



**ATCO Gas and Pipelines Ltd., CU Inc. and
Canadian Utilities Limited**

Disposition of the Calgary Service Centre Assets

September 23, 2015

Alberta Utilities Commission

Decision 20528-D01-2015

ATCO Gas and Pipelines Ltd., CU Inc. and Canadian Utilities Limited

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Proceeding 20528

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1 Introduction

1. On June 8, 2015, ATCO Gas and Pipelines Ltd. (ATCO Gas), CU Inc. (CU) and Canadian Utilities Limited (CU) (collectively, the applicants) filed an application with the Alberta Utilities Commission requesting approval to sell their Calgary Service Centre (CSC) assets to ATCO Real Estate Holdings Ltd., a wholly-owned subsidiary company of CU. The applicants sought approval from the Commission on the basis that the disposition of the CSC assets was outside of the ordinary course of business of the utility and accordingly required the approval of the Commission pursuant to Section 26(2)(d) of the *Gas Utilities Act*, RSA 2000, c. G-5.

2. The Commission issued notice of the application on June 9, 2015, and requested that interested parties submit a statement of intent to participate (SIP) by June 22, 2015. The Commission received SIPs from The City of Calgary (Calgary), the Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA). All interveners requested a process of information requests, argument and reply to test the application.

3. The Commission determined that the application would be considered by way of a minimal written process proceeding as outlined in Commission Bulletin [2015-09](#),¹ and issued the following process schedule on June 24, 2015:

Process step	Deadline
Information requests to ATCO Gas	July 8, 2015
Information responses from ATCO Gas	July 22, 2015
Argument	August 5, 2015
Reply argument	August 19, 2015

4. The Commission considers the record for this proceeding to have closed on August 19, 2015. In reaching the determinations set out in this decision the Commission has considered all relevant materials comprising the record of this proceeding. References in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to this matter.

¹ Bulletin 2015-09, Performance standards for processing rate-related applications, March 26, 2015.

2 Background and details of the application

5. The CSC assets, owned by ATCO Gas, a division of ATCO Gas and Pipelines Ltd., consist of three legal, adjacent properties located at 1040 – 11 Avenue S.W. in Calgary. The legal description and property use of the CSC assets is provided in the table below:

Table 1. Description of the CSC

Legal description	Property description
Lots 1–8, Block 64, Plan A1	North parking lot, Shop/Garage and the Annex buildings
Lots 35 and 36, Block 64, Plan A1	East portion of the Office building
Lots 25–34 and 37–40, Block 64, Plan A1	West portion of the Office building and the East parking lot

6. The CSC assets are situated on 1.8 acres of land (the area of all three legal properties). The main building, used for office space, is two stories high and was constructed in 1963. Two other buildings, a garage/shop and an annex, are the original buildings located on Lots 1–8. Including the basement, the CSC buildings provide approximately 50,000 square feet of office, shop, and storage space.

7. Lots 1–8, 35 and 36 were purchased in 1954 along with the shop/garage and the annex buildings. Lots 25–34 and 37–40 were purchased in 1962, and the office building was constructed by ATCO Gas in 1963.²

8. The original cost and remaining net book values of the CSC assets, estimated as at December 31, 2015, are set out in Table 2 below.

Table 2. CSC original cost and remaining net book value (NBV)

Description	Historical cost (\$000)	Accumulated depreciation (\$000)	Estimated NBV (December 31, 2015) (\$000)
<u>Calgary Service Centre</u> (Lots 25–40, Block 64, Plan A1)			
Land	115	0	115
Building	4,187	(2,104)	2,086
CSC Total	4,302	(2,104)	2,198
<u>Calgary Service Centre</u> <u>Garage</u> (Lots 1–8, Block 64, Plan A1)			
Land	20	0	20
Building	388	(235)	153
CSC garage total	408	(235)	173
CSC grand total	4,710	(2,339)	2,371

9. ATCO Gas stated that the annual operating costs of the CSC assets are \$500,000³ and that in 2014, it identified certain improvements that it determined the CSC assets required. The costs

² Exhibit 20528-X0002, pages 4-5.

of these improvements were forecast to be \$4.3 million over three years. ATCO Gas provided additional detail regarding these proposed improvements in Appendix B of its application. The forecast capital spending on the CSC assets improvements would be \$470,000, \$1,790,000 and \$1,990,000 for 2015, 2016 and 2017, respectively.

10. ATCO Gas advised that it had determined that it could provide the services currently being provided at the CSC by more efficiently utilizing existing space at seven of its other facilities and therefore planned to discontinue using the CSC and to relocate the employees currently at the CSC to these other facilities. ATCO Gas stated that it expected all relocations would be completed and the CSC assets withdrawn from service by the end of October 2015.

11. The specific transactional steps proposed to dispose of the CSC assets are as follows:

- a) ATCO Gas would transfer the CSC assets to ATCO Real Estate Holdings Ltd. (“Real Estate”) in exchange for cash and preferred shares of Real Estate.
- b) Real Estate redeems the preferred shares for a promissory note.
- c) ATCO Gas distributes the Real Estate promissory note to CUI as a dividend. CUI distributes the promissory note to CU as a dividend.
- d) CU contributes the promissory note to Real Estate as a subscription for additional common shares of Real Estate. The promissory note is cancelled.⁴

12. As a consequence of the completion of these transactions, CUI would no longer directly or indirectly own any of the CSC assets. ATCO Gas stated that it will not be altering its plans to withdraw the CSC assets from service regardless of the time required to process this application.⁵ It did state, however, that the commercial agreements relating to the transactions would not proceed unless all regulatory approvals ‘in a form satisfactory to respective counterparties are received.’⁶

13. ATCO Gas explained that because the transactions are occurring between affiliates, the asset dispositions are required to be recorded for accounting purposes at net book value. It proposed that the \$2.371 million net book value of the CSC assets be removed from rate base and transferred to non-utility accounts once the CSC assets were vacated and no longer required to provide utility service.⁷ In an information response to the Commission, ATCO Gas clarified that it would remove the CSC assets at the time of disposition.⁸

14. ATCO Gas further stated that the costs of relocating its employees, including renovation costs of \$1.3 million for its other seven existing buildings and \$0.2 million for office furniture and equipment, would be included in rate base and factored into the accounting test in the next capital true-up application. It submitted that the \$0.2 million for office furniture and equipment would be required regardless of whether the disposition and relocation of employees proceeded

³ Exhibit 20528-X0002, paragraph 13.

