



ATCO Gas and Pipelines Ltd.

Asset Swap Application

November 22, 2012



The Alberta Utilities Commission

Decision 2012-310: ATCO Gas and Pipelines Ltd.

Asset Swap Application

Application No. 1608166

Proceeding ID No. 1723

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1 Introduction

1. ATCO Gas and Pipelines Ltd. (AGPL), carrying on business under the trade name ATCO Pipelines (AP), filed an application with the Alberta Utilities Commission (AUC or Commission) on February 15, 2012, requesting approval, pursuant to Section 26(2)(d) of the *Gas Utilities Act*, RSA 2000, c. G-5 to transfer certain assets to NOVA Gas Transmission Ltd. (NGTL) in exchange for assets of approximately equal net book value from NGTL consistent with the terms of an integration agreement between AP and NGTL dated April 7, 2009. Integration combines AP and NGTL's physical assets in Alberta under a single rates and service structure that operates assets under a single integrated system. The asset transfer exchanges and realigns facilities between AP and NGTL to align asset ownership with their respective operating areas.¹

2. The legal requirement for AUC approval of the asset dispositions involved is found in Section 26(2)(d) of the *Gas Utilities Act*. Section 26(2)(d) of the *Gas Utilities Act* provides:

(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.

3. The Commission and its predecessor, the Alberta Energy and Utilities Board (EUB), have traditionally applied a "no harm test" in assessing an application for the disposition of utility property under Section 26(2)(d) of the *Gas Utilities Act*. In the present case, application of the no harm test requires the Commission to consider whether any of service quality, service reliability or customer rates are likely to be adversely affected by the transfer by AP of assets of

¹ Once integration is completed, AP will own and operate assets located primarily around the Calgary – Edmonton corridor (AP Footprint), while NGTL will own and operate assets located in the balance of Alberta (NGTL Footprint).

approximately \$114.6 million in net book value in exchange for NGTL assets of approximately \$115.6 million in net book value.

4. In this decision, the Commission considers this no harm test in deciding whether to approve this asset transfer; but the cost implications of the application on AP's revenue requirement associated with the exchange or transfer of assets between AP and NGTL is subject to further scrutiny in AP's next general rate application. AP's rate base and the implications of such for rate-making purposes is not determined in this decision but rather will be decided at the time of AP's next rate application.

5. On February 17, 2012, the Commission issued notice of this application. Any party who wished to intervene in this proceeding was required to file a statement of intent to participate (SIP) with the AUC by March 2, 2012.

6. The Commission received an SIP from the following parties:

- BP Canada Energy Company
- NGTL
- Encana Corporation
- Canadian Association of Petroleum Producers (CAPP)
- Office of the Utilities Consumer Advocate (UCA)
- ATCO Gas, a division of ATCO Gas and Pipelines Ltd.
- The City of Calgary

7. In their SIP, each of BP Canada Energy Company and Encana Corporation indicated that it had no issues with the application but reserved the right to participate. NGTL supported AP's application and reserved the right to participate. The UCA submitted that it neither opposed nor supported the application and expected to file information requests and submit final argument. As well, the UCA indicated that it was uncertain whether it would file evidence but reserved the right to do so. CAPP, ATCO Gas and The City of Calgary did not object to the application.

8. Based on the submissions received from parties, the Commission determined that a written proceeding was suitable. Through a series of letters,² the Commission established a process schedule, with argument and reply argument due July 19, 2012 and August 2, 2012 respectively.

9. On July 4, 2012, the Commission received an email from Lacombe County that raised concerns regarding the novation of existing crossing agreements applicable to the pipeline assets in Lacombe County being exchanged between AP and NGTL.

10. In a letter dated July 11, 2012, the Commission requested that Lacombe County file a statement of intent to participate if it wanted its July 4, 2012 email to be included and considered on the public record of Proceeding ID No. 1723 (ATCO Pipelines Asset Swap application).

11. In an email dated July 11, 2012, Lacombe County filed its SIP with the AUC. Inadvertently, the SIP was not placed onto the public record of Proceeding ID No. 1723. As a result, on October 25, 2012, the AUC requested that Lacombe County refile its SIP.

² Exhibits 13.01, 18.01 and 24.01.

12. On October 26, 2012, Lacombe County refiled its SIP, along with documentation on crossing agreements.
13. On October 30, 2012, the Commission established a process schedule to address the concerns raised by Lacombe County's October 26, 2012 SIP regarding the novation of existing crossing agreements applicable to the pipeline assets in Lacombe County being exchanged between AP and NGTL.
14. Both NGTL and AP were afforded an opportunity to file a reply submission to address Lacombe County's SIP and standing in the current proceeding, and provide submissions on further process by November 1, 2012. Lacombe County was also given an opportunity to reply to any submissions from NGTL and AP by November 5, 2012.
15. The Commission received a submission from AP on October 31, 2012, followed by a reply from Lacombe County dated November 6, 2012.
16. Based on the review of submissions from Lacombe County and AP, the Commission ruled on Lacombe County's submission. In its November 9, 2012 ruling, the Commission found that AP's October 31, 2012 response provided Lacombe County with the assurance sought in its SIP, in addition to that already extended in AP's Landowner Package,³ that novations or assignments of such agreements needed for the ongoing operation of the pipeline assets being transferred to AP will be properly affected in the ordinary course of conveyancing.
17. The Commission considers that the record for this proceeding closed on November 9, 2012.
18. In reaching the determinations contained within this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the evidence and argument provided by each party. Accordingly, 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 that matter.

