ATCO GAS SOUTH

Removal of Carbon Related Assets from Utility Service

October 19, 2010

ALBERTA UTILITIES COMMISSION
Decision 2010-496: ATCO Gas South
Removal of Carbon Related Assets from Utility Service
Application No. 1579086
Proceeding ID. 87

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Contents

List of Tables

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1 INTRODUCTION

1. The Alberta Utilities Commission (AUC or Commission) received an application on July 11, 2008 (Application) from ATCO Gas South (ATCO or AGS), a division of ATCO Gas and Pipelines Ltd., requesting that the Commission to set aside Order U2005-133,[1] and Decisions 2005-063[2] and 2007-005[3] of the Alberta Energy and Utilities Board (EUB or Board). ATCO requested the Commission grant a new order implementing the findings of the Alberta Court of Appeal in a decision issued May 27, 2008[4] (Carbon Appeal Decision). The Carbon Appeal Decision dealt with the Carbon natural gas storage facility and associated gas producing properties (collectively, Carbon) owned and operated by ATCO that had been included within the regulated rate base of ATCO.

2. Notice of the Application was issued on July 15, 2008 indicating that any party who wished to intervene in the proceeding (Proceeding) must submit a Statement of Intent to Participate (SIP) to the Commission by July 28, 2008.

3. SIPs were received from the Office of Utilities Consumer Advocate (UCA), BP Canada Energy Company, The City of Calgary (Calgary) and the Public Institutional Consumers of Alberta (PICA).

4. The Commission held a Pre-hearing Conference on December 16, 2008 to hear oral argument and reply argument to assist the Commission in determining the final scope of the Proceeding.

5. This Decision is the fourth in a series of decisions relating to the Application. The first three decisions are summarized in Section 2, "Background" of this Decision.

6. Following a lengthy written process, which involved a number of scheduling delays, the Commission notified registered parties on May 28, 2010 that an oral hearing would be held. The hearing was held on June 28, 2010 in the AUC's Edmonton hearing room.

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1 Order U2005-133: ATCO Gas South, 2005/2006 Carbon Storage Plan Interim Order (Application No. 1357130) (Released: March 23, 2005).
2 Decision 2005-063: ATCO Gas South, 2005/2006 Carbon Storage Plan – Preliminary Questions (Application No. 1357130) (Released: June 15, 2005).
3 Decision 2007-005: ATCO Gas South, Carbon Facilities - Part 1 Module – Jurisdiction (2005/2006 Carbon Storage Plan) (Application No. 1357130) (Released: February 5, 2007).
4 *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2008 ABCA 200 (Refer to Appendix 2 of Decision 2009-004).

7. The record for this portion of the proceeding closed on July 21, 2010 with the filing of a revision by the UCA to its Argument. The Division of the Commission assigned to hear the proceeding was W. Grieve (Chair), and Commissioners Dr. M. A. Yahya, and T. Beattie Q.C.

2 BACKGROUND

8. Carbon has had a long history as a regulated utility asset. The Carbon storage facility was originally a natural gas production field which was acquired by Canadian Western Natural Gas Company Limited (now ATCO) in 1957 for the purpose of developing a utility source of gas for production and delivery as peaking gas supply to its customers in the Calgary area. In 1967 the Carbon gas field was converted into a storage reservoir. Approval was granted by the Oil and Gas Conservation Board in1967 for the conversion of the natural gas production field into a natural gas storage facility. Certain production wells which were not required for storage cycling operations remained as gas production assets, and have remained so to this day. Throughout the period during which Carbon was employed by ATCO in providing regulated services it was variously used to produce natural gas for utility customer consumption, store natural gas for utility customers, provide utility revenue through the leasing of excess storage capacity to third parties and for operational and system load balancing requirements. At present, the entire storage facility is leased to an affiliate of AGS, ATCO Midstream Ltd. (ATCO Midstream) and is used for merchant storage capacity. A detailed historical overview of the development and regulation of the Carbon facilities can be found in Appendices 6, 7 and 8 of this Decision. Appendix 5 of Decision 2007-005 contains a map of the Carbon facilities.

9. The Proceeding for this Application also has a protracted history which is briefly described below.

10. Following the release of the Carbon Appeal Decision, the Application was filed and the Commission issued Order U2008-213.[5] This Order suspended the following three ATCO rate riders and charges related to Carbon effective July 1, 2008 until such time as the Commission might provide further direction:

- Company Owned Production Rate Rider (COPRR) – Rider "G" applicable to AGS's Low Use and High Use rate groups,
- Company Owned Storage Rate Riders (COSRRs) – Rider "H" applicable to AGS's Low Use and High Use rate groups,
- Rider "I" (Irrigation) applicable to the AGS's Irrigation rate group, and
- Carbon Production and Storage Charge (P&SC) paid by all AGS's customers.

11. The Commission provided Notice of the Application on July 15, 2008.

12. On September 9, 2008, the Commission requested comments from all parties in respect of an appropriate process to deal with the Application.

13. On September 29, 2008, the Commission suspended the Proceeding in response to a submission from Calgary. The Commission determined that consideration of the Application

[5] Order U2008-213: ATCO Gas Suspension of Riders and Rate (Application 1574733, Proceeding ID. 61) (Released: June 20, 2008).

would be premature in light of the Utility Asset Disposition Proceeding, Proceeding ID. 20,[6] a generic proceeding applicable to all utilities that had recently been initiated by the Commission. In suspending the Application the Commission referred to the potential overlap of issues relating to the disposition of utility assets and the interpretation and application of the Supreme Court of Canada's Calgary Stores Block Decision (Stores Block Decision).[7]

14. On November 13, 2008, the Commission issued Decision 2008-113[8] in respect of ATCO's 2008-2009 general rate application (GRA). This decision recognized that Rate Riders "G", "H" and "I" and the Carbon P&SC had been suspended and that there was a proceeding under way (this Proceeding) to address the Carbon Appeal Decision. In accordance with Decision 2008-113 ATCO submitted a compliance application in which it " removed the revenues, costs, assets and liabilities related to the Carbon Storage and Production assets (Carbon Assets) from the 2008/2009 revenue requirement forecasts…"[9] The amended revenue requirement was ultimately approved in the GRA compliance Decisions 2009-109[10] and 2010-025.[11]

15. On November 28, 2008 the Alberta Court of Appeal released two decisions granting ATCO leave to appeal the Harvest Hills[12] and the Salt Caverns Letters decisions[13] of the EUB and the Commission. In granting leave, the Court suggested that the Commission's Utility Asset Disposition Proceeding might benefit from the Court's guidance. As a consequence, the Commission suspended the process for the Utility Asset Disposition Proceeding and resumed the process dealing with this Application. At the same time the Commission laid out a procedural schedule that included an oral hearing that was to commence March 16, 2009

16. In order to facilitate and potentially expedite this Proceeding the Commission called an oral Pre-Hearing Conference for December 16, 2008. Following the conference, the Commission issued its Pre-Hearing Conference and Scoping Decision, Decision 2009-004[14] on January 9,

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6 Decision 2008-123: Review of Rate Related Implications of Utility Asset Dispositions Following the Supreme Court's Calgary Stores Block Decision Reasons for Decision on Motion by the ATCO Utilities dated October 21, 2008 (Application No. 1566373, Proceeding ID. 20) (Released: November 28, 2008).

7 *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140

8 Decision 2008-113: ATCO Gas 2008-2009 General Rate Application Phase I (Application No. 1553052, Proceeding ID. 11) (Released: November 13, 2008).

9 Application No. 1603068, Proceeding ID. 154, Section "Carbon Storage and Production Assets."

10 Decision 2009-109: ATCO Gas 2008-2009 General Rate Application Phase I Compliance Filing (Application No. 1603068, Proceeding ID. 154) (Released: July 28, 2009).

11 Decision 2010-025: ATCO Gas 2008-2009 General Rate Application Phase I Second Compliance Filing (Application No. 1605412, Proceeding ID. 294) (Released: January 13, 2010).

12 Harvest Hills refers to Decision 2007-101, (ATCO Gas Disposition of Land in the Harvest Hills Area, Application No. 1512932, released: December 11, 2007) considered the application by ATCO Gas for approval pursuant to section 26(2)(d) of the *Gas Utilities Act* to sell a four acre vacant parcel of land in the Harvest Hills area of Calgary purchased as part of a larger 5.35 acre lot in 1993 for construction of a regulating station. Leave to Appeal was granted on November 12, 2008 in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2008 ABCA 381.

13 The Salt Cavern Letters refers two letters issued in the proceeding related to ATCO Pipelines' 2008-2009 General Rate Application, Application No. 1527976, Proceeding ID 13. The first letter was issued by the EUB on November 6, 2007 and the second was issued by the Commission on July 30, 2008. Both letters restricted the proposed removal from rate base of certain salt cavern assets owned by ATCO Pipelines which were indicated to be surplus to the needs of the utility. Leave to Appeal was granted on November 12, 2008 in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2008 ABCA 382.

14 Decision 2009-004: ATCO Gas South, Removal of Carbon Related Assets from Utility Service Pre-hearing Conference Scoping Decision (Application No. 1579086, Proceeding ID. 87) (Released: January 9, 2009).

2009. This Decision included the Final Issues List and made a determination that a unilateral removal of assets, like Carbon, from rate base by a utility was a "disposition" requiring approval of the Commission under section 26(2) of the *Gas Utilities Act* (the Disposition Issue).

17. Following a round of information requests, on February 9, 2009, the Commission received a motion by the UCA to instruct ATCO to provide further and better information responses and included a request to suspend the February 12, 2009 date for the submission of intervener evidence. On February 10, 2009, Calgary submitted a similar motion. In a letter dated February 10, 2009 the Commission denied the requested suspension for the filing of intervener evidence.

18. Calgary filed a review and variance motion on February 12, 2009 with respect to the Commission's February 10th decision not to suspend the deadline of February 12 for intervener evidence. On February 13, 2009 the Commission denied the motion. However, the schedule was adjusted such that intervener evidence became due March 3rd and the date of the oral hearing delayed until March 17, 2009.

19. On February 20, 2009 the Commission provided its ruling with regard to the UCA and Calgary motions requesting ATCO to provide better information responses. ATCO was directed to provide certain supplemental information responses by February 24, 2009.

20. On February 27, 2009 the UCA submitted a motion, again requesting the Commission to direct ATCO to provide further and better information responses.

21. On March 6, 2009 the Commission issued a letter confirming the March 17, 2009 hearing had been cancelled and set a schedule to receive written argument and reply argument on three Preliminary Questions posed in the letter's attachment.

22. On June 26, 2009 the Commission issued Decision 2009-067,[15] in respect of three Preliminary Questions. In brief the Commission decided:

- October 10, 2006 would be the Adjustment Date to reflect all necessary rate adjustments for the removal of the Carbon assets from rate base.

- Amounts included in approved revenue requirements prior to the Adjustment Date in respect of depreciation or net negative salvage on the Carbon assets should not be refunded to customers.

- As costs for Carbon were prepared on a forecast basis and storage revenues from Carbon were collected and credited to customers on an actual basis, the Commission determined that the amount to be collected from customers to reflect the Adjustment Date should be calculated using the same methods.

This decision also ruled on the outstanding UCA motion in respect of ATCO IR responses.

[15] Decision 2009-067: ATCO Gas South, Removal of Carbon Related Assets from Utility Service, Preliminary Questions (Application No. 1579086, Proceeding ID. 87) (Released: June 26, 2009).

23. On July 3, 2009 the Commission received a letter from ATCO which included a request for Commission approval to enter into a negotiated settlement with respect to the outstanding matters related to the Application. This request was granted by the Commission on July 31, 2009 and the Proceeding was again suspended.

24. On August 6, 2009 the Commission issued a letter advising parties that the Commission was initiating a review and variance proceeding, Proceeding ID. 281, in light of the Court of Appeal's recent Salt Caverns Decision[16] which determined that a utility may unilaterally withdraw an asset from rate base without prior Commission approval. The review and variance proceeding was initiated with respect to the Disposition Issue decided in Decision 2009-004 and with respect to the Adjustment Date decided in Decision 2009-067. The review and variance proceeding was then suspended to permit settlement negotiations to proceed.

25. ATCO advised the Commission on September 21, 2009 that settlement negotiations had been terminated.

26. The Commission resumed the review and variance proceeding and on December 16, 2009 the Commission issued Decision 2009-253.[17] The Commission varied its finding in Decision 2009-004 that the consent of the Commission was required before a utility could remove an asset from rate base. It also varied the Adjustment Date determined in Decision 2009-067 from October 10, 2006 to April 1, 2005, being the date that ATCO indicated that Carbon was no longer used or required to be used to provide utility service.

27. On December 17, 2009 the Commission recommenced the process in this Proceeding using the new Adjustment Date of April 1, 2005 and directed ATCO to file by January 6, 2010, an update to the proposed Carbon recovery rate rider calculations assuming a start date of April 1, 2010 and to finalize any remaining placeholder amounts relating to the lease or operations of Carbon by ATCO Midstream until the Adjustment Date.

28. On January 6, 2010 ATCO filed the required Supplemental Evidence.

29. On January 15, 2009 the Commission issued a procedural letter and a schedule to complete review of the Application in writing concluding with concurrent written Reply Argument on May 21, 2010.

30. Following a round of information requests on the January 6, 2010 Supplemental Evidence, ATCO filed revised Carbon cost of service calculations for the years 2005-2009 on February 22, 2010.

31. On February 26, 2010 the UCA submitted a motion requesting the Commission allow additional information requests on the additional information filed by ATCO on February 22, 2010 and requested the Commission to direct ATCO to provide further and better information responses. Given the procedure to receive comment from parities regarding a motion, the existing schedule was again suspended.

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[16] *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2009 ABCA 246, Docket: 0701-0325-AC and 0801-0244-AC (Salt Caverns Appeal Decision).

[17] Decision 2009-253: ATCO Gas South Review and Variance Proceeding Of Decision 2009-004 and Decision 2009-067 (Removal of Carbon Related Assets from Utility Service) (Application No. 1605365, Proceeding ID. 281) (Released: December 16, 2009).

32. On March 3, 2010 the Commission issued a ruling allowing interveners to direct additional information requests to ATCO on the recently filed evidence.

33. The Commission provided its ruling on the UCA motion with respect to deficient ATCO information request responses on March 30, 2010 and ATCO provided the supplemental responses as directed on April 7, 2010.

34. On April 20, 2010 the Commission issued Decision 2010-167[18] which approved on an interim basis, the collection of Carbon related rate riders intended to partially collect amounts that would be due to ATCO as a result of adjusting revenue requirement and related riders to reflect the removal of Carbon from utility rate base and rates as of the Adjustment Date. The rate riders applied for were approved on an interim and refundable basis given that the final determination of the amounts to be recovered from ratepayers was left to be completed in this Proceeding.

35. On May 12, 2010, the Court of Appeal dismissed the application for Leave to Appeal filed by Calgary and the UCA in respect of Decision 2009-253 in *Calgary (City) v. Alberta (Utilities Commission)*, 2010 ABCA 158.(Carbon R&V[19] Appeal Decision).

36. Following receipt of information request responses to additional Commission information requests of the UCA, Calgary and ATCO, the Commission issued a letter on May 28, 2010 scheduling an oral hearing for June 28, 2010. A one day oral hearing was held on June 28, 2010 with ATCO presenting a witness and the UCA and Calgary sitting a combined panel of witnesses.

37. Written Argument was filed on July 9, 2010 and Reply Argument on July 16, 2010. The UCA filed an amendment to its Argument on July 21, 2010.

3 THE APPLICATION

38. In the Application, ATCO requested the following approvals:

- the Carbon related assets should be removed from AGS's rate base and distribution service rates effective April 1, 2005;
- with respect to the lease to ATCO Midstream, the placeholder lease rate of $0.45/GJ for utility purposes should be made $0/GJ effective April 1, 2005;
- AGS should be allowed to recover all amounts it was directed to provide to customers through Riders G, H, and I on and after April 1, 2005; and
- interest should be applied to the net amounts owed to AGS consistent with AUC Rule 23.

39. ATCO stated these requested approvals were required to implement the Court of Appeal's findings in the Carbon Appeal Decision. ATCO asserted that it was entitled to be returned to the position it would have been in but for the directions of the Board set out in Order U2005-133 and Decisions 2005-063 and 2007-005.

[18] Decision 2010-167: ATCO Gas South, Approval to Implement Carbon Recovery Riders (Application No. 1605873, Proceeding ID 479) (Released: April 20, 2010).

[19] Review and Variance.

40. ATCO indicated that the net impact to its customers to the end of 2009 (including amounts that would be recovered in the year 2010) would be a recovery of $21.4 million. This amount was subsequently updated and revised in ATCO's January 6, 2010 Supplementary Evidence filing to $48.2 million and further updated in AUC-AGS-10 filed on February 17, 2010 and the Updated Appendices to the Application filed by ATCO on February 22, 2010 to $50.3 million.

41. It its Application ATCO proposed that the recovery would be accomplished as follows:

> ATCO Gas proposes that it would develop and file the final rider for the year 2009 once a decision on this Application has been issued by the Commission. Changes related to additional amounts billed through the Riders and Production and Storage charge as a result of unbilled amounts and billing adjustments and related interest calculations will be incorporated in the final 2009 rider calculations. A compliance application would be filed with the Commission finalizing the amount of the 2009 rider for each rate groups prior to the implementation of the final rider on (assumed to be) January 1, 2009. In October 2009 ATCO Gas would then file an application calculating the final rider for the year 2010. That filing would incorporate final billing adjustment impacts related to Riders G, H and I and the production and storage charge, final interest calculations and an updated throughput forecast for the year 2010 into the rider calculations for that year.

42. On January 6, 2010 ATCO filed Supplemental Evidence that revised the proposed recovery period as follows:

> ATCO Gas has updated the recovery rate rider calculations within Appendix A (attached) to reflect a recovery period of April 1, 2010 to December 31, 2011. ATCO Gas proposes to use a deferral account to record differences between the amounts actually recovered and what is approved for recovery. ATCO Gas also proposes to file an updated calculation of the 2011 rider for approval of the Commission prior to its implementation on January 1, 2011. The updated rider will take into account actual changes to the interest rate and calculations, and an updated throughput forecast for 2011. Any amounts remaining in the deferral account after December 31, 2011 will be addressed by ATCO Gas at the next application filed to adjust its rates.[20]

43. In the January 6, 2010 Supplemental Evidence ATCO also provided the following comments on the status of placeholders:

> 8. There are no outstanding placeholder amounts related to the Carbon assets prior to the Adjustment Date of April 1, 2005. In EUB Decision 2004-022, at page 20, the EUB approved a final lease rate of $0.45/GJ for the 2004/2005 storage year. There is no discussion in the Decision of that rate being a placeholder rate.
>
> 9. On November 22, 2004, the EUB issued correspondence in the 2005/2006 Carbon Storage Plan Application No. 1357130. A copy of that correspondence can be found in Appendix E attached. That correspondence confirms that the $0.45/GJ lease rate was to be treated as a placeholder commencing April 1, 2005. That determination was re-iterated by the Board in EUB Order U2005-133, at page 2, Directive (5).
>
> 10. As such, there are no outstanding placeholders related to the Carbon assets prior to the Adjustment Date of April 1, 2005.

[20] Exhibit 110, page 2, paragraph 3.

4 ISSUES

44. The Final Scope for this Proceeding was determined in Decision 2009-004 to be as follows:

1. Verification of Carbon related accounts.

2. Update to Application with respect to Carbon-related Capital expenditures.

3. Date from which adjustments to rate base and revenue requirement should be made should Carbon be removed from rate base.

4. Required adjustments to distribution revenue requirement and regulatory accounts to reflect the removal of the Carbon assets from regulated service and the revenue associated therewith, including without limitation, the proper treatment of depreciation amounts and net negative salvage amounts and other monies previously collected through rates in respect of future liabilities in respect of the Carbon assets.

5. With respect to any amounts to be recovered from ratepayers, the calculation of interest, if any, the methodology to be employed in determining rates and the period during which any amounts to be recovered from ratepayers will be collected.

45. Issue 3 was addressed in Decision 2009-067 and varied by Decision 2009-253. The Adjustment Date was determined to be April 1, 2005.

46. Issue 4 has been partially addressed. In Decision 2009-067 the Commission determined that amounts included in approved revenue requirements prior to the Adjustment Date for depreciation or net negative salvage on the Carbon assets should not be refunded to customers. The Commission also determined that since costs for Carbon were prepared on a forecast basis and storage revenues from Carbon were collected and credited to customers on an actual basis, amounts to be collected from customers as of the Adjustment Date should be calculated using the same methods.

47. The remaining matters to be decided in this Decision relate to the verification of Carbon related accounts and capital related expenditures and the calculation of the amounts, including interest, to be collected from each AGS rate class over a defined period. In addition this Decision will address related matters that arose during the course of the Proceeding.

48. Before the Commision is able to address the remaing matters noted above, the Commission will address the implication of the Carbon Appeal Decision on this proceeding.

49. In reaching its determinations set out within this Decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the submissions 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.

4.1 Impact of Carbon Appeal Decision

50. The parties disagreed with respect to the impacts of the Carbon Appeal Decision on the ability of the Commission to adjust rates as of the Adjustment Date and on the need for a new approval under subsection 26(2) of the *Gas Utilities Act* in respect of the lease of the Carbon storage capacity to ATCO Midstream.

51. Interim Order 2005-133 was issued to preserve the status quo at the time relating to Carbon. The Order provided:

> (1) The Carbon Storage facility and the Carbon producing properties and all associated property and assets in the AGS 2004 rate base, adjusted in the ordinary course as required, shall continue in AGS' rate base until such time as the Board may otherwise determine.
>
> (2) AGS shall continue to include in revenue requirement all operating expenses, working capital, depreciation, taxes, return, and other related costs and shall continue to account for applicable revenue credits, in respect of the Carbon related assets in the same manner as it does presently, with any necessary adjustments, until such time as the Board may otherwise determine.
>
> (3) AGS may apply for new capital additions to rate base in respect of the Carbon related assets in the ordinary course during the time period that this Interim Order is in effect.
>
> (4) AGS is given approval to lease the entire storage capacity of the Carbon storage to ATCO Midstream for the 2005/2006 storage year and for each subsequent storage year ntil such time as the Board may otherwise determine.
>
> (5) On November 22, 2004, the Board issued direction with respect to a placeholder of $0.45/gigajoule to be used commencing April 1, 2005 in respect of the fee to be paid by ATCO Midstream in the 2005/2006 storage year in respect of a storage year lease of the entire storage capacity of the Carbon facility. The Board continues to consider that the use of such a placeholder is appropriate and amends the previous order by directing AGS to reflect such placeholder in its 2005 revenue requirement and in the revenue requirement of each subsequent year until such time as the Board may otherwise determine.
>
> (6) The Riders G, H and I will continue in effect and the current process to establish their value on a monthly basis will continue until such time as the Board may otherwise determine.
>
> (7) This Interim Order is effective as of the date hereof and shall remain in effect until such time as it is terminated or otherwise modified by the Board.

52. In Decision 2007-005 the Board made the interim directions set out in Order U2005-133 final stating:

> Given the above conclusions, the Board considers that Order U2005-133 should continue to remain in place on a final basis. Accordingly all Carbon related amounts approved by Decisions 2006-004, 2006-083 and 2006-133, (other than lease fee amounts payable by Midstream for the 2005/2006 storage year and subsequent years) that were subject to

> reconsideration following the outcome of the Board's determination with respect to the Board's jurisdiction over Carbon are hereby finalized. The amount of the lease payment would remain a placeholder until completion of a Part 2 Module.[21] (footnotes omitted)

53. As a result of Decision 2007-005 ATCO Gas was directed to maintain Carbon in rate base and revenue requirement and to lease the entire storage capacity to ATCO Midstream until such time as the Board may otherwise determine.

54. In the Carbon Appeal Decision the Court determined that the Board erred in law or jurisdiction when it included Carbon in rate base as an asset used or required to be used to provide service to the public when the only function of the Carbon facilities was to generate revenue.[22] The Court did not address the three additional question on which leave to appeal had been granted[23] stating that the other questions:

> …were predicated on its conclusion that the Carbon storage facility could be kept in rate base as a revenue generation asset. Our conclusion to the contrary undermines the assumption on which the Board answered these remaining questions, and the basis on which leave to appeal was granted. In the circumstances, it is neither necessary nor advisable to answer the remaining questions at this time.[24]

55. The Court then stated: "[T]he appeals are allowed and the matter is remitted to the Alberta Utilities Commission to be dealt with in a manner consistent with these reasons."[25]

56. The Carbon Appeal Decision raises three issues for consideration in this Decision:

(a) Can the Commission adjust rates as of the Adjustment Date to reflect the findings of the Court as interpreted by the Commission in Decision 2009-253 or would such an adjustment constitute retroactive or retrospective ratemaking?

(b) Is the effect of the Carbon Appeal Decision to invalidate or vacate the approvals provided by Order U2005-133 and Decision 2007-005 of the lease of the storage capacity to ATCO Midstream?

(c) If the prior approvals have not been invalidated or vacated by the Carbon Appeal Decision, are additional approvals still required with respect to the lease to ATCO Midstream given that the approvals were provided in the context of Carbon remaining in service and rate base?

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[21] Decision 2007-005, page 27.

[22] Carbon Appeal Decision, paragraph 33.

[23] The other questions for which leave to appeal was granted were:
(2) Does the *Roles, Relationships and Responsibilities Regulation* under the *Gas Utilities Act*, prohibit ATCO Gas South from operating the Carbon facilities and if so, is the Board unable to assert further jurisdiction over the Carbon facilities?
(3). Can the Board require an owner of a gas utility to continue to include an asset in the rate base or restrict an owner from withdrawing a specific asset from its gas distribution system once an asset has been included in a past rate base?
(4). Did the Board err in determining that a change in use of the Carbon facilities is a "disposition" for the purposes of section 26 of the *Gas Utilities Act*?

[24] Carbon Appeal Decision, paragraph 32.

[25] Carbon Appeal Decision, paragraph 34.

57. The Commission will address each of these questions in turn.

4.2 Retoactive or Retrospective Ratemaking

(a) Can the Commission adjust rates as of the Adjustment Date to reflect the findings of the Court as interpreted by the Commission in Decision 2009-253 or would such an adjustment constitute retroactive or retrospective ratemaking?

Views of the Parties

Calgary

58. Calgary submitted that adjustments such as those requested by AGS in this proceeding raise the issue of intergenerational inequity. It is clear from the record of this proceeding that the customers of AGS on April 1, 2005 are not the same as the customers today. As set out in the Calgary evidence the number of customers has risen by over 13 percent.[26] Calgary submitted that the inequity issues are obvious. A collection starting in 2010 retroactive to April 1, 2005 would involve on the order of 75,000 customers who were not customers at the time of the retroactive date. Calgary submitted that the fact that there was growth of customers during that period of time indicates that not all those customers received or paid the storage and production rider nor were they all charged the cost of service associated with the Carbon assets for that full period. This is what gives rise to the intergenerational equity. ATCO is seeking to have customers in 2010 and beyond pay it the requested amounts when it is clear just from the growth that they are not necessarily the same customers, even without taking into consideration the turnover of rate payers.

59. Calgary noted that ATCO justified its proposal to violate the principle of intergenerational equity with the concept of impracticality. Calgary submitted that impracticality is not the issue nor should it even be a significant consideration. The issue is fairness and equity. Calgary argued that the regulatory process should not allow ATCO to avoid the rigors that would be necessary to recover these funds in the usual manner by a non regulated entity seeking to recover 'overpayments.'[27]

60. In the oral hearing Commission Member Yahya questioned the witnesses for Calgary/UCA as to the source of the principle that intergenerational inequity is to be avoided.[28] In Argument Calgary indicated that the source for the principle is found in both the legislation and the case law dealing with retroactive ratemaking. Calgary suggested that the Alberta *Gas Utilities Act*, like the other utility statutes in Alberta provides for rate setting on a prospective basis, except for the year in which the proceeding is initiated.[29] One of the primary reasons for that, as has been acknowledged by the Supreme Court[30] and the Alberta Court of Appeal,[31] is to

[26] Calgary Argument, page 6, citing Exhibit 152 - Calgary Evidence, April 20, 2010, page 8, Question 11.
[27] Calgary Argument, page 11.
[28] Transcript, page 244.
[29] *Gas Utilities Act*, RSA 2000, c. G-5, section 40(a).
[30] *Northwestern Utilities v. City of Edmonton* [1979] 1 S.C.R. 684, 12 A.R. 449, paragraphs 28-29.
[31] City of Calgary v. Alberta Energy and Utilities Board and ATCO Gas and Pipelines Ltd. (2010) ABCA 132, paragraphs 23 and 48.

avoid imposing shortfalls, or surpluses, on current customers of a utility created by previous generations of consumers. That is, to maintain intergenerational equity.[32]

61. Calgary argued that retroactive ratemaking is prohibited in rate regulation except where the rates are expressly specified to be interim.[33] Where rates are not interim the Commission cannot retroactively change those rates even where the rates charged were less than what was fair and reasonable. Calgary submitted that that the April 1, 2005 rates are in no way "interim," and there are no deferral account considerations. The rates were finalized in 2007-063 and not subject to adjustment.[34]

62. Calgary submitted that TELUS Communications Inc. v. Canada (Radio-television and Telecommunications Commission), [2005] 2 F.C.R. 388 (TELUS Decision) does not apply to these proceedings. Calgary stated that in the TELUS Decision, the Canadian Radio-television and Telecommunications Commission (CRTC) had, unintentionally, altered the rates for different type of conduit in British Columbia. Telus appealed the decision to vary the order. Calgary summarized the findings of the Federal Court of Appeal as follows:

1) A decision rendered without jurisdiction is a nullity. However, once the nullity is addressed, the CRTC was still under a statutory duty to make a correct decision and ought to be allowed to fulfill its duty.

2) The CRTC, in revisiting its original order, was not engaged in setting rates and as a result was not engaged in retroactive ratemaking.[35]

63. Calgary submitted that the Federal Court of Appeal found that where the CRTC was not engaged in setting rates a decision to remedy a previous error is not retroactive ratemaking, even if that is the effect. That circumstance is distinguished from the Carbon case as the Commission was engaged in setting rates and did set rates in U2005-133 and 2007-005. Consequently, the TELUS Decision is not relevant to the situation before the Commission in this proceeding.[36]

PICA

64. Given the extent of the intergenerational inequity that would arise if the recovery/refund were imposed on an across the board basis, PICA recommended that the Commission approve one of the approaches to recover/refund recommended by the UCA[37] in order to reduce the intergenerational inequity. PICA recognized this may entail a relatively high cost for implementation.