⁴ Exhibit 20528-X0002, pages 9-10.

⁵ Exhibit 20528-X0018, AG-AUC-2015JUL08-003(c)(ii).

⁶ Exhibit 20528-X0002, page 13.

⁷ Exhibit 20528-X0002, page 6.

⁸ Exhibit 20528-X0018, AG-AUC-2015JUL08-002(b) and (c).

as planned.⁹ ATCO Gas further explained that the net reduction in rate base of \$0.9 million would be factored into the accounting test in its next capital tracker true-up.

15. In response to a Commission information request, ATCO Gas provided the 2015 municipal taxation assessed value of the CSC assets which indicated that CSC assets were assessed at \$19.64 million,¹⁰ and the appraised market value of the assets which showed an assessment of \$25.5 million.¹¹

3 Legislation

16. ATCO Gas and Pipelines Ltd. is a designated owner of a designated gas utility for the purposes of section 26 of the *Gas Utilities Act*. Section 26 of the *Gas Utilities Act*, states:

Designated gas utilities

26(1) The Lieutenant Governor in Council may by regulation designate those owners of gas utilities to which this section and section 27 apply.

(2) No owner of a gas utility designated under subsection (1) shall

...

(d) without the approval of the Commission,

- (i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of it or them, or
- (ii) merge or consolidate its property, franchises, privileges or rights, or any part of it or them,

and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a gas utility designated under subsection (1) in the ordinary course of the owner's business.

4 Discussion of issues

4.1 Disposition outside of the ordinary course of business

17. Commission approval of the disposition of the CSC assets is only required if the transaction is outside the ordinary course of the owner's business.

⁹ Exhibit 20528-X0018, AG-AUC-2015JUL08-003(c)(vi) and (d).

¹⁰ Exhibit 20528-X0018, AG-AUC2015JUL08-005(c).

¹¹ Exhibit 20528-X0018, AG-AUC2015JUL08-005(e).

18. In its argument submission, the CCA asserted that “the move is prompted by ordinary course of business concerns – in this case deciding not to proceed with ordinary O&M and a decision that short term space concerns indicated that it was more efficient to operate out of seven buildings rather than one.”¹² The CCA claimed that, as such, the disposition is within the ordinary course of business.

19. ATCO Gas rejected any suggestion that this was an ordinary course transaction, arguing in its reply that on the basis of materiality and frequency factors, the transaction was clearly outside the ordinary course of business of the gas utility.

20. Neither Calgary nor the UCA argued that the transaction was an ordinary course of business transaction.

Commission findings

21. In the present circumstances, the determination of whether this disposition is to be considered inside or outside the ordinary course of ATCO Gas’s business must be decided in the context of the transactions that would be expected to fall within the normal business of ATCO Gas.

22. In Decision 2011-387,¹³ the Commission considered whether AltaLink’s proposed sale of substation assets, with a net book value of \$1.3 million and a sale price of \$2.4 million, was a sale outside the ordinary course of business. In that decision, the Commission commented on the origins and applicability of the frequency and materiality test as follows:

38. The Commission’s predecessor, the Alberta Energy and Utilities Board (the board), developed this frequency and materiality test and has used this test as a means to determine this issue in past decisions. For example, in Order U2001-196,¹¹ the board stated:

... The Board confirms that it must first determine whether the disposition of an asset is outside the ordinary course of business for a utility. The proceeds of disposition, NBV, frequency and type of sale would be among the factors considered by the Board in that determination. The quantum and materiality (in relation to the total rate base) of the proceeds of disposition and the NBV would all be considered.

...

41. The term “ordinary course of business” has existed in law for many years and as noted above, the Supreme Court in *Stores Block* determined that as far back as 1915, the *Public Utilities Act*, required public utilities to obtain the approval of the board before selling any property outside the ordinary course of their business.

¹² Exhibit 20528-X0025, paragraph 36.

¹³ Decision 2011-387: AltaLink Management Ltd., Sale of Assets at Riverside 388S Substation, Provident Energy Ltd., Amendment to Redwater Industrial System Designation, Proceeding 1063, Application 1606975-1, September 22, 2011.

42. In a decision of the Public Utilities Board, Decision Order E93023,¹² the Public Utilities Board provided its views on the types of transactions that would meet the definition of ordinary course transactions as follows:

The Board considers that the sale of Assets which are in rate base requires Board approval to ensure that the assets being sold are no longer used or required to be used to provide utility service within the regulated utility's franchised service area. The Board notes that the sale of minor assets which are in rate base such as vehicles, computer equipment, meters and other assets where the frequency of disposition is high and the net proceeds of the transactions are generally not material, are reviewed at a General Rate Application. The Board considers that the sale of such minor assets should be regarded as in the ordinary course of business and generally would not require specific approval pursuant to Section 25.1 (2) (d) of the GU Act.

43. The frequency and materiality test developed and adopted by the board is similar to the considerations noted by the Public Utilities Board as to what constitutes a sale within the ordinary course of business.

¹¹ Order U2001-196: NOVA Gas Transmission Ltd., In the matter of the Sale of the Athabasca Maintenance Facility, Application No. 2001112, File No. 6417-04, August 3, 2001, page 3 of 5.

