



## **ATCO Gas**

### **Disposition of North Yard Service Centre**

**June 17, 2013**



**The Alberta Utilities Commission**

Decision 2013-225: ATCO Gas

Disposition of the North Yard Service Centre

Application No. 1609115

Proceeding ID No. 2299

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## **1 Introduction and background**

1. ATCO Gas, a division of ATCO Gas and Pipelines Ltd., filed an application with the Alberta Utilities Commission (AUC or the Commission) on December 13, 2012, requesting approval to dispose of the North Yard Service Centre. The application was made under Section 26(2)(d) of the *Gas Utilities Act*, RSA 2000, c. G-5 which requires the owner of a gas utility to seek Commission approval to dispose of property outside the ordinary course of business.

2. The North Yard Service Centre, consists of two parcels of land totaling 4.7 acres, and two older buildings, located near the intersection of 105th Avenue and 112th Street in Edmonton. The property was removed from rate base in 2010 after the Commission determined that it was neither used nor required to be used for utility service. The property has a book value of approximately \$1.6 million.

3. The AUC issued notice of the application on December 17, 2012. In response to the notice the Office of the Utilities Consumer Advocate (UCA), AltaLink Management Ltd. (AltaLink), AltaGas Utilities Inc. (AltaGas) and The City of Calgary (Calgary) filed statements of intent to participate. AltaLink and AltaGas indicated that they would monitor the proceeding. The UCA submitted that this application could be decided in a written proceeding including information requests.

4. Calgary submitted that the facts of the disposition appear to be directly related to a matter being considered by the Commission in Proceeding ID No. 20<sup>1</sup> and added that the issues list in Proceeding ID No. 20 included the following:

This proceeding [Proceeding ID No. 20] will consider if a reinvestment of a gain on sale pursuant to a Commission condition in the circumstances described by the Court should be treated as a shareholder capital investment in rate base by the utility and therefore entitled to earn a return or, if the reinvestment of the gain should be treated as a reduction to the capital cost of the replacement asset or as no-cost capital, thereby reducing customer rates.<sup>2</sup>

5. While not making a motion for a ruling, Calgary expressed the view that the acceptance and disposition of the ATCO Gas application in this proceeding is premature.

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<sup>1</sup> Proceeding ID No. 20, Utility Asset Disposition proceeding.

<sup>2</sup> Exhibit 9, Calgary's statement of intent to participate, page 2.

6. The Commission responded to Calgary's submission on January 11, 2013,<sup>3</sup> indicating that it had previously addressed, in Decision 2011-450,<sup>4</sup> the removal of the North Yard Service Centre from rate base and made findings on a potential sale of this property. The Commission determined that it would treat Calgary's submission as a motion to defer consideration of this application until after a decision in Proceeding ID No. 20, the Utility Asset Disposition proceeding is issued. The Commission also established a process schedule for parties to address the motion.

7. The Commission ruled on Calgary's motion March 7, 2013,<sup>5</sup> finding that the North Yard Service Centre was not disposed contemporaneously with its replacement and that there was no indication that the disposition would result in harm to customers. The Commission concluded that the circumstances in this proceeding do not meet the "circumstances described by the court" which will be explored in Proceeding ID No. 20 and dismissed Calgary's motion.

8. In its ruling, the Commission stated that it viewed the issues in this proceeding to be:

- (1) Did the removal from rate base of the North Yard Service Centre cause harm? That is, was it a prudent action? Any party alleging harm or imprudence should discuss the extent to which they opposed the construction of the North Edmonton Operating Centre and the discontinuance of use on the North Yard Service Centre at the time when these actions were proposed by ATCO.
- (2) If there was harm, what is the nature of that harm and what steps or processes should the Commission initiate to mitigate or financially remedy that harm?
- (3) Will the disposal of the North Yard Service Centre at this time cause harm? And, if so, what steps or processes should the Commission initiate to mitigate or financially remedy that harm?<sup>6</sup>

9. In its ruling the Commission also indicated that: "In their arguments parties may refer as necessary to the records of Proceeding ID No. 969 leading to Decision 2011-450, which approved the rate base cost of the North Edmonton Service Centre, and Proceeding ID No. 11 leading to Decision 2008-113,<sup>7</sup> which, at page 47, approved the then proposed new North Edmonton Service Centre."<sup>8</sup>

10. The Commission determined that the application should be considered by way of a written process and set a process schedule for the proceeding.

11. The Commission considers the record for this proceeding to have closed on April 8, 2013.

12. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this and referenced proceedings, including the evidence and arguments provided by each party. Accordingly, references in this

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<sup>3</sup> Exhibit 10, Commission letter dated January 11, 2013.

<sup>4</sup> Decision 2011-450: ATCO Gas (a Division of ATCO Gas and Pipelines Ltd.), 2011-2012 General Rate Application Phase I, Application No. 1606822, Proceeding ID No. 969, December 5, 2011.

<sup>5</sup> Exhibit 13, Commission ruling dated March 7, 2013.

