Decision **21321-D01-2016**

Alberta Utilities Commission

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

Disposition of the Calgary Service Centre

June 29, 2016

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1 Decision

1. In this decision, the Commission finds that ATCO Gas and Pipelines Ltd. (ATCO Gas) has satisfied the requirements of the no-harm test for the purpose of its disposition of the Calgary Service Centre (CSC). The transaction either favours ATCO Gas's customers or at least leaves them no worse off, having regard to all of the circumstances of the case, including impacts on rates and the quantity or quality of service

2. The Commission finds that the sale of assets is outside of the ordinary course of business and for all of the following reasons, considers it is in the public interest to approve the disposition as applied for pursuant to Section 26(2)(d) of the *Gas Utilities Act*.

3. The Commission orders that the disposition of the CSC is approved as applied for, and effective on the date of this decision.

2 Introduction

4. On February 9, 2016, ATCO Gas, CU Inc. (CUI) and Canadian Utilities Limited (CU) (collectively, the applicants) filed an application with the Alberta Utilities Commission requesting approval to sell their 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*.

5. The Commission issued notice of the application on February 10, 2016, and requested that interested parties submit a statement of intent to participate (SIP) by February 24, 2016. The Commission received SIPs from The City of Calgary, the Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA). The CCA and the UCA requested a process of information requests, argument and reply to test the application.

6. 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 February 26, 2016:

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

Process step	Deadline
Information requests to ATCO Gas	March 21, 2016
Information responses from ATCO Gas	April 4, 2016
Argument	April 18, 2016
Reply argument	May 2, 2016

7. The Commission considers the record for this proceeding to have closed on May 2, 2016. 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.

3 Background and details of the application

8. On June 8, 2015, the applicants filed an application (2015 application) with the Commission requesting approval to dispose of the CSC assets on the basis that the disposition of the CSC assets was outside of the ordinary course of business of the utility. The Commission considered the application and issued Decision 20528-D01-2015[2] on September 23, 2015. In that decision, the Commission found that the sale of the CSC assets was outside of the ordinary course of business of ATCO Gas;[3] however, the Commission denied the applicants' application for the proposed disposition of the CSC assets because ATCO Gas had failed to provide sufficient evidence to satisfy the Commission's no-harm test.[4]

9. ATCO Gas has again sought Commission approval for the disposition of the CSC assets in this application and, in so doing, has addressed the Commission's specific concerns identified in Decision 20528-D01-2015.

10. 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 historic use of the property is provided in the table below:

Table 1. Description of the CSC assets

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

Source: Decision 20528-D01-2015, Table 1.

[2] Decision 20528-D01-2015: ATCO Gas and Pipelines Ltd., CU Inc. and Canadian Utilities Limited, Disposition of the Calgary Service Centre Assets, Proceeding 20528, September 23, 2015.
[3] Decision 20528-D01-2015, paragraph 25.
[4] Decision 20528-D01-2015, paragraphs 71-72.

11. 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 to 8. Including the basement, the CSC buildings provided approximately 50,000 square feet of office, shop, and storage space.[5]

12. Lots 1 to 8, 35 and 36 were purchased in 1954 along with the shop/garage and the annex buildings lots 25 to 34 and 37 to 40 were purchased in 1962, and the office building was constructed by ATCO Gas in 1964.[6]

13. The original cost and remaining net book values (NBV) of the CSC assets are set out in Table 2 below.

Table 2. CSC original cost and remaining NBV

Description	Historical cost	Accumulated depreciation	NBV (November 1, 2015)
	($000)		
Calgary Service Centre (Lots 25–40, Block 64, Plan A1)			
Land	115	0	115
Building	4,131	(2,031)	2,100
CSC Total	4,246	(2,031)	2,215
Calgary Service Centre Garage (Lots 1–8, Block 64, Plan A1)			
Land	20	0	20
Building	395	(238)	157
CSC garage total	415	(238)	177
CSC grand total	4,661	(2,269)	2,392

Source: Exhibit 21321-X0001, application, paragraph 18, Table 3.

14. ATCO Gas stated that the annual operating costs of the CSC assets are $506,000.[7]

15. In 2012, ATCO Gas retained Coupland Kraemer Architecture and Interior Design (Coupland Kraemer) to provide preliminary estimates and a conceptual design for potential improvements that would be required to make the CSC suitable for long term use. To provide further support for this application, ATCO Gas again retained Coupland Kraemer to complete a more detailed assessment. Coupland Kraemer updated the details of the required improvements to be completed over a period of 18 months and revised its forecast from $4.25 million to $7.21 million. ATCO Gas provided additional detail regarding these proposed improvements in Appendix B of its application.