¹² Order E93023: Northwestern Utilities Limited, In the matter of an Application dated December 16, 1992, from Northwestern Utilities Limited for approval of the sale and the manner of disposition of the proceeds of the sale of certain assets in the Fairy Dell/Bon Accord field, File No. 920099 2240 0014 2, March 17, 1993.

23. The Commission reaffirmed the materiality and frequency criteria test in Decision [2013-417](#)¹⁴ as follows:

321. The Commission considers that the criteria articulated in Order U2001-196 are sufficient for the utility to determine whether a disposition is inside or outside the ordinary course of business for the purpose of determining if an application for approval of the disposition must be filed. While the additional criteria provided for in Decision 2011-450 may be useful to the Commission in evaluating specific cases, the Commission does not consider that these criteria are necessary for the utility to consider in making a determination of whether it must apply for approval of a disposition. With this clarification of the additional criteria listed in Decision 2011-450, the utilities may limit the criteria they use in determining whether an application in respect of a proposed disposition of an asset is necessary to the criteria described in Order U2001-196.

24. ATCO Gas's business is to provide gas distribution services to its customers through its distribution assets within its service territory. It would not, as part of this business, normally engage in the sale of its service centres or other real estate property. In its response to a Commission information request, ATCO Gas indicated that it had not disposed of any buildings and associated land with a fair market value in excess of \$20 million in the past 10 years.

¹⁴ Decision 2013-417: Utility Asset Disposition, Proceeding 20, Application 1566373-1, November 26, 2013.

Further, it explained that had the fair market value of the property been less than \$1.5 million, it would likely have considered the transaction to be within the ordinary course.¹⁵

25. The Commission recognizes that it would not be practical for every disposition to come before it for approval. However, the Commission finds that for ATCO Gas, the nature of this transaction is not compatible with the kind of minor disposition activities contemplated by the board, such as the sale of vehicles, computer equipment, meters or other assets where the frequency is high and the net proceeds are generally not material, that would fall within the ordinary course of business exemption provided for in the *Gas Utilities Act*. As such, the Commission finds that this is a sale outside the ordinary course of business of ATCO Gas and requires Commission approval pursuant to Section 26 of the *Gas Utilities Act*.

4.2 Assessment of harm

26. In deciding whether to approve a disposition, the Commission and its predecessor, the Alberta Energy and Utilities Board (board), have applied a no-harm test that considers the transaction in the context of both potential financial impacts and service level impacts to customers.

27. The no-harm test was summarized by the board in Decision [2000-41](#),¹⁶ as follows:

The Supreme Court of Canada has stated that the Board's jurisdiction to "safeguard the public interest in the nature and quality of the service provided to the community by public utilities" is "of the widest proportions." The Board has also noted that its governing legislation provides no specific guidance for the exercise of the Board's direction in approving an asset disposition by a designated owner of a public utility.

The Board has held that its discretion under essentially similar provisions of the GU Act must be exercised according to a "no-harm" standard. More specifically, the Board has held that it must be satisfied that customers of the utility will experience no adverse impact as a result of the reviewable transaction.

...

The Board believes that its duty to ensure the provision of safe and reliable service at just and reasonable rates informs its authority to approve an assets disposition by a public utility pursuant to Section 91.1(2) of the PUB Act. Therefore, the Board is of the view that, subject to those issues which can be dealt with in future regulatory proceedings ..., it must consider whether the disposition will adversely impact the rates customers would otherwise pay and whether it will disrupt safe and reliable service to customers. As already noted, the Board also accepts that it must assess potential impacts on customers in light of the policy reflected in the EU Act, namely the unbundling of the generation, transmission and distribution components of electric utility service and the development of competitive markets and customer choice. As a result, rather than simply asking whether customers will be adversely impacted by some aspect of the transactions, the Board concludes that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance favours customers or at least leaves them

¹⁵ Exhibit 20528-X0018, AG-AUC-2015JUL08-006.

¹⁶ Decision 2000-41: TransAlta Utilities Corporation Sale of Distribution Business, Application 2000051, File 6404-3, July 5, 2000, pages 7 and 8.

no worse off, having regard to all of the circumstances of the case. If so, then the Board considers that the transactions should be approved. [footnotes omitted]

28. In *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2006 SCC 4 (*Stores Block*), the Supreme Court discussed the nature of public utilities and the reasons for the kind of prohibition found in the *Gas Utilities Act*. Bastarache, J., writing for the majority stated:

4 As in any business venture, public utilities make business decisions, their ultimate goal being to maximize the residual benefits to shareholders. However, the regulator limits the utility's managerial discretion over key decisions, including prices, service offerings and the prudence of plant and equipment investment decisions. And more relevant to this case, the utility, outside the ordinary course of business, is limited in its right to sell [page152] assets it owns: it must obtain authorization from its regulator before selling an asset previously used to produce regulated services (see *MacAvoy and Sidak*, at p. 234).

...

43 There is no dispute that s. 26(2) of the GUA contains a prohibition against, among other things, the owner of a utility selling, leasing, mortgaging or otherwise disposing of its property outside of the ordinary course of business without the approval of the Board. As submitted by ATCO, the power conferred is to approve without more. There is no mention in s. 26 of the grounds for granting or denying approval or of the ability to grant conditional approval, let alone the power of the Board to allocate the net profit of an asset sale. I would note in passing that this power is sufficient to alleviate the fear expressed by the Board that the utility might be tempted to sell assets on which it might realize a large profit to the detriment of ratepayers if it could reap the benefits of the sale.

44 It is interesting to note that s. 26(2) does not apply to all types of sales (and leases, mortgages, dispositions, encumbrances, mergers or consolidations). It excludes sales in the ordinary course of the owner's business. If the statutory scheme was such that the Board had the power to allocate the proceeds of the sale of utility assets, as argued here, s. 26(2) would naturally apply to all sales of assets or, at a minimum, exempt only those sales below a certain value. It is apparent that allocation of sale proceeds to customers is not one of its purposes. In fact, s. 26(2) can only have limited, if any, application to non-utility assets not related to utility function (especially when the sale has passed the "no-harm" [page168] test). The provision can only be meant to ensure that the asset in question is indeed non-utility, so that its loss does not impair the utility function or quality.