<sup>6</sup> Exhibit 13, Commission ruling dated March 7, 2013, paragraph 13.

<sup>7</sup> Decision 2008-113: ATCO Gas, 2008-2009 General Rate Application Phase I, Application No. 1553052, Proceeding ID. 11, November 13, 2008.

<sup>8</sup> Exhibit 13, Commission ruling dated March 7, 2013, paragraph 14.

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 that matter.

## 2 Views of the parties

13. In response to UCA-AG-01, ATCO Gas confirmed that there were no costs of operations, maintenance, environmental remediation, property taxes, or any other costs related to the North Yard Service Centre assets charged to a utility account, or included in forecast revenue requirement since December 2010.

14. In response to UCA-AG-02(a), ATCO Gas confirmed that customers will not be liable for any future costs for the North Yard Service Centre assets, including any site remediation, environmental restoration, or any other costs related to these assets at any time after December 2010.

15. In response to CAL-AG-1.1, ATCO Gas confirmed that the disposition of the North Yard Service Centre does not meet the criteria of an extraordinary item set out in the Uniform Classification of Accounts for Gas Utilities. However, ATCO Gas noted that to the best of its knowledge the interpretation of this definition has not previously been raised in any ATCO Gas regulatory proceedings.

16. In argument, Calgary submitted that:<sup>9</sup>

- There has never been the type of review and analysis necessary to confirm if, in fact, customers are harmed by the series of transactions beginning with the inclusion of North Edmonton Operating Centre in rate base in 2008 and the potential disposition of the North Yard Service Centre in 2013.
- The Commission needs to make a finding in this proceeding on what the net impact on rates was, taking into account costs (ownership, operation and maintenance) for the operations of the North Yard Service Center prior to removal from rate base and the costs for North Edmonton Operating Centre afterwards. In order for this analysis to be addressed, the ATCO Gas application must be denied, and the Commission should take no further action until ATCO Gas refiles its application with this information so that it can properly be tested.
- During Proceeding ID No. 11 and in Decision 2008-113 for the purposes of ATCO Gas's 2008 and 2009 test years, Calgary argued that any approval of proposed land and structures to be included in ATCO Gas's rate base be conditioned upon the proceeds from the proposed disposition of assets be treated as a contribution towards the costs of new assets.
- The facts present in Decision [2012-339](#)<sup>10</sup> bear no resemblance to the circumstances present here. In Decision 2012-339 the facts were that the Borealis Properties were

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<sup>9</sup> Exhibit 18, Calgary argument.

vacant and surplus, and were leased to an ATCO affiliate with a revenue offset to the benefit of ATCO Electric Ltd.'s regulated customers. More to the point, there was no series of transactions whereby the vacant land was replaced with other rate base assets to provide utility service.

- Issues (1), (2) and (3) raised by the Commission in its letter of March 7, 2013, and repeated above in paragraph 8 cannot be determined on the record of this proceeding. The Commission lacks evidence in two key areas to make a determination of harm, namely evidence on the cumulative net impact on rates arising from the replacement/disposition of the North Yard Service Centre, including whether the terms of the sale would harm customers.

17. In reply argument, ATCO Gas submitted that:<sup>11</sup>

- Section 26(2)(d) of the *Gas Utilities Act* does not apply to former utility assets such as the North Yard Service Centre.
- The limited scope of Section 26 was described by the Supreme Court of Canada.
- In fact, Section 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” 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.
- It cannot be contended that there is any harm associated with the disposition of the North Yard Service Centre assets. Service quality and customer rates are unaffected by the sale since the assets in question have neither been used nor deemed required to be used for gas distribution service for over two years and all related costs were removed from rates effective that same date. This constitutes a full answer to the issue identified by Calgary.
- In Decision 2011-450, the Commission only included in rates those costs found by it to be prudently incurred and used or required to be used for the provision of gas distribution service. In that respect, customers' interests are protected. Calgary neither appealed nor reviewed the Commission's decision in that regard.

### 3 Views of the Commission

18. Section 26(2)(d) of the *Gas Utilities Act* states:

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

...

(d) without the approval of the Commission,

<sup>10</sup> Decision 2012-339: ATCO Electric Ltd., Disposition of Land Lots to an Affiliate (Fort McMurray Borealis Lots), Application No. 1608594, Proceeding ID No. 1975, December 17, 2012.

<sup>11</sup> Exhibit 20, ATCO Gas reply argument.



- (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 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.

19. The Supreme Court of Canada considered the effect of Section 26(2) in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, (Stores Block)

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" 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.<sup>12</sup>

20. The North Yard Service Centre ceased being a utility asset when it was removed from rate base in 2010 pursuant to Decision 2011-450. However, the issue of harm arising from its disposition was not considered by the Commission at that time because ATCO Gas was not then intending to dispose of the asset. Accordingly, the limited issue before the Commission in this proceeding is whether the disposition of the North Yard Service Centre will result in harm to customers.