UCA

65. The UCA expressed concern about the retroactive recovery of the amounts claimed by ATCO from customers who were non participants in the storage and production rider revenues:

[32] Calgary Argument, page 7.
[33] Calgary (City) v. Alberta (Utilities Commission), 2010 ABCA 132 (DGA Appeal Decision).
[34] Calgary Argument, page 18.
[35] Calgary Argument, page 19.
[36] Calgary Argument, page 19.
[37] PICA Reply, page 9.

> Thus there are at least a total some 62,573 customers who either in whole or in part did not participate in the activities occurring during the [ATCO] proposed recovery period of the Carbon revenue credits. From a ratepayer perspective, it would not appear to be either fair or reasonable to impose the full cost of these activities on them based upon their respective level of participation. Again, we are dealing with history and actual billings, both for cost and revenue credits. This intergenerational inequity must be recognized. Failure to do so imposes a penalty on numerous customers who were non participants in the events which [ATCO] seeks to redress.[38]

66. The UCA recommended the following methods of recovery, which it considered were more equitable than the one proposed by ATCO:

> The starting point is to understand that the Carbon revenue credits are line items on customer's bills. Thus each customer knows the amount that they received under the Carbon revenue Credit throughout the entire time period. From both an equity and intergenerational point of view, it would be completely appropriate to prorate the Carbon revenue recovery based on a proportional amount in relationship to the amount the customer received by month over the time frame. A second alternative would be to apportion each individual year recovery based upon the amounts the customer received in a given year. A third alternative would be to apportion the total amount of the recovery based upon the total amount of revenue credit each customer received over the time frame. All of these methods recognize the amounts actually received and in turn would recover the return of the revenue credit in some proportion to the amount received. Additionally, all these methods would in whole or in part recognize the intergenerational issues of imposing the recovery of the Carbon revenue credit claw back on customers who did not participate in whole or in part in the revenue credits. If the objective is to restate history and remove Carbon effective April 1, 2005, then only those customers who benefited from the revenue credit should be compelled to refund the credit.[39]

The foundation of the UCA proposals is to treat ratepayers in the fairest manner possible, in proportion to the benefits received and the costs paid assuming that the requested refund from customers is not deemed to be retroactive.[40]

67. In the event the Commission directs that a refund be paid by AGS ratepayers, the UCA submitted that "the method of repayment proposed by AGS and currently in effect is not consistent with Bonbright's 'Attributes of a Sound Rate Structure' nor would it be consistent with 'the desirable characteristics of utility performance'. Although not perfect, the UCA's first alternative is the fairest of the three alternatives proposed by the UCA and will still result in full recovery of the amount, if any, determined to be owed by the Commission."[41] This recovery mechanism provides three superior results.

1. It recovers the Carbon revenue credits from customers on a basis, as close as possible, to which they were received by customers.
2. It recognizes that some customers were receiving revenue credits for the entire period and others for only part of the period.

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[38] Exhibit 151.02; page 8.
[39] Exhibit 163.02, AUC.UCA-6.
[40] See Transcript, page 193, Transcript, page 245, line 21 to Transcript page 246, line 21.
[41] UCA Argument, page 16.

3. It completely eliminates any imposition on those customers who came on the system on or after July 1, 2008 when the Carbon riders were effectively suspended. Under this methodology the ultimate level of fairness and equity is achieved.[42]

68. The UCA submitted that the Court remitted the matter back to the AUC "… to be dealt with in a manner consistent with these reasons." None of the "reasons" indicate or suggest in any way the manner in which the error should be corrected and, in particular, that there should be a retroactive adjustment to rates previously paid by customers. Similarly, it did not provide any guidance as to whether there should be an Adjustment Date and, if so, whether it should be a date which preceded the issuance of the Court's decision on May 27, 2008. With regard to the latter point, the UCA argued that the Commission will note that the Alberta Rules of Court (Regulation AR 390/68) provides that, absent a direction to the contrary "Every judgment and order takes effect from (a) the date of pronouncement…."[43] [44]

69. The UCA submitted that although the Commission approved an Adjustment Date (i.e. April 1, 2005) that preceded the effective date of the Court's decision, being May 27, 2008, it did not address the implications of and its authority to impose retroactive rates.[45] The UCA submitted that the issue of retroactivity is a primary concern in this proceeding.

70. The UCA referred to the DGA [deferred gas account] Appeal Decision and submitted that the only exception to the rules against retroactive ratemaking relates to rates which have been determined to be and clearly understood by ratepayers to be "interim." There can be no support for any suggestion that "final" rates can be retroactively adjusted even if they resulted from an error on the part of the Board.[46]

71. The UCA also argued that ATCO ignored the subsequent and very important comments of the Alberta Court of Appeal in the recent DGA Appeal Decision which refused ATCO's application to recover outstanding amounts in its Deferred Gas Accounts. ATCO completely ignores the specific comments of the Court:

> Utility regulators cannot retroactively change rates (*Stores Block* at para. 71) because it creates a lack of certainty for utility consumers. If a regulator could retroactively change rates, consumers would never be assured of the finality of rates they paid for utility services.[47]

The majority of the Court also stated:

> Even though this was not prohibited ratemaking *per se*, the long delays gave rise to inter-generational equity issues which lie at the heart of the prohibition against retrospective ratemaking." [Emphasis added by the UCA.][48]

[42] UCA Argument, pages 13-14.
[43] AR 390/68, Rule 322(2).
[44] UCA Argument, page 3.
[45] UCA Argument, page 4.
[46] UCA Argument, page 25.
[47] DGA Appeal Decision, paragraph 47.
[48] DGA Appeal Decision, paragraph 71.

72. The UCA argued that irrespective of how AGS's Application is characterized, if approved, it will, by definition, constitute retroactive ratemaking in the sense that benefits previously received, in the form of revenue requirement offsets (going back to April 1, 2005), will be refunded by current and future customers. A substantial number of these customers did not receive any benefit from the revenue offset and may well be concerned when they are directed to participate in any refund.[49]

73. The UCA referred to the Stores Block Decision where the Supreme Court referenced the question of rate refunds generally:

> The Board was seeking to rectify what it perceived as a historic over-compensation to the utility by ratepayers. There is no power granted in the various statutes for the Board to execute such a refund in respect of an erroneous perception of past over-compensation. It is well established through out the various provinces that utility boards do not have the authority to retroactively change rates.[50] [Emphasis added.]

74. The UCA also argued that the comments of the Supreme Court of Canada should also be taken in the context of section 40(a) of the *Gas Utilities Act*. This section provides that in "fixing just and reasonable rates, tolls or charges" the Commission is limited to consideration of the revenues and costs of the owner (i.e. AGS) that are applicable to the fiscal year of the owner in which the proceeding is initiated and a subsequent, consecutive, fiscal year. This would suggest that the Commission has "no power," to use the terms employed by the Supreme Court of Canada, to consider revenues and costs for any period prior to AGS's 2009 fiscal year.[51]

75. The UCA submitted that there is absolutely no suggestion by the Board that the rates approved in the Order U2005-133 would be changed on a retroactive basis.[52]

76. In Decision 2007-005 the Board confirmed its position that Riders G, H and I were intended to have been approved as final rates in the following words:

> Given the above conclusions, the Board considers that Order U2005-133 should continue to remain in place on a final basis. Accordingly all Carbon related amounts approved by Decisions 2006-004, 2006-083 and 2006-133, (other than lease fee amounts payable by Midstream for the 2005/2006 storage year and subsequent years) that were subject to reconsideration following the outcome of the Board's determination with respect to the Board's jurisdiction over Carbon are hereby finalized. The amount of the lease payment would remain a placeholder until completion of a Part 2 Module.[53] [Emphasis added.]

77. The UCA submitted that customers were entitled to assume that Riders G, H and I would not be changed unless and until the Board approved a change in the fee payable by ATCO Midstream. This did not occur.[54] Similarly, in the Board's decision in ATCO Gas' 2005-2007 GRA, Phase II, dated April 26, 2007, the Board stated "Accordingly, the rates for 2005 and 2006

[49] UCA Argument, pages 17-18.
[50] Stores Block Decision, paragraph 71.
[51] UCA Argument, page 18.
[52] UCA Argument, page 20.
[53] Decision 2007-005, page 27.
[54] UCA Argument, page 20.

are hereby made final."[55] The UCA submitted that the Commission has no authority to retroactively change rates, particularly those which have been determined to be "final."[56]

78. The UCA submitted that ratepayers should be treated in the same fashion as ATCO. The concept of like treatment in terms of fairness, reasonableness and parity should be the guiding lights for the return of the Carbon revenue riders. There is a fundamental inequity that a ratepayer who first came on the system on June 1, 2008 is currently being required to refund amounts that occurred in April 2005. The UCA submitted that its Option 1 is by far the most fair and equitable method of charging ratepayers.[57]

79. The UCA also cited Laycraft J.A. in the *Coseka Resources Ltd. Decision* in addressing interim rates as an exception to the prohibition against retroactivity:[58]

> Nevertheless all consumers of a utility service must be aware that the rates in an interim order are subject to change and determine their course of action upon the basis of that knowledge.[59] [Emphasis added].

80. The UCA also submitted that the TELUS Decision can be distinguished and is of little, if any, support for ATCO's position. In reaching this decision, the Court went on to acknowledge the CRTC's conclusion that "…as a matter of regulatory policy, rates approved on a final basis should not generally be subject to adjustment…. ."[60] It also stated with regard to the setting of rates retroactively or retrospectively that "…the CRTC, in revisiting Order 2000-13, was not engaged in an exercise of retrospective rate setting, [and] there is no need to address this issue."[61] [62]

ATCO

81. ATCO argued that every filing for Riders "G", "H", and "I" that ATCO was required to make under compulsion of Order U2005-133 clearly identified that the filings were being made over the objections of ATCO regarding the jurisdiction of the Commission to issue the orders and decisions related to Carbon that were the subject of the successful appeals.[63]

> Order U2005-133 for the bulk of the refund period was an interim order. It was under appeal throughout its existence and even after it was made final. Furthermore, the riders used to provide to customers the revenues related to the Carbon assets were and continue to be subject to deferral account treatment. The use of placeholders to address matters outside of a General Rate Application has become common place, and is a well known practice. This is the proceeding which finalizes the Carbon placeholders. There is nothing retroactive occurring. The effect of the Court order is to require the Commission to correct its error now in order that tolls may be just and reasonable.[64]

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55 Decision 2007-026, page 98.
56 UCA Argument, page 22.
57 UCA Argument, page 9.
58 16 Alta. L.R. (2d) 60.
59 Coseka Decision, paragraph 36.
60 TELUS Decision, paragraph 53.
61 Ibid, paragraph 52.
62 UCA Argument, pages 37-38.
63 ATCO Argument, page 20.
64 ATO Argument, page 21.

82. ATCO submitted that refunding ATCO Gas back to April 1, 2005 does not constitute retroactive or retrospective ratemaking. ATCO referred to Decision 2009-067 at paragraph 32 and Decision 2009-253 at page 15 for support for this statement.[65]

83. ATCO Gas noted that the Court of Appeal in the Carbon R&V Appeal Decision also has upheld Decision 2009-253 which established the effective date of the Carbon adjustments as April 1, 2005 stipulating that the date was the correct interpretation of the Carbon Appeal Decision.[66]

84. In the response to AUC-UCA-6, the UCA has suggested three alternative methods for recovery of the amounts owed to ATCO Gas as of April 1, 2005. Each of the alternative methods would require ATCO Gas to not only identify the customers who received the revenue credits in previous years back to April 1, 2005, but to also total the amount received by each customer by month, year and for the full period in question. ATCO Gas submitted that there are a number of issues with regard to these recommendations which make them impractical:

> First, it should be noted that the payment of the riders to customers over the period in question did not necessarily coincide with the timing of the payment of the cost of service related to the Carbon assets. Due to regulatory lag, ATCO Gas' delivery rates in any given year will often include amounts related to approved revenue requirements for previous years. [This] would still not address the intergenerational effects that the UCA is concerned about.
>
> Second, ATCO Gas is not responsible for the final billing of customers. That is the responsibility of retailers and the default supply provider. ATCO Gas provides billing information to retailers and the default supply provider based on site IDs. While ATCO Gas maintains some limited historical distribution billing information on its billing system by site ID, it does not track billing information by customer. The administration of the alternatives suggested by the UCA would therefore fall to the retailers and the default supplier. ATCO Gas does not know how administratively difficult or costly this would be for retailers or if it even could be done at all.
>
> Third, ATCO Gas currently has an interim rider in effect as of April 1, 2010 which has commenced recovery of a portion of the Carbon amounts owed to it. The UCA has not indicated what would occur with respect to that interim rider, but based on the three alternatives posed by the UCA, it would appear that ATCO Gas would have to perform a refund of the interim rider on some basis, which would add to the administrative cost and complexity associated with the UCA's proposals.
>
> Finally, ATCO Gas notes that it is not aware of being required to perform a recovery or refund of amounts on a customer specific basis in its past history. The UCA also acknowledged that it is unaware of any past decisions by the regulator in Alberta that required the implementation of the types of alternatives proposed by the UCA. The AUC recently issued Decision 2010-102 related to the 2003 – 2007 Benchmarking and ATCO I-Tek Placeholders True-up proceeding. That Decision impacted the revenue requirement of ATCO Gas required to perform a customer specific adjustment related to the finalization of those placeholder amounts back to the year 2003.[67] (footnote omitted)

[65] ATCO Argument, page 4.
[66] Carbon R&V Appeal Decision at paragraphs 20 and 25.
[67] ATCO Argument, pages 22-23.

85. ATCO also noted that none of Calgary, UCA or PICA even considered section 29 of the *Alberta Utilities Commission Act*. That section has direct application here. That section requires the Commission on a direction back from the Court to effect the requested changes. ATCO submitted that what all three interveners miss, in particular, is that the rates struck on and after April 1, 2005 are not just and reasonable to the extent they thereafter include the costs of Carbon and its operations. That is the effect of the Court's decision. There can be no retroactivity when the initial rates subject to adjustment were found not to be just and reasonable. Rather, ATCO argued that the Commission is obliged to now make the decision it failed to do earlier - to determine just and reasonable rates excluding Carbon in accordance with the directions of the Court.[68]

86. ATCO also noted that the UCA acknowledged that it is unaware of any past decisions by the regulator in Alberta that required the implementation of the types of rate alternatives proposed by the UCA. ATCO noted that the AUC recently issued Decision 2010-102[69] related to the 2003-2007 Benchmarking and Placeholders True-Up proceeding, which impacted the revenue requirement of ATCO even further back than the Carbon Compliance proceeding does. ATCO argued that there appears little concern on the part of the UCA or Calgary for intergenerational issues related to a refund to the DGA on the part of ATCO with respect to the potential adjustment arising from the DGA Appeal Decision. Given the long history of making such adjustments to all customers' rates, customers can be said to have been on notice and come to expect that refunds and recoveries would be handled in this manner.[70]

87. ATCO submitted that the presence or absence of an interim toll, in the present context, is irrelevant. What is relevant, particularly when interpreted in connection with section 29 of the *Alberta Utilities Commission Act*, is:

(a) the original decisions and orders are not final and did not set just and reasonable rates since these decisions and orders were made without jurisdiction.

(b) the Commission's obligation to determine just and reasonable rates is unfulfilled until it complies with the Court's directions to remove Carbon costs and revenues from rates and issue new rate orders accomplishing that result.

The TELUS Decision, therefore, is consistent with the approach advocated by the ATCO.[71]

88. ATCO argued that if the Court of Appeal is powerless to correct for an erroneous decision other than on a going forward basis, that would be equivalent to saying there was no Court decision at all. Such an interpretation of the enabling legislation, therefore, begs why then, the Legislature would bother to permit appeals on questions of law and jurisdiction in the first place.[72]

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68 ATCO Reply Argument, page 23.
69 Decision 2010-102: ATCO Utilities (ATCO Gas, ATCO Pipelines and ATCO Electric Ltd.) 2003-2007 Benchmarking and ATCO I-Tek Placeholders True-Up (Application No. 1562012, Proceeding ID. 32) (Released: March 8, 2010).
70 ATCO Reply Argument, page 26.
71 ATCO Reply Argument, pages 27-28.
72 ATCO Reply Argument, page 28.

Views of the Commission

89. Calgary referred to the recent decision of the Alberta Court of Appeal in the DGA Appeal Decision as confirmation for the proposition that retroactive ratemaking is prohibited and that rates once established can not be changed except in the case of interim rates or deferral accounts. Calgary takes the position that Carbon related rates made interim by Order U2005-133 were made final in Decision 2007-005. Consequently, rates can not be adjusted back to the Adjustment Date even if a rate adjustment would be required in order to reflect the findings of the Court in the Carbon Appeal Decision. Calgary stated:

> In Calgary's submission the principle of prospective ratemaking, and the prohibition against retroactive, or retrospective, ratemaking confirmed by the Court of Appeal, leads to the conclusion that the Commission cannot start adjusting rate transactions that were made in the past even if the Court's decision leads to the conclusion that those rates were too low (at that time) due to the inclusion of Carbon in rate base. While ATCO may consider that including Carbon in rate base after April 1, 2005 resulted in rates which were too low the legislation, and the case law, provides that no retroactive rate adjustment can be made.[73]

90. The UCA agreed with Calgary that the adjustments sought by ATCO would constitute retroactive or retrospective ratemaking. In addition to U2005-133 and Decision 2007-005 the UCA refers to several other decisions of the Board including Decision 2007-026[74] and Decision 2007-063[75] where the rates for 2005, 2006 for 2007 were made final, other than with respect to certain placeholders including the amount of the lease payment to be paid by ATCO Midstream for the use of Carbon storage capacity. The UCA submitted that the Commission has no authority to retroactively change rates which have been determined to be "final."

91. The UCA concluded that there is no judicial authority, including the Carbon Appeal Decision to "suggest that, because the Board erred in law, the rules against retroactivity were suspended or did not apply."[76]

92. ATCO submitted that the ability to adjust rates back to the Adjustment Date (considered at that time to be October 10, 2006) has already been decided by the Commission in Decision 2009-067. In Decision 2009-067 the Commission stated:

> 32. An Adjustment Date of October 10, 2006 is also consistent with Order U2005-133. As referenced above, Order U2005-133, Decision 2006-004 and Decision 2007-005 all contain language which anticipates adjustments to revenue requirement upon resolution of the jurisdictional issues relating to Carbon. The jurisdictional issues requiring resolution related to whether or not Carbon was used or required to be used for either load balancing or revenue generation. The issue with respect to load balancing was resolved by Decision 2006-098 as of October 10, 2006. The Carbon Appeal Decision resolved the revenue generation issue as of May 27, 2008. As already stated, only operational uses were determined to be valid uses for utility

[73] Calgary Argument dated July 9, 2010 page 18.
[74] Decision 2007-026: ATCO Gas, 2003-2004 General Rate Application Phase II, Cost of Service Study Methodology and Rate Design and 2005-2007 General Rate Application Phase II (Application No. 1475249) (Released: April 26, 2007).
[75] Decision 2007-063: ATCO Gas, 2005-2007 General Rate Application Phase II, Second Compliance Filing to Decision 2007-026 (Application No. 1513143) (Released: August 14, 2007).
[76] UCA Argument dated July 9, 2010 paragraph 51.

> assets by the Carbon Appeal Decision. Accordingly, only October 10, 2006 should be considered as a date for adjustments to revenue requirement. Given the adjustments to revenue requirement contemplated by Order U2005-133, Decision 2006-004 and Decision 2007-005, an Adjustment Date of October 10, 2006, the date of Decision 2006-098, would not be retroactive ratemaking.[77]

93. ATCO referred to subsection 29(14) of the *Alberta Utilities Commission Act* which requires the Commission to vary or rescind a decision or order in accordance with a judgment of the Court of Appeal or the Supreme Court of Canada. In ATCO's submission interveners were ignoring the requirements of the legislation in suggesting that adjusting rates back to the Adjustment Date as a result of the Carbon Appeal Decision was retroactive or retrospective ratemaking.[78] ATCO further submitted:

> There can be no retroactivity when the initial rates subject to adjustment were found not to be just and reasonable. The Commission is obliged to now make the decision it failed to do earlier – to determine just and reasonable rates excluding Carbon in accordance with the directions of the Court.[79]

94. Parties were also asked by the Chair for their views in argument on whether the Federal Court of Appeal's decision in TELUS Communications Inc. v. Canada (Radio-television and Telecommunications Commission), [2005] 2 F.C.R. 388 (TELUS Decision) had any bearing on this proceeding. In that Decision the Court found that the Canadian Radio-television and Telecommunications Commission (CRTC) had, unintentionally, altered the rates for a certain types of conduits in British Columbia in a decision in 2000. Three years later in Telecom Decision CRTC 2003-54, the CRTC varied its original decision by restoring the previous rates in place effective as of the date of the original decision. Telus appealed the CRTC decision to vary the original order submitting that the variation of final rates amounted to retroactive or retrospective ratemaking. The Federal Court of Appeal denied the appeal stating:

> With respect, I believe the appellant misapprehends and therefore misstates what legally occurred in the case at bar in Telecom Decision CRTC 2003-54. The CRTC did not retroactively or retrospectively set rates as the appellant contends. Rather, it varied its decision by setting aside that part of its decision which was rendered in the absence of any evidence to support it and, therefore, in excess of jurisdiction and in violation of the fundamental duties imposed upon it by the Act. The effect, as it appears from paragraph 54 of its decision, was simply to restore the *status quo ante* which the invalid decision had altered. There was no setting of rates in Telecom Decision CRTC 2003-54.[80]

95. The Court went on to determine that in varying its earlier decision "the CRTC simply acknowledged or recognized the nullity of part of its Order,"[81] the part relating to the subject conduits. The Court determined that "a Decision rendered in the absence of evidence, like a decision rendered without jurisdiction, is a nullity."[82]

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77 Decision 2009-067, paragraph 32.
78 ATCO Reply Argument, paragraph 68.
79 ATCO Reply Argument, paragraph 69.
80 TELUS Decision, paragraph 39.
81 TELUS Decision, paragraph 51.
82 TELUS Decision, paragraph 42.

96. Calgary submitted that the Federal Court of Appeal found that where the CRTC was not engaged in setting rates a decision to remedy a previous error is not retroactive ratemaking, even if that is the effect. Calgary submitted that the Board was engaged in setting rates in Order U2005-133 and in Decision 2007-005 and therefore the TELUS Decision did not apply to the present proceeding.

97. The UCA points to the conclusion of the Federal Court of Appeal that in overturning its earlier decision the CRTC was not setting rates, merely restoring the status quo ante. Given that ATCO is requesting the Commission to set new rates as of the Adjustment Date, the UCA submitted the TELUS Decision does not apply.[83]

98. ATCO referred to its argument dated March 30, 2009 filed in connection with the preliminary questions process that lead to Decision 2009-067. At page 12 of that Argument the ATCO Utilities referred to the TELUS Decision and stated:

> Accordingly, Interim Order U2005-133 and the subsequent Decision 2007-005 finalizing that Order, are now of no effect. They have been rendered nullities.

99. The EUB decisions that approved the Carbon-related portions of the AGS rates, to the extent they did so, must be considered as a nullity from and after the Adjustment Date in accordance with the Carbon Appeal Decision and the TELUS Decision. As a consequence, rate adjustments in the form of rate collection riders are required prospectively to reflect the accounting corrections resulting from the removal of Carbon from ATCO's revenue requirements and rates effective as of the Adjustment Date. These rate adjustments are necessary to fulfill the direction of the Court of Appeal. As a result the Carbon-related portion of the AGS rates and riders in place since the Adjustment Date (whether previously declared final or not) are not valid. This finding is based on section 29(14) of the *Alberta Utilities Commission Act* and the finding of the Court of Appeal in the Carbon Appeal Decision that the Board lacked the jurisdiction to retain Carbon in utility service, revenue requirement and rates on the basis that it performed a revenue generation function.

100. Parties addressed the ways in which the rate adjustments necessary to fulfill the direction of the Court of Appeal could be implemented. ATCO proposed that all current customers would be responsible to reimburse ATCO for the under collections. The UCA expressed concerns that ATCO's approach would result in some customers who did not benefit in the past being required to reimburse ATCO for benfits they did not receive. The UCA proposed three alternatives each of which would require ATTCO to identify which of its current customers received the benefit of the lower rates in the past. It would only be those customers who would be called upon to reimburse ATCO. The UCA made it clear that ATCO would be entitled to recovery of the full amount.[84] The Commision disagrees with the UCA's approaches.

101. The Commission understands that intergenerational equity issues will arise when adjusting for the prior jurisdictional error which required ATCO to charge rates lower than it would be otherwise entitled to charge had the jurisdictional error not been made. All three of the UCA's approaches and ATCO's approach to implement the necessary adjustments raise intergenerational equity challenges. In order to comply with the Carbon Appeal Decision and

[83] UCA Argument dated July 9, 2010, paragraph 99.
[84] Transctript, pages 169-175.

permit ATCO to recover all of the amounts to which it is entitled, the Commission must choose an option that necessarily creates some degree of intergenerational inequities. Given the constantly changing makeup of customers, all of the UCA approaches would require those remaining customers who received the benefit of lower rates in the past to reimburse ATCO today for more than the benefit they received. ATCO's approach would require all present customers to share in the reimbursement thereby spreading responsibility for the reimbursement over the largest possible group of customers. The Commission has chosen to adopt the ATCO approach in order to minimize the cost and complexity of implementing the Carbon Appeal Decision, and rejects the UCA's approach given the potential of those approaches to result in some customers being responsible for relatively large reimbursement payments.

102. For the reasons stated above Order U2005-133, Decision 2005-063 and Decision 2007-005 are hereby varied in accordance with the directions of the Court of Appeal in the Carbon Appeal Decision so as to exclude Carbon from utility service, utility rate base and utility rates as of the Adjustment Date. The Commission will address the rate riders that are required to reflect the accounting corrections resulting from a removal of Carbon from regulated utility service as of the Adjustment Date later in this Decision.

4.3 Status of Storage Capacity Lease

(b) Is the effect of the Carbon Appeal Decision to invalidate or vacate the approvals provided by Order U2005-133 and Decision 2007-005 of the lease of the storage capacity to ATCO Midstream?

4.3.1 Order U2005-133

103. The EUB included the following related to the storage lease in the Order section of Order U2005-133:

> THEREFORE, IT IS ORDERED THAT:
>
> (2) AGS shall continue to include in revenue requirement all operating expenses, working capital, depreciation, taxes, return, and other related costs and shall continue to account for applicable revenue credits, in respect of the Carbon related assets in the same manner as it does presently, with any necessary adjustments, until such time as the Board may otherwise determine.
>
> (4) AGS is given approval to lease the entire storage capacity of the Carbon storage to ATCO Midstream for the 2005/2006 storage year and for each subsequent storage year until such time as the Board may otherwise determine.
>
> (5) On November 22, 2004, the Board issued direction with respect to a placeholder of $0.45/gigajoule to be used commencing April 1, 2005 in respect of the fee to be paid by ATCO Midstream in the 2005/2006 storage year in respect of a storage year lease of the entire storage capacity of the Carbon facility. The Board continues to consider that the use of such a placeholder is appropriate and amends the previous order by directing AGS to reflect such placeholder in its 2005 revenue requirement and in the revenue requirement of each subsequent year until such time as the Board may otherwise determine.
>
> (7) This Interim Order is effective as of the date hereof and shall remain in effect until such time as it is terminated or otherwise modified by the Board.

104. Order U2005-133 was made in response to correspondence from ATCO Gas South described in the first paragraph of Order U2005-133 as follows:

> The Alberta Energy and Utilities Board (Board) received correspondence from ATCO Gas South (AGS), dated March 8, 2005, which purports to withdraw "all plans, proposals or options previously filed by it in this proceeding pursuant to the Board's orders, including Direction #5 in Decision 2004-022." The letter also confirms at page 5 statements made by AGS in its submissions on the Board's Preliminary Questions dated January 24, 2005 and February 7, 2005 referring to "management's decision not to include any Carbon-related costs or revenues in connection with the 2005/2006 storage operation in its jurisdictional rates for distribution service, effective April 1, 2005." At page 6 "…AGS provides notice that all related riders (Riders G, H, I) will be discontinued effective April 1, 2005."

105. The Board described Order U2005-133 as an Interim Order and included the following regarding how long it was to remain in place:[85]

> This Interim Order shall remain in place until such time as the Board determines that there has been a final disposition of:
>
> (a) the matters presently before the Court of Appeal;
>
> (b) the matters being considered by the Board relating to Carbon;
>
> (c) any additional matters relating to Carbon that the Board may be required to decide as a result of subsequent filings of AGS or an intervener; and
>
> (d) any additional matters resulting from any direction from the Court of Appeal.

4.3.2 Decision 2007-005

106. The following summary is from the first paragraph of Decision 2007-005:

> In this Decision the Board has determined that the Carbon storage and associated production assets are used or required to be used for purposes of generating revenue to offset customer rates. This finding was made following a review of the unique history and evolution of Carbon which the Board determined has included revenue generated from its substantial excess capacity as an integral aspect of its utility utilization. Accordingly, it is appropriate for the Carbon assets to remain in regulated rate base subject to the Board's jurisdiction. The Board will conduct a further Part 1B Module process to determine if it is appropriate that 100% or some lesser portion of these assets and their associated revenue should continue to be used to offset customer rates.

[85] Order U2005-133, Section 2 "Board Findings".

107. The Board also finalized the interim Orders granted under Order U2005-133 in Decision 2007-005 stating:

> Given the above conclusions, the Board considers that Order U2005-133 should continue to remain in place on a final basis. Accordingly all Carbon related amounts approved by Decisions 2006-004, 2006-083 and 2006-133,74 (other than lease fee amounts payable by Midstream for the 2005/2006 storage year and subsequent years) that were subject to reconsideration following the outcome of the Board's determination with respect to the Board's jurisdiction over Carbon are hereby finalized. The amount of the lease payment would remain a placeholder until completion of a Part 2 Module.[86]

108. AGS included the following as part of this Application:[87]

> ATCO Gas is filing this Alberta Court of Appeal Compliance Application requesting the Board formally set aside Order U2005-133 and Decisions 2005-063 and 2007-005 and grant a new Order implementing the Court of Appeal Decision as directed, restoring the effect of what ATCO Gas outlined in its March 8, 2005 letter. On that basis, the Carbon related assets should be removed from ATCO Gas' distribution service rates effective April 1, 2005; the placeholder lease rate of $0.45/GJ for utility purposes should be made $0/GJ effective April 1, 2005; ATCO Gas should be allowed to recover all amounts it was wrongly directed to provide to customers through Riders G, H, and I on and after April 1, 2005, and interest should be applied to the net amounts owed to ATCO Gas consistent with AUC Rule 23. These actions are required to implement the Court's determination that the Board's Order and Decisions were made without legal authority. ATCO Gas is entitled to be returned to the position it would have been in but for the impugned Order and Decisions.