...

84 In my view, as I have already stated, the power of the Board to allocate proceeds does not even arise in this case. Even by the Board's own reasoning, it should only exercise its discretion to act in the public interest when customers would be harmed or would face some risk of harm.

29. The court in *Stores Block* provided its rationale regarding when a sale would be approved by the Board. It stated:

76 *MacAvoy and Sidak*, in their article, at pp. 234-36, suggest three broad reasons for the requirement that a sale must be approved by the Board:

1. It prevents the utility from degrading the quality, or reducing the quantity, of the regulated service so as to harm consumers;

2. It ensures that the utility maximizes the aggregate economic benefits of its operations, and not merely the benefits flowing to some interest group or stakeholder; and
3. It specifically seeks to prevent favoritism toward investors.

77 Consequently, in order to impute jurisdiction to a regulatory body to allocate proceeds of a sale, there must be evidence that the exercise of that power is a practical necessity for the regulatory body to accomplish the objects prescribed by the legislature, something which is absent in this case (see *National Energy Board Act (Can.) (Re)*, [1986] 3 F.C. 275 (C.A.)). In order to meet these three goals, it is not necessary for the Board to have control over which party should benefit from the sale proceeds. The public interest component cannot be said to be sufficient to impute to the Board the power to allocate all the profits pursuant to the sale of assets. In fact, it is not necessary for the Board in [page182] carrying out its mandate to order the utility to surrender the bulk of the proceeds from a sale of its property in order for that utility to obtain approval for a sale. **The Board has other options within its jurisdiction which do not involve the appropriation of the sale proceeds, the most obvious one being to refuse to approve a sale that will, in the Board's view, affect the quality and/or quantity of the service offered by the utility or create additional operating costs for the future.** This is not to say that the Board can never attach a condition to the approval of sale. For example, the Board could approve the sale of the assets on the condition that the utility company gives undertakings regarding the replacement of the assets and their profitability. It could also require as a condition that the utility reinvest part of the sale proceeds back into the company in order to maintain a modern operating system that achieves the optimal growth of the system. [emphasis added]

30. Subsequently, in *ATCO Gas and Pipelines v. Alberta (Energy and Utilities Board)* 2009 ABCA 171 (*Harvest Hills*), the Court of Appeal of Alberta considered the no-harm test in the context of the sale of land by ATCO Gas that had previously been in rate base. The Court of Appeal of Alberta addressed the circumstances in which the no-harm test should be applied, and referred to the Supreme Court of Canada's *Stores Block* decision. The court found:

In *Stores Block*, the Board found that there would be no harm to customers as a result of the sale. In the Supreme Court, Bastarache J. observed that even by the Board's own reasoning, it should only exercise its discretion to act in the public interest when customers would be harmed or would face some risk of harm (at para. 84). In our view, the harm contemplated by the Supreme Court must be harm related to the transaction itself.

31. An application of the no-harm test requires the Commission to consider whether the transaction will adversely affect rates or the quantity or quality of service. The Commission has considered both issues separately.

4.2.1 Service quality

32. In its application, ATCO Gas asserted that following an assessment of the functions currently performed at the CSC, the movement of those functions to the other seven existing

facilities would not result in any impact on service levels. ATCO Gas did not provide a copy of the assessment it conducted.¹⁷

33. In a Commission information request, ATCO Gas was asked to explain whether a gas leak or similar emergency in the Beltline area of Calgary would have the same response time after the relocation of the CSC employees. ATCO Gas responded:

It is not expected that the relocations will have any negative impact on response times as the operations personnel responsible for responding to emergencies typically respond either from a job site or enroute to a job site during business hours or from their homes during non-business hours. Regardless of the location of the employee's operating center, the dispatcher will determine the closest available staff in the Calgary area to respond.¹⁸

34. ATCO Gas also explained that the service applications function formerly performed at the CSC will be available at the suburban locations in the south (Midnapore), northeast (Whitehorn) and in the northwest (Crowfoot).¹⁹ It stated that the various work groups located at the CSC perform distinct functions and are not required to be co-located with other work groups in order to perform their work functions safely, effectively and efficiently.²⁰

35. Calgary stated that ATCO Gas's claim that its operational functions could be undertaken from anywhere in the Calgary region was "simply a bald claim made by ATCO with no supporting evidence to support it."²¹ It argued that ATCO Gas's proposal to disperse key operational functions to multiple locations goes directly against ATCO Gas's prior practice of consolidating its operating functions into a single service centre. Calgary stated that Edmonton operations are run out of two operating centres, and regional operations in Okotoks, Airdrie and Fort McMurray are run out of a single operating centre.²² Calgary further argued that ATCO Gas's claim that the dispersal of service application staff to the suburban locations would improve service is of little merit as only three employees out of the 109 being relocated are involved in the service application function. For these reasons, Calgary submitted that ATCO Gas has not discharged its onus under the first part of the no-harm test.

36. The CCA submitted that in this application ATCO Gas is proposing to disperse its operational staff amongst six different buildings and that this proposed practice is different from that of its electric utility affiliate, ATCO Electric. In other applications ATCO Electric has proposed to construct buildings, with the analysis that it is necessary to have operational staff co-located. The CCA stated:

For example, one of the reasons AEL [ATCO Electric Limited] advanced for buildings such as Drumheller and in the current capital tracker application for Ft. McMurray and High Level is that there are synergies to be derived from having operational, design and construction staff closely associated with each other [footnotes omitted].²³

¹⁷ Exhibit 20528-X0018, AG-AUC-2015JUL08-001(b).