2 Background

19. In order to streamline the provision of natural gas transmission services and address competitive pipeline issues in Alberta, AP and NGTL entered into the Alberta System Integration Agreement dated April 7, 2009 (Integration Agreement).⁴ The Integration Agreement requires AP and NGTL, subject to necessary regulatory approvals, to exchange ownership of certain physical assets within distinct operating territories or "footprints" in Alberta (Asset Swap), and to work together in Alberta under a single rates and services structure, while maintaining separate ownership, management and operation of their own assets (Integration). NGTL would be the party that interfaces contractually with customers for regulated gas transmission services using the combined regulated AP and NGTL gas transmission systems within Alberta (collectively, the Alberta System). AP's approved revenue requirement would be

³ Exhibit 20.01, AUC-AP-9(a) attachment.

⁴ On September 8, 2008, ATCO Ltd. issued a news release indicating that AP and NGTL had reached a proposed agreement to provide seamless natural gas transmission service to customers.

included in NGTL's revenue requirement through a monthly charge from AP to NGTL. The total Alberta System revenue requirement would therefore be composed of the AP revenue requirement approved by the Commission and charged to NGTL plus the NGTL revenue requirement approved by the National Energy Board (NEB).⁵ This would form the basis for the determination of Alberta System rates and tariffs for all customers. As part of the implementation of the Integration, all AP contracts would be transitioned to Alberta System contracts with NGTL.

20. On June 26, 2009, AP filed an application (Integration Application) with the AUC that sought a number of approvals from the Commission with respect to Integration and a request to approve AP's revenue requirement for each of 2010, 2011 and 2012. On April 29, 2009, the Commission approved AP's request to negotiate the revenue requirements for 2010, 2011 and 2012 and the parties reached a negotiated settlement on the requirements.

21. In its Integration Application, AP requested that the Commission:

- (i) issue an Order, pursuant to section 22 of the *Gas Utilities Act*, declaring that Integration is in the public interest and furthers the convenience of the public and to provide approval for AP to proceed with implementing Integration
- (ii) approve, pursuant to section 36 of the *Gas Utilities Act*:
 - (a) the AP revenue requirements for 2010, 2011 and 2012, as set out in the Negotiated Settlement
 - (b) the AP charge payable by NGTL to AP as of the Integration implementation date and equal to the AP revenue requirement as approved under (a)
- (iii) approve the transitioning of AP contracts to NGTL Alberta System contracts, effective on the Integration implementation date, in accordance with the Integration Application, pursuant to sections 22 and 36 of the *Gas Utilities Act*
- (iv) approve, the sale of AP assets to NGTL to effect a swap of assets between AP and NGTL, as reflected in the Integration Agreement; and provide such further and other relief as AP may request or the Commission may deem appropriate, pursuant to section 26 of the *Gas Utilities Act*⁶

22. In Decision 2010-228,⁷ the Commission approved AP's 2010-2012 Negotiated Settlement (Settlement) with regard to its 2010-2012 General Rate Application (GRA) Phase I and concluded that the proposal to integrate regulated gas transmission services in Alberta involving the AP and NGTL systems was in the public interest and furthered the convenience of the public.

23. Decision 2010-228 also approved the proposed AP-NGTL asset swap in principle.⁸ The transitioning of AP contracts to NGTL Alberta System contracts effective on the implementation of integration, and a swap of certain assets between AP and NGTL were to be determined in a separate proceeding. Contract transitioning was approved in Decision 2011-160⁹ and the transfer

⁵ NGTL is regulated by the NEB.

⁶ Proceeding ID No. 223, ATCO Pipelines Alberta, System Integration Application, page 19.

⁷ Decision 2010-228: ATCO Pipelines 2010-2012 Revenue Requirement Settlement and Alberta System Integration, Application No. 1605226, Proceeding ID. 223, May 27, 2010.

⁸ Decision 2010-228, page 46, paragraph 167.

⁹ Decision 2011-160: ATCO Pipelines Contract Transition, Application No. 1606374, Proceeding ID No. 732, April 20, 2011. In paragraph 151 Decision 2011-260, AP was directed to notify the Commission of the date that AP contracts cease to exist and customer contracts are transitioned to NGTL. In a letter dated August 23, 2011, AP advised the Commission that the Integration Implementation date was October 1, 2011.

of certain assets to implement a portion of the asset swap is the subject of the current proceeding¹⁰ before the Commission.

24. On August 12, 2010, the NEB also approved Integration in Decision RHW-1-2010. In May 2011, AP and NGTL applied to the Federal Competition Bureau for an advisory opinion (and Advance Ruling Certificate) under the Competition Act. On July 8, 2011, the Federal Competition Bureau issued a standard “No Action” letter, with no conditions regarding Integration and the Asset Swap and requesting notification of the closing date.