Views of the Parties

109. AGS indicated that the Commission has repeatedly affirmed that its Decisions and Orders would be adjusted depending on the outcome of the jurisdictional review. AGS added that this is what is happening now under the direction of the Alberta Court of Appeal. AGS submitted that it is the Commission, not AGS, which must reverse its prior directions to reflect in just and reasonable rates the removal of the Carbon related costs which it unlawfully included in rates. AGS argued that that the current one-year lease was validly entered into under direction and with approval of the Commission and that it should not now be voided.[88]

110. Calgary indicated that while the Carbon Appeal relating to Order U2005-133, Decisions 2005-063 and 2007-105 consisted of four questions, the Court of Appeal considered only the first: "Did the Board err in law or jurisdiction when it included the Carbon facilities in the rate base as an asset used or required to be 'used to provide service to the public within Alberta' when the only function of those facilities is to generate revenue?"[89]

111. Calgary added that the Carbon Appeal Decision does not address the approval of the lease to ATCO Midstream and that, while having Carbon remain in rate base is never stated as a condition of the approval of the lease in Order U2005-133, the crediting of lease revenue

[86] Decision 2007-005, page 27.
[87] Exhibit 1, Application, page 3 of 5, lines 28-33; page 4 of 5, lines 1-6.
[88] ATCO Argument, paragraphs 70, 72 and 74.
[89] Calgary Argument, page 15.

however, is.[90] The lease from AGS to ATCO Midstream was not in the ordinary course of business of AGS. As a result the only authority for the lease from AGS to ATCO Midstream is section 26 of the *Gas Utilities Act*.[91]

112. AGS replied that the plain wording of Order U2005-133 approved the act of leasing Carbon capacity to ATCO Midstream effective April 1, 2005 to the present. AGS stated that the lease rate was a placeholder as of April 1, 2005 to be reviewed once the jurisdictional questions were finally resolved. AGS submitted that whether a section 26 approval may be required or not is irrelevant to removing Carbon from rates and restoring AGS to the position it would have been in had the jurisdictional error not been made.[92]

113. The UCA indicated that the Carbon Appeal was initiated by ATCO to the Alberta Court of Appeal, in which ATCO requested the Court to address five questions.[93] The UCA noted that the Court found it necessary to address only the first question and concluded that the Board had erred in law or jurisdiction "when it included the Carbon facilities in rate base…." It then "remitted" the matter to the Commission "…to be dealt with in a manner consistent with these reasons." The UCA submitted that the Court did not provide any direction as to how this should be done and, specifically, did not make any reference to an "Adjustment Date" or whether AGS was entitled to a refund of all or any portion of the amounts credited to customers under Riders G, H and I.[94]

114. The UCA indicated that of the seven issues addressed in Order U2005-133, only the first three related to retaining the Carbon facilities in rate base. The UCA added that the next three issues addressed in Order U2005-133 related to approval of the leasing arrangement to ATCO Midstream, the determination of a placeholder of $0.45/GJ and the continuation of Rate Riders G, H and I. The UCA submitted that these are all concerned with the section 26 approvals granted by the Board which is quite independent and distinct from any question as to whether these assets should or should not be in rate base.[95]

115. The UCA argued that these leasing arrangement issues were not considered by the Alberta Court of Appeal, nor were they held to be invalid.[96] The UCA stated that similarly, the other two "impugned" Decisions, those being 2005-063 and 2007-005, address a number of issues not directly or indirectly related to the Board's decision to continue the inclusion of the Carbon facilities in rate base. The UCA submitted that as a result, Order U2005-133, Decision 2005-063 and Decision 2007-105 have not been "vacated" nor is this term used in the Court's Decision.[97]

116. In its Reply Argument, Calgary indicated that it is somewhat confused by the ATCO position on Order U2005-133. Calgary added that at the outset of AGS' Argument, the utility submitted that Order U2005-133 was issued without authority and confirmed that AGS applied to have Order U2005-133 set aside. However, Calgary stated that in another section of AGS'

[90] Calgary Argument, page 15.
[91] Caglary Argument, page 16.
[92] ATCO Reply Argument, paragraph 59.
[93] UCA Argument, paragraph 86.
[94] UCA Argument, paragraph 87.
[95] UCA Argument, paragraph 88 and 89.
[96] UCA Argument, paragraph 89.
[97] UCA Argument, paragraph 91.

Argument, the utility appeared to be arguing that the approval of the lease contained in Order U2005-133 is valid. Calgary submitted that if Order U2005-133 is invalid, or a nullity as is often referred to by AGS, then so is the approval of the lease to ATCO Midstream.[98]

117. In its Reply Argument, the UCA stated that from a purely legal standpoint, the Court did not suggest that the three impugned decisions were vacated, overturned, of no further force and effect vacated, or made without legal authority, as suggested by AGS.[99]

118. The UCA added in Reply Argument that the revenue credits received by customers, and which form the basis for the refund claimed, were paid pursuant to leasing arrangements with ATCO Midstream which were approved by the Board pursuant to its section 26(2) authority. The UCA added that these leasing arrangements have not been challenged and remain in full force and effect today. The UCA submitted that in the absence of a Court determination that these leasing approvals were made without authority, the Application is premature.[100]

Views of the Commission

119. The parties disputed the need for an approval for the current leasing arrangements between ATCO Gas and ATCO Midstream under section 26(2) of the *Gas Utilities Act*. Section 26(2) provides:

> 26(2) No owner of a gas utility … 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
>
> …
>
> 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.

120. The present lease arrangements with ATCO Midstream originally arose from the Uncontracted Capacity Agreement dated December 15, 1999 which is an addendum to the Gas Storage Services Agreement dated February 20, 1998 between Canadian Western Natural Gas Limited and ATCO Gas Services Ltd. (now ATCO Midstream).[101]

121. Decision 2004-022[102] approved a storage plan for the 2004/2005 storage year (April 1, 2004 - March 31, 2005). The storage plan included a lease to ATCO Midstream of the storage capacity of Carbon in excess of 16.7 petajoules at a rate of $0.45/gigajoule..

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98 Calgary Reply Argument, page 8.
99 UCA Reply Argument, paragraph 4.
100 UCA Reply Argument, paragraph 5.
101 Decision 2002-072, page 39.
102 Decision 2004-022: ATCO Gas South 2004/2005 Carbon Storage Plan (Application No. 1314634) (Released: March 9, 2004).

122. In a letter dated November 22, 2004 on Application 1357130 the Board confirmed approval for a lease of the entire storage capacity to ATCO Midstream for the 2005/2006 storage year (April 1, 2005 - March 31, 2006) at a placeholder rate of $0.45/ gigajoule. This direction was confirmed in a Board ruling dated December 23, 2004 on the same application.

123. ATCO has leased the entire storage capacity of Carbon to ATCO Midstream under a one year contract every year since Order U2005-133 was issued.[103]

124. Parties were asked by the Chair at the oral hearing for their views on whether the Carbon Appeal Decision vacated the entirety of Board Decisions U2005-133, 2005-063 and 2007-005 or only the portions of those decisions related to the retention of Carbon in utility service and rate base solely for revenue generation purposes.

125. Calgary stated in argument that the Carbon Appeal Decision did not address the portion of the decision relating to the lease to ATCO Midstream. Calgary stated:

> The question posed, and answered by the Court of Appeal in Carbon addresses only the inclusion of Carbon in rate base – the first of the determination in Order U2005-133 and the determination in Decision 2007-005. It does not address the approval of the lease to ATCO Midstream.[104]

126. The UCA took a similar position stating: "…the Order and the two Decisions have not been 'vacated' nor is this term used in the Court's Decision."[105]

127. Ms. Wilson, witness for ATCO commented as follows on the validity of the Board approvals of the lease to ATCO Midstream in light of the Carbon Appeal Decision in an exchange with Commission Counsel:

> Q I'm interested in knowing if ATCO has a position on the validity of the Board approvals in respect of the lease to Midstream given ATCO's position that the Court of Appeal overturned Order U2005-133 and Decisions 2007-005, which, as we just went through, approved the lease on an interim basis and then it was made final?
> A MS. WILSON: Well, I think we're talking here about a chicken and an egg kind of situation; which has come first, Mr. McNulty. I would note, though, that I have [not] seen anything from the Commission that actually relieves ATCO Gas from having to comply with Order U2005-133, and I think that's the piece that's missing for us still.
> Q Okay. And so in the event that the Commission were to in its decision try to address your request to have those decisions formally set aside, what is it you want the Commission to do in respect of the lease?
> A MS. WILSON: Well, I don't think that we can undo what has already occurred to date. We can't go back in time, Mr. McNulty. The asset is nonutility as of April 1st, 2005, but we had to enter into the lease under compulsion of the order. It's -- we are where we are at this point.
> Q And is ATCO seeking from -- anything from the Commission in this application with respect to approval of the lease from Midstream on -- either in the past or on a go-forward basis?

[103] Testimony of Ms. Wilson at transcript page 148.
[104] Argument of Calgary dated July 9, 2010.
[105] Argument of the UCA dated July 9, 2010, paragraph 91.

> A MS. WILSON: I don't think that we're here to talk about on a go-forward basis, Mr. McNulty. I think that's something that ATCO Gas will likely have to address perhaps through some other filing to the Commission once the decision on this proceeding has been issued. However, I think we do require a decision from the Commission that recognizes the fact that we entered into that lease over the period in question under compulsion of Order U2005-133, and given where we are, we can't, in effect, undo that lease.[106]

128. On the basis that revenue generation was not a valid utility function, the Commission considers that the findings of the Court in the Carbon Appeal Decision have no bearing on the question of the ATCO Midstream lease or to any portion of Order U2005-133, Decision 2005 063 or Decision 2007-005 not relating to the inclusion of Carbon in utility service or utility rates. No other portion of the decisions under appeal was made without jurisdiction so as to render it a nullity. Other than acknowledging that the AGS revenue requirements and rates should not have included either Carbon costs or Carbon related revenues effective as of the Adjustment Date and approving the consequent prospective rate riders necessary to adjust for the removal of Carbon costs and revenues as of the adjustment date, no other action is necessary on behalf of the Commission to comply with the Carbon Appeal Decision. Likewise, no other action is required to address the matters otherwise approved or disallowed by the Board in the impacted decisions.

4.4 Lease Approvals and Section 26

(c) If the prior approvals have not been invalidated or vacated by the Carbon Appeal Decision, are additional approvals still required with respect to the lease to ATCO Midstream given that the approvals were provided in the context of Carbon remaining in service and rate base?

Views of the Parties

Calgary

129. Calgary acknowledged that there has been no "sale" of Carbon although there is a lease of Carbon. Section 26(1)(d)(i) specifically includes the "lease" of the property of an owner of a gas utility as a disposition requiring prior Commission approval.[107]

130. Calgary submitted that the question posed, and answered by the Court of Appeal in Carbon addressed only the inclusion of Carbon in rate base – the first of the determination in Order U2005-133 and the determination in Decision 2007-005. It does not address the approval of the lease to ATCO Midstream. That Carbon must remain in rate base is never stated as a condition of the approval of lease in Order U2005-133, the crediting of lease revenue however, is. The lease from AGS to ATCO Midstream was not in the ordinary course of business of AGS. As a result the only authority for the lease from AGS to ATCO Midstream is section 26 of the *Gas Utilities Act*.[108]

131. Calgary submitted that Order U2005-133 is not a nullity. The Court of Appeal found that the Commission erred in keeping Carbon in rate base, the first determination of Order U2005-133. It did not address the lease to ATCO Midstream. That lease was approved. The

[106] Transcript, pages 150-152.
[107] Calgary Reply Argument, page 12.
[108] Calgary Argument, page 15-16.

only authority for that approval is section 26 of the *Gas Utilities Act*. The approval was conditioned by the Commission, all within its authority.[109]

PICA

132. PICA agreed with Calgary's submission that the leasing of the Carbon assets to ATCO Midstream, the ending of the flow of lease benefits in the amount of $0.45 per GJ to regulated utility customers and the removal of carbon assets from rate base, effective April 1, 2005 indicated there was an effective disposition of the Carbon assets requiring section 26 approval by the Commission. PICA also submitted that there is nothing to indicate the lease, itself, which was approved in U2005-133, was overturned by subsequent decision.

UCA

133. The UCA argued that by requesting that the Commission reduce the lease rate to $0/GJ, effective April 1, 2005, ATCO appeared to acknowledge the Board's authority in granting the section 26 approvals and is simply asking that the conditions of approval be changed retroactively and refund of amounts previously directed by the Board to be paid to the benefit of customers. The UCA submitted that there is no justification for suggesting that there should be a refund of amounts paid pursuant to a section 26 approval.[110]

134. The UCA submitted that all of the historical leasing arrangements of the Carbon facilities have been acknowledged not to be in the ordinary course of business and were approved by the Board pursuant to and in accordance with its section 26 authority. These leasing arrangements were conditional upon receipt by CWNG and, subsequently, ATCO Gas, of an amount which eventually became $0.45/GJ of capacity. None of those approvals have ever been challenged or held to have been made without authority. It also appears that these leasing arrangements continue through to the present day.[111]

135. The UCA submitted that there are no Court decisions which provide exceptions or limit the Board's authority pursuant to section 26. In fact, in the Stores Block Decision, the Supreme Court of Canada made it quite clear that the Board could attach conditions to the approval of a sale and outlined several options available to it.[112] It stated:

> This is not to say that the Board can never attach a condition to the approval of sale. For example, the Board could approve the sale of the assets on the condition that the utility company gives undertakings regarding the replacement of the assets and their profitability. It could also require as a condition that the utility reinvest part of the sale proceeds back into the company in order to maintain a modern operating system that achieves the optimal growth of the system.[113] [114]

136. The UCA submitted that the various section 26 approvals were validly made and remain in full force and effect and apply to the Carbon assets whether in rate base or not. The approvals

[109] Calgary Reply Argument, page 8.
[110] UCA Argument, page 29.
[111] UCA Argument, page 27
[112] SCC Stores Block Decision, paragraph 77 and 81.
[113] SCC Decision, paragraph 77, see also paragraph 81.
[114] UCA Argument, page 27.

remain in force and there is nothing which would justify ATCO Gas in receiving a refund of the amounts previously directed to be paid to the benefit of customers.[115]

137. ATCO stated, without support in the UCA's view that "Annual leasing, however, does not constitute retirement." The UCA submitted that the issue is not "retirement"; it is the disposition of assets which require Board/Commission approval pursuant to section 26 whether in rate base or otherwise and irrespective of the term of any lease. If one-year leases were held to be an exception, it would provide an opportunity for utilities to avoid the section 26 restrictions.

138. The UCA submitted that Order U2005-133 and Decisions 2005-063 and 2007-005have not been "vacated" nor is this term used in the Court's Decision.[116] Irrespective of how this ATCO Midstream fee is categorized, there is nothing in the Court decisions which would suggest or imply that it should be changed or that the approvals of these leasing arrangements were made without authority.

ATCO

139. ATCO submitted that Order U2005-133 has not yet been rescinded. ATCO took the position that its historical practice of one-year leasing of some or all of the Carbon storage is maintaining the status quo with regard to the assets, as ATCO Gas was directed to do. Section 26 approvals were not required in past storage years nor should they be required now. ATCO indicated that a future long-term lease or sale, however, may require a Section 26 approval, but that is not within the scope of this proceeding.[117]

140. ATCO submitted that from and after April 1, 2005, Carbon was leased in accordance with historical practice to maintain the status quo as directed by the Board. White the UCA indicated that the lease to ATCO Midstream has been acknowledged not to be in the ordinary course of business, ATCO noted that no reference for this supposed acknowledgement was provided provided. Further ATCO submitted that there is also no "new economic data" as the term was used in the Stores Block Decision as suggested by PICA.[118]

141. ATCO argued that the UCA is also wrong to say that section 26 approvals have been required for the regular annual leasing over the past twenty years. While the pricing of the uncontracted capacity leases was subjected to prudency review under the broad ratemaking provisions of the *Gas Utilities Act*, section 26 approvals were never requested nor received by the regulator.[119]

142. ATCO argued that the UCA's interpretation of historical practice with respect to the Board action respecting the Uncontracted Capacity Agreement cannot be reconciled with the facts before the Commission in the Jurisdictional Review or in the Carbon Compliance process. Whether a section 26 approval may be required or not is irrelevant to removing Carbon from

[115] UCA Argument, page 29.
[116] UCA Argument, page 35.
[117] ATCO Argument, page 24.
[118] PICA Argument, paragraph 14.
[119] ATCO Reply Argument, page 18.

rates and restoring ATCO Gas to the position it would have been in had the jurisdictional error not been made.[120]

143. ATCO submitted that the historical practice maintained by ATCO Gas as part of the status quo included entering into one-year deals. They were not renewed automatically. The maintenance of the status quo reflected the practice long associated with selling uncontracted Carbon capacity (in varying amounts) over time.[121] The terms and conditions of the Lease were never formally approved prior to Interim Order U2005-133, only the prudence of the price. The leasing activity was conducted annually. It was not a continuous long term lease.[122]

Views of the Commission

144. Calgary submitted that the approval of the lease to ATCO Midstream provided by Order U2005-133 and Decision 2007-005 were granted in circumstances where Carbon was directed to remain in utility service and the revenues generated under the lease would be included in the determination of ATCO's revenue requirement.[123] In AUC –CAL-1(a) Calgary stated:

> A disposition to ATCO Midstream through a lease where the revenue is not going to customers has never been approved under section 26.

145. Calgary submitted, supported by PICA, that a new subsection 26(2) *Gas Utilities Act* approval is necessary in respect to the lease to ATCO Midstream.[124] The UCA submits that the prior subsection 26(2) approvals remain valid but that they were conditional on receipt of lease payments by ATCO Midstream for the benefit of ratepayers. This condition can not now be retroactively removed and the monies refunded to ATCO.[125] The Commission does not agree. The existing approvals are sufficient for the lease of Carbon to ATCO Midstream from the Adjustment Date up until the end of the current one year term of the lease. The refund to ATCO of amounts credited to customers in respect of the lease fee payments made since the Adjustment Date by ATCO Midstream does not, in the circumstances, invalidate these approvals because it does not result in a harm to customers and aligns with the findings of the Court of Appeal in the Carbon Appeal Decision that the Commission lacked the jurisdiction to compel ATCO to retain Carbon in utility service and rate base for revenue generation purposes.

146. In Decision 2009-004 the Commission considered the question of harm to customers and the need for a subsection 26(2) approval for the removal of Carbon from rate base. The Commission found no harm to customers and accordingly would have granted a subsection 26(2) approval for the removal of Carbon from rate base had it been requested to do so. In Decision 2009-004 the Commission stated:

> With respect to Carbon, the Commission determined above that an increase in rates resulting from the permanent removal of Carbon from rate base is not a valid financial harm to customers and, accordingly, the removal of Carbon will not harm customers. Customers are not legitimately harmed by the removal of Carbon because Carbon has been previously determined by the Commission to have no valid operational purpose and

[120] ATCO Reply Argument, page 20.
[121] ATCO Argument, page 27.
[122] ATCO Reply Argument, page 27.
[123] Calgary Reply Agreement dated July 16, 2010 page 12, PICA Argument dated July 9, 2010, paragraph 9.
[124] Calgary Reply Agreement dated July 16, 2010, page 12.
[125] UCA Agreement dated July 9, 2010, paragraphs 72 and 73.

> because revenue generation has been determined by the Court of Appeal to be an invalid reason to maintain Carbon in utility service. Therefore, had the Commission been requested in the Application to consider the removal of Carbon from rate base under section 26(2) of the GUA and section 101(2) of the PUA, it would have provided its approval, subject to the appropriate adjustments to revenue requirement and the resolution of the other matters on the Final Issues List approved in this Decision.[126]

147. The Commission determined in Decision 2009-004 that customers would not be harmed by the withdrawal of Carbon from rate base. The Commission also sees no harm to customers with respect to a lease of the Carbon storage capacity to ATCO Midstream for the period from the Adjustment Date to the end of the current one-year term.

148. Given the continuing validity of the existing approvals of the lease to ATCO Midstream, no other subsection 26(2) *Gas Utilities Act* approvals are required with respect to the lease of the storage capacity of Carbon to ATCO Midstream for the period from the Adjustment Date to the end of the current one-year term. The Commission does not intent to review the terms and conditions, including the lease fee, in respect of the lease to ATCO Midstream for the period of time from the Adjustment Date to the end of the current term despite the fact that the current provisions have not been reviewed or approved by the Board. Such a review at this time would be pointless given the conclusion of the Commission that the removal of Carbon from utility service and rate base as of the Adjustment Date does not harm customers.

149. While no additional approvals are required at this time, any new disposition of Carbon beyond the current one year term of the lease will require a new approval pursuant to subsection 26(2) of the *Gas Utilities Act*. In this respect the Commission notes the following findings in Decision 2010-025 with respect to the continued applicability of subsection 26(2) of the *Gas Utilities Act* to the disposition of non-utility assets by a designated owner of a gas:

> 30. With regard to AG's request for the Commission's written concurrence with AG's position that AG "is free to dispose of [the] non-utility property without further application to the Commission," the Commission considers that in light of the express language of section 26 of the *Gas Utilities Act*, the Commission cannot simply allow AG to dispose of the asset. Subsection 26(2)(d) of the *Gas Utilities Act* requires that an application be filed with the Commission for approval when a designated gas utility seeks to "sell, lease, mortgage or otherwise dispose of or encumber its property" outside of the ordinary course of business. The Supreme Court in Stores Block explained that the reason for this requirement is "to ensure that the asset in question is indeed non-utility, so that its loss does not impair the utility function or quality."[8]

[8] *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, para 44: "It is interesting to note that s. 26(2) does not apply to all types of sales (and leases, mortgages, dispositions, encumbrances, mergers or consolidations). It excludes sales in the ordinary course of the owner's business. If the statutory scheme was such that the Board had the power to allocate the proceeds of the sale of utility assets, as argued here, s. 26(2) would naturally apply to all sales of assets or, at a minimum, exempt only those sales below a certain value. It is apparent that allocation of sale proceeds to customers is not one of its purposes. In fact, s. 26(2) can only have limited, if any, application to non-utility assets not related to utility function (especially when the sale has passed the "no-harm" 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.

[126] Decision 2009-004, page 18.

150. For several years prior to the Adjustment Date ATCO requested approval for a lease of a portion of the storage capacity at Carbon to ATCO Midstream in connection with the approval of its annual storage plans. While the request for leasing approval were not couched in terms of the requirements of subsection 26(2), approvals of the annual lease to ATCO Midstream were granted by the Board in conjunction with the approval of annual storage plans. Given this history, the leasing of Carbon on a one year basis can not be considered an activity carried out in the ordinary course of business as submitted by ATCO[127] so as to exclude the need for a subsection 26(2) approval from the Commission. Accordingly, any new or extended lease to ATCO Midstream, or other disposition of Carbon beyond the current one year term of the lease would require a new approval pursuant to subsection 26(2) of the *Gas Utilities Act*.

151. Further, subsection 26(2) is applicable to any other future disposition of Carbon in whole or in material part, whether in rate base or not. This includes the sale of the unproduced natural gas reserves used as base gas or any portion thereof. Any such disposition would require a prior subsection 26(2) approval from the Commission.

4.5 Alberta Regulation 546/63

152. The *General Instructions to the Canadian Gas Association Uniform Classification of Accounts for Natural Gas under the Jurisdiction of the Public Utilities Board of the Province of Alberta* (Alberta Regulation 546/63 or the Regulation) prescribes a uniform system of accounting for gas utilities to record transactions in accordance with accepted accounting procedures. It also provides account numbers for every account in the general ledger in which transactions are assembled for balance sheet purposes.

153. The parties to this proceeding disputed the interpretation and application of the Alberta Regulation 546/63 to the removal of Carbon from utility service, rate base and rates as of the Adjustment Date.

Views of the Parties

Calgary

154. Calgary submitted that the removal of the Carbon assets from Account 100 "Gas Plant in Service" with the addition of the assets to Account 110 "Other Plant" is a "retirement." Calgary noted that the regulations states:

> When a plant unit is retired from gas operations the ledger value shall be credited to the appropriate plant accounts. If the plant being retired is classified as depreciable, the ledge value les the net salvage value and/or insurance, if any, recovered shall be charged to accumulated depreciation. In the case where the insurance recovery and salvage exceeds the ledger value, and the amount of the excess is material, the total credit to the accumulated depreciation account shall not exceed the ledger value. Any such excess, if material shall be credited to account No. 351, "Profit from Sale of Plant".[128]

155. Calgary submitted that it is clear that the only way to remove depreciable gas plant from gas operations is via a retirement. For non-depreciable plant the regulations allow a transfer;

[127] ATCO Reply Agreement dated July 16, 2010 paragraph 57.
[128] Alberta Regulation 546/63, page 8.

however, for depreciable plant they require a retirement to be recorded. A detailed breakdown indicates that virtually all of the Carbon facilities are depreciable gas plant.[129]

156. Alberta Regulation 546/63 defines "ordinary retirement" and "extraordinary retirement" but does not provide the underlying definition of "retirement." Calgary submitted that the underlying definition of retirement is 'the removal or withdrawal of property from utility service.'[130] That definition is consistent with the definition of retirement in other regulatory situations, and with the ordinary meaning of retirement, as applied to a regulatory system which allows one legal entity to have both regulated and unregulated business.[131] Calgary submitted that the definitions available, from various sources, agree.[132] The removal or withdrawal of property from regulated or utility service is a retirement. Calgary submitted that:

> Alberta Regulation 546/63, and the NEB [National Energy Board] and the FERC [Federal Energy Regulatory Commission] accounting rules, all provide for the procedures to be followed upon a retirement. These are:
>
> (1) the book value is removed from the plant account,
>
> (2) the book value less (if negative) or plus (if positive) the salvage value is charged to accumulated depreciation, and
>
> (3) if the retirement is considered ordinary,[31] the amount would be left in accumulated depreciation,
>
> (4) if the retirement is considered extraordinary i.e. not contemplated in the depreciation, then because such retirement either unduly inflates (positive salvage) or deflates (negative salvage) the balance in the accumulated depreciation account it is then transferred to account the appropriate account [sic]. As noted in the Regulation "gains, if any, as a result of extraordinary retirements shall be credited to account No. 351, 'Profit from Sale of Plant' or account No. 355, 'Loss from Sale or Retirement of Plant', as applicable".[32] [133] (emphasis deleted)

[31] An ordinary retirement is the retirement of plant that results from causes reasonably assumed to been anticipated or contemplated in prior depreciation or amortization provisions SOR/83-190 section 39 which is similar to the language in AR 546/63 section 8.

[32] AR 546/63; the NEB and the FERC use a similar concept however the account numbers and names are different.

157. Calgary argued that a retirement is different from a sale, and that there must be an accounting of the profit or loss from that retirement.[134] Calgary submitted that the value of the base gas or cushion gas and the producing wells included in Carbon represents significant positive salvage value[135] that must be addressed in the retirement of Carbon, as it is an extraordinary retirement.[136]

[129] Calgary Reply Argument, page 9.
[130] Section 8 Retirements, Alberta Regulation 546/63.
[131] Calgary Argument, page 8.
[132] Calgary Argument, page 10.
[133] Calgary Argument, pages 10-11.
[134] Calgary Argument, page 11.
[135] Decision 2007-005, page 6, indicates 54 PJ of base or cushion gas valued in April of 2005 at approximately $225 million (Exhibit 152) and 19 PJ of recoverable gas from the producing field.
[136] Calgary Argument, page 11.

158. Calgary further submitted that the nature of the lease with ATOC Midstream is not relevant to the treatment of that lease under Alberta Regulation 546/63.[137] The treatment for leases is different than that for retirements such that it would appear clear that a lease is not a retirement under Alberta Regulation 546/63. Calgary submitted that the removal of Carbon from rate base is an extraordinary retirement within the meaning of Alberta Regulation 546/63 and should be treated as such.[138]

159. Calgary submitted that where there is a conflict between legislation and a Court decision, the legislation prevails. Consequently, as the Supreme Court did not address, or interpret Alberta Regulation 546/63, Calgary argued that it cannot be considered to "trump" the legislation. Where there is an "outright conflict" between legislation and judge-made law, the rules of statutory interpretation are clear: the legislation prevails.[139]

PICA

160. PICA submitted that pursuant to Alberta Regulation 546/63 accounting for the disposition of significant assets, including salvage, should take place within the regulatory books even where the transfer of assets takes place as a result of the cessation of operational use in the utility.[140]

161. PICA argued that the notional proceeds of the disposition should be held in the regulated books of ATCO until the Commission grants permission under section 26 of the *Gas Utilities Act* for ATCO to dispose of the Carbon assets. At that time, the Commission could also determine the appropriate disposition of the proceeds of sale, including allocation of the salvage and carrying costs on the proceeds of sale, from the time of sale until the date the section 26 approval is obtained.[141]

162. In the event the Commission is not persuaded there was a disposition requiring section 26 approval, PICA submitted that salvage value should be recognized in the regulated books pursuant to Alberta Regulation 546/63. In PICA's submission, such an approach would be consistent with the Stores Block Decision, paragraph 81, which allows the Commission to consider, in setting rates, any new economic data anticipated as a result of the transaction. PICA submitted the accounting for salvage pursuant to Alberta Regulation 546/63 is not precluded in any manner by the Salt Cavern Appeals Decision. Such an approach is also consistent with existing depreciation accounting practice where the negative or positive salvage from an asset is reflected in the accumulated depreciation and, consequently, in future rates.[142]

163. PICA noted that when an asset is removed from gross plant in service, usually at the end of its service life or, prematurely, due to obsolescence or disposition or change in use, the accounting entries involved are the same and are referred to as asset retirement entries. Accordingly, as noted in PICA's Argument, the accounting entries must conform to Alberta

[137] Calgary Argument, page 16.
[138] Calgary Argument, page 17.
[139] Calgary Argument, page 14, citing Ruth Sullivan, *Statutory Interpretation*, 2nd ed. (Markham, Ontario: LexisNexis, 2008) 319.
[140] PICA Argument, page 5.
[141] PICA Argument, page 4.
[142] PICA Argument, page 7.

