a utility’s costs must be presumed to be prudent.
- [41] However, the different uses of “prudence” in s. 122 are instructive. If the statute requires the Commission to approve “prudently incurred” expenses, it may be unreasonable for the Commission to fail to apply a no-hindsight methodology in reviewing such expenses. However, the costs at issue in this case do not fall within the categories of costs for which the statute grants recovery of “prudently incurred” costs. The use of the adjective “prudent” to qualify “costs and expenses” elsewhere in s. 122 does not itself imply a specific methodology. Nothing in the ordinary meaning of the word “prudent” or the use of this word in the statute as a stand-alone condition says anything about the time at which prudence must be evaluated.
- [42] Further, s. 121(4) of the EUA provides that the burden of establishing that the proposed tariffs are just and reasonable falls on the public utility. The requirement that tariffs be just and reasonable is a foundational requirement of the tariff-setting provisions of the EUA. Tariffs will not be just and reasonable if they do not comply with the statutory requirement of s. 122 that the costs and expenses be prudent. Thus, contrary to the ATCO Utilities’ proposed methodology, the utilities’ burden to establish that tariffs are just and reasonable necessarily imposes on the utilities the burden of establishing that costs are prudent.
- [43] In sum, neither the ordinary meaning of “prudent” nor the statutory language indicate that the Commission is bound by the EUA to apply a no-hindsight approach to the costs at issue, nor is a presumption of prudence statutorily imposed in these circumstances.

(2) Prudence Under the GUA

- [44] The GUA requires, inter alia, that on application by the owner of a gas utility, the Commission “fix just and reasonable” rates that “shall be imposed, observed and followed afterwards by the owner of the gas utility”: s. 36(a). Section 44(1) provides that changes in rates must be approved by the Commission, and the “burden of proof to show that the increases, changes or alterations are just and reasonable is on the owner of the gas utility seeking to make them”: s. 44(3). Further, s. 4(3) of the RRR Regulation provides that

[a] gas distributor is entitled to recover in its tariffs the prudent costs as determined by the Commission that are incurred by the gas distributor

- [45] While the RRR Regulation makes a specific reference to the recovery of “prudent” costs, I do not read this prudence requirement as implying a presumption of prudence and application of a no-hindsight rule. Regarding the “no hindsight” element, the statutory provisions do not use “prudent” to describe the decision to incur the costs, but rather to describe the costs themselves. Although s. 4(3) of the RRR Regulation uses the term “incurred”, it is used to indicate that the provision applies to costs incurred by the utility. No temporal inference can

be drawn from the use of “incurred” in this context; it is not used in a manner that calls for examination of the prudence of the decision to incur certain costs. The inquiry under s. 4(3) of the RRR Regulation rather asks whether the costs themselves can be said to be “prudent”. The GUA does not include a requirement that a no-hindsight rule must apply in assessing whether costs are prudent, nor does the text of the GUA or the RRR Regulation imply such a rule. Regarding a presumption of prudence, s. 44(3) of the GUA stipulates that the utility has the burden to establish that the rates are just and reasonable. Like the EUA, this in turn places the burden of establishing the prudence of costs on the utility.

(3) Conclusion With Respect to Statutory Requirements of the EUA and GUA

- [46] Though the statutes do contain language allowing for the recovery of “prudent” costs, the EUA and the GUA do not explicitly impose an obligation on the Commission to conduct its analysis using a particular methodology any time the word “prudent” is used. Further, reserving any opinion on whether the term “prudently incurred” might require a particular no-hindsight methodology, in this particular case the bare use of the word “prudent” does not, on its own, mandate a particular methodology.
- [47] It is thus apparent that the relevant statutes may reasonably be interpreted not to impose the ATCO Utilities’ asserted prudence methodology on the Commission. The existence of a reasonable interpretation that supports the Commission’s implied understanding of its discretion is enough for the Commission’s decision to pass muster under reasonableness review: McLean, at paras. 40-41. Thus, the Commission is free to apply its expertise to determine whether costs are prudent (in the ordinary sense of whether they are reasonable), and it has the discretion to consider a variety of analytical tools and evidence in making that determination so long as the ultimate rates that it sets are just and reasonable to both consumers and the utility.