¹⁸ Exhibit 20528-X0018, AG-AUC-2015JUL08-003(e).

¹⁹ Exhibit 20528-X0023, paragraph 13.

²⁰ Exhibit 20528-X0023, paragraph 16.

²¹ Exhibit 20528-X0027, paragraph 11.

²² Exhibit 20528-X0027, paragraph 12.

²³ Exhibit 20528-X0025, paragraph 13.

37. The CCA argued that ATCO Gas has not explained why its operations are so different from ATCO Electric's that the separation of employees does not have an impact on efficiencies and costs.²⁴ Further, the CCA noted that the ATCO Gas statement that location has no impact in responding to an emergency is contrary to what ATCO Electric has argued in its capital tracker applications. The CCA argued:

... while the two companies' arguments do not need to be the same, it seems that responses to emergencies cannot be totally independent of location.²⁵

38. In argument, the UCA acknowledged the ATCO Gas position that "the proposed transfer of utility functions from the CSC Assets to other facilities operated by AG would not have a detrimental impact on utility service."²⁶ However, in reply argument the UCA also stated that "AG has similarly not provided sufficient evidence to support a conclusion that the disposition of the CSC Assets will result in any enhancement of utility service." It further argued that "[i]t is not clear, from the evidence in this proceeding, whether customers currently served by the service applications function at the CSC Assets would be equally well or better served by the transfer of such function to locations in other parts of the city."²⁷

39. In response, ATCO Gas argued that there is no suggestion that service quality will deteriorate. It stated that "the optimizing of space is underway regardless of when or whether or not the disposition takes place. The disposition occurs because the assets are no longer in use and will have been withdrawn from rate base. A sale, therefore, cannot affect service quality (because the assets will not be used)."²⁸ As well, ATCO Gas rejected the suggestion that its situation was analogous to that of ATCO Electric and further asserted that with regard to the service application function, it would now have five employees engaged in that function at three locations rather than at the one CSC location, a fact which ATCO Gas argued is an obvious improvement in service.

Commission findings

40. ATCO Gas bears the burden of demonstrating that its proposal to remove the CSC assets from utility service and to provide these services by relocating its CSC employees to its other service centres does not result in harm to its customers by affecting "the quality and/or quantity of the service offered by the utility or create additional operating costs for the future."²⁹

41. The Commission has reviewed the evidential record of this proceeding and is not persuaded by the evidence on the record that service quality will not be affected by the proposed relocation. The other centres where operational staff are located are in the suburbs of Calgary. ATCO Gas is proposing to move 14 distribution operation employees to the Crowfoot Operations Centre located near the Crowfoot Shopping Centre. These employees would typically respond to gas leaks or similar emergencies. It is also proposing to move 12 pressure control

²⁴ Exhibit 20528-X0025, paragraph 15.

²⁵ Exhibit 20528-X0025, paragraph 19.

²⁶ Exhibit 20528-X0026, paragraph 43.

²⁷ Exhibit 2028- X 0030, paragraphs 5 and 7.

²⁸ Exhibit 20528-X0032, paragraph 24.

²⁹ *Stores Block*, paragraph 77.

operations employees, the other group of employees who may respond to emergencies, to the Midnapore Operations Centre, which is located near Midpark Boulevard in the outermost southeast of Calgary. Clearly, a downtown gas leak would not receive the same response time from the suburbs as it would from the current building location in the city's Beltline area.

42. The Commission acknowledges that the transfer of five service applications staff to suburban locations allows developers and builders to apply for gas service in the Whitehorn, Crowfoot, and Midnapore Operations centres rather than at the CSC.³⁰ However, the ATCO Gas Terms and Conditions of Service do not stipulate that service applications are required to be completed in person.³¹ Rather, the process for applying for new service lines (as explained on the ATCO Gas website) would suggest that the service line installation process can be completed over the telephone.³² Because no evidence was provided by ATCO Gas regarding the number of applications that are requested for new service lines in person, the Commission is unable to determine the impact, positive or negative, that the relocation would have on the level of service for new service applications.

43. More significantly, ATCO Gas has not provided sufficient evidence to support its assurance that location would have no impact on emergency response times. In an information request, the Commission asked ATCO Gas to explain its post-relocation response times for an emergency situation in the Beltline area. In response, ATCO Gas stated that "the operations personnel responsible for responding to emergencies typically respond either from a job site or enroute to a job site during business hours or from their homes during non-business hours."³³ Since response time will be dependent upon the location of the job site or the employee home relative to the location of the emergency, without an analysis of the current response times compared to expected post-relocation response times, the Commission is not persuaded that emergency response times will not be negatively impacted. Furthermore, ATCO Gas indicated that other centres require renovations to accommodate the additional staff coming from the CSC. Hence, if operations personnel are typically on a job site or en route to a job site, the need for seven separate service centres remains in question.

44. In response to the Commission's question about emergency response times, ATCO Gas simply stated that it "did not expect that the relocations will have any negative impact on response time" because it did not consider location to be a factor. This evidence is insufficient to satisfy the Commission that no harm would be visited upon customers as a consequence of the discontinuance of its CSC operations. ATCO Gas could have supported its position that location is not a factor when providing emergency response services to its customers by, for example, providing the current number of emergencies occurring in each of the existing centres, the response times, a forecast of response time from the suburban operational centres for similar emergencies in the area currently served by the CSC, and an explanation or objective standard that would demonstrate why the change in response time was still within an acceptable range.

³⁰ Exhibit 20528-X0018, AG-AUC-2015JUL08-003(c).

³¹ Decision 2014-363: ATCO Gas and Pipelines Ltd., 2015 Annual PBR Rate Adjustment Filing, Proceeding 3407, Application 1610837-1, December 19, 2014, Terms and Conditions for Distribution Service Connections, Effective January 1, 2015, Section 4.2.

³² <http://www.atcogas.com/Services/Service-Request/Install-a-Service-Line>.