Regulation 546/63, whereby any salvage associated with the retirement should be determined and recorded.[143]

164. PICA submitted that it would be appropriate to leave the amounts collected from customers respecting the future liability of retiring the Carbon assets in excess of the estimates as of April 1, 2005, in the regulatory books. These amounts were collected in the past from customers and in consideration of future obligations, which are determined to be in excess of future obligations as of April 1, 2005. These amounts would constitute part of the salvage required to be recorded upon retirement of the assets from the regulated books. The data relevant to these determinations is provided in CAL.AG-2.[144]

165. In addition, any accumulated depreciation amounts in excess of the estimates for same as of April 1, 2005, based on useful life estimates, should continue in the regulatory books. In PICA's submission, accumulated depreciation is a reserve account. Consequently, it is understood to be subject to change (as opposed to a liability account which is for a sum certain). The accumulated depreciation reserve balance that moves to the non regulated books must be consistent with the accumulated depreciation reserve requirements as of the date of transfer. The recording of excess accumulated depreciation in the regulated books would be part of the accounting for retirement of the assets from regulated service, pursuant to Alberta Regulation 546/63.[145]

UCA

166. The UCA generally supported PICA's arguments on this issue.[146]

167. The UCA also submitted that the Court in the Stores Block Decision did not consider the Regulation nor did it make any determination as to the appropriate accounting treatment which should be applied to retirement of the Carbon assets.[147]

ATCO

168. ATCO submitted that the Alberta Regulation 564/63 provides specific accounts (110. Other Plant) for the recording of "plant used in operations which are non-utility in nature." The Uniform Classification of Accounts does not indicate that a retirement must first occur in order to recognize non-utility plant in Other Plant.[148] ATCO noted that Ms. Wilson also confirmed that ATCO has accounted for the transfer of the Carbon assets out of utility service consistent with the Alberta Regulation 564/63.[149]

169. ATCO noted that Calgary chose not to quote from the Uniform System of Accounts (USA) for electric utilities in Alberta[150] which specifically addresses the transfer of utility property. In Electric Plant Instruction 13 (Transfers of Property), the USA indicates the following:

[143] PICA Reply Argument, page 2.
[144] PICA Reply Argument, page 2.
[145] PICA Reply Argument, page 2.
[146] UCA Reply Argument, page 18.
[147] UCA Argument, pages 32-33.
[148] ATCO Argument, page 15.
[149] ATCO Reply Argument, page 14.
[150] AUC Bulletin 2006-25.

> When property is transferred from one electric plant account to another, from one Utility department to another, such as from electric to gas, from one operating division or area to another, to or from Accounts 1010, Electric plant in service, 104, Electric plant leased to others, 105. Electric plant held for future use, and 121. Non-utility property, the transfer shall be recorded by transferring the original cost thereof from the one account, department, or location to the other. Any related amounts carried in the accounts for accumulated provision for depreciation or amortization shall be transferred in accordance with the segregation of such accounts.[151] [emphasis omitted]

170. ATCO argued that assets which remain in physical service under lease cannot be considered "retirements." Carbon on April 1, 2005 was under lease and in physical service. No sale, no buyer and no proceeds came into existence at that date. Carbon continued since that time to be under lease and remains in physical service to this day.[152] ATCO submitted that its ordinary practice, in this regard, involved entering into a one year lease of the storage facility.

171. ATCO submitted that Calgary has fabricated certain accounting entries based upon a fictitious sale of the Carbon assets as set forth in its response to AUC-CAL-1(b). The hypothetical accounting entries put forward by Calgary and the fictitious transactions are contrived. ATCO argued that Calgary was not able to identify anything in the Uniform Classification of Accounts that would require ATCO Gas to recognize such accounting entries.[153] [154] ATCO submitted that the effect of what Calgary recommends is the circumvention of the proper accounting entries required when an asset actually is sold outside the ordinary course of business. The appropriate application of the Regulation to gains or losses on the sale of assets outside the ordinary course of business was part of the Stores Block process, which determined that shareholders are entitled to those gains and losses. ATCO submitted that the Board, the Courts and ATCO have all recognized and upheld that effect. ATCO submitted that the Regulation and the Stores Block Decision are consistent.[155]

172. ATCO submitted that Calgary's attempts to manufacture a "retirement", or a "sale", and to invent sale proceeds, and to thereby create "positive salvage" are the wrong accounting treatment for the gain on sale of a surplus asset pursuant to the Regulation.[156] ATCO noted that the Commission previously rejected Calgary's positive salvage approach in Decision 2009-067.[157]

173. ATCO argued that the interveners contend there has been a "disposition" in the nature of a sale. Accordingly, they then "deem" proceeds and positive salvage by virtue of the removal of Carbon from regulation under a one-year lease with ATCO Midstream despite the absence of any provision in the Regulation requiring, this to be done. ATCO submitted that this seeks to overturn the Court of Appeal decision in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2009 ABCA 171 (Harvest Hills Appeal Decision). The Harvest Hills Appeal Decision struck down an attempt to record in a utility account a gain on sale outside the ordinary course of business to be carried forward to a subsequent rate case for disposition. The Court of

[151] ATCO Reply Argument, page 14.
[152] ATCO Reply, page 15.
[153] Transcript, page 225, lines 14-20.
[154] ATCO Argument, page 15.
[155] ATCO Reply, page 16.
[156] ATCO Reply Argument, page 17.
[157] Decision 2009-067, paragraph 39 and Section 3.2.4.

Appeal struck down that condition. It was the condition itself which was found offensive even in the absence of the actual allocation to customers of the balance in the account. For present purposes the Harvest Hills Appeal Decision is indistinguishable from what Mr. McNulty and Mr. Johnson discussed at Transcript, page 229, lines 9-25 to page 230, lines 1-13.[158]

174. Further, ATCO argued that Alberta Regulation 546/63 was enacted under the authority of the then Public Utilities Board to require certain accounts to be kept, under what is now section 35(c) of the *Gas Utilities Act.* It is improper to suggest that a regulation enacted under this provision could impliedly allow the Commission to override the general principle of law relied upon in Stores Block Decision and confer a jurisdiction not found to exist under the enabling legislation. In any event ATCO submitted Alberta Regulation 546/63 and the Stores Block Decision do not conflict. No issue of one overriding the other arises.[159]

175. ATCO submitted that there is no significance to Carbon's regulatory status. The Carbon assets may be transferred to a non-utility account but it is not retired.[160] ATCO indicated that this treatment was consistent with other regulatory jurisdictions and is fully consistent with shareholders realizing the gain on sale of surplus assets outside the ordinary course of business, a proposition affirmed in the Stores Block Decision.[161]

176. ATCO referred to Section 4.2.4 of Decision 2009-004 as indicating that the value of an individual asset withdrawn from utility service is not "revenue" to the utility which should be considered in determining just and reasonable rates. ATCO submitted that the Commission already decided that "value" to be attributed to Carbon in connection with removal from rate base "is the value presently attributed to the Carbon assets in revenue requirement."[162] The Commission previously rejected Calgary's positive salvage approach in Decision 2009-067.[163]

177. ATCO submitted that Alberta Regulation 546/63 can not override the statute which the Courts have found repeatedly does not provide any authority for the confiscation of proceeds of sale from, or the revenues generated by assets not required for operational utility use (Stores Block Decision, Carbon Appeal Decision, Harvest Hills Appeal Decision, Salt Caverns Appeal Decision and Carbon R&V Appeal Decision). ATCO referred to paragraph 30 of the Carbon Appeal Decision:

> [30] Regulation of the gas utility does not give the end customers an ownership interest in the assets of the utility: Stores Block at paras. 63-68. The end customers are entitled to service, not assets. The service that they are entitled to is the delivery of gas on reasonable and just terms, not revenue generation. Just as the end customers have no ownership interest in the assets of the utility, they have no interest in the profits, unregulated revenues, or unregulated businesses of the utility. The value of economic assets is often largely determined by the revenues they can generate, and if the end customers are not entitled to any ownership interest in the assets, they are likewise not entitled to any interest in the cash flow generated by those assets: Stores Block at para. 78. The end customers are entitled to receive gas delivery services from the utility, not

[158] ATCO Reply Argument, page 17.
[159] ATCO Reply Argument, page 22.
[160] ATCO Reply Argument, page 12.
[161] ATCO Reply, Argument, page 13.
[162] Decision 2009-004, page 15.
[163] Decision 2009-067, paragraph 39 and Section 3.2.4.

> revenue-generating services or gas rate subsidization. .. . (Carbon Appeal; emphasis omitted)

Commission Finding

178. The issue underlying the arguments advanced by parties with respect to the interpretation of Alberta Regulation 546/63 and its application to Carbon can be summarized into the following question: Do the retirement or salvage provisions of the Alberta Regulation 546/63 apply so as to require an accounting of the value of Carbon for the benefit of ratepayers upon its removal from utility service and rate base?

179. The Commission considers the answer to the question to be a straightforward "no". The courts have interpreted the operative provisions of the *Gas Utilities Act*, the *Public Utilities Act* and the *Alberta Energy and Utilities Board Act* and have made it clear that there are very narrow circumstances where the value (liability) associated with an asset being removed from utility service can be attached for the benefit (detriment) of ratepayers. The assets employed in the provision of utility service belong to the utility and upon their disposition or other removal from utility service, the value of the assets, in the absence of customer harm, belongs to the utility shareholders. The Supreme Court in the Stores Block Decision stated:

> Thus, can it be said, as alleged by the City, that the customers have a property interest in the utility? Absolutely not: that cannot be so, as it would mean that fundamental principles of corporate law would be distorted. Through the rates, the customers pay an amount for the regulated service that equals the cost of the service and the necessary resources. They do not by their payment implicitly purchase the asset from the utility's investors. The payment does not incorporate acquiring ownership or control of the utility's assets. The ratepayer covers the cost of using the service, not the holding cost of the assets themselves: "A utility's customers are not its owners, for they are not residual claimants": MacAvoy and Sidak, at p. 245 (see also p. 237).[164]

180. The Alberta Court of Appeal affirmed and applied these reasons in a several decisions including the Carbon Appeal Decision, the Harvest Hills Appeal Decision and the Salt Cavern Letters Appeal Decision.

181. The Supreme Court in the Stores Block Decision also referred at paragraph 50 to *Bell Canada v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [1989] 1 S.C.R. 1722, (Bell Canada Decision) where the Supreme Court stated at page 1756:

> The powers of any administrative tribunal must of course be stated in its enabling statute but they may also exist by necessary implication from the wording of the act, its structure and its purpose.

182. In the Stores Block Decision the Supreme Court concluded that the Board did not have the power under its enabling statutes to attach the proceeds of disposition upon sale of a utility asset. The Supreme Court stated:

> The interpretation of the *Alberta Energy and Utilities Board Act*, R.S.A. 2000, c. A-17 ("AEUBA"), the *Public Utilities Board Act*, R.S.A. 2000, c. P-45 ("PUBA"), and the *Gas Utilities Act*, R.S.A. 2000, c. G-5 ("GUA") (see Appendix for the relevant provisions of these three

[164] Stores Block Decision paragraph 68.

> statutes), can lead to only one conclusion: the Board does not have the prerogative to decide on the distribution of the net gain from the sale of assets of a utility. The Board's seemingly broad powers to make any order and to impose any additional conditions that are necessary in the public interest has to be interpreted within the entire context of the statutes which are meant to balance the need to protect consumers as well as the property rights retained by owners, as recognized in a free market economy. The limits of the powers of the Board are grounded in its main function of fixing just and reasonable rates ("rate setting") and in protecting the integrity and dependability of the supply system.[165]

183. The ability of Commission to attach conditions to a sale of a utility asset in the event of a finding of harm was explored by the Alberta Court of Appeal in the Harvest Hills Decision. In that Decision the Court stated:

> In our view, the harm contemplated by the Supreme Court must be harm related to the transaction itself.[166]

The Court further stated:

> In our view, a more reasonable interpretation of the Supreme Court's words would permit the Board to impose a condition if there was a close connection between the sale of the asset and the immediate resulting need to replace it.[167]

184. In the present case the Commission has already determined that the removal of Carbon from utility service will not result in harm to customers and therefore the possibility of attaching the value of Carbon in order to offset harm to customers is not at issue. In Decision 2009-004 the Commission stated:

> With respect to Carbon, the Commission determined above that an increase in rates resulting from the permanent removal of Carbon from rate base is not a valid financial harm to customers and, accordingly, the removal of Carbon will not harm customers. Customers are not legitimately harmed by the removal of Carbon because Carbon has been previously determined by the Commission to have no valid operational purpose and because revenue generation has been determined by the Court of Appeal to be an invalid reason to maintain Carbon in utility service. Therefore, had the Commission been requested in the Application to consider the removal of Carbon from rate base under section 26(2) of the GUA and section 101(2) of the PUA, it would have provided its approval, subject to the appropriate adjustments to revenue requirement and the resolution of the other matters on the Final Issues List approved in this Decision.[168]

185. The Commission has determined that the removal of Carbon from utility service will not harm customers and therefore there is no basis to attach the value of Carbon for the benefit of ratepayers under the provisions of the *Gas Utilities Act* as interpreted by the Courts. Calgary and the UCA now urge upon the Commission an interpretation of the Alberta Regulation 546/63 which, if adopted, could result in the very outcome rejected by the courts.

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[165] Stores Block Decision, paragraph 7.
[166] Harvest Hills Decision, paragraph 32.
[167] Harvest Hills Decision, paragraph 35.
[168] Decision 2009-004, page 18.

186. Calgary, supported by the UCA and PICA, suggest that the removal of Carbon from utility service constitutes a "retirement", specifically an "extraordinary retirement" under section 8 of the Alberta Regulation 546/63. An extraordinary retirement is defined as a retirement which "results from causes not reasonably assumed to have been anticipated or contemplated in prior depreciation or amortization provisions." Section 8 requires the utility to account for a gain or loss resulting on an extraordinary retirement "comprised of the difference between plant ledger value plus cost of removal less salvage and insurance recoveries and the related depreciation or amortization determined in a equitable manner." Calgary submitted that these provisions require ATCO to account for either the salvage value or the fair market value (if the lease to ATCO Midstream is both an extraordinary retirement and a disposition) of the asset upon its removal from utility service. This "gain" upon the extraordinary retirement of the assets would then be credited to Account 351 "Profit from Sale of Plant" under the Alberta Regulation 546/63. Account 351 is a Retained Earning Account with entries requiring the prior consent of the Commission. The Commission could then determine in a subsequent process how to dispose of this gain, including whether to employ this gain for the benefit of customers. Mr. Johnson, witness for Calgary discussed the Calgary position at the oral hearing with Commission Counsel in the following terms:

> Q If I understand you correctly, you're saying that that gain should be somehow used for the benefit of ratepayers, whether it's offsetting returns or whether it adds to the accumulated depreciation or in some other way reduces rates for customers over the long run; is that right?
> A MR. JOHNSON: That would be my recommendation. But at this stage all I'm suggesting is that the amount should be recorded as a gain, and then it would be up to the Commission to have a proceeding to deal with whether that gain -- how that gain should be treated.
> Q And it would be your recommendation it would be for the benefit of ratepayers; is that right?
> A MR. JOHNSON: It would be to reflect that gain as part of the, in all likelihood I think, as part of the fair return that ATCO is entitled to.[169]

187. Calgary, the UCA and PICA also submitted that the fact that the Alberta Regulation 546/63 was not argued before the courts and that it was not addressed by the courts in the Stores Block Decision and subsequent cases. This they submitted was a material consideration, with Calgary stating that "the Regulation would prevail if there was an outright conflict, any implied conflict cannot be said to have the decision prevail over the Regulation."[170]

188. The Commission can not accept the premise put forward by Calgary as supported by the UCA and PICA. As noted in the Bell Canada Decision quoted above, the powers of an administrative tribunal must be stated in the "enabling statute" or exist by necessary implication. Powers not provided for in this matter can not be bestowed by regulation Additional authority for this principle is referred to by ATCO in its Reply Argument where they cite the following passage:

[169] Transcript, page 228.
[170] Calgary Argument, page 14.

> Unless the enabling Act so provides, delegated legislation cannot override any Act – and certainly not the enabling Act itself. Indeed it is taken not to be impliedly authorized to override any rule of the general law.[171]

189. In the Stores Block Decision, the Supreme Court clearly indicated that the Board had not been provided with the statutory authority to attach the proceeds of disposition of a utility asset in the absence of harm for the benefit of customers. It also indicated that such a power can not be inferred by the doctrine of jurisdiction by necessary implication.[172] The Carbon Appeal Decision clearly held that the revenues generated by utility assets not required for operational utility use can not be attached by customers.

190. The Commission also notes the wording of the Supreme Court in the Stores Block Decision that a "potentially confiscatory legislative provision ought to be construed cautiously so as not to strip interested parties of their rights without the clear intention of the legislation."[173]

191. Regardless of whether or not the Alberta Regulation 546/63 could technically be interpreted in a manner that would identify the need to record a regulatory gain upon the removal of Carbon from regulatory service as the result of an "extraordinary retirement", the Alberta Regulation 546/63, as subordinate legislation, can not be interpreted in such a manner that would extent to the Commission a jurisdictional authority to allocate asset value to customers, where such authority has not been expressly bestowed by the enabling statute or otherwise available to the Commission by way of the doctrine of jurisdiction by necessary implication. The Alberta Regulation 546/63 can not be interpreted in such a manner so as to overrule the Supreme Court in the Stores Block Decision with respect to the powers of the Commission under its enabling statutes. The Alberta Regulation 546/63 can not be seen as creating a regulatory gain subject to the discretionary disposition of the Commission, a discretion that could be exercised by allocating the gain to the benefit of customers, thus allowing customers to appropriate the value of Carbon upon its removal from utility service. Therefore the deeming under the Alberta Regulation 546/63 of a gain upon removal of Carbon from utility service would be to no purpose as the utility shareholder is entitled to retain the value of its assets upon the removal of those assets from regulated service.

192. ATCO takes the position that the removal of Carbon from utility service is not an extraordinary retirement and that it can fully comply with the Alberta Regulation 546/63 without the need to consider whether the Alberta Regulation 546/63 provides the Commission with authority not already provided for in the underlying statutes. Ms. Wilson confirmed in her testimony that the proposed methodology for the adjustment of the ATCO Gas utility regulatory accounts as of the Adjustment Date as described in AUC-AGS-1 is in accordance with the provisions of the Alberta Regulation 546/63.[174] These proposed adjustments credit the Original Cost to Account 100 "Gas Plant in Service" and debit Account 110 "Other Plant" which includes non-utility assets. Similar debit adjustments will be made to Account 105 "Accumulated Depreciation - Gas Plant" and credit Account 111 "Accumulated Depreciation – Other Plant." ATCO submitted that the transfer of the Carbon assets from a utility plant account to the non-utility portion of the Other Plant account does not require a retirement of the asset.

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171 F.A.R. Bennion, Statutory Interpretation (4th ed) (London: Butterworths, 2002) at 199 cited at page 22 of ATCO's Reply Argument.

172 Stores Block Decision, paragraph 52 and paragraphs 77-79.

173 Stores Block Decision, paragraph 79.

174 Transcript, pages 153-155.

193. ATCO submitted that there is no "retirement" of Carbon and that it continues to operate and to generate revenues as a non-utility asset.[175] ATCO considered that there is no conflict between the provisions of the Alberta Regulation 546/63 and the interpretation of the enabling statutes by the courts. Compliance with the Alberta Regulation 546/63 does not involve an extraordinary retirement with the creation of a gain to be disposed of with the consent of the Commission.

194. A review of *Sullivan on the Construction of Statutes* indicates authority for a presumption that regulations and statutes are meant to work together. The author states:

> The presumption of coherence applies with respect to regulations as well as statutes. It is presumed that regulatory provisions are meant to work together, not only with their own enabling legislation but with other Acts and other regulations as well. In so far as possible the courts seek to avoid conflict between statutory and regulatory provisions and to give effect to both. Where conflict is unavoidable, normally the statutory provision prevails.[176]

195. The Commission considers that ATCO's proposed accounting methodology set out in AUC-AGS-1(a) upon the removal of Carbon from utility service as of the Adjustment Date complies with the Alberta Regulation 546/63 in a manner that allows the Alberta Regulation 546/63 to work together with the enabling statutes. The Commission considers this to be a reasonable interpretation of the Alberta Regulation 546/63 and accepts the proposed accounting treatment.

196. The interpretation of the Alberta Regulation 546/63 put forward by the interveners leads to the creation of a gain related to the value of the Carbon assets, the disposition of which would be at the discretion of the Commission with the possibility that it could be allocated in whole or in part for the benefit of customers. The courts have repeatedly found that that the Commission does not have the authority under its enabling statutes, absent harm, to allocate the value of a utility's assets to customers once the asset ceases to be employed in the provision of utility services. The interveners' interpretation of the Alberta Regulation 546/63 does not fit with the presumption that the Alberta Regulation 546/63 and the enabling statutes are meant to work together, leading to a conflict with the statutes and the courts with respect to the authority of the Commission to allocate the value of utility assets to customers. The Commission rejects the interveners' interpretation of the Alberta Regulation 546/63.

4.6 Determination of Amounts to be Recovered

197. A primary purpose of this Proceeding was to determine the amount that ATCO will be permitted to recover from its customers in its south service territory in order to properly account for the withdrawal of Carbon from regulated service effective as of the Adjustment Date. The amount will be affected by consideration of a number of points that will be reviewed in the following sections.

[175] ATCO Reply Argument dated July 16, 2010, paragraphs 36-40.
[176] Ruth Sullivan, Sullivan on the Construction of Statutes (5th ed) (Markham, Ontario: LexisNexis Canada Inc., 2008) at 341.

4.6.1 Verification

198. The Commission must determine if ATCO has satisfied the burden of proof necessary to justify the Carbon related reimbursement it is seeking from its customers.

199. In attempting to document the amounts owed, ATCO has reviewed its Calgary related accounts and identified the accounts related to rate base in Appendix B to the Application. ATCO also included all amounts from its operating accounts 610 – 619 and 650 – 659 as being related to Carbon. In addition, ATCO assumed that the following amounts relate to the Carbon assets:

1. Environmental audit costs and

2. Overhead rates of 57 percent for the years 2005-2007 and 60 percent for the years 2008 and 2009, which were applied against labor costs to determine administrative costs.

   The overhead rates were consistent with the rates that were being used by ATCO in its affiliate service agreements and included amounts for fringe benefits, inter-affiliate charges from ATCO I-Tek and insurance costs related to the Carbon assets.

200. ATCO identified the accounts related to rate base in Appendix B to the Application.

Views of the Parties

Calgary

201. The purpose of this proceeding is to determine the matters that the Court did not – how the removal of Carbon from rate base is to be treated from a regulatory perspective, how the accounting is to be undertaken, what is owed to ATCO, who is to pay what amounts. In short, how the rates will be affected.[177]

202. Calgary submitted that there are problems with the reliability of the amounts for which ATCO is requesting recovery from customers. Calgary contended that ATCO did not provide sufficient information that would allow verification of the amounts concerned. Calgary cited an example using Exhibits 150.01 and 179 from which it observed that ATCO used internal calculations for reconciliation purposes, which were not apparent on the face of the information provided. Calgary submitted that all amounts being sought by ATCO should be clear, obvious and verifiable. Consequently, because of the uncertainty involved, Calgary recommended that an independent auditor be engaged to verify the amounts ATCO seeks to recover.[178]

203. Calgary was also concerned with the amounts ATCO claimed to have been paid by its customers as it contended that there was no method to substantiate the claims. Calgary noted that there were two amounts that customers paid at various times: the cost of service for Carbon that was included in rates from 2005 to August 31, 2007 and the production and storage charge on consumption that was in effect from September 1, 2007 to June 30, 2008. Calgary submitted that ATCO did not give customers credit for amounts paid by them for a period from January 1,

[177] Calgary Reply Argument, page 1.
[178] Calgary Argument, page 2, 3 and 4.

2008 to June 30, 2008. Therefore the amount that ATCO seeks to collect is overstated by the amounts paid by customers during that time.[179]

204. Calgary submitted that ATCO did not provide justification or support for the 'trust us' approach it has taken nor did it provide sufficient justification for its proposed method of recovery, which Calgary contended was not fair and reasonable. Calgary asserted that ATCO has not discharged the onus of burden of proof and, accordingly, allowing its requests for recovery of Carbon related amounts from customers will result in rates that are not just and reasonable, as required by the *Gas Utilities Act*.[180]

205. In addition to the issue of verification, Calgary contested ATCO's right to recover the Carbon related amounts. Calgary submitted that the Carbon Appeal Decision, did not establish an entitlement to refunds but instead only determined that the Commission erred in keeping Carbon in rate base when its use was revenue generation. Calgary considered that the Court made no comment on the results of that determination, did not determine that there would be a refund, and left the determination of the results of the removal of Carbon from rate base to the Commission.[181]

206. Calgary asserted that in order to comply with the Alberta Regulation 546/63 ATCO should record a retirement in a manner consistent with those regulations and the regulations of other regulators.

207. Calgary also stated that ATCO appears to agree that the "value presently attribute[d] to Carbon assets in revenue requirement" is what should be the value used for the Carbon assets. Calgary submitted that this value would be the present value of the net revenue stream, which would approximate the fair market, if that this value is higher than the value of the gas both base and in the producing wells.[182]

UCA

208. The UCA noted ATCO's claims that it does not have the same information that the ratepayers have on their monthly bills with respect to consumption and the resulting billing amounts based upon the Rate Riders in effect for the billing period. The UCA thus submitted that there is no foundation upon which the Commission or Interveners can verify the amount which ATCO seeks to recover. This amount exceeds $77 million, net of the Cost of Service amount resulting in approximately $50 million to be recovered from customers. The UCA considered that the entire amount is substantiated only by an allegation that the amount is what was billed, which from a ratepayer's perspective, would be unacceptable. The UCA submitted that the data proffered by ATCO was not supported by billings actually made to ratepayers.[183]

209. The UCA also noted that all of ATCO's customers were billed by ATCO's default supply provider, and natural gas retailers commencing in May 2004. As ATCO did not provide any

[179] Calgary Argument, page 4.
[180] Calgry Reply Argument, page 13.
[181] Calgary Reply Argument, pages 4-5.
[182] Calgary Reply Argument, page 3.
[183] UCA Argument, page 5.

billing information from these sources, the UCA considered that there was a data source from which the ratepayer was billed, which is not on the record in this proceeding.[184]

ATCO

210. ATCO submitted that the Carbon accounts have been verified and that the related issues to be determined are the validity and symmetry of the data used by it in the determination of the amounts owed to it; and certain matters related to the interest calculation. ATCO further submitted that it demonstrated and provided required information to support the appropriateness for approval for the recovery of the $50 million owed to it from customers.[185]

211. ATCO submitted that its methodology for determining the revenues to be returned to it and the costs to be returned to customers was completely consistent with the Commission's ruling of March 30, 2010, which confirmed that the recovery of the Carbon costs by ATCO was based on forecasts costs, and forecast throughput, and that ATCO took the forecast risk related to the recovery of those amounts, as it does for most aspects of its revenue requirement. ATCO also submitted that the billing of customers based on their actual usage is one of the forecast risks that ATCO Gas absorbs, because the actual volume will never exactly match the forecast volume. ATCO suggested that it demonstrated this point with the calculation it provided showing the effects of throughput difference for the years 2005-2007 on the Carbon revenue requirement forecast, which indicated that if the Carbon revenue requirements were adjusted for this difference, customers would actually owe an additional $1.1 million to ATCO.[186]

212. ATCO explained that it was unable to provide information for throughput volume that can be multiplied by the approved rider rates each month to come to the amounts actually paid because the rider rates changed each month and ATCO's customer information billing system does not trace and report throughput information by the different rates in place for each billing cycle. ATCO noted that it avoided costly programming, reporting and data storage costs associated with the tracking of this type of information, as it considered the information was not necessary. ATCO submitted that a review of the volumes and rates that resulted in the rider revenues paid to was not required to confirm the appropriateness of those revenues. ATCO stated that it provided detailed information requested by the Commission and a reconciliation of the Rider amounts shown on Schedule I with the amounts reported in its audited financial statements for the years 2006 and 2007 in the response to CAL-AG-8(b and c), which confirmed the validity of the Rider amounts.[187]

213. ATCO submitted that no party to this proceeding has been able to demonstrate that the Rider amounts reflected on Schedule I do not reconcile to what was actually billed by ATCO Gas (and ATCO Pipelines with regard to Rate 13 customers for a period of time). Neither the actual consumption billed nor the approved rider rates are at issue in this proceeding.[188]

Views of the Commission

214. As referred to in paragraph 198 above the Commission must determine whether or not ATCO has satisfied the burdon of proof in properly verifying the amounts to be collected from

[184] UCA Argument, page 6 and 8.
[185] ATCO Argument, page 4, 6 and 29.
[186] ATCO Argument, page 8.
[187] ATCO Argument, page 9 and 10.
[188] ATCO Reply Argument, page 8.

rate payers. The applicable burdon of proof is the balance of probabilities on the evidence presented. In assessing whether ATCO has satisfied its burdon of proof, the Commission will consider the extent to which ATCO has complied with accounting standards, provided evidence to demonstrate the cost of service incurred, amounts collected from rate payers in total and the amounts credited to rate payers in total given the data available to it. The Commission is satisfied that ATCO has satisfied its burdon of proof by way of the additional information provided below.

215. ATCO indicated that the total amount owed to it was shown on Schedule I of Appendix A of Exhibit 150.01 is $50,008,349. This is comprised of $43,727,482 plus interest of $6,280,867. Exhibit 150.01 is a supplemental information response for UCA-AG-34. The composition of the $43,727,482 is as follows:[189]

- $13,821,766 (Rider G after April 1, 2005)
- $63,139,047 (Rider H after April 1, 2005)
- $590,668 (Rider I)
- ($33,824,000) Cost of Service for the Carbon assets from April 1/05 to December 31/07.

216. ATCO filed backup for the calculations of the cost of service figures as part of the Initial submission (Exhibit 1). ATCO filed updated cost of service calculations in Exhibit 60 and the same cost of service calculations were filed in Exhibit 110. The cost of service calculations for the period of April 1, 2005 to December 31, 2007 included on Schedule I of Appendix A of Exhibits 60 and 110 totaled ($35,632,000). As part of its review of the updated Cost of Service calculations, the Commission identified a concern it had with the return on debt and debt expense calculations for the period of April 1, 2005 to December 31, 2009. These concerns were included in the information requests sent to ATCO on February 1, 2010.[190] In response to these information requests,[191] ATCO indicated that it had determined that not deducting the return on debt from the net income before tax was an oversight that overstated the income tax expense related to the Carbon assets. Subsequent to this, ATCO filed another updated cost of service calculation on February 22, 2010.[192] The cost of service calculations for the period of April 1, 2005 to December 31, 2007 included on Schedule I of Appendix A of Exhibit 136 totaled ($33,824,000). This same cost of service calculation figure is reflected on Exhibit 150.01 as well.