16. In its 2015 application to dispose of the CSC assets, ATCO Gas advised that it would discontinue using the CSC and that its employees would be relocated and the assets withdrawn from service by the end of October 2015. In this application ATCO Gas confirmed that it has

5 Exhibit 21321-X0001, application, paragraph 12.
6 Exhibit 21321-X0001, application, paragraph 11.
7 Exhibit 21321-X0001, application, paragraph 19, Table 4.

withdrawn the CSC assets from service effective November 1, 2015, the date in which the relocation of its employees from the CSC to other facilities was completed.[8]

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

a) ATCO Gas transfers the Non-Utility 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.[9]

18. On completion of these transactions, CUI would no longer directly or indirectly own any of the CSC assets. While the CSC assets have been withdrawn from service, ATCO Gas stated that the commercial agreements relating to the transactions would not proceed unless all regulatory approvals "in a form satisfactory to respective counterparties are received."[10]

19. ATCO Gas had initially contemplated relocating its CSC employees to seven of its other facilities.[11] In July 2015, ATCO Gas acquired its transmission affiliate ATCO Pipelines' Calgary Operations Base (COB) facility located at 5757 Burbank Crescent S.E., Calgary, at the NBV of $0.4 million. ATCO Gas submitted that it acquired the property on the basis that it housed assets critical to its operations that would be difficult and costly to relocate. This facility, which was no longer required by ATCO Pipelines, and subsequently vacated, provided additional existing space for the relocation of CSC employees. In 2015, ATCO Gas had contemplated moving 37 of the 109 employees to the COB.[12] Following the acquisition, ATCO Gas stated that it moved over 30 per cent of its CSC employees to the COB facility.[13]

20. In its 2015 application, five of its facilities required renovations to accommodate the relocated employees. Following the COB acquisition, ATCO Gas refined its relocation plan and reduced the building renovations requirements from five locations to four locations. The actual renovation costs were $1.47 million, $0.03 million lower than the estimated renovation costs.[14]

21. ATCO Gas explained that although its rate base increased by $1.47 million to renovate the four other facilities to accommodate the CSC employees, the alternative cost of keeping the CSC in operation would have retained $2.4 million in rate base which was the NBV of the facility as of November 1, 2015. In addition, $7.2 million would have been added to its rate base

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[8] Exhibit 21321-X0001, application, paragraph 3.
[9] Exhibit 21321-X0001, application, paragraph 97.
[10] Exhibit 21321-X0001, application, paragraph 116.
[11] The seven facilities were: Airdrie Operations Centre, ATCO Centre 1, Calgary Operations Base, Crowfoot Operations Centre, Maintenance Depot, Midnapore Operations Centre, and Whitehorn Operations Centre. Exhibit 20528-X0018 AG-AUC-2015JUL08-003(c) attachment, PDF page 15.
[12] Ibid.
[13] Exhibit 21321-X0001, application, paragraphs 34-36.
[14] Exhibit 21321-X0001, application, paragraph 38.

over the next two years for the improvements required to keep the CSC in service which did not include the annual operating costs of the CSC assets of at least $500,000.[15]

22. ATCO Gas also revised the market value of the CSC assets from $25.5 million to $23.6 million, a decrease of 7.5 per cent. ATCO Gas explained it used the midpoint of five to 10 per cent, the reasonable assumption of the reduction in value supplied by Acumen Real Estate Valuations Inc.[16]

23. The table below shows the number of employees moved and their responsibilities by function:

Table 3. CSC functions and staff

Function	Description of function	# of employees
Contract construction - mains and services installation, urban pipeline relocation, mains replacement	Responsible for managing all contract work in the Calgary region related to the installation of new mains and services, replacement of plastic and steel mains and services, and the Urban Pipeline Relocation program.	30
Contract construction - Meter Relocation and Removal program	Responsible for managing all contract work in the Calgary region related to the relocation of gas meters from inside to outside.	10
Customer care	Provides direction, training, and support for employees in the South concerning customer inquiries.	1
Distribution operations field	Responsible for operations and maintenance of distribution mains and services in the central and west side of the City of Calgary.	14
Electronics and instrumentation	Responsible for maintaining and testing electronics, instrumentation, and communication equipment in Calgary, Red Deer and Lethbridge regions.	21
Engineering, construction & operational support management	Responsible for managing and directing work groups that make up engineering, construction, and operational support in Calgary region.	2
Environment	Provides guidance, direction, and support for matters related to environment in the South.	1
Health and safety	Provides guidance, training, direction, and support for matters related to health and safety in the South.	5
Pressure control (DOF) operations	Responsible for operations and maintenance of pressure control and metering facilities in Calgary region.	13
Quality	Provides guidance, direction, development, training, auditing, and support for matters related to quality programs in the South.	2
Service applications	Responsible for processing residential and commercial service applications in the City of Calgary and Chestermere.	4
Surveying	Responsible for all survey work in the Calgary region.	6
Total		**109**

Source: Exhibit 21321-X0001, application, Appendix D, paragraph 1, Table 1.

15 Exhibit 21321-X0001, application, paragraph 79.
16 Exhibit 21321-X0001, application, paragraph 46.

4 Legislation

24. 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.

5 Discussion of issues

5.1 Disposition of assets and the ordinary course of the business

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

Commission findings

26. In Decision 20528-D01-2015, the Commission applied its materiality and frequency criteria test and determined that this was a sale outside of the ordinary course of the owner's business because "… 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*."[17] The Commission notes that the revised market value of the CSC assets as estimated by ATCO Gas, is not materially different from the original appraised value.