C. Characterization of the Costs at Issue: Forecast or Committed

- [48] As explained in OEB, understanding whether the costs are committed or forecast may be helpful in reviewing the reasonableness of a regulator’s choice of methodology: para. 83. Committed costs are those costs that a utility has already spent or that were committed as a result of a binding agreement or other legal obligation that leaves the utility with no discretion as to whether to make the payment in the future: para. 82. If the costs are forecast, there is no reason to apply a no-hindsight prudence test because the utility retains discretion whether to incur the costs: para. 83. By contrast, the no-hindsight prudence test may be appropriate when the regulator reviews utility costs that are committed: paras. 102-5.
- [49] Determining whether particular costs are committed or forecast turns on factual evidence relevant to those costs as well as on legal obligations that may govern them. Factual evidence may take the form of details regarding the structure of the utility’s business, relevant conduct on the part of the utility, and the factual context in which the costs arise.

Legal issues may relate to any contractual, fiduciary or regulatory obligations that grant or bar discretion on the part of the utility in incurring the costs at issue. Where the regulator has made an assessment of whether the costs are committed or forecast, that assessment is owed deference by this Court.

- [50] On the basis of the evidence and the arguments before it, the Commission found that the “COLA amount ha[d] not yet been awarded for 2012 because consideration of the COLA adjustment occurs towards the end of the calendar year”: Decision 2011-391, at para. 93. The Commission concluded that there was enough time from the date Decision 2011-391 was published on September 27, 2011 to the end of the calendar year for the ATCO Utilities and their parent Canadian Utilities “to prospectively decide whether to separately fund any difference Canadian Utilities may choose to pay beyond the COLA level approved for regulatory purposes for 2012 onwards”: *ibid.* This finding supports a characterization of the disallowed COLA costs as forecast because their disallowance left it open to Canadian Utilities to reduce the COLA that would apply to the 2012 benefit payments to 50 percent of CPI or to incur the COLA of 100 percent of CPI regardless, knowing that the differential would ultimately be borne by the utilities: OEB, at para. 82.
- [51] However, the Commission did not disallow the use of a COLA of 100 percent of CPI (up to a maximum of 3 percent) with regard to the special payments intended to address the unfunded liability and fixed by the 2009 Actuarial Report for the year 2012. The Commission did so by reasoning that any consumer overpayment that resulted in 2012 would be compensated through reduced special payments once a new report was prepared for 2013 onward.
- [52] In their factum in this Court, the ATCO Utilities submitted that the COLA costs were committed in the same way as the costs fixed by binding collective agreements were in the companion OEB appeal. In oral argument, counsel for the ATCO Utilities explained that the pension actuary prepares an actuarial report at intervals of a maximum of three years and files it with the Superintendent of Pensions: see ss. 13 and 14 of the Employment Pension Plans Act (2000)[6] and ss. 9 and 10 of the Employment Pension Plans Regulation (2000).[7]
- [53] In this case, the 2009 Actuarial Report applied for the years 2010, 2011 and 2012. The pension actuary determined the employer’s required contribution to fund projected benefits owed to beneficiaries and to address any unfunded liability in the DB plan. For each of the three years covered by the report, the actuary assumed a post retirement pension increase of 2.25 percent per year to be included in required contributions.[8] It was argued by the ATCO Utilities that the employer is required by law to make such contributions: s. 48(3) of the Employment Pension Plans Regulation (2000).[9] Accordingly, the ATCO Utilities submitted that once the actuarial report covering 2010, 2011 and 2012 had been filed, the amounts identified in that valuation, including a post retirement pension increase of 2.25 percent, should be understood as committed.