25. AP’s integration with NGTL was effective on October 1, 2011. As of this date, AP no longer invoices customers directly, but instead invoices NGTL monthly, based on AP’s approved revenue requirement.¹¹

26. AP and NGTL entered into an Asset Swap Agreement dated June 15, 2011 (Asset Swap Agreement).¹² The key components of the Asset Swap Agreement are as follows:

- it provides for the overall asset transfer to be conducted in one or more tranches (closings)
- it provides for a due diligence process on behalf of the transferee
- it provides for non-monetary adjustments for closings prior to the final closing to ensure no harm to the rate base of either party as a result of the timing and selection of assets for each closing
- it provides for monetary adjustments at the final closing for: (i) any difference in aggregate net book value of the assets received by a party; (ii) any expenditures in respect of the assets not already included in the value of the assets; and (iii) any abandonment costs relating to the assets already collected by the transferee¹³

Upon completion of the operational review of all assets within each tranche applications to approve transfer of pipeline and facility licenses will be made to the AUC and the NEB respectively. The close of each tranche will occur upon the completion of the license transfer of each respective tranche.

3 Issues

27. Before reaching a determination with respect to approval of AP’s asset transfer and related dispositions, the Commission must address “the no harm test” and the specific concerns raised by the UCA:

1. the treatment of information that will allow accurate depreciation costs to be calculated in the future

¹⁰ Application No. 1608166, Proceeding ID No. 1723.

¹¹ Decision 2011-494: ATCO Pipelines 2011 Final Revenue Requirements, Final Rates Filing and Deferral Account, Application No. 1607451, Proceeding ID No. 1314, December 20, 2011, page 2.

¹² A copy of the executed Asset Swap Agreement is provided as Attachment 2 to the application.

¹³ Exhibit 1, application, page 5, paragraph 15.

2. the potential that AP will earn an additional return on mid-year rate base as a result of the timing of asset tranche transfers
3. AP income tax treatment under the Asset Swap Agreement

4 Discussion of issues

28. The no harm test considers the proposed transaction in the context of both potential financial impacts and service level impacts to customers and has been reviewed in several EUB and Commission decisions. The test was summarized in Decision 2000-41¹⁴ when the EUB stated:

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."¹⁵ The Board has also noted that its governing legislation provides no explicit guidance for the exercise of the Board's discretion in approving an asset disposition by a designated owner of a public utility.¹⁶

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.¹⁷...

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 asset 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 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.

¹⁵ *ATCO Ltd. v. Calgary Power Ltd.* [1982] 2 S.C.R. 557, at 576 (per Estey J.)

¹⁶ Decision U99102, p.7

¹⁷ See Decision U98084, *NOVA Corporation, et al., Application for Regulatory Approvals in Connection with a Proposed Merger of NOVA Corporation and TransCanada Pipelines Limited* (May 19, 1998), p. 6; Decision U98097, *Westcoast Energy Inc. et al., Sale of Shares in Centra Gas Alberta Inc. from Westcoast Energy Inc. to AltaGas Services Inc.* (June 29, 1998), p.3; Decision U99102, *supra*, p.8

¹⁴ Decision 2000-41: TransAlta Utilities Corporation, Sale of Distribution Business, Application No. 2000051, File No. 6404-3, July 5, 2000, pages 7 and 8.

4.1 Depreciation

29. In its information request UCA-AP-3(b), the UCA questioned whether AP was aware of the depreciation procedures used by NGTL with respect to the assets being transferred from NGTL to AP.¹⁵ AP's response was that AP is generally aware of the depreciation procedures NGTL uses to depreciate its assets but has not done an analysis of the specific procedure used in relation to the assets to be transferred. AP added that it will be engaging a depreciation expert to perform a depreciation study to incorporate the NGTL assets into AP's asset base.¹⁶

30. The UCA submitted that there is a clear risk that when AP and its depreciation expert(s) conduct future depreciation studies, they will discover the information required for estimating the historical and forecast life and net salvage is deficient, incomplete, or otherwise needs to be supplemented by information currently held by NGTL.¹⁷

31. The UCA noted that following a similar failure to scrutinize asset data after the transfer of assets from TransAlta to Aquila Networks Canada (Alberta) Ltd. (ANCA), the Commission's predecessor stated in EUB Decision [2003-019](#):¹⁸

The Board notes ANCA's comments that it was unaware of the deficiencies in the required data for a depreciation study. The Board considers that it was the responsibility of ANCA to take all reasonable steps available to it, to ensure that it was able to provide a depreciation study when it made the commitment to its customers and stakeholders that it would do so.

32. The UCA argued that AP should at least be requesting NGTL to provide all available information needed to ensure the data being incorporated into AP's depreciation data matches and has integrity. The UCA requested that the Commission make clear in any decision approving this application that any associated future harm to customers, such as delayed or expensive depreciation studies, incomplete or imprecise estimations of life and net salvage, or ad hoc depreciation methods for the transferred assets, will be at the expense of AP and not its customers.¹⁹

33. In reply argument, AP submitted that it is taking all prudent steps to acquire and ensure the accuracy of the information and data required to perform a depreciation study and discounted the UCA's concern that NGTL would not cooperate with AP on an ongoing basis with respect to matters affecting the Alberta System. AP argued that the Integration Agreement specifically contains a "Further Assurances" clause committing the parties to continue working together once Integration is implemented.²⁰

4.1.1 Commission finding

34. The Commission recognizes that the Asset Swap and its depreciation implications for AP have not been subject to an extensive review by a depreciation expert. Consistent with Decision 2003-019, the Commission considers that any deficiencies in the data required to conduct a

¹⁵ Exhibit 16.02, page 4.