27. The Commission finds that this application does not contain any additional information that would cause the Commission to revise its determination made in Decision 20528-D01-2015,

[17] Decision 20528-D01-2015, paragraph 25.

and as such, the Commission finds that this is a sale outside of the ordinary course of business of ATCO Gas and requires Commission approval pursuant to Section 26 of the *Gas Utilities Act*.

5.2 Assessment of harm

28. 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.

29. The no-harm test was summarized by the board in Decision 2000-41,[18] 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 [Gas Utilities] 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 [Public Utilities Board] 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 [Electric Utilities] 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 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.[19] [footnotes omitted]

30. Order U2001-196[20] also considered the no-harm test where the board stated:

> As previously stated, the Board employs the no-harm test when evaluating applications to dispose of rate base assets. The Board will consider the potential impact on both rates and

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18 Decision 2000-41: TransAlta Utilities Corporation Sale of Distribution Business, Application 2000051, File 6404-3, July 5, 2000.

19 Decision 2000-41, pages 7-8.

20 Order U2001-196: NOVA Gas Transmission Ltd., In the Matter of the Sale of the Athabasca Maintenance Facility, Application 2001112, File 6417-04, August 3, 2001.

> the level of service to customers. The Board would also assess the prudence of the sale transaction, taking into account the purchaser (i.e. relationship to vendor), and tender or sale process followed. …[21]

31. The Supreme Court of Canada stated in *ATCO Gas & Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2006 SCC 4 (*Stores Block)* that the board "should only exercise its discretion to act in the public interest when customers would be harmed or would face some risk of harm."[22]

32. 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.

33. 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.

5.2.1 Service quality

34. In its application, ATCO Gas submitted that the proposed disposition of the CSC will not result in any impact on service levels and supported this conclusion by noting that it continues to meet or exceed the target service levels established in Rule 002: *Service Quality and Reliability Performance Monitoring and Reporting for Owners of Electric Distribution Systems and for Gas Distributors*. ATCO Gas submitted that Rule 002 performance measures relevant to the assessment of the service quality as it pertains to the CSC employee relocations, are: (1) customer satisfaction related to service applications and (2) emergency response times. In addition, ATCO Gas provided data with respect to its response to hit-line emergencies to further support its conclusion. The impact of the relocations on service application customer satisfaction, Rule 002 performance measures and hit-line emergency response time is discussed below.

Service applications

35. Four employees that performed the service applications function at the CSC were relocated to suburban locations in the south (Midnapore), northeast (Whitehorn) and in the northwest (Crowfoot).[23] ATCO Gas explained that of the three categories of service applications (residential four-party, residential conventional and commercial) that were previously processed

[21] Order U2001-196, page 4.
[22] *Stores Block*, paragraph 84.
[23] Exhibit 21321-X0001, application, paragraph 15, Table 2.

only at the CSC, 98 per cent of four-party applications are made online, while 98 per cent of residential conventional and 100 per cent of commercial applications are made in-person.[24]

36. ATCO Gas stated that since the move of the service applications function from the CSC to its other operations centres, it has generally received positive feedback from its customers, with customers noting the advantage of free parking and avoidance of downtown traffic. ATCO Gas noted that it had received one customer comment that the Midnapore location, where ATCO Gas accepts commercial applications, was less convenient than the CSC location.[25]

37. No intervener raised a concern about service applications.

Rule 002

38. ATCO Gas clarified that the types of emergencies included within the Rule 002 emergency response time metric are fires or explosions, blowing gas, gas leaks or odours, asphyxiation, carbon monoxide, and emergency service provider assistance, and noted that the service standard for ATCO Gas is set at 87 per cent of emergencies responded to within 60 minutes.[26]

39. In response to a Commission information request, ATCO Gas provided the percentage of emergencies responded to within 60 minutes for the Calgary region for 2014, 2015, 2016 year-to-date and for January, February and March 2016 and indicated that the recent emergency response performance in the Calgary Region is consistent with historical levels:[27]

Table 4. Emergency response time metric results for the Calgary region

2014	2015	2016 (YTD)	January 2016	February 2016	March 2016
(%)					
94.1	96.1	95.3	99.1	91.2	92.6

40. Calgary filed argument opposing the application. Regarding ATCO Gas's approach of using Rule 002 service quality results to indicate the impact of the relocations, Calgary noted that these results were reported on an aggregate basis; that is, ATCO Gas North and South service territory was included. Calgary further argued that the results from a period of two months was not sufficient to establish a trend. For these reasons, Calgary asserted that the evidence provided by ATCO Gas was of little value.[28]

41. In its reply argument, ATCO Gas responded that it provided Rule 002 emergency performance metric results for November and December 2015, and for January, February and March 2016, and also provided the Calgary region annual results for 2014, 2015, and year-to-date 2016. ATCO Gas submitted that these results demonstrated that it has maintained its emergency response performance in the Calgary region.[29]

24 Exhibit 21321-X0001, application, paragraphs 73-74.
25 Exhibit 21321-X0001, application, paragraphs 76-77.
26 Exhibit 21321-X0001, application, paragraph 55.
27 Exhibit 21321-X0017, updated response to AG-AUC-2016MAR21-007.
28 Exhibit 21321-X0022, Calgary argument, paragraphs 20-23.
29 Exhibit 21321-X0025, ATCO Gas reply argument, paragraph 37.