- [54] To address this argument, a distinction must be drawn between the COLA that is used to determine the post retirement pension increases applied to employer contributions paid into the DB plan, and the COLA applied to benefit payments paid out of the plan. While the ATCO Utilities were legally bound to make contributions including a post retirement pension increase of 2.25 percent into the plan for 2012, the actual COLA paid out to beneficiaries was set by Canadian Utilities on an annual basis. The ATCO Utilities' information responses to the Commission in preparation for their 2011 pension common matters application show that the actual COLA set by Canadian Utilities for 2010 was 0 percent and for 2011 was 1.7 percent.
- [55] The ATCO Utilities' argument that the costs are committed rests on the notion that if the Commission reduces the recoverable COLA to 50 percent of CPI (up to a maximum of 3 percent), they risk incurring a shortfall because the COLA recovered through rates will be less than the post retirement pension increases of 2.25 percent that they were legally obliged to contribute.
- [56] However, while both the employer contributions into the DB plan and the benefit payments made to beneficiaries are subject to cost of living adjustments, the portion of Decision 2011-391 at issue in this appeal was concerned specifically with the reasonableness of the COLA to be set by Canadian Utilities for the 2012 benefit payments. As such, the Commission's disallowance was with respect to the COLA benefits to be paid out to beneficiaries in 2012 — not to the employer contributions into the DB plan.
- [57] Contrary to the submissions of the ATCO Utilities, the facts of this case are different from those in OEB. In OEB, the utility was bound to pay certain costs by virtue of collective agreements with separate counterparties, the employee unions. In this case, the Commission found that the COLA applied to benefit payments from the DB plan was set by the ATCO Utilities' parent, Canadian Utilities, and that Canadian Utilities retained discretion over the setting of the COLA for the test period. DB plan members would ultimately receive benefits reflecting a COLA of 100 percent in 2012 only if Canadian Utilities decided to set the COLA at that level.
- [58] Canadian Utilities may have exercised that discretion in such a way as to avoid saddling its regulated subsidiary with costs it knew would not be recovered. Accordingly, while the ATCO Utilities were required to make contributions reflecting a post retirement pension increase of 2.25 percent into the DB plan pursuant to the 2009 Actuarial Report, the COLA applied to benefit payments for 2012 was not committed when the Commission issued its Decision 2011-391. This is so because at the time Decision 2011-391 was published, Canadian Utilities had yet to set COLA for 2012.
- [59] It was not unreasonable for the Commission to decide, without applying a no-hindsight analysis, that 50 percent of CPI (up to a maximum of 3 percent) "represent[ed] a reasonable level for setting the COLA amount for the purposes of determining the pension cost amounts for regulatory purposes" in 2012: Decision 2011-391, at para. 92.

D. Considering the Impact on Rates in Evaluating Costs

- [60] The ATCO Utilities argue that in considering the prudence of the COLA costs the Commission was preoccupied with the aim of reducing rates charged to customers.
- [61] As discussed above, a key principle in Canadian regulatory law is that a regulated utility must have the opportunity to recover its operating and capital costs through rates: OEB, at para. 16. This requirement is reflected in the EUA and GUA, as these statutes refer to a reasonable opportunity to recover costs and expenses so long as they are prudent. A regulator must determine whether a utility's costs warrant recovery on the basis of their reasonableness — or, under the EUA and GUA, their “prudence”. Where costs are determined to be prudent, the regulator must allow the utility the opportunity to recover them through rates. The impact of increased rates on consumers cannot be used as a basis to disallow recovery of such costs.[10] This is not to say that the Commission is not required to consider consumer interests. These interests are accounted for in rate regulation by limiting a utility's recovery to what it reasonably or prudently costs to efficiently provide the utility service. In other words, the regulatory body ensures that consumers only pay for what is reasonably necessary: OEB, at para. 20.
- [62] In this case, the Commission did emphasize the effect that reducing the COLA would have on the ATCO Utilities' unfunded liability. It is also true that a lower unfunded liability based on an actuarial report using a 50 percent COLA instead of 100 percent would mean a lower revenue requirement, and thus lower rates passed on to consumers. However, I do not agree with the ATCO Utilities' submission that the Commission, in considering the effect of COLA on the utilities' unfunded pension liability, was basing its disallowance on concerns about rate hikes for consumers. Regulators may not justify a disallowance of prudent costs solely because they would lead to higher rates for consumers. But that does not mean a regulator cannot give any consideration to the magnitude of a particular cost in considering whether the amount of that cost is prudent.
- [63] Indeed, it seems axiomatic that any time a regulator disallows a cost, that decision will be based on a conclusion that the cost is greater than ought to be permitted, which leads to the inference that consumers would be paying too much if the cost were incorporated into rates. But that is not the same as disallowing a cost solely because it would increase rates for consumers. In this case, the Commission found it unreasonable for the ATCO Utilities to receive payments to cover a COLA of 100 percent while they carried a large unfunded liability on their books, in part because of evidence from comparator companies that COLA figures of less than 100 percent were common, and because of the Commission's finding that a COLA of 100 percent was not necessary to ensure that the ATCO Utilities could attract and retain employees. While this conclusion carries with it the consequence that rates will be lower as a result, the Commission reasoned from the prudence of the costs themselves, not from a desire to keep rates down, to arrive at its conclusion to disallow costs. I find nothing unreasonable in the Commission's reasoning in this regard.