¹⁶ Exhibit 21.01.

¹⁷ Exhibit 31.01 UCA argument, paragraph 13.

¹⁸ Decision 2003-019: Aquila Networks Canada (Alberta) Ltd., 2002/2003 Distribution Tariff, Application No. 1250392, February 28, 2003, page 62.

¹⁹ Exhibit 31.01, UCA argument, paragraph 17.

²⁰ Exhibit 33, AP reply argument, pages 1-2.

depreciation study, the depreciation method previously employed by NGTL, and the impact of any required future adjustments to depreciation costs, estimations of life, or net salvage are to be borne by AP's shareholders, unless AP is able to justify why customers should bear any subsequent adjustments. The Commission directs AP to advise the Commission of any material adjustments to depreciation under consideration or being made (including changes to environmental liabilities and abandonments) in its next general rate application.

35. The Commission considers that any adverse future consequences resulting from this concern raised by the UCA may be dealt with more effectively in AP's next general rate application. Accordingly the Commission is not persuaded that depreciation matters raised by the UCA are likely to result in harm to AP customers.

4.2 Tranche timing and non-monetary adjustment

36. The Asset Swap transfers assets of approximately equal net book value between AP and NGTL in four tranches (see [Appendix 3](#)) over an 18-month period to align asset ownership with the respective operating areas.²¹ The value of each of these tranches as at December 31, 2010, is provided below (these are preliminary values which will be updated at the time of each closing).

Table 1. Asset values to be swapped

NGTL Assets transferring to AP (\$millions)				AP Assets transferring to NGTL (\$millions)			
Tranche	Historic cost	Accumulated depreciation	Net book value	Tranche	Historic cost	Accumulated depreciation	Net book value
1	12.9	-6.1	6.8	1	28.4	-10.8	17.6
2a	96.5	-52.6	43.9	2	32.5	-13.4	19.1
3	19.9	-9.5	10.4	3	6.3	-2.2	4.1
4a	100.3	-45.8	54.5	4	96.3	-22.5	73.8
Total	229.6	-114	115.6		163.5	-48.9	114.6

37. The Asset Swap Agreement also provides for adjustments for tranche closings prior to the final closing to prevent harm to the rate base of either party as a result of the timing and selection of assets for each tranche closing. These consist of monetary adjustments for differences in aggregate net book value and also abandonment costs related to the assets already collected by the transferee. Further, any adjustments required for differences in line pack with respect to transferred assets will be made pursuant to Article 7.2(b) of the Asset Swap Agreement.

38. The UCA argued that AP's proposed asset swap in four tranches could result in rate base additions for AP greater than its retirements during the calendar year. As such, the annual return could be over and above the amount that would be earned absent the asset swap.²²

39. The UCA submitted that it remained unclear how the mechanics of the bilateral agreement between AP and NGTL would affect AP's filings before the Commission. As shown in Ms. Radway's evidence and information request responses on behalf of the UCA, depending on how the regulatory information is filed, and notwithstanding the presence of the Non-Monetary Adjustment in the Asset Swap Agreement, the UCA stated that it is possible for AP to

²¹ Exhibit 1, Application, Attachment 4 Schedule A & Schedule B, pages 19-21.

²² Exhibit 31.01, UCA argument, paragraph 18.

earn an increased return based on the actual mid-year rate base additions, amounting to between \$1 million and \$1.5 million.²³ The UCA submitted that to avoid any extra return, inadvertently or otherwise, and to ensure transparency in the years where the assets are transferred, the AUC should include a condition preventing AP from earning an increased return as a result of transfer timing. The UCA added that AP should also be directed to include the reconciliation of the tranche transfers in subsequent annual regulatory filings. The UCA further submitted that to ensure transparency, such a reconciliation table should include the capital additions and retirements on an actual basis as separate line items.²⁴

40. AP submitted that the Non-Monetary Adjustment mechanism would eliminate any differences in the net book value of the rate base additions and retirements as part of the Asset Swap Agreement. AP stated that the only time when rate base would be impacted by a difference in the tranche values is at the time of the final asset swap tranche.

41. AP noted that Section 3.3(b) of the Asset Swap Agreement states:

The Non-Monetary Adjustments are intended to ensure no harm to the rate base of either Party as a result of the timing and selection of Transferred Assets at each Closing. (emphasis added by AP).