Hit-line emergency response

42. ATCO Gas explained that its Distribution Operations Service (DOS) staff and Distribution Operations Field (DOF) staff both respond to emergencies and have the potential to impact service levels.

43. DOS staff typically respond to emergencies such as fires, explosions, blowing gas, gas odours and leaks at customer homes and businesses, carbon monoxide and asphyxiation, and emergency service provider assistance. Because no DOS staff were located at the CSC, this group would have no impact on service levels as a result of the relocations.

44. DOF staff typically respond to emergencies such as hit-line emergencies and some gas leak and odour calls that are detected outside customer homes and business.[30] ATCO Gas provided a summary of hit lines addressed by DOF staff in the City of Calgary from January 2013 to December 2015. The results illustrated that only seven events, which is 0.7 per cent of hit-line emergencies, had the potential of an increased response time with the CSC out of service.[31] The results were based on the total number of hit lines in ATCO Gas's Central Operations area, the area served by the CSC DOF staff, during Monday to Friday at 7:30 to 8:15 a.m. and 3:15 to 4:00 p.m., the most likely times that DOF staff would be dispatched from the CSC. ATCO Gas clarified that operations staff closest to the location of the emergency would be dispatched, and that the majority of DOF staff typically spend most of their day at work sites, checking in at the office, in this case, the CSC, at the start and end of their workday.[32]

45. ATCO Gas analyzed four hit lines that occurred during the most likely times that DOF staff would be dispatched from the CSC, and provided a table comparing the actual response times to the location of the emergency, to the estimated response times from the Crowfoot Operating Centre (CFOC), using Google maps:

Table 5. Response time comparison – actual versus estimated

	39 Woodlark Drive SW	1105 Premier Way SW	17 Elveden Drive SW	14 Cougar Ridge Landing SW
Incident date	25-May-15	24-Jul-14	09-Aug-13	13-Sep-13
Time call received	7:30 a.m.	8:05 a.m.	7:44 a.m.	3:18 p.m.
Time first response on site	8:15 a.m.	8:22 a.m.	8:12 a.m.	3:35 p.m.
Actual response time [min]*	45	17	28	17
Estimated response time from CFOC [min]**	27	39	31	26
CFOC versus actual impact [min]	-18	22	3	9

Source: Exhibit 21321-X0001, application, paragraph 69, Table 8.
*Actual location of responders not tracked.
**Estimated using Google Maps (mid-range), departing at date and time call received, and using eight minute lag time before personnel depart from CFOC.

46. In response to a Commission information request, ATCO Gas provided additional data showing estimated response times from the CSC and other facilities, compared to actual response

30 Exhibit 21321-X0001, application, paragraphs 56 and 62.
31 Exhibit 21321-X0014, AG-AUC-2016MAR21-004, Table 3, correct version of Table 7 of the application.
32 Exhibit 21321-X0001, application, paragraphs 58 and 66-68.

times for selected hit-line emergencies in the northwest, northeast and south operating areas, which occurred during the most likely times that DOF staff would be dispatched from the CSC, and noted that all estimated and actual hit-line emergency response times remained "well within ATCO Gas's Rule 002 service standard of 60 minutes:"[33]

Table 6. Response time comparisons for hit-line emergencies

Address	Incident date	Time call received	Actual response time (min)*	Estimated response time from CSC (min)**	Estimated response time from other facilities (min)**
214 11A Street NW	26-Jun-15	3:40 p.m.	10	16	29[1]
259 Nolan Hill Road NW	03-Apr-14	3:37 p.m.	38	37	20[1]
9 Kincora Street NW	02-Jun-14	8:00 a.m.	36	34	19[1]
3802 Brentwood Road NW	13-Nov-13	3:49 p.m.	16	21	20[1]
56 Skyview Shores Road NE	14-Feb-14	7:35 a.m.	26	41	24[2]
6036 Martingrove Road NE	06-Jun-14	3:58 p.m.	22	44	17[2]
705 1 Street NE	02-Jul-14	3:30 p.m.	40	21	25[2]
42 Dovercliffe Way SE	10-Jun-13	3:51 p.m.	31	30	28[2]
12027 Lake Erie Way SE	29-Sep-15	7:38 a.m.	42	33	17[3]
175 Silverado Blvd SW	07-May-14	3:48 p.m.	28	48	16[3]
63 Marquis Meadows Place SE	11-Sep-13	8:14 a.m.	23	46	24[3]
740 Queensland Drive SE	03-Sep-13	3:50 p.m.	24	45	20[3]

Source: Exhibit 21321-X0014, AG-AUC-2016MAR21-005(a) and (c),Table 1, 2 and 3.

*Actual location of responders not tracked.
**Estimated using Google Maps (mid-range), departing at date and time call received, and using eight minute lag time before personnel depart from ATCO Gas facility.