217. Regarding the amounts shown for Riders G, H and I shown on Schedule I of Appendix A of Exhibit 150.01, the Commission issued an information request to ATCO on May 4, 2010[193] in which ATCO was requested to provide more information and documentation about these Rider amounts. ATCO's response was filed on May 18, 2010[194] and a supplemental response was filed

[189] These figures do not add to the exact number due to rounding.
[190] Exhibit 125; AUC-AGS-10 and AUC-AGS-14.
[191] Exhibit 131.
[192] Exhibit 136.
[193] Exhibit 161.02.
[194] Exhibit 162.02.

on June 4, 2010.[195] Included in the information ATCO submitted were listings for each month from April, 2005 to December, 2009 of the amounts for Riders G, H and I. In addition, ATCO submitted copies of ATCO-CIS [customer information system] billing reports for each month from April, 2005 to December, 2009 that show the rider revenues in total for each of Rider G, H and I. The Commission verified that the totals for each of Rider G, H and I on these monthly ATCO-CIS billing reports were included in the monthly total figures that are included on Schedule I of Appendix A from Exhibit 150.01.

218. The Commission notes that ATCO provided a list, including account numbers used for recording purposes, of Carbon assets that were included in rate base, which amounted to $37.021 million (excluding construction work in progress)[196] at December 31, 2009. The Commission also notes that this amount equals the net differnce on the Property, Plant and Equipment Schedule[197] provided by ATCO in respect of disclosing its net property, plant and equipment at that date both including and excluding Carbon. The Commission accepts that ATCO has demonstrated that it appropriately accounted for the Carbon assets.

219. From a practical standpoint the Commission would be unable to verify that ATCO has used the Alberta Regulation 546/63 without conducting an audit of ATCO's financial records. The Commission does not consider that such an audit would be reasonable, nor cost effective, under the circumstances. The Commission accepts ATCO's explanation that it was unable to provide information for throughput volume because ATCO's customer information billing system does not trace and report throughput information by the different rates in place for each billing cycle. While this type of billing information could not be made available the Commission accepts that ATCO's reconciliations for the revenue and expense amounts are sufficiently reasonable under the circumstances to support the net amounts it has claimed for recovery from customers.

4.6.2 Mid-year Convention

220. ATCO employed the mid-year convention in the determination of the Carbon accounts and the amounts to be collected from rate payers in accordance with its traditional accounting practices. The interveners took issue with the mid-year convention in the circumstances of this Application.

221. The mid-year convention refers to the practice of using an arithmetical average of the previous year-end balance and the current year-end balance to establish an annual value.

Views of the Parties

Calgary

222. Calgary noted that although the revenue and operating expenses associated with Carbon are being adjusted as of April 1, 2005, the owning costs, return, depreciation and income taxes are not adjusted until July 1, 2005, resulting in customers being charged owning costs on an asset that is no longer in service yet being deprived of the benefits of that asset for three months. Calgary submitted that the application of the mid-year convention means that customers pay twice and ATCO earns twice. Accordingly, Calgary submitted that the mid-year convention,

[195] Exhibit 171.02.
[196] Exhibit 110.04, Appendix B, page 6 of 6.
[197] Ibid, Appendix DSchedule 2.3-B

which would allow ATCO to double recover amounts from customers for three months of one year, does not properly apply in the unique circumstances of Carbon.[198]

223. Calgary observed that the mid-year convention is merely a tool, which is neither mandated by legislation nor the Court, and that the Court recognized that it was a reasonable, not perfect, tool for the Commission to apply where it was reasonable to do so. Calgary considered that as ATCO was requesting customers to pay approximately $50 million, the approach it used in its determinations should be one that is just and reasonable rather than one that is merely not unreasonable.[199]

224. Calgary submitted that symmetry and fairness would indicate that the customers should benefit from the revenue for the period from April 1, 2005 to June 30, 2005 period. Calgary considered that asking the rate payer to pay a return to ATCO and at the same time be asked to pay back the revenue received from the asset for the same period of time is unjust and unreasonable.[200] Calgary argued that the use of the mid-year convention does not provide a fair representation of the owning and operating costs associated with the removal of the Carbon assets on April 1, 2005.[201]

PICA

225. PICA supported Calgary's recommendation to include the Carbon assets in the calculation of return, taxes, etc., for only three months (January 2005 to March 2005). PICA submitted that Calgary's recommendation was consistent with the accounting principle of matching revenues with costs related to producing those revenues (matching principle). In particular, PICA considered that the matching principle should override the mid-year convention where there is a monthly calculation of revenue being matched against the corresponding costs.[202]

ATCO

226. ATCO submitted that the use of the mid-year convention in the determination of the 2005 rate base for the Carbon assets is reasonable and appropriate. ATCO viewed the mid-year convention issue as being identical to the Commission's prior decision regarding requested adjustments to the approved forecast for net negative salvage in that the mid-year convention is a feature of the approved revenue requirement forecast for the year 2005, which inappropriately included the Carbon assets. ATCO argued that Calgary unsuccessfully appealed the use of the mid-year convention in 2005 rates in *Calgary (City) v. Alberta (Energy and Utilities* Board*)*, 2010 ABCA 94 (Working Capital Appeal Decision) which upheld that aspect of the approved rate forecast methodology for 2005. Calgary should not be permitted to re-litigate that matter again. ATCO clarified that the mid-year convention has only been applied to the determination of the utility income and the income taxes related to the utility income.[203]

227. ATCO noted that the amount of the inventory used in the storage working capital calculation that was the subject of the denied appeal was $98.4 million for a period of three

[198] Calgary Argument, page 5.
[199] Calgary Argument, page 5 and 6.
[200] Calgary Argument, page 6.
[201] Calgary Reply Argument, page 10.
[202] PICA Argument, page 8.
[203] ATCO Argument, page 17.

months and the Court of Appeal concluded that the mid-year convention did not lead to an unreasonable determination of rate base and fair return. ATCO further noted that the 2005 Carbon rate base used in the current proceeding is $42 million, for a period of nine months, which indicates that the use of the mid-year convention in the current Proceeding also does not lead to an unreasonable determination of rate base and fair return.[204]

228. ATCO submitted that Calgary ignored the Carbon Appeal Decision when it asserted that customers should be entitled to revenue generation over the period April 1, 2005 to June 30, 2005 because ATCO has not changed the principles that were used in the derivation of the approved 2005 revenue requirement forecast that relates to the Carbon assets. ATCO asserted that the Court of Appeal said revenue generation is not a valid utility service and therefore Calgary was wrong in law.[205]

229. ATCO submitted that revenues and operating costs are not determined using the midyear convention and, therefore, introduction of a new convention in this Proceeding would be inappropriate. Notwithstanding, ATCO noted that Calgary recommended that only revenues should be adjusted, whereas application of any new convention would also have to consider the effect on operating costs.[206]

230. ATCO argued that fairness requires that parties know not only what the rules are in advance but also that those rules will not be changed on an ad hoc basis, at the whim of one party or another. ATCO submitted that the consistent use of the same principles, such as the mid-year convention, ensures fairness to all parties over time.[207]

231. ATCO disagreed with PICA that Calgary's position that not using the mid-year convention was consistent with the accounting principle of matching of matching revenues with costs related to those revenues. ATCO submitted that PICA overlooked that the use of the mid-year convention to determine rate base related costs is consistent with the matching principle, because it recognizes that not all expenditures or retirements of capital assets occur on January 1 or December 31.[208]

232. ATCO submitted that it derived the amounts of the Carbon revenue requirement that needed to come out of its total revenue requirement forecast, which was based on the mid-year convention. Accordingly, ATCO also submitted that, use of the mid-year convention in the derivation of the Carbon amounts was reasonable.[209]

Views of the Commission

233. The Commission accepts ATCO's use of mid-year convention. Notwithstanding that the owning costs, return, depreciation and income taxes were not adjusted until July 1, 2005, the mid-year convention has been the norm that has been applied in recognizing rate base transactions and its continued application in these circumstances is consistent with the findings of the Court of Appeal in the Working Capital Appeal Decision. The Commission does not

[204] ATCO Argument, page 17 and 18.
[205] ATCO Reply Argument, page 10.
[206] ATCO Reply Argument, page 10.
[207] ATCO Reply Argument, page 10.
[208] ATCO Reply Argument, page 11.
[209] ATCO Reply Argument, page 11.

consider that the circumstances surrounding the timing of the removal of Carbon from utility service warrants a change to the application of this established regularory practice.

4.6.3 Carrying Charge

234. ATCO proposed that interest should be applied to the net amounts owed to it based on AUC Rule 023: *Rules Respecting Payment of Interest* (Rule 023).[210] Carrying charges in this Decision, represent an award of interest to be recovered or paid by ATCO in its rates in respect of the adjustments as approved by the Commission for Carbon related amounts

Views of the Parties

Calgary

235. Calgary asserted that ATCO did not include a calculation of interest on amounts owing to customers on account of the overpayment of the Production and Storage charge for the period January 1, 2008 to June 30, 2008, but did include interest on the amounts owed ATCO. Calgary argued that fairness and transperancy required interest to be applied simetrically.

PICA

236. PICA submitted that the inclusion of interest on the $3.418 million working capital adjustment, effective April 1, 2005, is inconsistent with the logic of interest calculations used by ATCO for other amounts. Accordingly, PICA submitted that ATCO should be directed to reduce the interest amount to reflect the calculation of interest on the $3.418 million working capital adjustment effective as and from when the Board/Commission approval was received for the refund/collection of this amount.[211]

UCA

237. The UCA considered that there were two fundamental issues regarding the amount of interest that ATCO is seeking to recover in this Proceeding.

a) First, there are amounts related to the Carbon revenue riders which appear to have occurred prior to April 1, 2005 on which ATCO is seeking to recover the related interest, and
b) Second, during the period January 1, 2008 through June 30, 2008 the Carbon Cost of Service was recovered through a dedicated rate rider, which effectively removed the cost of Carbon from base rates and treated the Carbon Cost of Service as a stand-alone cost center.[212]

ATCO

238. ATCO noted that that neither Calgary nor the UCA took the position that ATCO should not be entitled to recover interest on the amounts owed to it in accordance with Rule 023.[213]

[210] Exhibit 1, page 4 of 5.
[211] PICA Argument, page 10.
[212] UCA Argument, page 10.
[213] ATCO Argument, page 12.

239. ATCO disagreed with the UCA that there are amounts related to the Carbon revenue riders which occurred prior to April 1, 2005 which are being included in the interest calculations. ATCO argued that it had made appropriate adjustments to remove the effect of these riders.[214]

240. ATCO argued that the 2008 Production and Storage Charge has already been returned to customers in the manner approved by the Commission through the 2008-2009 GRA compliance process.[215]

241. ATCO disagreed with PICA that ATCO should reduce the interest calculation in respect of the $3.418 million working capital adjustment to reflect the time when it was approved for recovery. ATCO submitted that this reduction was shown in Exhibit 150.01.[216]

Views of the Commission

242. The Commission agrees that Rule 023 applies to the determination of carrying charges. With respect to the interest on the Production and Storage Charge the Commisssion agrees with ATCO that the interest has been handled correctly. With respect to the interest on the necessary working capital adjustment the Commisssion will permit ATCO's recovery of interest on the necessary working capital adjustments as determined by ATCO as shown on Exhibit 150.01, Schedule I.

4.7 Other Matters

4.7.1 Miscellaneous Carbon Related Adjustments

243. On September 11, 2009 ATCO filed additional evidence with the Commission in the current proceeding related to certain additional adjustments that are required with respect to the removal of the Carbon assets from utility service. ATCO is seeking approval in this proceeding to make the adjustments to the Direct Energy Regulated Services' (DERS) South Gas Cost Flowthrough Rate (GCFR) and the ATCO's South load balancing deferred account (LBDA).

244. ATCO explained that prior to October 1, 2008 (when ATCO implemented Retailer Service), DERS was responsible for balancing ATCO's distribution system through its GCFR. The impact of the change in procedure for the period November 1, 2006 to September 30, 2008 is a refund to DERS's GCFR in the amount of approximately $106,000. For the period October 1, 2008 to June 30, 2009, ATCO was responsible for balancing its distribution system. The adjustment that is required to ATCO's South LBDA for the period October 1, 2008 to June 30, 2009 is a charge in the amount of approximately $47,000.

245. ATCO reiterated its request in its supplementary evidence submitted on January 6, 2010 and summarized that it was seeking approval to make a refund to DERS's South GCFR in the amount of approximately $106,000, and to charge an amount of approximately $47,000 to the ATCO South LBDA. These adjustments are related to the removal of the impact of the Carbon production FSR [firm service – receipts] account from the south FSU [firm service – utility] account of ATCO.

[214] ATCO Argument, page 10 and 13.
[215] ATCO Argument, page 13.
[216] ATCO Reply Argument, page 8.

246. The Commission received no objections from interveners to ATCO's proposal and after consideration of the evidence accepts the necessity for the adjustments in the amounts applied for. The Commission therefore approves ATCO's request as submitted.

4.7.2 Disposition of Application No. 1506285

247. Given that this Proceeding will be closed as of this Decision, the Commission will also close the process for Application No. 1506285, ATCO Gas South Carbon Facilities Part 1B Module, which had been adjourned by the EUB's letter of April 13, 2007 pending the the conclusion of related litigation. This Proceeding has rendered the Part 1B Module redundant.

4.8 Riders and Collection Period

248. In its Argument, AGS indicated that the final amount owed to it including simple interest based on AUC Rule 023 is approximately $50 million. AGS referenced Appendix A provided in Exhibit 150.01 as the backup for the approximate $50 million figure and indicated that this figure is premised on AGS being able to recover all amounts owed to it by December 31, 2011.[217] The total amount owed to AGS shown on Schedule I of Appendix A of Exhibit 150.01 is $50,008,349. This is comprised of $43,727,482 plus interest of $6,280,867. The Commission, in Section 4.6.1 of this Decision, has approved the $43,727,482. The interest amount of $6,280,867 has not been modified by the Commission as provided below because the interest amount is dependent upon the collection period and the final riders approved.

249. The Commission considers that the riders designed to collect the outstanding amount owed to AGS should be calculated with the end date of December 31, 2011, weighed against their overall impact on rates. On Schedule J of Appendix A of Exhibit 150.01, AGS included calculations of what the resulting riders for 2011 would be based on the 2011 forecast throughput as well as how much would be recovered through requested interim riders assumed to be in place for the period of May, 2010 to December, 2010. AGS included the following requested interim riders for the applicable period in 2010 on Schedule J of Appendix A of Exhibit 150.01:

- Low Use & High Use $0.254 per GJ (Rider 'H')
- Irrigation $0.470 per GJ (Rider 'I')

250. The Commission approved the interim riders shown above in Decision 2010-167 (as amended by an Errata)[218] for the period of May-December 31, 2010. Given the timing of the release of this Decision, the Commission has decided to terminate, effective October 31, 2010, the interim riders originally scheduled to expire on December 31, 2010 and replace them with final riders applicable to the period from November 1, 2010 to December 31, 2011. The Commission's calculation of these final riders is included in Appendix 3 of this Decision. In calculating these final riders the Commission has used the forecast throughput figures for November 1, 2010 to December 31, 2011 included on Schedule I of Appendix A of Exhibit 150.01 since these are the most recent throughput forecasts on the record of this proceeding. The resulting final riders calculated by the Commission are as follows:

[217] ATCO Argument, paragraph 2.
[218] Decision 2010-167 and errata: ATCO Gas South Approval to Implement Carbon Recovery Riders (Application No. 1605873, ID. 479) (Released: April 20, 2010) (Errata Released: April 22, 1010).

- Low Use & High Use $0.283 per GJ (Rider 'H')
- Irrigation $0.566 per GJ (Rider 'I')

251. As shown in Appendix 4 of this Decision, the total interest amount is $6,271,973. The effect of rounding the final rider amounts to only three decimal places results is a forecast under collection by AGS of $61,923. Given the significance of the approved pre-interest amount owed to AGS of $43,727,482 and the inherent difficulty in accurately forecasting natural gas throughput, especially for a long period of time (which in this case is from May 1, 2010 to December 31, 2010) there is the possibility that the actual amount of money AGS collects through these interim and final riders will be different than the approved amounts. Therefore, the Commission directs that AGS file an application no later than three months after the final riders expire on December 31, 2011 which includes details of the actual amounts recovered through the interim and final riders. This application should include actual information in tabular format similar to the following:

Table 1. Low Use & High Use

Month	Opening Balance (A)	Interest (Bank of Canada Actual + 1.5%) (B)	Actual Recoveries (C)	Closing Balance (A)+(B)+(C)
May, 2010	$43,253,837	XXX	(YYY)	
June, 2010				
July, 2010				
Each Month Separately for August, 2010 to December, 2011				
Grand Total				

Table 2. Irrigation

Month	Opening Balance (A)	Interest (Bank of Canada Actual + 1.5%) (B)	Actual Recoveries (C)	Closing Balance (A)+(B)+(C)
May, 2010	$473,645	XXX	(YYY)	
June, 2010				
July, 2010				
Each Month Separately for August, 2010 to December, 2011				
Grand Total				

Table 3. Total

Month	Opening Balance (A)	Interest (Bank of Canada Actual + 1.5%) (B)	Actual Recoveries (C)	Closing Balance (A)+(B)+(C)
May, 2010	$43,727,482	XXX	(YYY)	
June, 2010				
July, 2010				
Each Month Separately for August, 2010 to December, 2011				
Grand Total				

The actual grand totals recovered should be compared to the forecast approved amounts (including interest) of $49,457,873 for Low Use & High Use and $541,581 for Irrigation (as

shown in Appendix 4 of this Decision) and the differences should be reported in the application, along with AGS' recommendations on how these differences should be treated. Any amount of over/under collection shall be addressed in the application by a further rate rider to ensure that only the amounts awarded under this Decision are refunded to AGS.

252. The final rider of $0.283 per GJ for the Low Use & High Use category is an increase of $0.029 per GJ from the interim rider of $0.254 per GJ approved in Decision 2010-167. This is a percentage increase of approximately 11.5 percent. The impact of the interim rider amount was brought up in Decision 2010-167 and was commented on by AGS as follows:

> In reply to the UCA's argument that the proposed rider would constitute a 26.8 percent increase in the commodity (variable) rate, AGS stated that, for an average customer consuming 120 GJ annually, the requested interim rider (Rider "G") would result in an increased costs of approximately $15 in 2010 or an increase of approximately 4 percent in distribution service costs for an average customer in 2010.[219]

253. Decision 2010-167 stated:

> … The Commission also accepts as reasonable AGS's calculation that the proposed rate Rider "G" will cost the average Low Use consumer about an additional $15 in 2010, which for the average customer would constitute about a 4 percent increase in distribution costs for the year.[220]

254. For an average customer consuming 120 GJ annually in 2011, the resulting increase in the commodity cost will be approximately $34.[221] Adding this to the total distribution services costs for 2010 of $375[222] before the final rider (assuming no increase in any other costs in 2011) results in a total of $409 for distribution services costs for an average customer in 2011. The resulting percentage increase in 2011 as a result of the final rider is approximately nine percent.[223] The Commission does not consider a nine percent increase amounting to $34 over the entire year 2011 to constitute rate shock in the circumstances of this proceeding. Consequently, the Commission considers the collection period designed for the final rider of November 1, 2010 to December 31, 2011 to be reasonable.

255. The rate schedules for Rate Riders 'H' and 'I' which are effective from the date of this Decision until December 31, 2011 are attached in Appendix 5.

[219] Decision 2010-167, paragraph 13.
[220] Decision 2010-167, paragraph 18.
[221] 120 GJ * $0.283/GJ = $33.96.
[222] Based on this information that a $15 increase is an approximate increase of four percent in distribution service costs for an average customer in 2010, the Commission has calculated that the total distribution services costs for an average customer in 2010 is $375, excluding the interim rider amounts. 15/.04 = 375.
[223] 34/375.

5 ORDER

256. IT IS HEREBY ORDERED THAT:

(1) Rider "H" as approved in Decision 2010-167 errata in the amount of $0.254/GJ to be applied to the Low Use and High Use Delivery Service Rates during the period May 1, 2010 to December 31, 2010 will now be effective only for the period of May 1, 2010 to October 31, 2010.

(2) Rider "I" as approved in Decision 2010-167 in the amount of $0.470/GJ to be applied to the Irrigation Delivery Service Rate during the period May 1, 2010 to December 31, 2010 will now be effective only for the period of May 1, 2010 to October 31, 2010.

(3) Rider "H" is revised and approved in the amount of $0.283/GJ to be applied to the Low Use and High Use Delivery Service Rates during the period November 1, 2010 to December 31, 2011.

(4) Rider "I" is revised and approved in the amount of $0.566/GJ to be applied to the Irrigation Delivery Service Rate during the period November 1, 2010 to December 31, 2011.

(5) ATCO Gas South shall file an application no later than three months after December 31, 2011 in which it will provide details of the actual amounts recovered through Riders "H" and "I", and provide for a reconciliation mechanism for any over/under collection as described in this Decision.

Dated on October 19, 2010.

ALBERTA UTILITIES COMMISSION

(original signed by)

Willie Grieve
Chair

(original signed by)

Moin A. Yahya
Commissioner

(original signed by)

Tudor Beattie, Q.C.
Commissioner

APPENDIX 1 – PROCEEDING PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative
ATCO Gas South (ATCO or AGS) L. Smith D. Wilson R. Trovato D. Zavaduk J. Santos
BP Canada Energy Company C. G. Worthy G. Boone
The City of Calgary (Calgary) P. Quinton-Campbell M. Rowe
Public Institutional Consumers of Alberta (PICA) N. McKenzie R. Retnanandan
Office of the Utilities Consumer Advocate (UCA) J. A. Bryan, Q.C. H. Vanderveen R. Bell

APPENDIX 2 – ORAL HEARING – REGISTERED APPEARANCES

Name of Organization (Abbreviation) Counsel or Representative	Witnesses
ATCO Gas South (ATCO or AGS) L. E. Smith	D. Wilson
Office of the Utilities Consumer Advocate (UCA) J. A. Bryan, Q.C. The City of Calgary (Calgary) P. Quinton-Campbell	H. Johnson H. Vander Veen

Alberta Utilities Commission
Commission Panel W. Grieve, Chair M. A. Yahya, Commissioner T. Beattie, Q.C., Commissioner
Commission Staff B. McNulty(Commission Counsel) R. Armstrong, P.Eng. D. R. Weir, CA M. McJannet D. Mitchell C. Aitken

APPENDIX 3 – AUC DETERMINATION OF FINAL RECOVERY

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Appendix 3 - AUC
Determination of Fina

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APPENDIX 4 – AUC CALCULATION OF MONTHLY AMOUNTS

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Appendix 4 - AUC
Calculation of Monthly

(consists of 2 pages)

APPENDIX 5 – SOUTH RATE SCHEDULES

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Appendix 5 - South
Rate Schedules Nov 1

(consists of 19 pages)

APPENDIX 6 – DECISION 2007-005 APPENDIX 6

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Appendix 6 -
2007-005 Appendix 6

(consists of 10 pages)

APPENDIX 7 – DECISION 2009-253 APPENDIX 3

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Appendix 7 -
2009-253 Appendix 3

(consists of 7 pages)

APPENDIX 8 – DECISION 2009-253 SECTION 2

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Appendix 8 -
2009-253 Section 2

(consists of 6 pages)

APPENDIX 9 – 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. As shown in Appendix 4 of this Decision, the total interest amount is $6,271,973. The effect of rounding the final rider amounts to only three decimal places results is a forecast under collection by AGS of $61,923. Given the significance of the approved pre-interest amount owed to AGS of $43,727,482 and the inherent difficulty in accurately forecasting natural gas throughput, especially for a long period of time (which in this case is from May 1, 2010 to December 31, 2010) there is the possibility that the actual amount of money AGS collects through these interim and final riders will be different than the approved amounts. Therefore, the Commission directs that AGS file an application no later than three months after the final riders expire on December 31, 2011 which includes details of the actual amounts recovered through the interim and final riders. This application should include actual information in tabular format similar to the following: ..... Paragraph 251

Determination of Final Recovery of Carbon Credits less Cost of Service Charges
Recovery Period of November 1, 2010 to December 31, 2011
As Determined by the Alberta Utilities Commission

	Low Use & High Use	Irrigation
2010 Interim Riders Approved in Decision 2010-167 and Errata	**$0.254**	**$0.470**

Forecast Throughput (GJ)	Low Use & High Use	Irrigation	Total
May 1, 2010 to October 31, 2010	31,911,663	529,155	32,440,818
November 1, 2010 to December 31, 2011	145,902,799	517,269	146,420,068
Totals for Recovery Period	177,814,462	1,046,424	178,860,886

	Total	Low Use & High Use	Irrigation
Charges/Credits			
Production Credit - All Rate Groups	13,821,767	$13,740,903	$80,864
Storage Credit - Low Use/High Use	63,139,047	$63,139,047	$0
Storage Credit - Irrigation	590,668	$0	$590,668
Cost of Service - All Rate Groups	($33,824,000)	($33,626,113)	($197,887)
Net Before Interest	$43,727,482	$43,253,837	$473,645
Interest	$6,271,973	$6,204,037	$67,936
Total Including Interest to Dec. 31, 2011	$49,999,455	$49,457,874	$541,581
Recovery (May 1 to October 31, 2010)	($8,354,265)	($8,105,562)	($248,703)
Remainder to be Recovered	$41,645,190	$41,352,312	$292,878
November 1, 2010 to December 31, 2011 Recovery Rate ($/GJ)		**$0.283**	**$0.566**
		$0.283	**$0.566**

ATCO Gas South

Monthly Amounts Paid Out To or (Recovered From) Customers - As Calculated by the Alberta Utilities Commission

Month	Rider G $	Adjustments prior to April 1, 2005	Rider G After April 1, 2005	Rider H $	Adjustments prior to April 1, 2005	Rider H After April 1, 2005	Rider I $	Cost of Service	Net	Recovered by AG	Cumulative	Bank Rate	Plus 1.5%	Interest $	Total Owed to ATCO Gas	Other Throughput (GJ)	Irrigation Throughput (GJ)
Apr-05	404,574	(361,688)	42,886	(1,734,472)	2,527,007	792,535	5	(1,080,611)	(245,186)	-	(245,186)	2.75	4.25	(868)	(246,054)		
May-05	228,334	88,716	317,050	1,414,952	54,296	1,469,248	2,705	(761,462)	1,027,541	-	782,355	2.75	4.25	2,771	784,258		
Jun-05	366,855	(141,024)	225,831	1,691,561	(176,487)	1,515,074	27,550	(502,452)	1,266,004	-	2,048,359	2.75	4.25	7,255	2,057,517		
Jul-05	405,593	(105,930)	299,663	1,774,608		1,774,608	17,909	(456,501)	1,635,678	-	3,684,037	2.75	4.25	13,048	3,706,243		
Aug-05	377,827		377,827	1,408,895		1,408,895	42,837	(473,575)	1,355,984	-	5,040,021	2.75	4.25	17,850	5,080,077		
Sep-05	399,251		399,251	1,604,221		1,604,221	16,750	(661,148)	1,359,074	-	6,399,095	3	4.5	23,997	6,463,148		
Oct-05	444,658		444,658	1,566,510		1,566,510	3,680	(1,033,530)	981,318	-	7,380,413	3.25	4.75	29,214	7,473,680		
Nov-05	413,831		413,831	1,257,598		1,257,598	143	(1,596,120)	75,453	-	7,455,866	3.25	4.75	29,513	7,578,646		
Dec-05	568,046	41,548	609,594	1,927,425		1,927,425	8	(1,905,601)	631,426	-	8,087,292	3.5	5	33,697	8,243,769		
Jan-06	537,913		537,913	1,621,938		1,621,938	(66)	(1,833,872)	325,914	-	8,413,206	3.75	5.25	36,808	8,606,491		
Feb-06	424,515		424,515	1,545,956		1,545,956	(168)	(1,557,726)	412,577	-	8,825,783	3.75	5.25	38,613	9,057,681		
Mar-06	624,066		624,066	482,169	1,538,100	2,020,269	(0)	(1,493,703)	1,150,632	-	9,976,415	4	5.5	45,725	10,254,038		
Apr-06	346,013		346,013	(378,233)	1,879,900	1,501,667	(80)	(984,358)	863,242	-	10,839,657	4.25	5.75	51,940	11,169,220		
May-06	219,529		219,529	1,471,903		1,471,903	196	(694,954)	996,674	-	11,836,331	4.5	6	59,182	12,225,076		
Jun-06	283,417		283,417	1,568,530		1,568,530	17,384	(455,295)	1,414,036	-	13,250,367	4.5	6	66,252	13,705,364		
Jul-06	262,901		262,901	1,593,098		1,593,098	33,769	(412,236)	1,477,533	-	14,727,900	4.5	6	73,640	15,256,537		
Aug-06	136,275	57,010	193,285	1,475,768		1,475,768	61,113	(432,632)	1,297,533	-	16,025,433	4.5	6	80,127	16,634,197		
Sep-06	115,354		115,354	1,680,084		1,680,084	45,542	(605,663)	1,235,317	-	17,260,750	4.5	6	86,304	17,955,818		
Oct-06	275,341		275,341	1,565,370		1,565,370	19,383	(942,205)	917,889	-	18,178,639	4.5	6	90,893	18,964,600		
Nov-06	335,277		335,277	1,981,221		1,981,221	(411)	(1,453,704)	862,384	-	19,041,023	4.5	6	95,205	19,922,189		
Dec-06	313,722	15,588	329,310	1,778,679		1,778,679	63	(1,742,652)	365,400	-	19,406,423	4.5	6	97,032	20,384,621		
Jan-07	345,100		345,100	1,532,574		1,532,574	(49)	(1,858,472)	19,154	-	19,425,577	4.5	6	97,128	20,500,903		
Feb-07	387,702		387,702	1,798,746		1,798,746	-	(1,581,851)	604,598	-	20,030,175	4.5	6	100,151	21,205,652		
Mar-07	362,378		362,378	1,611,761		1,611,761	2	(1,511,225)	462,916	-	20,493,091	4.5	6	102,465	21,771,033		
Apr-07	340,024		340,024	1,574,240		1,574,240	(9)	(996,014)	918,241	-	21,411,332	4.5	6	107,057	22,796,331		
May-07	301,885		301,885	1,531,256		1,531,256	301	(700,605)	1,132,837	-	22,544,169	4.5	6	112,721	24,041,889		
Jun-07	314,988		314,988	1,392,207		1,392,207	9,240	(461,562)	1,254,873	-	23,799,042	4.5	6	118,995	25,415,757		
Jul-07	301,313		301,313	1,443,569		1,443,569	85,962	(416,968)	1,413,875	-	25,212,917	4.75	6.25	131,317	26,960,949		
Aug-07	278,238		278,238	1,433,111		1,433,111	89,007	(432,587)	1,367,768	-	26,580,685	4.75	6.25	138,441	28,467,158		
Sep-07	298,589		298,589	1,959,061		1,959,061	40,311	(608,814)	1,689,147	-	28,269,832	4.75	6.25	147,239	30,303,544		
Oct-07	183,503		183,503	1,297,268		1,297,268	10,787	(951,420)	540,138	-	28,809,970	4.75	6.25	150,052	30,993,734		
Nov-07	268,142		268,142	1,655,805		1,655,805	17,172	(1,465,612)	475,507	-	29,285,477	4.75	6.25	152,529	31,621,770		
Dec-07	435,731		435,731	1,959,703		1,959,703	4,541	(1,758,870)	641,105	-	29,926,582	4.5	6	149,633	32,412,508		
Jan-08	478,594		478,594	1,806,691		1,806,691	-	-	2,285,284	-	32,211,866	4.25	5.75	154,349	34,852,141		
Feb-08	524,768		524,768	1,950,647		1,950,647	-	-	2,475,415	-	34,687,281	4.25	5.75	166,210	37,493,766		
Mar-08	343,668		343,668	1,274,551		1,274,551	(1,781)	-	1,616,438	-	36,303,719	3.75	5.25	158,829	39,269,033		
Apr-08	486,262		486,262	1,845,469		1,845,469	-	-	2,331,731	-	38,635,450	3.25	4.75	152,932	41,753,696		
May-08	428,228		428,228	1,723,858		1,723,858	2,468	-	2,154,554	-	40,790,004	3.25	4.75	161,460	44,069,710		
Jun-08	435,160		435,160	1,509,712		1,509,712	11,254	-	1,956,126	-	42,746,130	3.25	4.75	169,203	46,195,039		
Jul-08	219,228		219,228	691,555		691,555	21,786	-	932,569	-	43,678,699	3.25	4.75	172,895	47,300,503		