42. AP argued that the Non-Monetary Adjustment mechanism allows the value of the tranches being swapped to be equalized prior to the completion of the Asset Swap and ensures that the rate bases of AP and NGTL remain unchanged. The UCA's evidence should therefore be rejected.²⁵

4.2.1 Commission finding

43. The Commission is satisfied that the Non-Monetary Adjustment mechanism will negate any increased return that might result from the timing of asset tranche transfers with varying net book values prior to completion of the Asset Swap. The Commission finds that the rebuttal evidence submitted by AP²⁶ satisfactorily demonstrates that the Non-Monetary Adjustment mechanism will operate to offset the cumulative difference in the tranche values so that rate base remains unchanged after the first three tranches. Any difference in rate base will only occur after the final tranche is completed as a result of the difference between the \$115.6 million transferred from NGTL to AP and the \$114.6 million being transferred from AP to NGTL. This will result in a net \$1 million increase in rate base for AP. Even if the Commission were to accept the UCA's evidence, any increased return that might occur should be weighed against the forecast benefit or savings²⁷ associated with Integration. Given the expected monetary benefit of Integration, the Commission expects any resulting marginal increase in return will be immaterial. The UCA's recommendation regarding the inclusion of a condition preventing AP from earning an increased return as a result of transfer timing is therefore unnecessary and is rejected.

44. The Commission concurs with the UCA's submission that AP should file a reconciliation of each of the tranche transfers, similar in format to that shown in the tables included in AP's

²³ Exhibit 23.03, paragraph A10 and Exhibits 29.01 and 29.03 re: AUC-UCA-1(a) and (b).

²⁴ Exhibit 31.01, UCA argument, paragraphs 22-24.

²⁵ Exhibit 32.01, AP argument, paragraph 14.

²⁶ Exhibits 30.01 and 30.02.

²⁷ Exhibit 1, application, paragraph 11, net cumulative savings for the period from 2010 through 2017 to customers are \$41.3 million.

rebuttal evidence. This will help to monitor the progress of the asset swap and serve as a check that the Non-Monetary Adjustment mechanism is functioning as represented by AP. The Commission directs AP to submit the reconciliation of the tranche transfers upon the closing of each tranche and also as part of the subsequent general rate application(s) and the subsequent [Rule 005: Annual Reporting Requirements of Financial and Operational Results](#) (Rule 005) annual regulatory filings. To ensure transparency, the reconciliation tables should include the capital additions and retirements on an actual basis as separate line items.²⁸

4.3 Income tax and other costs

45. The UCA expressed concerns that AP identified increased income tax as a consequence of the Asset Swap, due to different capital cost allowances between the incoming and exiting assets, and that AP proposed to capture these extra expenditures in the “Integration deferral account”.²⁹ As part of its evidence³⁰ the UCA submitted the following concerns with this proposal:

- It is not clear that the “Integration deferral account” currently exists.
- Decision 2010-228 notes that AP stated in an Information Request response that it “may” have an “Integration deferral account” in 2010 resulting from AP’s Negotiated Settlement with regard to its 2010-2012 General Rate Application (GRA) Phase I – but that is not the approval of an actual deferral account.
- The Settlement’s treatment of income taxes does not consider a deferral account.
- Using a deferral account to broadly capture income tax (or other material costs) without any sense of their magnitude does not allow the Commission to apply the “no harm test” to the transfer of a regulatory asset, required under s. 26(2)(d)(i) of the *Gas Utilities Act*.
- Upon disposition, a deferral account would represent an increased cost to AP ratepayers that will have to be paid at some point, contrary to the Alberta System Integration Agreement.

46. In order to assess harm, the UCA submitted that there must be full disclosure and transparency in the sale of any regulated asset. The UCA argued that there must be full disclosure of costs included in AP’s Integration deferral account, and absent that transparency, costs such as income tax should not be approved for inclusion in AP’s Integration deferral account.

47. To ensure that the Asset Swap’s benefits to customers are not significantly eroded, the UCA submitted that the Commission should condition any approval of the present application on the basis that increased AP customer costs, which are neither included in the application’s net present value calculation nor offset by a matching benefit from the NGTL system, should be borne by AP’s shareholders and not its customers.

48. AP indicated that its proposed treatment of the increase in income taxes due to lower capital cost allowance deduction claims resulting from the Asset Swap is consistent with the spirit and intent of the Integration Agreement. Section 5.1(a) of the Integration Agreement states:

The swap of assets will not affect the revenue requirement of either Party.

²⁸ Exhibit 31.01, UCA argument, paragraphs 22-24.

²⁹ Exhibit 20.01, AUC-AP-7(f).

³⁰ Exhibit 25.03, UCA evidence A16 and A17.

AP added that Section 5.1(b) (ii) of the Integration Agreement further states:

... the intent that neither Party is to be negatively impacted by such swap ...

49. AP argued that the charges in the deferral account will be completely offset by tax deductions for NGTL.³¹

50. AP argued that the UCA's submission was entirely inappropriate for a number of reasons. First, it amounted to requiring AP to "guarantee" the savings that will result from integration. That had never been part of the Integration equation, nor had AP's return been premised on any such risk. Imposing such a risk would certainly have return implications. Further, the condition requested by the UCA places non-symmetrical risk on AP. AP submitted that the UCA was seeking to have the Commission make rate determinations that may affect a number of stakeholders. AP did not consider the current process was the proper forum to make such a determination and potentially affected parties had not had notice that such issues may be raised. The proper forum for determining AP's revenue requirement is a rate proceeding where all relevant facts are before the Commission and all interested parties have an opportunity to participate.³²