47. In its argument, Calgary stated that ATCO Gas's claim that the impact to response times by DOF staff is limited to a brief window of time when these employees are typically in the office suggests that in ATCO Gas's opinion, the risk to the public regarding emergency response times is low and immaterial. Calgary further argued that given that ATCO Gas is seeking to dispose of the CSC "for a potential profit to its shareholders in the tens of millions of dollars," ATCO Gas's assessments and claims cannot be relied upon. For these reasons, Calgary submitted that ATCO Gas has not discharged its onus under the service quality part of the no-harm test.[34]

48. In its reply argument, ATCO Gas maintained that it had demonstrated that the relocation of its CSC employees had no material impact in service levels related to emergency response, given that it has shown that emergency response times continue to be within the Rule 002 service quality standard of 60 minutes, and that only 0.2 per cent of emergencies would be potentially impacted by the move.[35] DOF staff are in their base operations centre for approximately four per cent of the time during business hours during a work week, and might be dispatched to an emergency directly from the office during this timeframe, rather than from a job site; which in ATCO Gas's view means that "emergency response coverage is no different post-CSC closure

33 Exhibit 21321-X0014, AG-AUC-2016MAR21-005, tables 1-3.
34 Exhibit 21321-X0022, Calgary argument, paragraphs 25-32.
35 Exhibit 21321-X0025, ATCO Gas reply argument, paragraphs 31-32.

than it was beforehand."[36] Regarding Calgary's assertion that the evidence shows "not that the risk is dropping from the relocation, but rather that the risk is low, and apparently immaterial, in ATCO's opinion," ATCO Gas submitted that in order to satisfy the no-harm test, it is not required to demonstrate a reduction in risk will result from the disposition. ATCO Gas stated rather, that it "must demonstrate that there is no deterioration in service and that customers are no worse off without the asset being employed in utility service than they were while it was part of the gas distribution system."[37]

49. In its argument, the UCA simply acknowledged ATCO Gas's evidence "that the relocation has not had a detrimental impact on service levels and safety to date, and is not expected to do so in the future."[38] The CCA did not raise any concerns in regards to service quality.

Commission findings

50. As set out in paragraph 28 above, the Commission's application of the no-harm test considers whether on balance, and, having weighed "the potential positive and negative impacts of the transactions," the proposed transaction either "favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case."[39]

51. The transfer of four service applications staff[40] to suburban locations requires developers and builders to apply for gas service in the Whitehorn, Crowfoot and Midnapore Operations centres rather than at the CSC. Given that 98 per cent of four-party applications are made online, and therefore not affected by the relocation, and that ATCO Gas has generally received positive feedback from customers who have made applications in-person since the move, the Commission finds that the level of service for new service applications will leave customers no worse off by the relocation.

52. The Commission finds ATCO Gas's evidence on potential service quality impacts to emergency responses to be persuasive. Its analysis of the actual hit-line emergency response times compared to estimated response times expected without the CSC in service demonstrates that emergency response times remain within ATCO Gas's Rule 002 service standard of 60 minutes. Further, because none of the DOS staff who typically respond to emergencies such as fires, explosions, blowing gas, gas odours and leaks at customer homes and businesses, carbon monoxide and asphyxiation, and emergency service provider assistance were relocated, emergencies of this nature are unaffected by the closure of the CSC. Lastly, with regard to the DOF employees who typically respond to emergencies such as hit-line emergencies and some gas leak and odour calls that are detected outside customer homes and business, the Commission accepts ATCO Gas's evidence that the relocation does not negatively impact service response because these employees typically do not work from a home base in any event.

53. For all of the above reasons, the Commission finds that the disposition of the CSC satisfies the service quality component of the no-harm test and, having regard to all of the

36 Exhibit 21321-X0025, ATCO Gas reply argument, paragraphs 29-30.
37 Exhibit 21321-X0025, ATCO Gas reply argument, paragraph 35.
38 Exhibit 21321-X0019, UCA argument, paragraph 26.
39 Exhibit 21321-X0019, UCA argument, footnote 21.
40 Exhibit 21321-X0001, application, Appendix D, paragraph 1, Table 1.

circumstances, finds 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.

5.2.2 Impact to rates

54. ATCO Gas stated that during the current performance-based regulation (PBR) plan, customer rates will be unaffected by the removal of the CSC from utility service. In support of this statement, ATCO Gas filed the following analysis of the financial impacts of this proposed disposal:

> ATCO Gas's rate base increased by $1.47 million for the required renovations as opposed to an increase of $7.2 million of capital investment required to maintain the CSC. In addition, rate base was reduced by the removal of the net book value of the CSC ($2.4 million at the time of removal on November 1, 2015).[41]

55. In response to a Commission information request, ATCO Gas explained that the capital investment of $0.4 million for the acquisition of the COB will be added to rate base and factored into the accounting test in the next capital tracker true-up application, however, ATCO Gas confirmed that it will not be applying for capital tracker treatment for the CSC relocation project in the current PBR term, nor will it apply for the expansion of Calgary area facilities in its rebasing application which will set going-in rates for the next PBR term.[42]

Operational costs

56. In its 2015 application, ATCO Gas indicated that the annual operating costs for the CSC were $500,000. In this application, ATCO Gas updated its annual operating costs of the CSC assets to reflect its actual 2014 expenditures of $506,000.[43]

57. ATCO Gas provided a table itemizing the types of operating costs that were incurred at the facilities to where most of the CSC employees were relocated:

Table 7. Building operating costs (average of 2013 and 2014 actual costs)