³³ Exhibit 20528-X0018, AG-AUC-2015JUL08-003(e).

This is only one example of what ATCO Gas could have provided to support its position. However, no supporting evidence was provided at all.

45. As stated by the board in Decision 2000-41, it is the Commission's responsibility to weigh the potential positive and negative impacts of the transactions to determine whether the balance favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case. In the absence of any supporting evidence, the Commission is unable to find that the quality of service for customers will, on balance, leave the customers no worse off by the removal of the CSC assets from utility service and, consequently, the Commission can make no finding on harm.

4.2.2 Impact to rates

46. ATCO Gas stated that during the current PBR plan, customer rates will be unaffected by the removal of the CSC from utility service. In support of this statement, ATCO Gas provided the following analysis of the financial impacts of this proposed disposal:

ATCO Gas' rate base will increase by approximately \$1.5 million for the required renovations and furniture as opposed to an increase of \$4.3 million of capital investment required to maintain the CSC. In addition, rate base will be reduced by the removal of the net book value of the CSC (estimated at \$2.5 million as of December 2014) [footnotes omitted].³⁴

47. In argument, Calgary stated that during the PBR term, customer rates would not change as a result of this disposition; however, until re-basing occurs, the final impact would be unknown. Calgary submitted that until re-basing occurs, there is insufficient evidence to confirm that both operating costs and revenue requirement will indeed decrease.³⁵

48. Calgary further argued that ATCO Gas has not provided a formal business case or other analysis to demonstrate that the relocation of the affected employees is an effective or efficient outcome. The internal reviews completed by ATCO Gas, which found that the seven existing facilities could be renovated, were not supported by an independent assessment and therefore, the rate impacts forecast by ATCO Gas should not be relied upon by the Commission.³⁶

49. Calgary also asserted that the \$4.3 million forecast capital upgrade costs were "equally suspect, and ... designed to support an outcome which favours it [*sic*] shareholder."³⁷ The HVAC (heating, ventilation, and air conditioning) failures and leaking roofs were characterized by Calgary as being an inconvenience, rather than an emergency which could affect the safety or security to persons or property. Calgary noted ATCO Gas did not provide an independent assessment of the buildings' current condition and cautioned that the cost estimates provided in Appendix B of the application may not be truly necessary. Calgary also observed that the CSC

³⁴ Exhibit 20528-X0023, paragraph 11.

³⁵ Exhibit 20528-X0027, paragraph 22.

³⁶ Exhibit 20528-X0027, paragraph 27.

³⁷ Exhibit 20528-X0027, paragraph 28.

upgrade estimates were not subject to a competitive procurement process³⁸ and therefore concluded that the CSC upgrade cost forecast was completed for two purposes:

Firstly, to attempt to show that Customers would be better off (on a rates basis) with a relocation of the CSC functions, and secondly, to confirm the prudence of the alternative (relocation) option.³⁹

50. Calgary stated that neither purpose has been made clear by the evidence provided and submitted that the Commission should disregard this evidence.

51. The CCA noted that the characterization of replacing HVAC system components and a leaky roof as an emergency situation suggests “inadequate maintenance practises.”⁴⁰ Because the issues with the CSC have not been raised with the Commission in a prior application, the CCA questioned whether ATCO Gas’s O&M practices are prudent. The CCA argued:

... more appropriate O&M procedures could have avoided the possibility of a potential emergency situation which seems to have prompted in part this abrupt move.⁴¹

52. The UCA demonstrated that between 2005 and 2015, ATCO Gas spent \$1,171,620 on repairs and maintenance and capital investments in the CSC assets.⁴² The UCA noted that none of the items on ATCO Gas’s list of capital improvements relates to either the HVAC repairs or leaky roof which ATCO Gas had stated comprise the emergency situation. Instead, the UCA explained that:

A number of items, including but not limited to the construction of an elevator (\$600,000), appear to relate to renovations of components of the CSC Assets that do not meet current [Alberta Building] Code requirements [footnotes omitted]⁴³

53. The UCA argued that ATCO Gas’s forecast of \$4.3 million in capital spending related to compliance with building code requirements would not necessarily be prudent unless one of the following two scenarios arises:

- 1) AG has a legal obligation under the Code or safety codes legislation to bring the CSC Assets, or some component thereof, into compliance with the current Code; or
- 2) AG is required to bring CSC Assets, or some component thereof, into compliance with the current Code in order to ensure safe and reliable utility service.⁴⁴

54. The UCA submitted that because ATCO Gas has not provided evidence in this proceeding that demonstrates that its proposed capital spending on the CSC assets relates to either of the two scenarios, it is therefore in ATCO Gas management’s discretion to update the CSC to building code standards. The UCA further noted that some portion of the cost of capital

³⁸ Exhibit 20528-X0020, AG-CAL2015JUL08-004 (i).

³⁹ Exhibit 20528-X0027, paragraph 35.

⁴⁰ Exhibit 20528-X0025, paragraph 8.

⁴¹ Exhibit 20528-X0025, paragraph 10.

⁴² Exhibit 20528-X0022, AG-UCA-2015JUL08-001(b), Attachment, PDF pages 5-8.

⁴³ Exhibit 20528-X0026, paragraph 29.

⁴⁴ Exhibit 20528-X0026, paragraph 30.

improvements or repairs to the CSC assets would have been embedded in going-in PBR rates.⁴⁵ The UCA concluded that ATCO Gas had not provided sufficient evidence that the proposed disposition of the CSC assets represented the least cost alternative and was therefore prudent.