4.3.1 Commission finding

51. Section 5.1(a) and Section 5.1(b) (ii) of the Integration Agreement indicates that neither party is intended to be impacted by the swap of assets between parties. The Commission is mindful of the submission of the UCA that "[u]sing a deferral account to broadly capture income tax costs (or other material costs) without any sense of their magnitude does not allow the Commission to apply the "no harm test" to the transfer of a regulatory asset,³³ required under s. 26(2)(d)(i) of the *Gas Utilities Act* (GUA)". The Commission accepts AP's contention that any increase in income taxes for AP as a result of reduced capital cost allowance deductions will be offset by a corresponding decrease for NGTL, all other things being equal. Even though this means that the revenue requirements for each of AP and NGTL may be affected by the Asset Swap, the overall combined revenue requirements are not likely to be materially impacted and it is this combined revenue requirement which is used in determining customers' rates. As such, customers are not likely to be harmed by a potential increase in AP's income taxes associated with the Asset Swap as the combined revenue requirement and rates are essentially unchanged.

52. With respect to the UCA's submission that it is not clear that an Integration deferral account was approved by the Commission, Decision 2010-228 states:

"Flow through" items are items that either: (i) have offsetting revenues and expenses (e.g. franchise fees); or (ii) have the difference between the actual amount and forecast amount placed in a deferral account for collection from or refund to customers at a later time (e.g. hearing costs, Integration costs/savings).³⁴

53. Although Decision 2010-228 may not have explicitly approved an Integration deferral account, the Commission approved the Settlement as filed which contained the above section. As

³¹ Exhibit 32.01, AP argument, paragraph 20.

³² Exhibit 33.01, AP reply argument, paragraph 21.

³³ Decision 2000-41, as cited in Exhibit 1, application, paragraph 52.

³⁴ Decision 2010-228, paragraph 37.

a result, the Commission considers that creation of an Integration deferral account was therefore implicitly approved. The Commission is satisfied that AP's proposal to capture the extra cost in the "Integration deferral account" is reasonable. The Commission and interested parties will be given the opportunity to examine and challenge any extra income tax expenditures when AP files application to settle the balance in the Integration deferral account. The Commission directs AP to clearly identify any increased income tax amounts resulting as a consequence of the Asset Swap in AP's Integration deferral account approval application.

4.4 Conclusion

54. The Asset Swap Agreement provides for adjustments for tranche closings prior to the final closing to prevent harm to the rate base of either party as a result of the timing and selection of assets for each closing. These consist of monetary adjustments for differences in aggregate net book value and also abandonment costs related to the assets already collected by the transferee. Section 3.3(b) of the Asset Swap Agreement also includes Non-Monetary Adjustments intended to ensure no harm to the rate base of either party as a result of the timing and selection of transferred assets at each tranche closing. AP and NGTL also conducted province-wide landowner and stakeholder information publication and consultation efforts and no formal objections to the Asset Swap were recorded throughout the process.

55. When evaluating AP's asset transfer and considering whether the "no harm test" is satisfied, the Commission is mindful of the overall benefits of Integration when weighed against specific costs identified in the asset transfer approval application. In Decision 2010-228, the Commission concluded the following with respect to Integration:

- Integration eliminates stacked tolls for customers who transport gas in Alberta on both the AP and NGTL pipeline systems, eliminates the need for duplicative terms of service, and reduces the regulatory burden and costs which result when NGTL and AP compete for customers in Alberta, often leading to protracted and contentious regulatory proceedings.³⁵
- Integration should enhance the orderly, efficient, and cost effective expansion of the Alberta System in that system planning for an expansion is anticipated to be performed on a coordinated basis.³⁶
- The exclusive footprint areas should lead to efficiencies for facility applications.³⁷
- The 2010-2012 GRA Phase I Settlement forecasted cost savings to AP's customers due to Integration, and reduced business risk for AP.³⁸
- Most customers requiring the use of both the AP and NGTL pipeline systems should benefit by the removal of dual or stacked tolls that inhibited cost effective transportation of gas in the province. However, the rate impact to individual customers will be explored in NGTL's rate application to the NEB.³⁹

³⁵ Decision 2010-228, paragraph 131.

³⁶ Decision 2010-228, paragraph 131.

³⁷ Decision 2010-228, paragraph 131.

³⁸ Decision 2010-228, paragraph 131.

³⁹ Decision 2010-228, paragraph 132.

56. Based on its review of the evidence in this proceeding, the Commission is satisfied that AP has met the requirement of the no harm test, specifically as it relates to concerns regarding service quality, reliability, and increased costs to customers, which has been applied by the Commission in determining whether to approve a disposition under Section 26(2)(d) of the *Gas Utilities Act*. In reaching its finding on the “no harm test,” the Commission relied significantly on the assertions in AP’s application:

In applying the no harm test, the Commission first considers if the disposition would disrupt safe and reliable service to customers or otherwise affect the quality and/or quantity of services being provided to ratepayers. It is respectfully submitted that the proposed disposition of the AP Swap Assets in conjunction with Integration will not disrupt safe and reliable service, nor will it adversely affect the quality and/or quantity of services being provided to ratepayers. On the contrary, the proposed swap will allow for the efficiencies and streamlining of service contemplated by Integration to be fully realized.