Building	Building management labour	Property management services	Contractor services[1]	Vehicle and heavy equipment usage	Utilities	Supplies	Total
	($000)						
Blackfoot Operations Centre[2]	0	9	13	0	29	25	**76**
Crowfoot Operations Centre	145	0	95	10	80	23	**353**
Maintenance Depot	0	155	15	0	131	8	**309**
Midnapore Operations Centre	129	0	104	23	119	19	**394**
Whitehorn Operations Centre	101	0	101	7	142	43	**394**
Total	375	164	328	40	501	118	**1,526**

Source: Exhibit 21321-X0001, application, paragraph 86, Table 10.
1 Contractor Services primarily consists of snow removal, snow melting, shredding and recycling services.
2 Blackfoot Operations Centre (formerly COB) costs are based on operating cost information provided by ATCO Pipelines.

41 Exhibit 21321-X0001, application, paragraphs 78-79.
42 Exhibit 21321-X0014, AG-AUC-2016MAR21-011(a).
43 Exhibit 21321-X0001, application, paragraph 19, Table 5.

58. ATCO Gas also submitted that it "does not expect" any material increase in operating costs for the service centres that will be absorbing the employees and functions that were being provided at the CSC because most of the operating costs for these service centres are independent of occupancy. ATCO Gas anticipated that only the cost for supplies would increase at the other facilities in proportion to the relocated staff. It explained that the annual supplies cost for the CSC was $16,000[44] and projected that a "liberal" estimate of the increase in building operating costs of $157,000 for all five buildings.[45]

Necessary capital expenditures

59. As stated above, ATCO Gas forecast capital spending of $7.2 million over 18 months would have been required to continue to provide service from the CSC in the long term. These expenditures include the required improvements recommended by Coupland Kraemer of $5.5 million, $1.4 million for consulting/contractor and engineering fees, and $0.3 million for internal costs.[46]

60. The estimated capital expenditure of $5.5 million was based on recommendations to address deficiencies in three categories:[47]

(a) Estimated capital expenditures of $2.8 million to address functional deficiencies that would require replacement of the heating, ventilation and air conditioning (HVAC) system, and upgrades to the training rooms and boardrooms, electrical and communications system, washrooms and locker rooms, and roofing and perimeter glazing units.

(b) Estimated capital expenditures of $1.0 million to address building code deficiencies related to accessibility, life and fire safety, and the potential for hazardous building materials.

(c) Estimated capital expenditures of $1.7 million to address cosmetic deficiencies in the flooring, window coverings, ceilings, doors and partition, coffee areas, washroom, locker room and exterior finishes.

61. The revised capital expenditure forecast of $7.2 million represented a $2.9 million increase from its 2015 application forecast of $4.3 million. ATCO Gas provided an itemized breakdown of the differences between the two forecasts, reproduced below in Table 8. It explained that the original estimate did not include technology fees, project management costs, and additional improvements to the building envelope recommended by Coupland Kraemer. This increased scope of work, including substantial building envelope upgrades along with technology fees and internal project management costs, which was not anticipated by the previous preliminary assessment, also increased the estimated costs. ATCO Gas further explained that the elevator was removed from the forecast due to a clarification from Coupland Kraemer that an elevator was not required by code if washroom facilities on the main floor were upgraded to

44 Exhibit 21321-X0001, application, paragraph 86.
45 Exhibit 21321-X0015, AG-UCA-2016MAR21-005(d).
46 Exhibit 21321-X0001, application, paragraphs 27-28.
47 Exhibit 21321-X0001, application, Appendix B, pages 2-8.

include barrier-free access. Parking lot improvements and office furniture were also considered to no longer be required and were excluded from the updated forecast.[48]

Table 8. Comparison of current and previous estimates for CSC improvements

Item description	Previous estimate	Updated estimate	Difference
	($000)		
Mechanical / HVAC upgrades	470	900	430
Electrical and audiovisual upgrades	510	1,075	565
Building envelope upgrades	30	815	785
Asbestos abatement	260	500	240
Exiting and fire protection	90	225	135
General interior upgrades (washrooms and cosmetic work)	1,240	2,020	780
New elevator	600	0	(600)
Parking lot upgrades	70	0	(70)
Total improvement costs	**3,270**	**5,535**	**2,265**
Fees for contractor, architect, engineering, permits, etc.	780	1,400	620
Technology fees	0	50	50
Project management (internal)	0	220	220
Office furniture	200	0	(200)
Grand total	**4,250**	**7,205**	**2,905**

Source: Exhibit 21321-X0001, application, paragraph 30, Table 5.

62. ATCO Gas further explained that the timing of the proposed improvements was dependent on the replacement of the mechanical systems which were critical:

> … In Proceeding 20528, ATCO Gas failed to effectively communicate that although replacement of the mechanical systems were the most critical items driving the timing of the upgrades, the other improvements identified by the architectural firm would have to be undertaken at the same time to ensure both code compliance and to achieve the cost efficiencies associated with a single renovation instead of undertaking multiple, smaller improvement projects in a piece-meal fashion. …[49]

Upgrades to the existing facilities

63. ATCO Gas provided the details of its CSC relocation plan and costs in Appendix D of the application. The actual total renovation cost was $1.47 million.