Monthly Amounts Paid Out To or (Recovered From) Customers - As Calculated by the Alberta Utilities Commission

Month	Rider G $	Adjustments prior to April 1, 2005	Rider G After April 1, 2005	Rider H $	Adjustments prior to April 1, 2005	Rider H After April 1, 2005	Rider I $	Cost of Service	Net	Recovered by AG	Cumulative	Bank Rate	Plus 1.5%	Interest $	Total Owed to ATCO Gas	Other Throughput (GJ)	Irrigation Throughput (GJ)
Aug-08	10,718		10,718	28,048		28,048	10,278	-	49,044	-	43,727,743	3.25	4.75	173,089	47,522,636		
Sep-08	(499)		(499)	(1,373)		(1,373)	(20)	-	(1,892)	-	43,725,851	3.25	4.75	173,081	47,693,825		
Oct-08	(379)		(379)	(1,636)		(1,636)	249	-	(1,766)	-	43,724,085	2.5	4	145,747	47,837,806		
Nov-08	70		70	336		336	(28)	-	378	-	43,724,463	2.5	4	145,748	47,983,932		
Dec-08	257		257	864		864	203	-	1,324	-	43,725,787	1.75	3.25	118,424	48,103,680		
Jan-09	687		687	2,240		2,240	227	-	3,154	-	43,728,941	1.25	2.75	100,212	48,207,046	17,293,351	(89)
Feb-09	35		35	238		238	(100)	-	173	-	43,729,114	1.25	2.75	100,213	48,307,432	13,788,029	(228)
Mar-09	355		355	91		91	-	-	446	-	43,729,560	0.75	2.25	81,993	48,389,871	14,212,427	-
Apr-09	(595)		(595)	(2,445)		(2,445)	134	-	(2,906)	-	43,726,654	0.5	2.0	72,878	48,459,843	9,272,859	(109)
May-09	96		96	392		392	-	-	488	-	43,727,142	0.5	2.0	72,879	48,533,210	6,454,468	11,968
Jun-09	69		69	30		30	416	-	515	-	43,727,657	0.5	2.0	72,879	48,606,604	4,115,408	108,578
Jul-09	(19)		(19)	(96)		(96)	17	-	(98)	-	43,727,559	0.5	2.0	72,879	48,679,385	3,158,930	122,279
Aug-09	(37)		(37)	(152)		(152)	-	-	(189)	-	43,727,370	0.5	2.0	72,879	48,752,075	3,380,551	262,598
Sep-09	35		35	141		141	(9)	-	167	-	43,727,537	0.5	2.0	72,879	48,825,121	5,160,030	42,383
Oct-09	5		5	1		1	-	-	6	-	43,727,543	0.5	2.0	72,879	48,898,006	9,326,319	(18,651)
Nov-09	(86)		(86)	(24)		(24)	-	-	(110)	-	43,727,433	0.5	2.0	72,879	48,970,775	12,935,919	(4,930)
Dec-09	76		76	20		20	-	-	96	-	43,727,529	0.5	2.0	72,879	49,043,750	15,638,320	(800)
Jan-10	(37)		(37)	(10)		(10)	-	-	(47)	-	43,727,482	0.5	2.0	72,879	49,116,582	17,466,285	(89)
Feb-10	-		-	-		-	-	-	-	-	43,727,482	0.5	2.0	72,879	49,189,461	13,925,909	(228)
Mar-10	-		-	-		-	-	-	-	-	43,727,482	0.5	2.0	72,879	49,262,340	14,354,551	-
Apr-10	-		-	-		-	-	-	-	-	43,727,482	0.5	2.0	72,879	49,335,219	9,365,588	(109)
May-10	-		-	-		-	-	-	-	(1,661,454)	42,066,028	0.5	2.0	70,110	47,743,875	6,519,013	11,968
Jun-10	-		-	-		-	-	-	-	(1,106,798)	40,959,229	0.5	2.0	68,265	46,705,341	4,156,562	108,578
Jul-10	-		-	-		-	-	-	-	(867,863)	40,091,366	0.5	2.0	66,819	45,904,297	3,190,519	122,279
Aug-10	-		-	-		-	-	-	-	(990,668)	39,100,699	0.5	2.0	65,168	44,978,798	3,414,357	262,598
Sep-10	-		-	-		-	-	-	-	(1,343,674)	37,757,025	0.5	2.0	62,928	43,698,052	5,211,630	42,383
Oct-10	-		-	-		-	-	-	-	(2,383,808)	35,373,217	0.5	2.0	58,955	41,373,199	9,419,582	(18,651)
Nov-10	-		-	-		-	-	-	-	(3,694,683)	31,678,533	0.5	2.0	52,798	37,731,313	13,065,278	(4,930)
Dec-10	-		-	-		-	-	-	-	(4,469,448)	27,209,085	0.5	2.0	45,348	33,307,213	15,794,703	(800)
Jan-11	-		-	-		-	-	-	-	(4,992,338)	22,216,747	0.5	2.0	37,028	28,351,903	17,640,948	(89)
Feb-11	-		-	-		-	-	-	-	(3,980,313)	18,236,434	0.5	2.0	30,394	24,401,984	14,065,168	(228)
Mar-11	-		-	-		-	-	-	-	(4,102,961)	14,133,472	0.5	2.0	23,556	20,322,578	14,498,097	-
Apr-11	-		-	-		-	-	-	-	(2,676,904)	11,456,568	0.5	2.0	19,094	17,664,768	9,459,244	(109)
May-11	-		-	-		-	-	-	-	(1,870,103)	9,586,465	0.5	2.0	15,977	15,810,642	6,584,203	11,968
Jun-11	-		-	-		-	-	-	-	(1,249,525)	8,336,939	0.5	2.0	13,895	14,575,011	4,198,128	108,578
Jul-11	-		-	-		-	-	-	-	(981,156)	7,355,783	0.5	2.0	12,260	13,606,115	3,222,424	122,279
Aug-11	-		-	-		-	-	-	-	(1,124,556)	6,231,227	0.5	2.0	10,385	12,491,944	3,448,501	262,598
Sep-11	-		-	-		-	-	-	-	(1,513,629)	4,717,598	0.5	2.0	7,863	10,986,178	5,263,746	42,383
Oct-11	-		-	-		-	-	-	-	(2,681,843)	2,035,756	0.5	2.0	3,393	8,307,729	9,513,778	(18,651)
Nov-11	-		-	-		-	-	-	-	(3,731,658)	(1,695,902)	0.5	2.0	-	4,576,071	13,195,931	(4,930)
Dec-11	-		-	-		-	-	-	-	(4,514,147)	(6,210,050)	0.5	2.0	-	61,923	15,952,650	(800)
									-								
TOTAL	**14,227,546**	**(405,780)**	**13,821,766**	**57,316,231**	**5,822,816**	**63,139,047**	**590,668**	**(33,824,000)**	**43,727,482**	**(49,937,532)**				**6,271,973**	**49,999,455**		

APPENDIX 5

ATCO GAS AND PIPELINES LTD.

ATCO GAS SOUTH

RATE SCHEDULES

November 1, 2010

Effective November 1, 2010

ATCO GAS AND PIPELINES LTD. - SOUTH
RATE SCHEDULES

INDEX

Page

Conditions

Riders

Delivery Service Rates

Other Service Rates

Effective by Decision 2007-059
On Consumption September 1, 2007
This Replaces General Conditions
Previously Effective May 4, 2004

ATCO GAS AND PIPELINES LTD. - SOUTH
GENERAL CONDITIONS

1. Approval of Alberta Utilities Commission:

Changes in Rates from time to time are subject to approval by the Alberta Utilities Commission (Commission) for the Province of Alberta.

2. Special Contracts:

Unless varied by the Commission, service to Customers under Special Contracts shall be subject to the terms and conditions thereof. A special contract is required for all Customers with annual requirements in excess of 500,000 GJ.

3. Specific Facilities Conditions:

The Rates do not include extra costs incurred by the Company and payable by the Customer for Special Facilities or conditions requested by the Customer at the Point of Delivery.

4. Winter Period - Summer Period:

The winter period is the five calendar months from November 1 to March 31, and the summer period is the seven calendar months from April 1 to October 31.

5. Late Payment Charge:

When accounts are not paid in full on or before the due date, the Company will apply a 1% penalty on the amount due. If the payment is not received by the next billing cycle, a 1% penalty will be applied to the balance carried forward (including interest).

6. Terms and Conditions:

The Company's Terms and Conditions for Distribution Service Connections and Distribution Access Service apply to all Customers and form part of these Rate Schedules.

7. DSP Rider F:

The words "DSP Rider "F" " as they appear on the Rate Schedules, shall mean the Default Supply Provider's Regulated Services Gas Cost Flow-Through Rate for ATCO Gas.

Effective by Decision 2010-185
On Consumption June 14, 2010
This Replaces Rider "A"
Previously Effective May 21, 2010

ATCO GAS AND PIPELINES LTD. - SOUTH
ATCO GAS – SOUTH AND ATCO PIPELINES - SOUTH
RIDER "A" TO ALL RATES
AND ANY OTHER RIDERS THERETO

All charges under the Rates, including any charges under other Riders, to Customers situated within the communities listed on this Rider "A" are subject to the addition of the percentage shown. The percentage shown is to be applied as an addition to the billings calculated under the Rates including charges as allowed under other Riders in effect.

Method A. - Applied to gross revenues excluding Rider "G" and the Market Value portion of Rider "H".

Method C. - Applied to gross revenues and Rider "E".

Municipality	%	Method	Municipality	%	Method	Municipality	%	Method
Calgary**	11.11	C	Claresholm	10.00	A	Lomond	20.00	A
Lethbridge	32.30	A	Coaldale	11.30	A	Longview	16.00	A
Acme	20.00	A	Coalhurst	12.44	A	Magrath	15.00	A
Airdrie	29.60	A	Cochrane	23.00	A	Milk River	30.00	A
Banff	31.20	A	Coutts	20.00	A	Nanton	13.00	A
Banff Park	5.25	C	Cowley	13.79	A	Nobleford	0.00	A
Barnwell	13.00	A	Cremona	27.00	A	Okotoks	5.25	C
Barons	14.97	A	Crossfield	17.00	A	Olds	27.50	A
Bassano	20.00	A	Crowsnest Pass	15.00	A	Penhold	18.00	A
Beiseker	15.00	A	Delburne	21.60	A	Picture Butte	6.00	C
Big Valley	5.26	C	Didsbury	25.00	A	Raymond	5.00	A
Black Diamond	14.00	A	Duchess	12.67	A	Rockyford	29.00	A
Bow Island	10.50	A	Elnora	16.00	A	Rosemary	14.78	A
Bowden	22.00	A	Foremost	21.00	A	Standard	11.34	A
Brooks	18.00	A	Fort Macleod	12.50	A	Stavely	10.00	A
Burdett	12.00	A	Glenwood	5.26	C	Stirling	5.00	A
Canmore	22.10	A	Granum	8.50	A	Strathmore	11.18	A
Carbon	15.07	A	High River	13.00	A	Taber	20.00	A
Cardston	15.00	A	Hill Spring	5.00	A	Taber*	35.00	A
Carmangay	15.00	A	Hussar	13.74	A	Trochu	14.20	A
Carstairs	25.00	A	Innisfail	5.26	C	Turner Valley	10.00	A
Champion	15.00	A	Irricana	11.18	A	Vauxhall	5.50	C
			Linden	15.23	A	Vulcan	15.00	A

* Applied to High Use and FSD customers.

** Exemption available on Rider "E" portion of natural gas feedstock quantities used by an electrical generation plant whose primary fuel source is natural gas, for the commercial sale of electricity or used by a district energy plant for combined heat and power production, if deemed by the City of Calgary to be a qualifying facility.

Effective by Decision 2010-180
On Consumption May 21, 2010
This Replaces Rider "B"
Previously Effective March 25, 2010

ATCO GAS AND PIPELINES LTD. – SOUTH
ATCO GAS – SOUTH AND ATCO PIPELINES - SOUTH
RIDER "B" TO ALL RATES
AND ANY OTHER RIDERS THERETO

This Rider is applicable to Customers resident in municipalities that receive a property tax under the Municipal Government Act or receive payment for specific costs which are not generally incurred by the Company. This Rider is the estimated percentage of gross revenue required to provide for the tax payable or specific cost incurred each year. To the extent that this percentage may be more or less than that required to pay the tax or specific cost, the percentage of gross revenue provided in the Rider will be adjusted on the 1st of February each year.

The percentage is to be applied as an addition to the billings calculated under the Rates including charges as allowed under other Riders in effect with respect to the following municipalities:

Banff
Redwood Meadows (Siksika Nation)
Bow Island
Foremost
Rosemary
Turner Valley
Canmore
Elnora
Linden
Brooks
Granum
Milk River
Trochu
Claresholm
Lomond
Nanton
Bassano
Nobleford
Didsbury
Olds
Carstairs
Airdrie
Cardston
Penhold
Raymond
Coutts
Crowsnest Pass
Vulcan
Stirling
Stavely
Strathmore
Champion
Carmangay
Hill Spring
Taber

By Decision 2009-183
Effective November 1, 2009 to October 31, 2010
This Replaces Rider "D"
Previously Effective November 1, 2008

ATCO GAS AND PIPELINES LTD. - SOUTH
ATCO GAS – SOUTH
RIDER "D" TO RETAILER DELIVERY SERVICE RATES FOR THE RECOVER OF UNACCOUNTED FOR GAS (UFG)

All Retailer Delivery Service Customers delivering gas off the ATCO Gas South distribution system will be assessed a distribution UFG charge of 0.457 % at the Point of Delivery. The UFG assessment will be made up "In-Kind" from each Customer Account.

Effective by Decision 2007-059
On Consumption September 1, 2007
This Replaces Rider "E"
Previously Effective May 4, 2004

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "E" TO DELIVERY SERVICE RATES
FOR THE DETERMINATION OF THE "DEEMED VALUE OF NATURAL GAS"
FOR CALCULATION OF MUNICIPAL FRANCHISE FEE PAYABLE

A Deemed Value of Natural Gas Rate will be applied to the energy delivered to Delivery Service Customers for the determination of municipal franchise fee payable by Customers in municipalities designated as Method "C" municipalities on Rider "A" of these Rate Schedules.

FOR ALL RATES:

The "Deemed Value" is an amount equal to the Gas Cost flow Through Rate specified on the DSP Rider "F".

Effective by Order U2008-213
On Consumption on and after July 1, 2008

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "G" TO ALL RATES
FOR CREDITING OR DEBITING COMPANY OWNED PRODUCTION RELATED BENEFITS/COSTS

To be applied to the energy delivered to all Delivery Service customers unless otherwise specified by specific contracts or the Commission.

Company Owned Production Rate Rider (COPRR): $0.00 per GJ

Effective by Decision 2010-496
On Consumption on May 1, 2010
This Replaces Rider "H"
Previously Effective July 1, 2008

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "H" TO LOW USE AND HIGH USE DELIVERY SERVICE RATES
FOR RECOVERY OF CARBON RELATED COSTS

To be applied to the energy delivered to Low Use and High Use Delivery Service customers unless otherwise specified by specific contracts or the Commission effective May 1, 2010 to October 31, 2010.

Carbon Recovery Rider (CRR): $0.254 per GJ

Effective by Decision 2010-496
On Consumption on November 1, 2010
This Replaces Rider "H"
Previously Effective May 1, 2010

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "H" TO LOW USE AND HIGH USE DELIVERY SERVICE RATES
FOR RECOVERY OF CARBON RELATED COSTS

To be applied to the energy delivered to Low Use and High Use Delivery Service customers unless otherwise specified by specific contracts or the Commission effective November 1, 2010 to December 31, 2011.

Carbon Recovery Rider (CRR): $0.283 per GJ

Effective by Decision 2010-496
On Consumption on May 1, 2010
This Replaces Rider "I"
Previously Effective July 1, 2008

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "I" TO IRRIGATION DELIVERY SERVICE RATES
FOR RECOVERY OF CARBON RELATED COSTS

To be applied to the energy delivered to Irrigation Delivery Service customers unless otherwise specified by specific contracts or the Commission, effective May 1, 2010 to October 31, 2010.

Carbon Irrigation Recovery Rider (CIRR); $0.470 per GJ

Effective by Decision 2010-496
On Consumption on November 1, 2010
This Replaces Rider "I"
Previously Effective May 1, 2010

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "I" TO IRRIGATION DELIVERY SERVICE RATES
FOR RECOVERY OF CARBON RELATED COSTS

To be applied to the energy delivered to Irrigation Delivery Service customers unless otherwise specified by specific contracts or the Commission, effective November 1, 2010 to December 31, 2011.

Carbon Irrigation Recovery Rider (CIRR); $0.566 per GJ

Effective by Decision 2010-466
On Consumption October 1, 2010
This Replaces Rider "J"
Previously Effective May 1, 2009

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "J" SURCHARGE TO ALL DELIVERY SERVICE RATES

To be applied to the fixed charge, variable charge, production and storage charge and demand charges to all customers unless otherwise specified by specific contracts or the Commission, effective October 1, 2010 to December 31, 2010.

For All Delivery Service Rates the amount is equal to: 5.89%

Effective by Decision 2010-466
On Consumption October 1, 2010
This Replaces Rider "P"
Previously Effective August 1, 2010

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "P" PENSION & BENCHMARKING TRUE UP RIDER

To be applied to the fixed charge, variable charge and demand charges to all customers unless otherwise specified by specific contracts or the Commission, effective October 1, 2010 to December 31, 2010.

For All Delivery Service Rates the amount is equal to: 17.52%

Effective by Decision 2010-128
On consumption April 1, 2010

ATCO GAS AND PIPELINES LTD. - SOUTH
RIDER "T" TRANSMISSION SERVICE CHARGE ADJUSTMENT TO LOW USE AND HIGH USE DELIVERY SERVICE RATES

To be applied to the Low Use and High Use customers unless otherwise specified by specific contracts or the Commission, effective April 1, 2010 to December 31, 2010.

Low Use Delivery Rate	$0.039 per GJ
High Use Delivery Rate	$0.010 per Day per GJ of 24 Hr. Billing Demand

Effective by Decision 2010-466
On Consumption October 1, 2010
This Replaces Low Use Delivery Service
Previously Effective August 1, 2010

ATCO GAS AND PIPELINES LTD. – SOUTH
LOW USE DELIVERY SERVICE

Available to all customers using less than 8,000 GJ per year except those customers who utilize the Company's facilities for emergency service only.

CHARGES:

Fixed Charge:	$0.620 per Day
Variable Charge:	$1.028 per GJ
Production and Storage Charge:	$0.000 per GJ
COPRR:	Rider "G"
CRR:	Rider "H"
Delivery Rate Surcharge:	Rider "J"
Pension & Benchmark Placeholder Rider:	Rider "P"
Transmission Service Charge Rider:	Rider "T"

ADDITIONAL CHARGES:

For Low Use Delivery Service customers that obtain their gas services from Retailers the following additional charges will apply.

Unaccounted For Gas:	Rider "D"

Effective by Decision 2010-466
On Consumption October 1, 2010
This Replaces High Use Delivery Service
Previously Effective August 1, 2010
High Use Page 1 of 2

ATCO GAS AND PIPELINES LTD. - SOUTH
HIGH USE DELIVERY SERVICE

Available to all customers using 8,000 GJ or more per year on an annual contract except those customers who utilize the Company's facilities for emergency service only.

CHARGES:

Fixed Charge:	$0.685 per Day
Demand Charge:	$0.289 per Day per GJ of 24 Hr. Billing Demand
Variable Charge:	$0.00 per GJ
Production and Storage Charge:	$0.000 per GJ
COPRR:	Rider "G"
CRR:	Rider "H"
Delivery Rate Surcharge:	Rider "J"
Pension & Benchmark Placeholder Rider:	Rider "P"
Transmission Service Charge Rider:	Rider "T"

DETERMINATION OF BILLING DEMAND:

The Billing Demand shall be the greater of:

1. The greatest amount of gas in GJ delivered in any consecutive 24-hour period during the current and preceding eleven billing periods provided that the greatest amount of gas delivered in any consecutive 24 hours in the summer period shall be divided by 2, **or**
2. The Nominated Demand

PROVIDED that for a customer who elects to take service only during the summer period, the Billing Demand for each billing period shall be the greatest amount of gas in GJ in any consecutive 24 hours in that billing period.

In the first contract year, the Company shall estimate the Billing Demand from information provided by the customer.

NOMINATED DEMAND:

A customer whose maximum consumption exceeds 4 500 GJ for any 24-hour period in the winter period must nominate in writing twelve months in advance of each contract year the maximum consumption for any 24-hour period in the winter period in that contract year (the "Nominated Demand"). The Company reserves the right to restrict the amount of gas in GJ delivered in the winter period to the Nominated Demand and to restrict the amount of gas in GJ delivered in any one hour to **5%** of the Nominated Demand.

ADDITIONAL CHARGES:

For High Use Delivery Service customers that obtain their gas services from Retailers the following additional charges will apply.

Unaccounted For Gas: Rider "D"

Gas Imbalances:

Settlement of Monthly Imbalance Quantity when Based on Daily Information:

Magnitude of Imbalance Quantity	Reasons for Imbalance Quantity	Settlement by Company	Price
<5%	Overdeliveries	N/A	N/A
	Underdeliveries	N/A	N/A
>5%	Overdeliveries	Purchase	75% of the Average Daily AECO "C" prices for that Month
	Underdeliveries	Sale	130% of the Average Daily AECO "C" prices for that Month

Settlement of Imbalance Quantity Arising from Adjustments:

When the Customer's Account is put out of balance by actual adjustments, the Customer is required to bring the account into balance by providing 1/25 of the imbalance amount on a daily basis over a 25-day period.

Effective by Decision 2010-466
On Consumption October 1, 2010
This Replaces Irrigation Delivery Service
Previously Effective August 1, 2010

ATCO GAS AND PIPELINES LTD. - SOUTH
IRRIGATION DELIVERY SERVICE

Available to all customers who use natural gas as a fuel for engines pumping irrigation water between April 1 and October 31.

CHARGES:

Fixed Charge:	$1.052 per Day
Variable Charge:	$0.965 per GJ
Production and Storage Charge:	$0.000 per GJ
COPRR:	Rider “G”
CIRR:	Rider “I”
Delivery Rate Surcharge:	Rider “J”
Pension & Benchmark Placeholder Rider:	Rider “P”

ADDITIONAL CHARGES:

For Irrigation Delivery Service customers that obtain gas services from Retailers the following additional charges will apply.

Unaccounted For Gas:	Rider “D”

Effective By Decision 2007-059
On Consumption September 1, 2007
This Replaces Rate 7
Previously Effective January 1, 2006

ATCO GAS AND PIPELINES LTD. - SOUTH
EMERGENCY DELIVERY SERVICE

CHARGES:

AUTHORIZED:

Fixed Charge:	$15.00 per Day
Variable Charge:	Variable Charge of Low Use Delivery Service
Gas Cost Recovery:	Highest cost of Gas purchased by the DSP on the Day of Sale, with a minimum price of the DSP Rider "F".

UNAUTHORIZED:

Fixed Charge:	$125.00 per Day
Gas Cost Recovery:	Five (5) times the DSP Rider "F", with a minimum price of the highest cost of Gas purchased by the DSP on the Day of Sale.

Effective By Decision 2007-059
On Consumption September 1, 2007
This Replaces Rate 8
Previously Effective January 1, 2006

ATCO GAS AND PIPELINES LTD. - SOUTH
UNMETERED GAS LIGHT SERVICE

Applicable to all Customers with Company installed and approved gas lights.

Fixed Charge: $0.090 per Mantle per Day

APPENDIX 6 – DECISION CHRONOLOGY RELATED TO CARBON

Decision 23616, dated March 4, 1959. The Board of Public Utility Commissioners approved CWNG's application to acquire the Carbon gas rights as being used and useful used in the operation of the company [87]and approved their inclusion in rate base.

Approval No. 956, dated June 23, 1967. The Oil and Gas Conservation Board approved CWNG's application for the storage of gas in the Carbon field.

Decision 30253, dated June 4, 1971. The PUB set finalized rates for CWNG. Carbon related assets continued to be included in rate base.

Decision C75093, dated April 17, 1975, was with respect to the 1974-1975 GRA, and provided for the inclusion of injected gas in storage in working capital. Canada Cement Lafarge Limited argued that CWNG's capital expenditures in relation to the Carbon Field should be excluded from rate base for 1974 and 1975 as these expenses were unusual and not necessary to maintain a reasonable level of customer service or provide for additional customers. The PUB rejected this argument and included storage expenditures in rate base.

Decision C76121, dated June 25, 1976, was with respect to the 1975 GRA. The PUB determined that gas held for use to satisfy utility customer requirements is inventory and may be included in the rate base as a component of necessary working capital. The PUB calculated the amount for gas inventory to be included in the working capital allowance as the mid-year average of the value of gas stored underground and available for sale.

Decision C77001, dated January 17, 1977, was with respect to the 1976 GRA**.** The PUB applied the same treatment to storage gas available for sale as used in the previous decision. Based on the mid- year average, supply inventory was included in necessary working capital.

Decision E77125, dated August 25, 1977, was with respect to the 1977 GRA. In calculating total necessary working capital, the PUB reaffirmed its use of the "one-eighth rule" for cash expenses and added the mid-year balances of gas supplies inventory, materials and supplies, unamortized exploration expense and unamortized rate hearing costs to that amount.

Decision E79061, dated May 15, 1979 was with respect to the 1978 GRA. The PUB considered that injected gas in storage was recognized as a component of necessary working capital because it required the utility's investment in order to operate safely and efficiently. It reaffirmed that the calculation was to be based on the mid-year balance of stored gas. The PUB approved a 1978 arrangement that gave TCPL full use of Carbon, and the ability to store up to 35 BCF provided it was reduced to 25 BCF by March 31, 1979. Partly in exchange for this, TCPL would not charge CWNG the 30% penalty charge on peaking gas purchased by CWNG between 1978 and April 1981.

Decision C85250, dated December 20, 1985 was with respect to the 1985-1986 GRA. CWNG forecasted a significant increase in gas in storage for 1985 and 1986 over levels experienced in 1984 on the basis that arrangements made with producers to store gas at the producers' expense during 1985 were not expected to continue. The PUB reduced this amount because it considered that CWNG would be able to obtain additional gas storage contracts in 1986. The PUB also approved the inclusion in rate base of 6 wells to monitor storage gas migration. All revenue from storage was to be treated as income credits.

[87] Decision 23616, p. 10

Decision E86110, dated December 30, 1986, related to a Rates Inquiry. The PUB noted that CWNG had indicated no storage was available for utility customers. However, the PUB considered that storage was related to and compatible with the provision of transportation services. Moreover, the PUB agreed with Cominco that CWNG/NUL should provide an evaluation of their storage capacity.

Decision E88090, dated November 18, 1988 related to Transportation Service to Small Industrial Customers. The PUB noted that CWNG and NUL indicated that their storage facilities were not adequate to provide load balancing or buy-sell services as offered by Ontario utilities. The PUB also noted that excess storage capacity at Carbon was offered on a tender basis and that export companies such as TCPL made use of the facility.

Decision C90026, dated July 27, 1990 was with respect to the 1989-1991 GRA. The PUB rejected the interveners' argument that the use of mid-month balances would result in a more accurate calculation of necessary working capital. It was not persuaded to move away from the mid-year convention generally used in the determination of rate base. However, the PUB noted that CWNG may store much larger quantities of gas for utility sales customers after the expiry of the contract reserving storage for TransCanada in 1992 (CWNG forecast storage capacity for CWNG and NUL in test years 1989, 1990, 1991 in addition to that for TCPL). The PUB therefore directed CWNG to keep records of monthly Carbon storage balances for sales customers and provide them for evaluation at the next GRA. The PUB agreed that CWNG's approach to tender the excess capacity would result in the highest margin on gas storage. However, the PUB agreed with Calgary that the highest margin might not necessarily ensure that the customers would benefit fully from the storage revenues if the forecast revenues were lower than the revenues likely to be generated by the competitive bid process.