..... With respect to the potential for the proposed disposition to adversely impact the rates customers would otherwise pay, it is respectfully submitted that the proposed disposition will have no such adverse impact. The proposed disposition involves a swap of AP assets for NGTL assets of approximately equal value. As such, the respective rate bases of AP and NGTL remain unchanged as a result of the swap.⁴⁰

57. The Commission finds that the UCA’s concerns with respect to income tax, increased return due to tranche timing and differences in the net book value of assets transferred between NGTL and AP, and depreciation, have been adequately addressed by AP. Further the Commission is satisfied that AP’s landowner and stakeholder engagement adequately informed affected parties of the intended asset transfer by AP. Nevertheless, the implications of the Asset Swap for rate-making purposes should not be construed as approved by this decision and remain subject to further scrutiny and determination in AP’s next general rate application(s).

58. The Commission is also satisfied that AP and NGTL have entered into four operating agreements “to ensure the safe and reliable operation of the pipeline system during the Asset Swap and on an ongoing basis once the Asset Swap is completed.” The agreements consist of the following:

- i. The Transitional Operating Agreement⁴¹
- ii. The Long-Term Operating Agreement
- iii. The Odourization Agreement
- iv. The Cathodic Protection Services Agreement⁴²

59. In response to CAPP-AP-5(i),⁴³ AP explained that it will not be requesting further approvals for the Asset Swap, but will be applying for the required pipeline and facility license transfers 30 days in advance of the closing of each tranche. The Commission considers that AP’s

⁴⁰ Exhibit 1, application, paragraphs 53 -54.

⁴¹ Once all assets are transferred, this agreement will no longer be in effect.

⁴² Exhibit 1, application, page 14, paragraph 44.

⁴³ Exhibit 19.01.

proposed timeline to address pipeline and facility license transfers is reasonable. The Commission directs AP to provide written notice to the AUC that the tranche is ready to close 30 days prior to each tranche closing date in accordance with Section 6(f) of the Transitional Operating Agreement.

60. AP's asset transfer to NGTL and related dispositions are approved as filed pursuant to Section 26(2)(d) of the *Gas Utilities Act*.

4.5 Other - board directions

61. In Decision 2010-228, the Commission directed AP clarify the matter of outstanding directions in its future detailed application for the Asset Swap:

The Commission has compiled a summary of outstanding directions from 2003 to the end of 2009 (refer to Appendix 5), many of which are ongoing and some applicable to a GRA Phase II. AP should review and identify those that will become redundant in the event Integration receives universal approval and a GRA Phase II or other routine filings become unnecessary. AP is directed to clarify the matter of outstanding directions in its future detailed application for the Asset Swap.⁴⁴

62. The Commission is satisfied that AP's application complies with the above direction from Decision 2010-228 because it clearly identified the proceedings wherein AP has complied with outstanding directions, where a direction continues to be an ongoing matter to be addressed in a future application, and the specific cases where Integration has made the direction moot.

⁴⁴ Decision 2010-228, page 48, paragraph 179.

5 Order

63. It is hereby ordered that:

(1) ATCO Gas and Pipelines Ltd.'s asset transfer to Nova Gas Transmission Ltd. and related disposition is approved as filed pursuant to Section 26(2)(d) of the *Gas Utilities Act* and subject to the Commission's directions in this decision.

Dated on November 22, 2012.

The Alberta Utilities Commission

(original signed by)

Mark Kolesar
Vice-Chair

(original signed by)

Anne Michaud
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
ATCO Pipelines (AP) N. Gretener B. Jones S. J. Mah
ATCO Gas (AG) A. Green M. Bayley
BP Canada Energy Company C. G. Worthy
The City of Calgary D. Evanchuk M. Rowe H. Johnson
Canadian Association of Petroleum Producers (CAPP) R. Fairbairn K. Folkins
Encana Corporation R. Powell D. Dunlop
Lacombe County T. Hager
NOVA Gas Transmission Ltd. (NGTL) L. Angus
Office of the Utilities Consumer Advocate (UCA) R. B. Wallace M. Keen B. Shymanski
The Alberta Utilities Commission Commission Panel M. Kolesar, Vice-Chair A. Michaud, Commission Member Commission Staff J. Petch (Commission counsel) M. McJannet R. Armstrong, P.Eng. N. Mahbub D. Mitchell L. Ou

Appendix 2 – Summary of Commission directions

This section is provided for the convenience of readers. In the event of any difference between the directions in this section and those in the main body of the decision, the wording in the main body of the decision shall prevail.