64. ATCO Gas supported its claim that the proposed disposition of the CSC and relocation of its staff to other facilities was prudent, with an analysis of the revenue requirement for three alternatives: (i) status quo, (ii) long-term CSC improvements and (iii) CSC staff relocation and disposition. The analysis calculated a revenue requirement of $1.11 million, $1.88 million and

[48] Exhibit 21321-X0001, application, paragraphs 29-30.
[49] Exhibit 21321-X0001, application, paragraph 25.

$0.45 million,[50] respectively, which "clearly demonstrates that the costs incurred for the investments made in association with relocation of the CSC functions as outlined herein were prudent."[51] ATCO Gas also asserted that the downtown location of the CSC as an operating centre was not ideal from a safety perspective, due to increasing vehicle and pedestrian traffic.[52]

65. The CCA argued that the sale of the CSC was related to the acquisition of COB and therefore costs of the COB transaction and the other renovations should be offset against the proceeds of the disposition.[53] The CCA stated:

> There is a close connection between the sale of the asset and the need to replace it as ATCO has confirmed that the disposition of the CSC could not have occurred without the acquisition of COB and the renovations required at other buildings. Finally the need to replace the asset was immediate since 107 employees needed places to work when the CSC was vacated.[54]

66. ATCO Gas responded that the driver for the acquisition of COB was the existence of key ATCO Gas distribution utilities on the COB site itself. ATCO Gas noted that it would have been required to move its distribution assets from the site and therefore it "was a significantly better cost alternative" to simply purchase the COB facility for its NBV of $0.4 million.[55]

67. Calgary was concerned that ATCO Gas had not confirmed the quantum of the increase to operating costs of the existing facilities due to the transition of operations.[56] Further, Calgary questioned whether any forecast is reliable given the magnitude of the increase in the forecast costs of the required renovations to the CSC.[57] Calgary stated:

> Calgary submits that the rate impacts forecasted by ATCO cannot and should not be relied upon by the Commission to make a decision to grant the Application.[58]

68. ATCO Gas responded that the estimate provided as part of the 2015 application is preliminary in nature and that it felt the high level estimate is sufficient for the purpose of evaluating possible alternatives. ATCO Gas further noted that the revenue requirement comparison[59] demonstrates that the sale of the CSC is beneficial for both the utility and ratepayers irrespective of the forecast improvement costs provided by Coupland Kraemer.

69. The UCA noted that without a PBR mechanism to allow for adjustments for the removal of assets that are not used in the provision of utility service, there may be an asymmetry of risk

50 Includes additional operating costs of $157,000, analysis updated in Exhibit 21321-X0015, AG-UCA-2016MAR21-005(d).
51 Exhibit 21321-X0001, application, paragraph 87.
52 Exhibit 21321-X0001, application, paragraph 31.
53 Exhibit 21321-X0020, CCA argument, paragraph 28.
54 Exhibit 21321-X0020, CCA argument, paragraph 32.
55 Exhibit 21321-X0025, ATCO Gas reply argument, paragraph 43.
56 Exhibit 20321-X0022, Calgary argument, paragraph 34.
57 Exhibit 20321-X0022, Calgary argument, paragraph 39.
58 Exhibit 20321-X0022, Calgary argument, paragraph 40.
59 Exhibit 20321-X0001, application, Table 11.

between utilities and ratepayers.[60] However in this case, the UCA submitted that symmetry may indeed exist:

> … the UCA is of the view that, on the specific evidence in the current proceeding, the requested disposition would not necessarily require the application of such mechanism. In this regard, the UCA relies upon the evidence of AG that, while certain costs relating to the CSC Assets will remain in customer rates for the balance of the PBR term, there are other costs, required for the continued provision of the same utility functions previously served by the CSC Assets, which will not be included in customer rates for the balance of the PBR term. In effect, **there appears to be some degree of symmetry as between customers and utility shareholders in relation to the costs** for the continued provision of utility services in the Calgary area for the balance of the PBR term.[61] [emphasis added]

70. ATCO Gas responded that the above statement by the UCA accurately reflects the current impact to customer rates. It stated:

> Upon rebasing, customers will receive the incremental benefit of the net reduction in both operating costs and rate base associated with the removal of CSC from utility service. It also reflects the basic unfairness of removing those costs from utility rates now while not including the other costs incurred in their place.[62]

Commission findings

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

Operational costs

72. In Decision 20528-D01-2015, the Commission stated:

> 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. 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. [footnotes omitted]

73. In this application, the Commission accepts ATCO Gas's evidence that its 2014 actual costs of $506,000 are a reasonable representation of what the annual operational costs for the CSC would be. The Commission also accepts ATCO Gas's representation that it "does not expect" any material increase in operating costs for the service centres that will be absorbing the

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[60] Exhibit 20321-X0019, UCA argument, paragraph 27.
[61] Exhibit 20321-X0019, UCA argument, paragraph 29.
[62] Exhibit 201332-X0025, ATCO Gas reply argument, paragraph 11.

employees and functions currently being provided at the CSC because most of the operating costs are independent of occupancy.

Necessary capital expenditures

74. In Decision 20528-D01-2015, the Commission also questioned the necessity and amounts of the capital spending forecast for the CSC.