21. In *ATCO Gas and Pipelines v. Alberta (Energy and Utilities Board)* 2009 ABCA 171 (Harvest Hills), the Alberta Court of Appeal recently 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 addressed the circumstances in which the no harm test should be applied. In coming to its decision, the Court of Appeal referred to the Supreme Court of Canada's Stores Block decision. The Court of Appeal found as follows:

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.

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<sup>12</sup> ATCO Gas and Pipelines Ltd. v. Alberta (Energy & Utilities Board), 2006 SCC 4, at paragraph 44.

22. The Commission considered the effect of the Harvest Hills decision in Decision 2010-615,<sup>13</sup> another proceeding that addressed the disposition of assets by a utility (in that case, FortisAlberta Inc.). The Commission concluded that the Harvest Hills decision did not preclude it from assessing harm from the transaction as a whole, i.e., the disposition of an existing asset and the investment in a replacement asset.<sup>14</sup>

23. The Commission took a similar approach when considering an asset disposition issue in Decision 2013-110.<sup>15</sup> In that proceeding EPCOR Energy Alberta Inc. (EPCOR) proposed to sell its former customer contact centre. It was EPCOR's evidence that the contact centre, which was located in Calgary, was no longer needed because it had consolidated its contact services into a single location in Edmonton. The Commission adopted the approach described in Decision 2010-615 and concluded that it must consider the transaction and the consequences of the surrounding circumstances as a whole when assessing any associated harm to customers.

24. In this case, the transaction and surrounding circumstances as a whole include the construction of the North Edmonton Service Centre, the removal of the North Yard Service Centre from rate base and ATCO Gas's plan to dispose of the North Yard assets. In Decision 2008-113, the Commission determined that the construction of the North Edmonton Operating Centre was prudent. Although Calgary argued that any approval of the North Edmonton Service Centre in ATCO Gas's rate base should be subject to a condition that the proceeds from the proposed disposition of the North Yard Service Centre be treated as a contribution towards the costs of new assets, the Commission included no such condition in its approval.

25. In Decision 2011-450, the Commission approved the removal of the North Yard Service Centre from ATCO Gas's rate base as it was no longer required for the provision of utility service. Calgary repeated its request that the Commission condition its approval by requiring that the proceeds from the proposed disposition of the North Yard Service Centre be treated as a contribution towards the costs of new assets. The Commission once again chose not to include such a condition in its approval.

26. The final element of the transaction as a whole is the disposition of the North Yard Service Centre. The evidence on the record in this proceeding with respect to that disposition is that there were no costs of operations, maintenance, environmental remediation, property taxes, or any other costs related to the North Yard Service Centre assets charged to a utility account, or included in forecast revenue requirement since it was removed from rate base in December 2010. Further, ATCO Gas confirmed that customers will not be liable for any future costs for the North Yard assets, including any site remediation, environmental restoration, or any other costs. Having regard to the foregoing, the Commission is satisfied that the disposition of the North Yard Service Centre will not impair ATCO Gas's function or quality.

27. Having regard to the Supreme Court's ruling in *Stores Block* and the Court of Appeal's ruling in *Harvest Hills*, the Commission concludes that in the absence of harm involving the transaction and surrounding circumstances as a whole, and in the absence of concerns about

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<sup>13</sup> Decision 2010-615: FortisAlberta Inc., Disposition of High River Service Centre, Application No. 1606380, Proceeding ID. 734, December 23, 2010.

<sup>14</sup> Decision 2010-615, at paragraph 32.

<sup>15</sup> Decision 2013-110: EPCOR Energy Alberta Inc., 2012-2013 Regulated Rate Tariffs, Application No. 1608427, Proceeding ID No. 1872,m March 21, 2013.

maintaining a modern operating system or concerns about achieving the optimal growth of the system the proceeds (and gains) from such dispositions cannot be appropriated for the benefit of customers.<sup>16</sup>

28. The Commission is satisfied that the North Yard Service Centre is a non-utility asset and that neither the removal of the North Yard Service Center from rate base, nor its disposition has or will result in harm to customers. The Commission therefore approves the disposition of the North Yard Service Centre.

#### **4 Order**

29. It is hereby ordered that:

- (1) The disposition by ATCO Gas of the North Yard Service Center is approved.

Dated on June 17, 2013.

#### **The 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

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<sup>16</sup> *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, paragraphs 77, 78 and 84.



**Appendix 1 – Proceeding participants**

<b>Name of organization (abbreviation) counsel or representative</b>
ATCO Gas D. Cook D. Wilson A. Green A. Forgie
AltaLink Management Ltd. (AltaLink) D. Morris R. Pallister D. Madsen
AltaGas Utilities Inc. (AltaGas) N. J. McKenzie C. Martin
The City of Calgary (Calgary) D. I. Evanchuk H. Johnson M. Rowe
Office of the Utilities Consumer Advocate (UCA) T. D. Marriott R. Daw R. Bell B. Shymanski

The Alberta Utilities Commission  Commission Panel W. Grieve, QC, Chair T. Beattie, QC, Commission Member A. Michaud, Commission Member  Commission Staff JP Mousseau (Commission counsel) S. Allen B. Whyte B. Clarke
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