1. The Commission recognizes that the Asset Swap and its depreciation implications for AP have not been subject to an extensive review by a depreciation expert. Consistent with Decision 2003-019, the Commission considers that any deficiencies in the data required to conduct a depreciation study, the depreciation method previously employed by NGTL, and the impact of any required future adjustments to depreciation costs, estimations of life, or net salvage are to be borne by AP's shareholders, unless AP is able to justify why customers should bear any subsequent adjustments. The Commission directs AP to advise the Commission of any material adjustments to depreciation under consideration or being made (including changes to environmental liabilities and abandonments) in its next general rate application. Paragraph 34
2. The Commission concurs with the UCA's submission that AP should file a reconciliation of each of the tranche transfers, similar in format to that shown in the tables included in AP's rebuttal evidence. This will help to monitor the progress of the asset swap and serve as a check that the Non-Monetary Adjustment mechanism is functioning as represented by AP. The Commission directs AP to submit the reconciliation of the tranche transfers upon the closing of each tranche and also as part of the subsequent general rate application(s) and the subsequent [Rule 005: Annual Reporting Requirements of Financial and Operational Results](#) (Rule 005) annual regulatory filings. To ensure transparency, the reconciliation tables should include the capital additions and retirements on an actual basis as separate line items. Paragraph 44
3. Although Decision 2010-228 may not have explicitly approved an Integration deferral account, the Commission approved the Settlement as filed which contained the above section. As a result, the Commission considers that creation of an Integration deferral account was therefore implicitly approved. The Commission is satisfied that AP's proposal to capture the extra cost in the "Integration deferral account" is reasonable. The Commission and interested parties will be given the opportunity to examine and challenge any extra income tax expenditures when AP files application to settle the balance in the Integration deferral account. The Commission directs AP to clearly identify any increased income tax amounts resulting as a consequence of the Asset Swap in AP's Integration deferral account approval application. Paragraph 53
4. In response to CAPP-AP-5(i), AP explained that it will not be requesting further approvals for the Asset Swap, but will be applying for the required pipeline and facility license transfers 30 days in advance of the closing of each tranche. The Commission considers that AP's proposed timeline to address pipeline and facility license transfers is reasonable. The Commission directs AP to provide written notice to the AUC that the tranche is ready to close 30 days prior to each tranche closing date in accordance with Section 6(f) of the Transitional Operating Agreement. Paragraph 59

Appendix 3 – Tranche Timing and Asset Swap Map

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



Appendix 3 -
Tranche Timing

(consists of 3 pages)



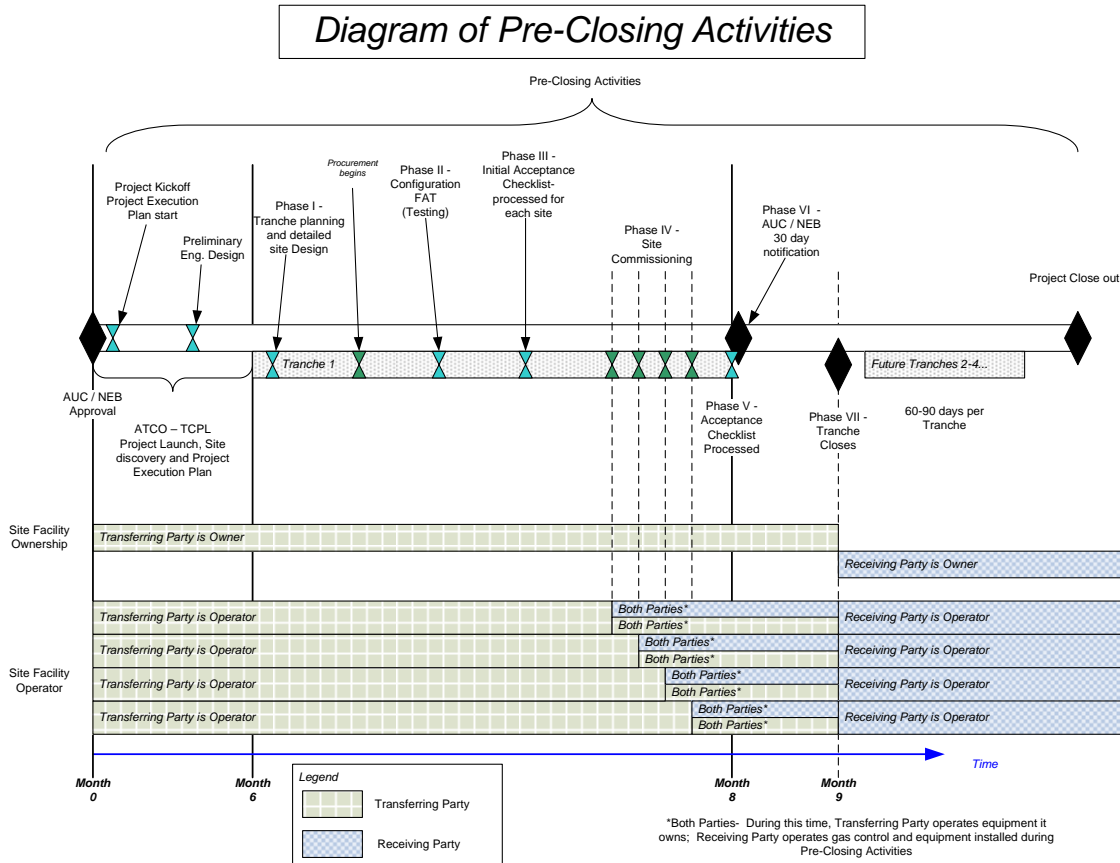
Appendix 3 - Asset
Swap Map

(consists of 1 pages)

Phases	Site Pre-Closing Activities	Responsibilities
Phase V-VII	None anticipated	Not applicable

9. Diagram of Pre-Closing Activities

The following diagram illustrates the Pre-Closing Activities:



SCHEDULE "B"

Tranche Map

See attached page.