Decision C91012, dated March 28, 1991 was with respect to a GRA Phase II proceeding. CWNG stated that the original contract with TCPL was very favourable to utility customers and that the price charged for excess capacity not used by utility sales customers was in excess of incremental costs and was all credited to the sales customers. The PUB directed CWNG to address the allocation of storage expenses after the expiration of the TCPL contract.

Decision E92094, dated October 28, 1992, was with respect to the 1992-93 Winter GCRR. A summer/winter period GCRR is calculated by adding the balance in the Deferred Gas Account at the end of the previous summer/winter period to the gas costs forecast for the upcoming summer/winter period and dividing the result by the forecast summer/winter period gas sales volume. GCRR's were determined twice a year for each of the summer and winter periods. The PUB considered that storage costs would be better dealt with at a GRA proceeding than within a GCRR proceeding.

Decision E93004, dated February 8, 1993, was with respect to the 1992-1993 GRA. CWNG sought to include the cost of an additional compressor at the Carbon Plant. It stated that Carbon Compressor Five would allow greater storage of off-peak gas at lower prices and increased peak day deliverability of this lower priced gas during high demand periods, which would ensure a reliable winter supply particularly necessary due to the expiration of the storage agreement with TCPL and Nova's significant system wide supply shortages. Further, back-up compression would assist in minimizing CWNG customer gas costs resulting from compressor failures. The PUB made the following findings:

- A new compressor (#5) was approved for inclusion in rate base.
- A loop of a portion of the Carbon line was approved for inclusion in rate base in 1993.
- Calgary argued that with the TCPL contract expiring cost of service based rates should be established for available storage capacity to ensure that costs were recovered. CWNG argued that storage in Alberta was fully competitive and that cost of service based rates were not appropriate for storage. The PUB agreed with CWNG and no cost of service based rates were (nor have ever been) developed for Carbon.
  - CWNG was directed to provide further studies with respect to the use and value of storage.
  - A proposal to expand the transmission line from Carbon to Calgary to 322 TJ/day capacity was approved, albeit at a lower cost than applied for.

The PUB reduced the storage gas component of mid-year necessary working capital to reflect a normalized amount rather than the amount proposed by CWNG which had been calculated on the basis of more expensive gas injected in March of 1992.

The PUB stated that it considered storage to be one of the components of the company's portfolio of gas supply sources that should be used to minimize gas supply costs as well as improve deliverability. The PUB directed CWNG to provide evidence, at a future GCRR proceeding, to demonstrate how storage facilities are used to minimize gas costs.

The PUB also considered that storage facilities should be used primarily to minimize CWNG's gas costs and provide security of supply to CWNG's customers and thereby maximize the benefit of storage to CWNG customers. However, while the PUB considered that market-based pricing might be appropriate, CWNG was to demonstrate that any benefit from storage service to others maximized the benefit to customers. The PUB approved a change in the accounting of storage revenues.

Decision E93080, dated October 27, 1993, was with respect to the 1993-94 Winter GCRR. The PUB included a summary of CWNG's evidence on the benefits of storage: increased security of supply, flexibility for handling load and supply balancing and market changes due to weather, ability to contract gas at higher load factors, gas cost savings due to summer/winter gas price differentials and increased control flexibility for supply portfolio adaptation.

Decision E93098, dated December 30, 1993, was with respect to a GRA Phase II proceeding. The PUB continued accounting for storage revenue as income credits and did not approve a cost of service based storage rate.

Decision E95039, dated March 31, 1995, was with respect to the 1995 Summer GCRR. The Board considered that, in future applications, CWNG should provide an explanation of why it was selecting the storage levels it was using, or proposing to use, supported by an analysis showing why the selected storage level was in the best interests of utility customers.

Decision E95106, dated November 1, 1995, was with respect to the 1995-96 Winter GCRR. The Board noted the statements made by CWNG that storage provides security of supply, operational flexibility for the system and contractual flexibility resulting in benefits to customers. The Board directed CWNG to include in future GCRR applications evidence supporting the selected storage levels including a comparison of the unit costs of storage with prevailing storage market values.

Decision U96093, dated October31, 1996, was with respect to the 1996-97 Winter and 1997 Summer GCRR. The Board directed CWNG to continue to include in future GCRR applications evidence supporting selected storage levels, including any updated study reflecting prevailing market conditions and a comparison of the unit costs of storage with prevailing storage market values.

Decision U97010, dated January 16, 1997, was with respect to the 1996-97 Winter GCRR. The Board accepted the application included 13.7 PJ of net storage for use in the 1996/97 winter.

Decision U97063, dated May 30, 1997. The Board accepted 13.7 PJ for storage in the summer at Carbon for customer use for the 1997/98 winter.

Decision U98064, dated March 30, 1998, was with respect to the 1998 Summer GCRR. Calgary did not agree with CWNG’s proposal to increase storage by 3 PJs. The Board approved the GCRR as applied for.

Decision U98067, dated April 13, 1998, was with respect to the 1997-98 Winter GCRR. CWNG argued that the best method by which to manage customer bill volatility included the acquisition of incremental

storage, and that the use of storage was more beneficial than financial hedging because it allowed more operational flexibility with the gas supply portfolio. The Board concurred.

Decision U99070, dated July 30, 1999, was with respect to the 1998 GRA. This was a partial Phase I decision. The City of Calgary claimed that inclusion of a gas supply component in the distribution rate constituted a structural barrier to direct purchase. It submitted that the GCRR should recover costs associated with gas supply including storage. While agreeing that direct purchase barriers should be eliminated, the Board stated that it required more information to resolve the issue of regulated storage. It was not clear to the Board how the security of supply, physical hedging of gas costs and other roles of gas storage impact the costs attributable to gas supply and distribution. The Board therefore directed that these issues be addressed in the remainder of the 1998 GRA Phase I proceeding.

Decision 2000-9, dated March 2, 2000 was with respect to the remainder of the issues related to the 1998 GRA**.** CWNG proposed capital additions to its rate base to reflect prepaid royalties on base or cushion gas and expenditures undertaken to ensure third parties were not able to drain the Carbon storage reservoir. The Board disallowed these additions due to the uncertainty of the need to make prepaid royalty payments and the fact that the Carbon Acreage Protection Program was not completed in 1998 and therefore, the additions could not be considered used and useful. The Board did, however, continued to indicate that the facility ensures security of supply for the CWNG system and is used and useful. The Board also directed CWNG to continue to use the mid-year method for determining the value of storage inventory.

In 1993, CWNG added a sixth compressor to the field, increasing its capacity beyond CWNG's customer requirements. CWNG subsequently tendered a proposal for use of the additional capacity created by the new compressor and received bids from a number of companies. CWNG eventually entered into an agreement with ATCO Gas Services, now Midstream, to market its gas storage services. The terms of this agreement with ATCO Gas Services were the principal issues of contention relating to storage revenues for the Company. The agreement enabled CWNG to provide both regulated and unregulated storage from the facility.

CWNG stated that storage revenue was received from ATCO Gas Services under the long-term "Compressor 6" agreement. This revenue was forecast to be $537,000 for 1998. The Compressor 6 agreement was defended on the basis that Carbon was not a merchant storage facility in the same sense other facilities were. CWNG submitted that the Compressor 6 agreement provided a revenue stream, plus other benefits to its customers. Those benefits included additional reliability, and incremental storage and deliverability at no cost. Revenue from third parties for storage service provided under long-term arrangements was forecast to be $1,070,000 in 1998.

Interveners argued that ATCO Gas Services received preferential treatment to CWNG's utility customers when there were equipment failures and reduced deliverability. Interveners suggested that on numerous occasions it appeared that the Carbon facility was being operated to the benefit of the non-regulated affiliate, ATCO Gas Services, at the expense of the customers of CWNG. Interveners further suggested that revenue was lost to CWNG customers as a result of CWNG's arrangement with ATCO Gas Services.

The Board found that CWNG's arrangements with ATCO Gas Services had not met the Board's expectations of prudent arrangements that maximized the value to ratepayers of the use of the rate base asset at Carbon. The Board then used the 1993 bids from arms-length third parties to CWNG as a basis for deeming an additional $1.5 million of revenue (less net working capital adjustments) from the Compressor #6 arrangement. For the non-contracted capacity at Carbon the Board also used the arms-length bids as a proxy for the fair market value of storage and increased the revenue for the uncontracted capacity agreement from 12.5¢/GJ to 32¢/GJ. The Board directed a further $1.876 million of deemed revenue.

The Board approved the requested depreciation for Carbon, based upon a 1997 Carbon Abandonment and Salvage Cost Study, which included a provision of 17% of the original cost as negative net abandonment and salvage, an increase from that approved in the 1992/93 GRA.

Order U2000-161, dated April 7, 2000, related to an objection by Calgary with respect to the 1998 summer injection of an additional 3 PJs. The Board accepted an increase in CWNG's use of storage by an additional 3 PJ, for a total of 16.7 PJ. The Board also noted that the GRA was the preferred proceeding to deal with the management of storage.

Order U2000-183, dated May 4, 2000, related to the 2000-2001 Storage Plan. The Board approved AGS' proposal for 2000/01 Carbon storage plan involving arbitrage. AGS had proposed to arbitrage 5 PJs for 25¢/GJ. The remainder of 11.7 PJ was to be used for summer injection and winter withdrawal to maximize the price differential. Board approved a negotiated settlement with customers regarding the use of 5 PJ of the 16.7 PJ of storage allocated for utility use, as well as the balance of the GCRR.

Decision 2000-16, dated June 13, 2000, was with respect to a GRA Phase II. The Board accepted AGS' allocation of storage costs for the purposes of the cost of service study. The Board also reaffirmed its finding that inclusion of a gas supply component in the distribution rate could constitute a barrier to customer choice. It considered that unbundling of services was generally agreed to be the most effective means of eliminating those barriers and directed the unbundling of the storage rate from the delivery rate. The Board favored a collaborative process. The outcome of that process was expected to be an unbundling proposal with primary focus on the transfer of the sales portion of gas supply-related service costs from the distribution rate to the GCRR. The Board also expected the process to develop strategies that would address, amongst other things, monitoring the development of a competitive market for storage, the issue of deregulation of storage and the issue of stranded costs and any residual value.

Order U2000-308, dated October 27, 2000 was with respect to the 2000-01Winter GCRR. The Board approved the application, as filed, including an arbitrage of 5 PJ at 25¢/GJ price differential (see U2000-183 for details).

Decision 2001-22, dated March 27, 2001, was with respect to the 2001-2002 Storage Plan. The Board approved an arrangement for contract acquisition of third party storage for the 2001/02 winter.

Decision 2001-75, dated October 30, 2001, was with respect to the GCRR Methodology and Gas Rate Unbundling Proceeding (Part A). The Board ruled on policy issues and what costs should be removed from the base rates.

The Board also considered that the use of storage facilities as a price hedging mechanism presents some of the same attributes as company owned production. In both cases the facilities can be described as "legacy assets", assets that have been the subject of historical regulation, included in rates over many years, with uses that have evolved over time as the industry and the energy market place have emerged from the previously fully regulated market. In both cases, crediting the benefits arising from the facilities directly to the gas commodity rate created an economic bias towards regulated gas rate offerings, and implied that customers taking competitive gas supply did not receive any of the benefits from these assets. The Board was of the view that both of these results were undesirable. Therefore, the Board directed that company storage facility costs and benefits related to gas price stabilization or hedging were to be treated in accordance with the North Core Committee (NCC) COP Rider proposal. The gas withdrawn from storage would be valued at the current GCRR portfolio cost for inclusion in gas commodity rates. The net benefits (or costs) achieved using utility storage assets would be credited to base rates on a per gigajoule basis. Customers, whether they elected to receive gas from the utility or from a marketer, would share in the benefits arising from utility storage.

Decision 2001-81, dated October 31, 2001, was with respect to the 2001-2002 Winter Storage Agreement. The Board approved the agreement, but indicated AGS was acting on its own initiative and was accountable with regard to strategic and operating decisions in respect of Carbon.

Decision 2001-96, dated December 12, 2001, was with respect to the 2001-2002 GRA. The Board approved Carbon's capital improvements forecast of $1.2 million in 2001 and $1.3 million in 2002. The Board also accepted AGS' forecast for Carbon fuel expense. It was noted that AGS was proposing a 10-year lease of the storage capacity to Midstream, which would be dealt with in a related proceeding.

Decision 2001-110, dated December 12, 2001, was with respect to the Deferred Gas Account Reconciliation, Part B-1 of the GCRR Methodology and Gas Rate Unbundling Proceeding. The Board finalized previous GCRR rates and ordered a $4 million imprudence payment with respect to AGS' actions respecting withdrawals from Carbon during 2000/01 winter. In this Decision the Board made the following statements:

> Storage has provided managers of gas supplies with a physical hedge and a peaking supply for many years, and the Board expects this principle of gas portfolio management to continue as long as utilities own storage. The Board also notes that there are a range of load factors and storage services available to managers of gas supplies. In particular, the Board in Decision 2001-75, provided for the continued use of Carbon as a physical hedge and a peaking supply for as long as it is a used and useful rate base asset.[88]
>
> …The Board also expects AGS to be more diligent in the future in achieving cost savings for customers and to investigate methodologies, such as the one presented by [Calgary's witness] Mr. VanderSchee, that will assist it in making decisions when managing the withdrawals from Carbon for the customers benefit.[89]

Decision 2002-072, dated July 30, 2002, the Transfer of the Carbon Storage Facilities proceeding, was with respect to an application by AGS for approval of a process to transfer Carbon to an affiliate. AGS stated that storage was no longer needed for utility service and requested approval of a process for transferring the asset to an affiliate. The Board determined the facility was used and useful and directed that it remain in rate base.

Specifically, the Board concluded that[90]

> In applying the "used or required to be used" and "used and useful" tests specifically to Carbon in terms of its past and present use, the Board notes that in Decision 2001-110, it was stated:
>
> > Storage has provided managers of gas supplies with a physical hedge and a peaking supply for many years, and the Board expects this principle of gas portfolio management to continue as long as utilities own storage. The Board also notes that there are a range of load factors and storage services available to managers of gas supplies. In particular, the Board in Decision 2001-75, provided for the continued use of Carbon as a physical hedge and a peaking supply for as long as it is a used and useful rate base asset.[34]
>
> The Board also notes the references in the evidence that storage generally provided a benefit in 6 out of 10 years in the historical period from 1990/1991 to 1999/2000.[35]
>
> The Board considers that the continued use of Carbon by ATCO Gas could be useful, especially while the retail market is under development. The Board notes that only one Intervener group at the hearing believed that the asset could be sold ("…if and when a purchaser becomes available

[88] Decision 2001-110, p. 27
[89] Ibid, p. 30
[90] Decision 2002-072 Carbon Transfer Decision, pp. 21-23

who is prepared to pay an amount at least equal to the required 'no-harm' compensation")[36], on the basis of AGS not having used it for the storage year 2001/2002.

Although ATCO Gas obtained short-term storage agreements for the 2001/2002 winter period, which ATCO Gas submitted provided for storage capacity at an approximate rate of $0.17/GJ, the Board is concerned about the lack of information with which to assess and compare such future contract storage costs with the operating costs associated with Carbon.

Further, the Board shares the more general concern of the CCA that the manner in which ATCO Gas has structured its operations may make it appear that Carbon is no longer used for operational services and no longer needed. Notwithstanding how ATCO Gas operated Carbon during the 2001/2002 winter period, and the acknowledgement by the CG that ATCO Gas did not appear to need Carbon in the 2001/2002 winter period, the Board believes it has received insufficient evidence overall to allow it to confidently determine that the asset would not be used or required to be used in future. This is so given the Board's current understanding of historic and present technical and operational aspects of available storage facilities, including storage capacity, capacity to deliver, physical operations, interconnections with other pipeline systems, exchange and swap capabilities, peaking flexibility, and operating and maintenance costs as they affect the provision of service in the Calgary region. Comparison of information provided by ATCO Gas on degree-days and withdrawals[37], as discussed in Section 1.2 of this Decision, reveals a close correlation, indicating that Carbon has been operated in winter seasons to serve the AGS market and suggesting that Carbon is required to meet the temperature sensitive demands of the Calgary environs. The Board considers that it is clear from the foregoing historical observations that Carbon has been operated in the winter season to service the AGS market and especially in a fashion that correlates to the temperature increases and decreases and, at times, others have utilized a portion of the deliverability that AGS had reserved for its own use.

Overall, the Board considers that at present there is insufficient economic and financial evidence with which to determine that a withdrawal of Carbon from regulated service would in all events not harm AGS's customers. The Board considers that there is evidence to indicate that Carbon continues to be a used and useful regulated asset, notwithstanding there are alternatives to its use available. The status quo operation of Carbon on a prudent basis would appear to remain appropriate at the present time.

This is not to say that the Board would dismiss a future application by ATCO Gas to dispose of Carbon. The Board believes there is some uncertainty as to the degree of usefulness of Carbon. Therefore, the Board would be willing to consider a sale of the assets if certain conditions can be met, the foremost of which is keeping the customers harmless by establishing a no-harm value. The Board would apply the no-harm principle to any future application by ATCO Gas to dispose of Carbon and would require ATCO Gas to demonstrate that the no-harm test would be met in accordance with the conditions discussed later in this Decision.

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[34] Decision 2001-110, page 27
[35] Exhibit 3, Appendix A, Ziff Energy Group, ATCO Gas (South) Storage Study, page 19.
[36] CG Argument, page 7
[37] Cal-AG.18 and Cal-AG.19

However, the Board did not foreclose the possibility of a sale of the asset, but indicated that before the Carbon assets could be removed from rate base, they would have to be the subject of a bid process and the no harm test would be applied at the time that a application for sale was received. The fee for uncontracted capacity was increased to 41¢/GJ by the Board. (Also see 2001-2002 GRA Compliance Decision 2002-097).

Decision 2002-072 ordered as follows:

(1) For ATCO Gas, a Division of ATCO Gas and Pipelines Ltd.:

> The Carbon Storage Facilities will remain in rate base as regulated assets to be operated by ATCO Gas - South in accordance with this Decision and in the manner contemplated by Decisions 2001-75 and 2001-110 until such time as a future application may be brought before the Board to dispose of Carbon in accordance with the guidance set out in this Decision or, for approval by this Board of a negotiated settlement by ATCO Gas - South of a different arrangement with its stakeholders for the use of Carbon.

(2) For the 2001/2002 test years ATCO Gas-South will:

(a) reflect the revenues from ATCO Midstream Ltd. for uncontracted capacity based on a fee of $0.41/GJ, including for purposes of the storage rider.
(b) reflect the annual revenues from ATCO Midstream Ltd. for office services in the amount of $11,000.
(c) reduce the payment for gas storage services for the 2001/2002 storage year by $237,500. The proportion of the reduction attributable to the test years will be $178,125 for 2001 (covering the months from April to December) and $59,375 for 2002 (covering the months from January to March).
(d) reflect charges to ATCO Midstream Ltd. in the amount of $500,000 for gas management services.

Decision 2002-092, dated October 29, 2003, was with respect to the 2002-2003 Winter Storage Plan. The Board directed AGS with respect to the operation of the utility portion of Carbon storage for the 2002/2003 storage year and noted that the Board expected AGS to use Carbon as a physical hedge. The Board approved the storage plan with some revisions and conditions. The Order stated in part the following:

(1) The methodology and plan proposed by ATCO Gas South for the 2002/2003 storage season is approved in principle. Specifically, approval is given for the following:

(a) The storage capacity of 16.7 PJ reserved for utility use at the Facility.
(b) The gas procurement and injection strategy for summer 2002.
(c) The gas withdrawal plan for winter 2002/2003, provided however that, ATCO Gas South will actively manage storage volumes with the expectation that the monthly maximum daily withdrawal rate will be exceeded where the Model would predict an associated benefit for customers.
(d) The risk mitigation strategies.

Decision 2003-015, dated February 18, 2003, was with respect to for the Reconciliation Process for Certain Costs and Revenues Charged to the GCRR and COSRR. The Board provided directions for the reconciliation process.

Decision 2003-021, dated Mach 11, 2003, was with respect to the Determination of the Fair Market Value of Uncontracted Carbon Storage**.** The Board denied AGS' proposal to release the full capacity (less 9.5 PJ committed to long term agreements) of Carbon by tender for the 2003/04 storage year citing insufficient time to deal with interveners concerns and insufficient evidence for the Board to conclude that 16.7 PJ should not be reserved for utility customers. The Board established the 2003-2004 storage plan, and the process for filing the 2004-2005 storage plan. AGS was to retain 16.7 PJ for customers and the revenues from Midstream would be under the same terms as the previous year at a fee of 41¢/GJ.

Decision 2003-028, dated April 30, 2003, was with respect to 2001-2002 GRA Evaluation of the Need for a 2002 Phase II. The Board accepted AGS' change in the allocation of Carbon costs from 100% demand to commodity.

Decision 2003-072, dated October 1, 2003, was with respect to the 2003-2004 GRA – Phase I. The Board approved the inclusion of the forecast capital costs, the addition of insurance expense for working gas and fuel costs, but noted the latter two items would need to be revisited at a future proceeding.

Decision 2003-098, dated December 4, 2003 was with respect to the Transfer of Certain Retail Assets to Direct Energy Marketing Limited (DEML) and Proposed Arrangements with Direct Energy Regulated Services (DERS) to Perform Certain Regulated Retail Functions. The Board approved DERS as the Default Supply Provider in the ATCO Gas service territories.

Decision 2003-108, dated December 18, 2003, was with respect to 2003 Gas Rate Unbundling. The Board denied the proposal to unbundle the COP costs and the company-owned storage costs. The Board was concerned that the issue of moving prospectively established revenue requirements into a rate rider that is adjusted monthly was not adequately addressed in the proceeding. Changes to the COPRR and COSRR were denied.

Decision 2004-022, dated March 9, 2004, was with respect to the 2004-2005 Carbon Storage Plan. The Board approved the storage plan similar to that in previous years, and the uncontracted capacity fee was increased to 45¢/GJ. The Board also dealt with a jurisdictional objection by AGS in Argument and Reply Argument as follows:

> In its Argument and Reply Argument, AGS raised several jurisdictional concerns with respect to Carbon and the ability of the Board to grant the relief requested by the interveners. The AGS Reply Argument went so far as to request the Board to consider mitigating the costs of the Carbon storage business by eliminating those costs from the gas distribution revenue requirement and by removing Carbon from rate base effective April 1, 2004. The Board notes however, that the Application itself did not raise a jurisdictional objection nor take issue with Carbon remaining in rate base. The Board found that the appropriate place for AGS to have raised an objection to the jurisdiction of the Board or to request removal of the Carbon assets from rate base, would have been in the Application itself. In that manner, interveners would have been able to submit information requests in an effort to gain a better understanding of the applicant's position and would have had the opportunity to file evidence in respect of the various jurisdictional concerns raised by AGS. Given the several acrimonious proceedings in which Carbon has figured prominently, the Board was especially concerned that all parties have an opportunity to fully explore any assertion that the Board lacks jurisdiction over the utilization of Carbon and any suggestion that Carbon be removed from rate base.
>
> For the above reasons, the Board declined at that time to fully consider the arguments raised by AGS in its Argument and Reply Argument with respect to the jurisdiction of the Board and its request to have Carbon removed from rate base.[91]

The Board's decision not to consider the jurisdictional challenges raised by AGS in argument was upheld on appeal to the Alberta Court of Appeal.[92]

Decision 2005-121 dated November 8, 2005 was with respect to an application by AGS requesting final approval of the forecasted placeholder amounts which had been included in the approved 2003/2004 GRA revenue requirement (Decision 2003-072, p. 205), with respect to a $1.2 million fee to be paid to Midstream pursuant to the Gas Storage Services Agreement in each of 2003 and 2004. The Board noted that the requested amount of $1.2 million for each of 2003 and 2004 was below the annual $1.6 million

[91] Decision 2004-022, 2004/2005 AGS Carbon Storage Plan, p. 18
[92] *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2005 ABCA 226, 48 Alta. L.R. (4th) 1, 34 Admin. L.R. (4th) 218

amount submitted by AGS as being a more appropriate estimate of the value for the storage services. The Board approved the placeholder amounts of $1.2 million for 2003 and 2004 as final.

Order U2005-133, dated March 23, 2005 (Interim Order-2005-2006 Carbon Storage Plan).
AGS submitted a letter withdrawing all Carbon related costs or revenues in connection with the rates for distribution service. In response, the Board directed that the Carbon Storage and the Carbon Producing Properties were to remain in rate base until the Board otherwise determined and that AGS should continue to calculate the storage and production riders. The Board approved the leasing of the entire field to ATCO Midstream at a placeholder rate of 45¢/GJ for purposes of determining the COSRR.

Decision 2005-063, dated June 15, 2005, was with respect to the 2005-2006 Carbon Storage Plan – Preliminary Questions. The Board defined the scope of jurisdictional process after considering the positions taken on the Preliminary Questions regarding jurisdiction and use of Carbon. The Board determined that either or both revenue generation and distribution system load balancing were the two uses which were relevant for review in the next proceeding, the Part 1 Module.

Decision 2005-081, dated July 26, 2005, was with respect to the Retailer Service and Gas Utilities Act Compliance Phase 2 Part A. The Board determined that load balancing, which could include the use of Carbon, would be examined in Part B of the proceeding. (The Board later advised that the use of Carbon for load balancing would be decided in of the Part B process.)

Decision 2006-004, dated January 27, 2006, was with respect to the 2005-2007 GRA. The Board approved the capital costs and expenses for Carbon as filed in the application which had been included in the Application in compliance with the directions of the Board set out in **Order U2005-133**. The Board directed AGS to include all Carbon assets in rate base, and all operation and maintenance costs and revenues on a consolidated basis.

Decision 2006-098, dated October 10, 2006 (and Errata dated November 7, 2006) was with respect to the Retailer Service and GU Act Compliance Phase 2 Part B, Customer Account Balancing and Load Balancing. The Board concluded that, although ATCO Gas could use storage generically for load balancing in abnormal situations, Carbon was not used or required to be used to provide service to the public, nor should it otherwise remain in rate base, in connection with the load balancing of the ATCO Gas distribution system.

3.1 General Comments on Carbon as a Storage Facility

Reservoir storage facilities, like Carbon are developed from fully or partially depleted oil or natural gas reservoirs. These reservoirs are made up of one or more hydrocarbon bearing formations usually composed of sand or other porous material. The hydrocarbons within these formations are partially or fully produced before the reservoir is converted into a storage facility. The depleted formations are utilized for storage through the injection of gas purchased in the market for storage purposes. A minimum operating pressure must be maintained in the storage reservoir to provide for optimum operation for injecting and withdrawing the gas. This minimum operating pressure is created by the retention of a certain amount of the original natural gas in situ or through the injection of gas into the reservoir. The gas used to provide the minimum pressure is referred to as base gas or cushion gas.

Gas intended for cycling storage is injected using compression into wells drilled or converted and equipped for both injection and withdrawal. Reservoir storage (like Carbon) differs from other types of storage such as aquifer storage, which uses gas to displace water in water bearing formations, or salt cavern storage, which uses old salt mines or specially formed holes, called caverns, in salt formations, where the caverns have been developed using solution mining to dissolve and extract the salt. The surface facilities are generally the same for all types of storage and are composed of a variety of wells and processing related equipment, compressors, piping facilities, meters and system control equipment. (Refer to Appendix 5 for two maps showing the Carbon area facilities and land holdings.) [Appendix omitted]

3.2 Development and Uses of the Carbon Facilities

The Carbon facilities have a long history as regulated assets. Carbon has been in regulated utility service and used for almost 50 years to provide one or a combination of three functions: company owned gas production (COP), operational requirements (i.e. peaking gas, seasonal storage, load balancing, emergency supply) and/or revenue generation (rental of capacity to third parties and seasonal price mitigation differentials, with income credits/revenue offsets applied to reduce customer rates or the cost of gas to customers).

The Carbon Glauconite gas field was discovered by third parties in 1955 near Carbon, Alberta. In 1957 the rights to the field were purchased by Canadian Western Natural Gas Company Limited (CWNG, now AGS), for the purpose of developing a utility source of gas for production and delivery as peaking gas supply in the Calgary area. In 1958 the Oil and Gas Conservation Board, a precursor to the EUB, approved the construction of a gathering system in the Carbon field and a 94 kilometre, 16 inch, high pressure gas transmission pipeline to the Calgary area. Further, in Decision 23616, dated March 4, 1959, The Board of Public Utility Commissioners, also a precursor to the EUB, approved the inclusion of Carbon in rate base. The facilities were constructed by the company and have been in the company's regulated rate base since 1958. Gas deliveries from the Carbon field commenced in December 1958.

From 1959 to 1967, CWNG used the Carbon field to meet the gas supply requirements of its regulated customers. When first acquired by CWNG, the Carbon field provided COP usually in the form of seasonal and/or peaking gas for customer use. Following initial low production levels, COP grew from 577 MMCF in 1962 to 5,355 MMCF in 1967.

In 1967 the Carbon gas field was converted into a storage reservoir. Approval No. 956 was issued by the Oil and Gas Conservation Board on June 23, 1967, approving CWNG's scheme for the storage of gas in the Carbon field. Certain production wells, the Producing Properties, which were not required for storage cycling operations remained as gas production assets, and have remained so to date, providing COP for the benefit of customers.

In 1967, CWNG entered into an Exchange Agreement with TransCanada PipeLines Limited (TransCanada or TCPL), which involved deliveries to TCPL at Carbon. The facility was upgraded with additional compression, SCADA and control wells in order to meet the terms of the Exchange Agreement. In 1970 the Exchange Agreement with TCPL was further expanded and additional compression was again added at Carbon to meet the terms of this agreement. At this point, the capacity of the storage facility was approximately 10 BCF (11 PJ).[7]

Under the Exchange Agreement TCPL had access to a substantial amount of deliverability without an annual gas purchase obligation given that gas taken in the winter was replaced by gas injections in the summer. CWNG and its customers received revenue from TCPL for providing the service and increased deliverability through facility additions.

Between 1967 and 1972, in conjunction with the TCPL Exchange Agreement, a combination of base gas production as COP and injection for TCPL took place during which time an additional 23,700 MMCF of base gas was produced as COP from the storage facility while TCPL's annual injections were as little as 1,639 MMCF in 1968 and as much as 4,351 MMCF in 1971. COP from the storage facility was suspended in 1972 to retain the unproduced native gas as base gas for the storage operation.