VI. Conclusion

- [64] The Commission was not statutorily bound to apply a particular methodology to the costs at issue in this case. The use of the word “prudent” in the EUA and GUA cannot by itself be read to impose upon the Commission the specific no-hindsight methodology urged by the ATCO Utilities.
- [65] While there are undoubtedly situations in which a failure to apply a no-hindsight methodology may result in unjust outcomes for utilities, and thus violate the statutory requirement that rates must strike a just and reasonable balance between consumer and utility interests, the Commission did not act unreasonably in this case. The disallowed costs were forecast costs. Accordingly, it was reasonable in this case for the Commission to evaluate the ATCO Utilities’ proposed revenue requirement in light of all relevant circumstances. Further, because the Commission did not use impermissible methodology, it was not unreasonable for the Commission to direct the ATCO Utilities to reduce their pension costs incorporated into revenue requirements by restricting annual COLA to 50 percent of CPI (up to a maximum of 3 percent) for current service costs from 2012 onward and for special payments addressing the unfunded liability from 2013 onward.
- [66] For these reasons, I would dismiss the appeal.

Appeal dismissed.

Solicitors for the appellants: Bennett Jones, Calgary.

Solicitor for the respondent the Alberta Utilities Commission: Alberta Utilities Commission, Calgary.

Solicitors for the respondent the Office of the Utilities Consumer Advocate of Alberta: Reynolds, Mirth, Richards & Farmer, Edmonton; Michael Sobkin, Ottawa.

- [1] This provision has since been replaced by s. 35(2) of the Employment Pension Plans Act, S.A. 2012, c. E-8.1.
- [2] These provisions have since been replaced by s. 13 of the Employment Pension Plans Act (2012).
- [3] These provisions have since been replaced by ss. 48 and 49 of the Employment Pension Plans Regulation, Alta. Reg. 154/2014.
- [4] This provision has since been replaced by s. 52(2)(b) of the Employment Pension Plans Act (2012).

- [5] The GUA does provide some methodological guidance to the Commission with regard to calculating a utility's return on its rate base by specifying what information may be considered in this process: "In fixing the fair return that an owner of a gas utility is entitled to earn on the rate base, the Commission shall give due consideration to all facts that in its opinion are relevant" (s. 37(3)). However, it does not provide any further methodological guidance for assessing the recoverability of a utility's costs.
- [6] These provisions have since been replaced by s. 13 of the Employment Pension Plans Act (2012).
- [7] These provisions have since been replaced by ss. 48 and 49 of the Employment Pension Plans Regulation (2014).
- [8] For clarity, the 2009 Actuarial Report and the DB plan use two separate terms to describe annual pension benefit increases, though they are conceptually linked: the DB plan refers to cost of living adjustment (or COLA), while the 2009 Actuarial Report refers to "post retirement pension increases". The 2009 Actuarial Report's post retirement pension increase figure of 2.25 percent was based on the DB plan's formula for COLA and the actuarial report's assumption for inflation.
- [9] This provision has since been replaced by ss. 60(2)(b) and 60(3) of the Employment Pension Plans Regulation (2014).
- [10] Regulators may, however, take into account the impact of rates on consumers in deciding how a utility is to recover its costs. Sudden and significant increases in rates may, for example, justify a regulator in phasing in rate increases to avoid "rate shock", provided the utility is compensated for the economic impact of deferring its recovery: *TransCanada Pipelines Ltd. v. National Energy Board*, 2004 FCA 149, 319 N.R. 171, at para. 43.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/15516/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/atco-gas-and-pipelines-ltd-v-alberta-utilities-commission-2015>

Prepared on 29 October 2026 · Esheria