55. With regard to ATCO Gas's proposed accounting treatment, the UCA argued that:

... the fair and appropriate regulatory treatment of these costs would be to remove them from rates concurrently with the removal of the CSC Assets from utility service, resulting in a reduction in customer rates from that time until the end of the PBR term. ... [A] possible mechanism for this would be via a Y Factor or similar adjustment, representing a refund to customers.⁴⁶

56. In its reply, ATCO Gas rejected the suggestions of the interveners that its transaction had to result in a lower cost alternative and reiterated its position that as a result of optimizing existing space, the costs will be less than they would be if the CSC remained in service. Further, ATCO Gas argued that the Commission:

... can rely upon ATCO Gas' stipulation that removal of approximately \$2.5 million Net Book Value of the Calgary Service Centre from rate base and the reduction of approximately \$500,000 per year of operating costs more than offset the \$1.3 million of incremental capital costs and any negligible additional operating costs which would result from ATCO Gas' management decisions. Those savings alone demonstrate the fact there will be no financial harm to customers, leave aside the additional \$4.3 million of repair and upgrading costs which otherwise would be required to be incurred over the next three years to ensure a facility, already 50 years old, is capable of continuing to render utility service.⁴⁷

Commission findings

57. When assessing whether a transaction should be approved, the Commission, as part of the no-harm test, will consider whether, on balance, ratepayers will be adversely affected by the transaction.

58. ATCO Gas's position that this transaction will not result in financial harm to customers is dependent upon the reasonableness of its forecast of: (1) the ongoing annual operational costs of the CSC assets (\$500,000), (2) the necessary capital expenditures for the CSC assets (\$4.3 million over three years) and (3) the costs for the upgrades to the seven service centres to absorb the CSC activities and employees.

Operational costs

59. Currently the annual operating costs of the CSC assets, as stated by ATCO Gas, are \$500,000. The 2012 operating cost of the facility's O&M is embedded in the going-in rates and are subject to I-X treatment for the duration of the PBR term. ATCO Gas will continue to collect this amount from ratepayers (regardless of whether the building is occupied or sold) until the next PBR term. ATCO Gas stated that \$500,000 is a fair representation of the amount reflected

⁴⁵ Exhibit 20528-X0026, paragraph 37.

⁴⁶ Exhibit 20528-X0026, paragraph 14.

⁴⁷ Exhibit 20528-X0032, paragraph 10.

in going-in rates.⁴⁸ For the purposes of this analysis, the Commission is prepared to accept ATCO Gas's representation that \$500,000 represents the ongoing operating costs of the CSC assets.

60. ATCO Gas has asserted that the transfer "is not expected to" result in a material increase in operating costs for the seven service centres that will be absorbing the employees and functions currently being provided at the CSC.⁴⁹ Under ATCO Gas's PBR plan, increased operating costs beyond the yearly I-X increase would come out of the account of the shareholder rather than the ratepayer. Consequently, the Commission would expect that the operating costs during the PBR term would remain at or, ideally for ATCO Gas, below what they were in 2012.

61. While the Commission can accept that the transaction would result in a reduction of the annual operating costs of the CSC assets, the Commission remains troubled by ATCO Gas's inability to state unequivocally that there would be no material increase in the operation costs of the seven service centres.

Necessary capital expenditures

62. The Commission is also concerned with the reasonableness of ATCO Gas's forecast capital spending of \$4.3 million over three years that it states is required for the CSC assets. As noted by the UCA, from 2005 to 2015, ATCO Gas spent a total of \$1,171,620 on repairs, maintenance and capital investment in the CSC building.⁵⁰ On an annual basis, the amount is approximately \$117,000. ATCO Gas's current forecast would result in spending increases of over 10 times that amount, to roughly \$1.4 million, when averaged out over the three years of 2015-2017.⁵¹ A large increase of this nature for capital spending could be the consequence of a sudden, unexpected failure of equipment, however, the limited information provided by ATCO Gas does not suggest that this is the case. There was no business case provided to support the proposed improvements. ATCO Gas stated the improvements were identified as a result of a review by Coupland Kraemer Architecture & Interior Design Inc.,⁵² however ATCO Gas did not provide a copy of the review to the Commission as part of its application. The nature of the improvements fall into four categories:

1. Interior work for a total of \$1,190,000 with the largest groups of expenditures consisting of work done on the flooring, millwork, painting, and finishing.
2. Mechanical/electrical work for a total of \$1,030,000 with the largest groups of expenditures being HVAC upgrades, new lighting, and fire system upgrades.
3. Other work for a total of \$1,050,000 with the largest groups of expenditures consisting of the second floor elevator and the removal of asbestos floor tile.
4. General fees for a total of \$780,000 with the largest groups of fees being contractor costs, construction management fees, and the architectural & interior design consulting fee.

⁴⁸ Exhibit 20528-X0018, AG-AUC-2015JUL08-007(a).

⁴⁹ Exhibit 20528-X0020, AG-CAL-2015JUL08-005(d).

⁵⁰ Exhibit 20528-X0026, paragraph 27.

⁵¹ Exhibit 20528-X0002, Appendix B.

⁵² Exhibit 20528-X0018, AG-AUC-2015JUL08-001(b).

63. These groups of fees and work expenses seem to consist of things ATCO Gas could have chosen to do at any time in the past few years. This calls into question the reason why ATCO Gas would allow the facility to fall into what appears to be a general state of dis-repair. It therefore appears to the Commission that the forecast was generated to show that ratepayers would (potentially at re-basing) experience lower rates with the CSC relocation.⁵³