75. In this application, the Commission accepts ATCO Gas's evidence on the necessity and reasonableness of the forecast capital spending upgrades that would have to be completed for the CSC to remain in operation. Specifically, the Commission is persuaded by the following facts:

- ATCO Gas hired an external party (Coupland Kraemer) to assess the architectural, structural, mechanical and electrical elements of the CSC to support the forecast expenditures.[63]
- Coupland Kraemer provided a more detailed assessment of the forecast costs required to remain at the CSC in the long term.[64] ATCO Gas noted that the recent analysis was far more granular and included adjustments to the forecast costs for mechanical, HVAC, electrical, asbestos abatement and building envelope upgrades. Further ATCO Gas's original estimate omitted costs for technology fees and internal project management.[65]
- The report indicated which costs were required to meet building code requirements and therefore were not optional.
- ATCO Gas removed from its estimate the costs for renovations of the CSC that would not necessarily be required.

Upgrades to the existing facilities

76. The Commission had expressed concern with the risk that further renovation costs beyond those identified by ATCO Gas in the 2015 application would be required at the service centres following the relocation of the CSC because the existing service centres were already at capacity.

77. At the time that ATCO Gas made its 2015 application, it had not yet acquired the COB. With the acquisition of the COB, the risk arising from this capacity issue is lowered. As explained by ATCO Gas:

> … the additional office space available as a result of the COB acquisition enabled the CSC to be vacated, and that COB absorbed the largest number of displaced CSC staff. ATCO Gas also indicated that, particularly in light of the recent workforce rationalization, adequate space is available in Calgary area facilities to accommodate reasonably foreseeable growth.[66] [footnotes omitted]

78. Further, ATCO Gas has asserted that it will not apply for the expansion of Calgary area facilities in its rebasing application which will set going-in rates for the next PBR term.

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63 Exhibit 21321-X0001, application, Appendix B, CKAID CSC Assessment.
64 Exhibit 21321-X0001, application, Appendix B, CSC Capital Improvements.
65 Exhibit 21321-X0014, AG-AUC-2016MAR21-001.
66 Exhibit 21321-X0021, ATCO Gas argument, paragraph 16.

79. The Commission finds the actual total renovation costs of $1.47 million to be reasonable. The original forecast for the cost of renovations to existing facilities was $1.5 million or a difference of two per cent.[67] Further, the planned renovations for the COB facility are estimated to be between $30,000 to $50,000 for 2016 and $1,400 for 2017.[68]

80. On the basis of this evidence, the Commission is persuaded that the risk of unknown future costs to ratepayers resulting from this transaction has been significantly reduced.

81. Having accepted ATCO Gas's forecast of ongoing annual operational costs of the CSC assets, combined with the costs of necessary capital expenditures for the CSC assets and the actual costs for the upgrades to the four service centres to absorb the CSC activities and employees, the Commission finds in the result that the closure of the CSC and the provision of the CSC services from the other service centres are favoured.

82. In addition, with respect to the proposed rate treatment under the current PBR regulatory scheme, the Commission finds that the adjustments to rate base of the utility will occur on the dates that items were removed or added for the purposes of utility service. However they will not be reflected in customer rates until the end of the current PBR term. Additionally, the decrease in operating costs as a result of this transaction will accrue to the account of the shareholder until the end of the current PBR term, at which point ratepayers will share in the efficiency gains made by the utility. This is consistent with the inherent incentives embedded in the principles of the current PBR regime in Alberta.

83. Finally, the Commission agrees with the UCA that the sale of the CSC is an example of the sort of decoupling of costs and revenues contemplated within PBR.[69] If ATCO Gas were still under cost-of-service regulation, ATCO Gas shareholders would likely have seen an increase in rate base and, in corollary, utility net income, had ATCO Gas management chosen to undertake the forecast renovations of the CSC. Justification of the additions to rate base would have occurred in a future general rate application, and upon approval, added to the rate base of the utility. The perverse incentives inherent in cost-of-service regulation have been avoided in this case, as ATCO Gas's management was able to find a lower cost solution beneficial to both ratepayers and the utility.

6 Conclusion

84. The Commission finds that ATCO Gas has satisfied the requirements of the no-harm test and, having weighed the potential positive and negative impacts of the transaction, the balance either favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case, including impacts on rates and the quantity or quality of service

85. The Commission finds that the sale of assets is outside of the ordinary course of business and for all of the above reasons, considers it is in the public interest to approve the disposition as applied-for pursuant to Section 26(2)(d) of the *Gas Utilities Act.*

[67] ($30,000/$1,500,000)*100.
[68] Exhibit 21321-X0014, AG-AUC-2016MAR21-011(c).
[69] Exhibit 21321-X0019, UCA argument, paragraph 32.

7 Order

86. It is hereby ordered that:

(1) The application for the disposition of the Calgary Service Centre is approved as applied for effective the date of this decision.

Dated on June 29, 2016.

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

Alberta Utilities Commission Commission panel W. Grieve, QC, Chair T. Beattie, QC, Commission Member A. Michaud, Commission Member Commission staff C. Wall (Commission counsel) B. Whyte A. Corsi P. Genderka