64. The Commission has made this finding for the following reasons. First, the only evidence filed by ATCO Gas regarding the details of the forecast \$4.3 million in capital expenses that it indicated was necessary to be spent over the next three years was the one page table in Appendix B to the application. This table set out the proposed expenditure and costs but no supporting evidence on the current conditions of the assets, how long these conditions have been present, the urgency for the change and how the forecast amounts were determined. As noted above, between 2005 and 2015, ATCO Gas has spent approximately \$1.17 million on repairs, maintenance and capital investment in the CSC, including repairs to the roof and the HVAC system. ATCO Gas now asserts that \$4.3 million in repairs is necessary to avoid an emergency situation from occurring; however, the costs of updating the HVAC system and roof repairs, which ATCO Gas has identified as the repairs necessary to avoid an emergency situation, represent \$470,000 of the \$4.3 million of capital expenditures forecast or approximately 11 per cent of the total forecast cost. If all mechanical and electrical forecast costs are included, these costs represent \$1,030,000 of the capital costs. Second, ATCO Gas has not provided evidence to demonstrate whether the remaining costs, which appear to be driven by a desire by ATCO Gas to bring the building to meet current building code requirements (including \$600,000 to install a new elevator) or to be of an esthetic nature (i.e., \$1.19 million for interior repairs) are required to be incurred or whether these costs are merely part of ATCO Gas's list of upgrades. Further, as noted by the interveners, ATCO Gas has already spent money on the roof and HVAC system. When asked why further work and repairs were necessary or why the work done to date had been insufficient or failed, ATCO Gas responded that "in 2014 as part of a broader assessment of needs and alternatives it was determined that continued maintenance of the system would not be able to manage the issue any longer and that significant improvements (including replacement of the chiller system) would be required."⁵⁴

65. Consequently, in the absence of adequate supporting evidence, the Commission has assigned little weight to the \$4.3 million capital spending forecast for the CSC provided by ATCO Gas in its consideration of the no-harm test as it applies to customer rates.

Upgrades to the existing facilities

66. The Commission is also concerned about the reasonableness of ATCO Gas's forecast cost of \$1.3 million for upgrades to the seven service centres to absorb the operations and employees of the CSC.⁵⁵ ATCO Gas has advised that these existing facilities are not under-utilized but that it is able to renovate existing space to accommodate additional staff.⁵⁶ In its description of these forecast renovations, the phrase "General interior renovations to

⁵³ Exhibit 20528-X0027, paragraph 35.

⁵⁴ Exhibit 20528-X0018, AG-AUC 2015 Jul08-003-(b).

⁵⁵ Exhibit 20528-X0018, AG-AUC-2015JUL08-003(c)(vi). The additional \$200,000 required for office furniture and equipment is required regardless of whether the relocation of employees occurs.

⁵⁶ Exhibit 20528-X0020, AG-CAL-2015JUL08-002(h).

accommodate a larger number of staff” was used by ATCO Gas to describe the renovations proposed for the Calgary Operations Base, Crowfoot Operations Centre and the Midnapore Operations Centre.

67. Accepting ATCO Gas’s statement that the existing space is not under-utilized, the Commission is concerned that there is only a finite number of renovations that is able to occur before space would run out and ATCO Gas has clearly stated that it is unable to commit to what its longer-term space requirements could be as a result of this transfer.⁵⁷

68. Accepting that the \$1.3 million forecast for renovations is a reasonable forecast for necessary improvements up until 2017, ATCO Gas can provide no assurance that further renovations or additional space may be required or what the costs of that additional space or renovations might be after 2017. The City of Calgary continues to have substantial forecast growth, despite the recent economic downturn in the oil industry, and it is reasonable to conclude that it is likely that ATCO Gas will continue to need additional employees beyond 2017 and that additional space to accommodate them will be necessary, particularly as the existing space is not under-utilized. For these reasons, the Commission considers that the \$1.3 million forecast for upgrades to existing service centres is too conservative when considering future costs at these service centres beyond 2017. The risk that additional facilities or more large-scale renovations will need to be undertaken and paid for by ratepayers is a concern and, as a consequence of the relocation of the CSC employees to these already fully-utilized service centres, these additions may be more extensive than might otherwise have been the case if the employees had not been subsumed within these seven service centres. Consequently, the Commission is not persuaded by the evidence that the \$1.3 million in forecast costs represents a reasonable cost when determining whether there is no-harm to ratepayers.

69. The risk that ratepayers face in this instance of unknown future costs is high. ATCO Gas has not met its onus in demonstrating that it will not require further renovations to existing suburban operation centres or a new location with a more central footprint in The City of Calgary. The tax assessed value of the CSC assets is approximately \$20 million, and it is probable that a new or replacement building in downtown Calgary would be significantly more than the assessed value of the CSC assets.

5 Conclusion

70. It is the decision of ATCO Gas whether to proceed with the removal of its CSC assets from utility service and relocate its employees to the other seven service centres as proposed. However, the law is clear that once ATCO Gas has determined that the assets are no longer used for providing utility service, the assets must be removed from rate base at that time.⁵⁸

71. The Commission cannot approve the disposition of the CSC assets. The Commission finds that there is insufficient evidence for it to determine whether the applicant has satisfied the no-harm test. It is not the responsibility of the Commission to ask questions of the applicant in

⁵⁷ Exhibit 20528-X0021, AG-CCA-2015JULY08-001(j).

⁵⁸ Calgary (City) v. Alberta (Utilities Commission), 2010 ABCA 158.

order to assist the applicant in making its case. The onus is on ATCO Gas in this instance to provide proper supporting documentation. It has not done so.

72. The application for the proposed disposition is therefore denied.

Dated on September 23, 2015.

Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair

(original signed by)

Tudor Beattie, QC
Commission Member

(original signed by)

Anne Michaud
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
ATCO Gas Pipelines Ltd. (ATCO Gas) Bennett Jones LLP
Office of the Utilities Consumer Advocate (UCA) Brownlee LLP
Consumers' Coalition of Alberta (CCA)
The City of Calgary (Calgary) McLennan Ross Barristers & Solicitors
AltaLink Management Ltd. (AltaLink)

<p>Alberta Utilities Commission</p> <p>Commission panel</p> <ul style="list-style-type: none"> W. Grieve, QC, Chair T. Beattie, QC, Commission Member A. Michaud, Commission Member <p>Commission staff</p> <ul style="list-style-type: none"> C. Wall (Commission counsel) B. Whyte P. Genderka A. Corsi
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