In 1972 CWNG entered into a 20-year storage agreement with TCPL. This agreement allowed for a major expansion of the storage facility. Storage working cycle capacity increased significantly, to approximately 36.5 BCF (41.0 PJ) with TCPL being the predominant user of that capacity.

During the 20-year storage rental agreement with TCPL, from 1972 – 1992, at times TCPL may have exclusively utilized the capacity of Carbon, such as in 1978, 1979 and 1980 when it had as much as 36,500 MMCF in inventory. However pursuant to the TCPL agreement, the utility always retained the right to encroach upon the use by TCPL of the capacity and deliverability of the facility for utility operational purposes,[8] such that the extent to which the facility may have been used for revenue generation purposes and the extent to which the facility may have been used for utility gas supply or system balancing purposes is not precisely clear on the present record. Although the data available on the record is not complete, the available evidence indicates that between 1986 and 1991, AGS used up to approximately 25% of the Carbon capacity on a variable basis for its utility uses.

The TCPL storage arrangement expired in 1992. From 1993 until approximately 1996, capital expansions were undertaken at Carbon, and approved by the Board, relating to the storage reservoir, compression equipment, dry gathering lines, wells and meter stations, all of which increased storage capacity and enhanced reliability for CWNG and services to Northwestern Utilities Limited (NUL). The services to NUL, an affiliated distribution utility operating in

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[7] For the purpose of consistency, conversions are based on 39.7megajoules/cubic metre.
[8] Agreement between TCPL and CWNG dated April 1, 1972, sections 4.6, 4.12, and 5.2

northern Alberta, were provided by CWNG under the Firm Service Gas Storage Agreement dated February 1, 1993. This contract was for 9 PJ of storage and had a 20-year term with a 5-year termination notice. AGS elected to treat the contract as terminated in early 2001. From 1996 to the present, it appears that capacity expansions were undertaken to provide benefits to ratepayers and additional third party storage contracts.

All the capital costs associated with the expansions that have occurred over the years have been included in rate base regardless of the purpose of the expansion or which customers' requirements were being addressed. Revenues received from TCPL and other third party users of Carbon storage were not directly used to offset the capital requirements of development and expansion of the Carbon facilities, rather they were used to offset the overall revenue requirement of the utility, thereby reducing the amount that would have otherwise been recovered through rates in order to recover the full costs of funding the capital and operating costs of existing Carbon facilities and expansions.

During the period since 1992, AGS increased its use of storage capacity to 16.7 PJs or 38% of capacity while continuing to rent out the balance of the capacity. Starting in 1998, AGS engaged the services of an unregulated affiliate, ATCO Gas Services Ltd., now ATCO Midstream Ltd. (Midstream), to manage and operate the storage operations.[9] Midstream also entered into an agreement to lease a portion of the storage facility.[10] In Decision 2005-121, the Board described the arrangements with Midstream as follows:

> Since 1998, AGS has contracted with Midstream to provide Carbon storage management and operations services pursuant to the Storage Services Agreement. Appendix "A" – Scope of Services portion of the Application, outlines the work performed by Midstream in 2003 and 2004. Nine areas are identified in Appendix "A": operations; gas coordination; storage reservoir and facilities; production reservoirs and facilities; planning; regulatory support; production accounting; surface and mineral land management; administration and marketing services (Storage Services). The services identified in Appendix "A" appear to have been modified from time to time although no formal amendments have been filed. In addition, the parties entered into the Uncontracted Capacity Agreement addendum.

Midstream operated an unregulated storage business utilizing the portion of Carbon capacity not required for utility operations or already the subject of existing third party storage contracts and the lease payments were treated as revenue offsets to regulated rates. During the same period the usage evolved to the point at which AGS leased out the entire capacity to Midstream, in particular, during the storage seasons starting in 2001, 2005 and 2006.

The record in respect of the percentage of Carbon storage capacity and deliverability reserved for the utility uses in the years since the termination of the TCPL agreement in 1992 is incomplete. What is clear is that the amount of capacity so used has been variable. At present the Carbon storage facilities consist of 38.7 BCF (43.5 PJ) of working gas capacity, 48 BCF (54 PJ) of base

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[9] Gas Storage Services Agreement entered into on February 20, 1998 between CWNG (now ATCO Gas) and ATCO Gas Services Ltd. (now ATCO Midstream).

[10] Midstream leased Carbon storage capacity pursuant to the addendum to Gas Service Storage Agreement between CWNG and Midstream dated December 15, 1999 which is referred to as the Uncontracted Capacity Agreement.

or cushion gas,[11] twenty four injection and withdrawal wells, one well with withdrawal only, four observation wells, two Joules-Thompson plants and a total of 11800 HP of compression. The Producing Properties associated with Carbon consist of production wells, compression, gathering lines, refrigeration and approximately 19 PJs[12] of recoverable gas.

3.3 Evolution of ATCO's Use of Carbon

As indicated above, CWNG used Carbon for gas supply purposes from 1958 to 1967. After conversion to a storage operation in 1967, CWNG continued until 1972 to supply its customers with 23.7 BCF of COP produced from base gas at the storage facility in addition to COP from the associated Producing Properties. This gas was utilized for system load balancing and security of supply purposes for regulated service. In addition, CWNG used a portion of the capacity and deliverability of Carbon Storage which was not contracted to third parties for utility purposes. A large portion of the capacity of the storage facility during this time was surplus to the utility's needs, and was contracted to TCPL under the Exchange Agreement and the revenues utilized as revenue offsets or income credits to regulated rates.

In the early 1980's Carbon was the only commercial storage facility in Alberta. During the 1980's CWNG's storage business changed operationally and commercially along with the natural gas industry as it moved from regulated gas prices and reserve requirements to a deregulated environment.

During the gas cost recovery rate (GCRR) processes[13] in the 1990's, CWNG dedicated a certain amount of the capacity of Carbon to customers for use in annual storage plans,[14] wherein gas was purchased for injection in summer months and withdrawn in winter months, when prices were typically higher, in order to provide gas price mitigation to customers during the winter. CWNG also continued to use Carbon storage for peak utility gas supply requirements and system balancing, given its favorable deliverability characteristics. ATCO Gas continued to provide annual storage plans for gas price mitigation to customers using a portion of the Carbon capacity up to the year 2004.

As deregulation in the gas market progressed and the competitive storage market evolved in Alberta during the 1990's and early 2000's, ATCO Gas concluded that Carbon was no longer needed for utility purposes. In the years from 2000 onward, AGS has repeatedly stated this conclusion and has sought for the facility to be removed from regulation, and for its regulated operations involving the facility to be terminated. In more recent years AGS has maintained that the Board no longer has jurisdiction over the facility.

Commencing in 1998 AGS leased the portion of Carbon capacity which was surplus to the utility needs and third party contracts to its affiliate, Midstream. Midstream then operated an

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[11] The base gas quantities are estimated based on a recovery rate of approximately 75%.

[12] Calgary Evidence dated October 31, 2005 Exhibit E

[13] A summer/winter period GCRR was calculated by adding the balance in the Deferred Gas Account at the end of the previous summer/winter period to the gas costs forecast for the upcoming summer/winter period and dividing the result by the forecast summer/winter period gas sales volume. GCRR's were determined twice a year for each of the summer and winter periods.

[14] The storage years commenced on April 1 of each year with injection taking place ordinarily from April 1 up to November 1 of each year, then withdrawals take place from November 1until March 31 in the succeeding year. Commencing in 1998 up to 2004 (excluding 2001) the amount of capacity reserved to customers in the annual storage plans was 16.7 PJs.

unregulated storage business utilizing that portion of Carbon capacity and the lease payments were treated as revenue offsets to regulated rates. The Board fixed a rate for this lease at 32¢/GJ in Decision 2000-9,[15] and subsequently updated this rate in Decisions 2002-072[16] and 2004-022 to its current rate of 45¢/GJ.

ATCO Gas filed evidence in its 2000/2001 winter GCRR application that storage was no longer required in the gas portfolio.[17] During the winter of 2000/2001 AGS did not vary the withdrawals from Carbon storage as had typically been done in past years to optimize pricing advantages for customers, but rather staged the withdrawals in a uniform pattern. In Decision 2001-110[18] the Board required AGS to credit $4 million to customers based on suboptimal use of the facility during this winter period.

In the winter of 2001/2002 ATCO Gas did not use Carbon at all for utility storage or operational purposes but utilized third party contracted storage instead. This result followed a negotiated process among AGS and customers and was accepted by the Board. The Board noted that AGSs broader strategy relating to Carbon storage would be reviewed in future.[19]

In the proceeding leading to Decision 2001-75,[20] ATCO Gas filed evidence that storage was no longer needed for operations, indicated that COP introduced market distortions and stated that it would be filing an application to remove Carbon from regulated utility service.[21] Customers did not agree with ATCO's position in this regard, but generally preferred an approach whereby AGS continued to provide COP and the benefits of storage to customers. Calgary in particular characterized ATCO's arguments as nothing less than astounding.[22] In Decision 2001-75, the Board decided that Carbon was a "legacy asset"[23] and should remain in regulated service to provide rate payers with the benefit of a physical hedge of gas supply on the expectation that gas injected in the summer months would be less expensive than gas acquired in the winter months. The benefits of Carbon storage and COP were directed to be credited to customers in the distribution delivery rates, rather than in the gas commodity rate, in order to enable the development of the retail gas market.[24] These credits to customers, reflected in credit riders for

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15 2000-9 – Canadian Western Natural Gas Company Limited 1997 Return on Common Equity and Capital Structure and 1998 General Rate Application – Phase I (Application 980413 & 980421) (Released: March 2, 2000)

16 Decision 2002-072 – ATCO Gas, A Division of ATCO Gas and Pipelines Ltd. Transfer of Carbon Storage Facilities (Application 1237639) (Released: July 30, 2002)

17 Decision 2001-22, ATCO Gas-South Application for Approval of an Arrangement for Acquisition of Storage Services for the 2001/2002 Gas Storage Year for ATCO Gas-South (Application 2001094) (Released: March 27, 2001), p. 1

18 Decision 2001-110 – Methodology for Managing Gas Supply Portfolios and Determining Gas Cost Recovery Rates Proceeding and Gas Rate Unbundling Proceeding. Part B-1: Deferred Gas Account Reconciliation for ATCO Gas (Application 2001040) (Released: December 13, 2001)

19 See Decision 2001-16, ATCO Gas-South and ATCO Gas-North, Divisions of ATCO Gas and Pipelines Ltd., Gas Cost Recovery Rate Adjustments (Applications 2000367 & 2000368) (Released: February 28, 2001), Decision 2001-22 and Decision 2001-81, ATCO Gas–North, A Division of ATCO Gas and Pipelines Ltd., Winter Period Gas Cost Recovery Rate (Application 1246114) (Released: October 30, 2001).

20 Decision 2001-75, Methodology for Management Gas Supply Portfolios and Determining Gas Cost Recovery Rates (Methodology) Proceeding and Gas Rate Unbundling (Unbundling) Proceeding Part A: GCRR Methodology and Gas Rate Unbundling (Application 2001040 & 2001093) (Released: October 30, 2001)

21 Decision 2001-75, p. 49

22 Ibid, p. 52

23 Refer to p. 55, Decision 2001-75

24 Decision 2001-75, pp. 19, 55-56, 80-82 and 126

storage and COP, remain in place today by order of the Board, pending final disposition of the issue of the Board's jurisdiction over Carbon, and related matters.[25]

In July 2001 ATCO Gas filed an application with the Board requesting approval of a process whereby Carbon could be transferred to its unregulated affiliate Midstream. This application resulted in Decision 2002-072, wherein the Board indicated that:

> The Board considers that there is evidence to indicate that Carbon continues to be a used and useful regulated asset, notwithstanding there are alternatives to its use available.[26]

The Board determined that AGS could bring an application to dispose of Carbon in a way that met the no-harm requirements of the Board; i.e. there must be no detrimental impact on customers that could not be mitigated.[27]

For the 2002/2003 winter storage period, ATCO Gas and the customers were unable to agree on a storage strategy through a negotiated process. The Board approved a storage plan based on 16.7 PJs being reserved for utility use as a physical hedge and also approved an active management of storage volumes in order to optimize benefits of winter withdrawals to customers.[28]

For the 2003/2004 storage year, AGS applied for Board approval to tender the total volume of Carbon capacity, at fair market value determined by a request for bids process, and to retain no capacity as physical hedge for core customers. If the Board required a physical hedge for customers, then AGS proposed to obtain it from market storage providers. The Board denied this request and ordered that the status quo be maintained, with 16.7 PJs reserved for utility use and the same injection, withdrawal and risk mitigation strategies utilized as in the 2002/2003 storage year.[29]

In 2003 legislation was passed to restructure the retail gas market in Alberta.[30] Although the impact of this legislation is discussed in greater detail later in this Decision, broadly speaking, it served to narrow the regulated function of AGS to that of a distributor only, being responsible for system operations, load balancing and customer metering. The legislation assigned the gas supply and billing functions to retailers and to the distribution utility as the default supply provider (DSP). Distributors were enabled to contract out or assign the DSP function to third party retailers with Board approval, subject to the statutory requirement that the contracting out or assignment of this function did not relieve the distributor of its responsibilities or liabilities under the legislation.

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25 Order U2005-133, dated March 23, 2005. Rider G, the company-owned production rate rider (COPRR), and Riders H and I, the company-owned storage rate riders (COSRR) (Rider I is applied to irrigation customers only), remain in place pursuant to this Order.

26 Decision 2002-072, p. 22

27 Decision 2002-072, pp. 52–55

28 Decision 2002-092, ATCO Gas South, a Division of ATCO Gas and Pipelines Ltd. -2002/2003 Winter Storage Plan (Application 1272527) (Released: October 29, 2002)

29 Decision 2003-021, dated March 11, 2003

30 The *Gas Utilities Act*, R.S.A. 2000, c.G-5 (GU Act or GUA) section 28 was amended and Alberta Regulations 184/2003 – Default Gas Supply Regulation, 185/2003 – Natural Gas Billing Regulation and 186/2003 - Roles, Relationships and Responsibilities Regulation (R3 Regulation) under the GUA were introduced.

In 2003 AGS agreed to transfer certain retail assets to Direct Energy Marketing Limited and assigned the DSP function to Direct Energy Regulated Services (DERS). The Board approved this transaction in Decision 2003-098,[31] dated December 4, 2003, and the transfer became effective June 1, 2004. Thus AGS has not been in the retail gas supply business since May 2004.

The 2004/2005 storage year was considered in Decision 2004-022. AGS filed a storage plan, at the direction of the Board in Decision 2003-021.[32] AGS submitted a plan comprising four options for managing utility-related storage. AGS reiterated prior statements that Carbon was no longer required for utility purposes and in argument raised challenges to the jurisdiction of the Board over the facility, in part based on the 2003 legislation mandating the separation of the distribution and retail functions. The Board declined in Decision 2004-022 to make a jurisdictional finding that was based on submissions raised by AGS in argument and considered that, in view of several past acrimonious proceedings involving Carbon, the issue of jurisdiction should be considered in a proceeding where all parties had a proper opportunity to participate. The Board's decision not to consider the jurisdictional challenges raised by AGS in argument was upheld on appeal to the Alberta Court of Appeal.[33] Decision 2004-022 approved a storage plan for 2004/2005 based on a continuation of the 2003/2004 practices.[34] AGS' jurisdictional challenges led, in part, to the June 10, 2004 letter from the CG requesting the Board to initiate the present proceeding to address the Board's jurisdiction relating to the Carbon assets.

For the 2005/2006 storage year AGS withdrew its storage plan, as will be discussed in greater detail below, and the Board did not direct such a plan in Order U2005-133.[35]

At present AGS no longer has a requirement to use Carbon for regulated gas supply, and does not use Carbon for annual storage plans as a physical hedge in mitigation of the gas price or for load balancing. DERS, as the DSP for the ATCO Gas system, does not use Carbon storage in performing its functions of obtaining gas supply or in load balancing in accordance with ATCO Gas' tariff.[36]

At present the storage facility is used 100% for merchant storage capacity, with AGS leasing out the entire capacity of Carbon to Midstream at a rate of 45¢/GJ. The revenue from the AGS lease to Midstream is applied against customer rates through Riders H and I. The COP wells from the Carbon field produce approximately 820 TJs (730 MMCF)[37] of gas per year, the market value of which is credited to customers through Rider G. No COP is produced from the base gas.

The storage and COP riders are maintained as revenue offsets to distribution customers in accordance with Board Order U2005-133.

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31 Decision 2003-098 – ATCO Electric Ltd., ATCO Gas North and ATCO Gas South, Both Operating Divisions of ATCO Gas and Pipelines Ltd. Transfer of Certain Retail Assets to Direct Energy Marketing Ltd. and Proposed Arrangements with Direct Energy Regulated Services to Perform Certain Regulated Retail Functions (Application 1299855) (Released: December 4, 2003)

32 Decision 2003-021 – ATCO Gas South Determination of the Fair Market Value of Uncontracted Carbon Storage (Application 1286912) (Released: March 11, 2003)

33 *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2005 ABCA 226, 48 Alta. L.R. (4th) 1, 34 Admin. L.R. (4th) 218

34 Decision 2004-022 dated March 9, 2004

35 Order U2005-133 – ATCO Gas South 2005/2006 Carbon Storage Plan Interim Order (Application 1357130) (Released March 23, 2005)

36 Exhibit 51, DERS's letter of October 19, 2004

37 2005 ATCO Gas South cumulative Company Owned Production from Schedule CM2

2.1 History of Carbon

5. In the Background section of Decision 2007-005[4] the Board included a description of Carbon and a significant amount of detailed history.[5] This description is attached as Appendix 3 to this Decision. Briefly, Carbon was originally a natural gas production field which was acquired by Canadian Western Natural Gas Company Limited (now ATCO) in 1957 for the purpose of developing a utility source of gas for production and delivery as peaking gas supply in the Calgary area. In 1967 the Carbon gas field was converted into a storage reservoir. Approval was granted by the regulator in 1967 for the conversion of the natural gas production field into a natural gas storage facility. Certain production wells which were not required for storage cycling operations remained as gas production assets, and have remained so to date. Throughout the period during which Carbon was employed by ATCO in providing regulated services it was variously used to produce natural gas for utility customer consumption, store natural gas for utility customers, provide utility revenue through the leasing of excess storage capacity to third parties and for operational and system load balancing requirements. At present the entire storage facility is leased to an affiliate of ATCO Gas South, ATCO Midstream Ltd. and is used for merchant storage capacity.

2.2 Events Leading to Decision 2007-005 on the use of Carbon for Revenue Generation

6. On June 10, 2004, the Alberta Energy and Utilities Board (the Board or EUB) received a letter from the Consumer Group[6] and the UCA. T he letter requested, *inter alia*, the Board to initiate a proceeding to address the concerns raised by ATCO in prior Board proceedings with respect to the Board's jurisdiction as it relates to Carbon.

7. In a letter of July 23, 2004 the Board directed ATCO to file an application with respect to how Carbon would be utilized during the 2005/2006 annual storage cycle and the basis for ATCO's objection to the Board's jurisdiction over Carbon.

8. On August 16, 2004, ATCO submitted an application to the Board regarding the 2005/2006 Carbon Storage Plan.

9. On March 8, 2005 ATCO filed correspondence which purported to withdraw its storage plan application. ATCO stated:

> AGS' management has determined, therefore, that the prudent operation of the AGS distribution system does not require the use of the Carbon storage operation and all relate facilities. …This reasoning underlies AGS' management's decision not to include any Carbon-related costs or revenues in connection with the 2005/2006 storage operation in its jurisdictional rates for distribution service, effective April 1, 2005.[7]

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[4] Decision 2007-005 - ATCO Gas South, Carbon Facilities - Part 1 Module – Jurisdiction (2005/2006 Carbon Storage Plan) (Application No. 1357130) (Released: February 5, 2007).

[5] A detailed chronological summary of prior Decisions by the Alberta regulator relating to Carbon can be found in Appendix 6 of Decision 2007-005.

[6] The Consumers Group includes: Alberta Irrigation Projects Association, Alberta Urban Municipalities Association, Consumers Coalition of Alberta, First Nations, and the Public Institutional Consumers of Alberta.

[7] Letter from Bennett Jones, counsel for ATCO dated March 8, 2006, filed in proceeding EUB Application No. 1357130 at page 5.

ATCO also provided notice that all related rate riders or charges (Riders G, H, I) would be discontinued effective April 1, 2005.

10. On March 23, 2005 the Board issued Order U2005-133[8] which was described in Decision 2005-063[9] as follows:

> The Interim Order directed AGS to maintain Carbon and all related assets in rate base, authorized a lease of the entire storage capacity to ATCO Midstream at a placeholder rate equal to the existing storage rate of $0.45/GJ and directed AGS to maintain Rate Riders G, H and I. The Interim Order was effective March 23, 2005 and is to remain in place until such time as the Board determines that there has been a final disposition of:
>
> (a) the matters presently before the Court of Appeal;
> (b) the matters being considered by the Board relating to Carbon;
> (c) any additional matters relating to Carbon that the Board may be required to decide as a result of subsequent filings of AGS or an intervener; and
> (d) any additional matters resulting from any direction from the Court of Appeal.

The authorization to lease the entire Carbon storage capacity to ATCO Midstream was provided at page 2 of Order U2005-133 in the following terms:

> AGS is given approval to lease the entire storage capacity of the Carbon storage to ATCO Midstream for the 2005/2006 storage year and for each subsequent storage year until such time as the Board may otherwise determine.

11. In Decision 2005-063 the Board addressed certain Preliminary Questions related to the Board's continuing jurisdiction over Carbon. In that Decision the Board determined that the question of the Board's jurisdiction with respect to Carbon could best be addressed through an examination of whether or not Carbon was used or required to be used to provide service to the public and therefore should remain in rate base, which was the test established for the inclusion of assets in rate base set out in section 37(1) of the *Gas Utilities Act*, RSA 2000 c. G-5. Section 37(1) then read as follows:

> **Rate base**
>
> **37(1)** In fixing just and reasonable rates, tolls or charges, or schedules of them, to be imposed, observed and followed afterwards by an owner of a gas utility, the Board shall determine a rate base for the property of the owner of the gas utility used or required to be used to provide service to the public within Alberta and on determining a rate base it shall fix a fair return on the rate base.

The Board determined that there were two "uses" for Carbon relevant to the Board's analysis. These two uses were revenue generation and distribution system load balancing.[10]

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[8] Order U2005-133 – ATCO Gas South 2005/2006 Carbon Storage Plan Interim Order (Application 1357130) (Released March 23, 2005).

[9] Decision 2005-063 - ATCO Gas South, 2005/2006 Carbon Storage Plan – Preliminary Questions (Application No. 1357130) (Released: June 15, 2005), page 6.

[10] Ibid, page 21.

12. The Board addressed the load balancing use in Decision 2006-098[11] dated October 10, 2006. The Board concluded that Carbon was not used or required to be used to provide service to the public, nor should it otherwise remain in rate base, in connection with the load balancing of the ATCO Gas distribution system.[12]

13. The remaining use to be considered in determining whether or not Carbon was used or required to be used to provide service to the public was revenue generation. Decision 2007-005 addressed this use. The Board concluded that revenue generation was a proper utility use for Carbon given its unique factual and historical circumstances.

2.3 Events Following Decision 2007-005

2.3.1 Carbon Revenue Generation Appeal Decision

14. On May 27, 2008 the Alberta Court of Appeal issued a Decision[13] (Carbon Appeal Decision) which allowed the ATCO appeal of Order U2005-133 and Decisions 2005-063 and 2007-005. Specifically, the Court determined that the Board erred when it included Carbon in rate base as an asset used or required to be used to provide service to the public when the only function of the Carbon facilities was to generate revenue.

15. On June 20, 2008 the Commission issued Order U2008-213[14] which stated that until such time as the Commission might provide further direction, the three below named rate riders and charges related to the Carbon assets were to be suspended from the rate schedules of ATCO, effective July 1, 2008.

- Company Owned Production Rate Rider (COPRR) – Rider "G",
- Company Owned Storage Rate Riders (COSRRs) – Rider "H" and Rider "I" (Irrigation), and
- Carbon Production and Storage Charge (P&SC).

16. On July 11, 2008 ATCO filed an Application (Carbon Compliance Application) with the Commission requesting the Commission to set aside Order U2005-133 and Decisions 2005-063 and 2007-005 and to grant a new order implementing the finding of the Alberta Court of Appeal in the Carbon Appeal Decision.

17. Notice of the Application was issued on July 15, 2008.

2.3.2 Decision 2009-004, the Pre-hearing Conference Scoping Decision

18. Following a pre-hearing conference held on December 16, 2008 the Commission issued Decision 2009-004 which established the Final Issues List for the Carbon Compliance Application proceeding. In addition, this Decision also considered whether the unilateral removal of an asset from rate base by a utility was a "disposition" requiring the prior consent of

[11] Decision 2006-098 – ATCO Gas Retailer Service and Gas Utilities Act Compliance Phase 2 Part B (Application 1411635) (Released: October 10, 2006); Decision 2006-098 Errata (Released: November 7, 2006).
[12] Ibid, page 51.
[13] *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)* 2008 ABCA 200.
[14] Order U2008-213 – ATCO Gas Suspension of Riders and Rate (Application 1574733, Proceeding ID. 61) (Released: June 20, 2008)

the Commission under section 26(2)(d) of the *Gas Utilities Act*. In regard to this issue (Disposition Issue), the Commission made the following determination in Decision 2009-004:

> The "disposition" question is again before the Court of Appeal in the appeal of the Salt Cavern Letters.[35] In each of those two letters, the Board and then the Commission, agreed with the decision of the Board in Decision 2007-005 that a withdrawal of an asset from rate base out of the ordinary course of business was a "disposition" under section 26(2) of the GUA and section 101(2) of the PUA. The Commission continues to support this position and agrees with Calgary and the UCA that the Carbon Appeal Decision does not overturn the determination of the Board in Decision 2007-005 that a withdrawal of an asset from rate base out of the ordinary course of business is a disposition. …
>
> The analysis of the Board in Decision 2007-005 quoted above conforms with the purposive analysis approach to the legislation.
>
> For the above reasons, the Commission concludes that the approval of the Commission is required prior to a removal of an asset from rate base out of the ordinary course of the owner's business.[15]

[35] The Salt Cavern Letters refers two letters issued in the proceeding related to ATCO Pipelines' 2008-2009 General Rate Application, Application No. 1527976, Proceeding ID 13. The first letter was issued by the EUB on November 6, 2007 and the second was issued by the Commission on July 30, 2008. Both letters restricted the proposed removal from rate base of certain salt cavern assets owned by ATCO Pipelines which were indicated to be surplus to the needs of the utility. Leave to Appeal was granted on November 12, 2008 in *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2008 ABCA 382.

It is this Disposition Issue that is one of the two matters to be reconsidered by the Commission in this R&V Proceeding in light of the Court of Appeal's decision with respect to the appeal of the Salt Cavern Letters referred to in the above quote from Decision 2009-004.

2.3.3 Decision 2009-067 – The Preliminary Questions Decision

19. On June 26, 2009 the Commission issued Decision 2009-067 which determined certain Preliminary Questions with regard to the Carbon Compliance Application including the following question:

> With respect to the removal of the Carbon assets from rate base, what is the appropriate date from which adjustments to rate base and revenue requirement should be made (the Adjustment Date)?[16]

20. The Commission determined the Adjustment Date to be October 10, 2006, based in part on the following reasoning:

> 30. The Alberta Court of Appeal ruled that an asset must have an operational purpose in order to be considered used or required to be used.[15] It was not until the Board determined in Decision 2006-098 that Carbon should not be used for load balancing that the question of whether or not Carbon could be used for operational purposes was finally determined. Revenue generation was found not to be a valid operational purpose.

[15] Decision 2009-004, pages 17-18.
[16] Decision 2009-067, page 2, paragraph 6.

> Accordingly, the release date of Decision 2006-098, October 10, 2006, could be the Adjustment Date. …

and

> 34. For the above reasons, the Commission concludes that the proper Adjustment Date is October 10, 2006 being the date that the regulator determined that Carbon no longer had an operational purpose for providing utility service.[17]

[15] Carbon Appeal Decision, paragraphs 25 and 27

This issue relating to the Adjustment Date for when Carbon should be removed from rate base with the necessary revenue requirement and rate adjustments is the second issue to be reconsidered by the Commission in this R&V Proceeding in light of the Court of Appeal's decision with respect to the appeal of the Salt Cavern Letters.

2.3.4 Salt Cavern Letters Appeal Decision

21. Subsequent to the release of Decision 2009-067 the Alberta Court of Appeal, on June 30, 2009, released its decision with respect to the Salt Cavern Letters appeals referred to above (Salt Cavern Letters Appeal Decision).[18] In that Decision the Court stated:

> Ceasing to use an asset for utilities purposes involves the traditional criteria for what is in the rate base (discussed in Part F above), and does not involve or require a s. 26 application at all. The 2008 "***Carbon***" decision (cited in the previous paragraph) clearly adopts the decisions about the "used or required to be used" test, and defines that as operational use in the utility: see para. 25 for example.[19]

2.4 Present Review and Variance Proceeding

22. As referred to in the Introduction to this Decision, the present R&V Proceeding was initiated by the Commission by letter dated August 6, 2009.[20] The Commission considered that the reasons of the Court of Appeal in the Salt Cavern Letters Appeal Decision may :

- raise a substantial doubt as to the correctness of, or
- constitute a new fact or a change in circumstances which raises a reasonable possibility that the new fact or change in circumstances could lead the Commission to materially vary or rescind

the Commission's determinations with respect to the Disposition Issue in Decision 2009-004 and with respect to the Adjustment Date in Decision 2009-067. In commencing this R&V Proceeding, the Commission indicated that written submissions and reply submissions from parties, together with the materials already forming the record of the Carbon Compliance Application would constitute the record for the R&V Proceeding.

23. In a letter dated August 17, 2009 the Commission referred to the July 31, 2009 approval of the Commission permitting parties to negotiate a possible settlement of all outstanding matters

[17] Ibid, page 7, paragraphs 30 and 34.
[18] *ATCO Gas and Pipelines Ltd. v. Alberta (Utilities Commission)*, 2009 ABCA 246, Docket: 0701-0325-AC and 0801-0244-AC (refer to Appendix 4).
[19] Ibid, paragraph 56.
[20] Refer to Appendix 2.

related to Carbon, including the Adjustment Date. Noting that a successful settlement might limit the R&V Proceeding to an academic exercise the Commission held the R&V Proceeding in abeyance to allow parties time to negotiate. The Commission imposed a deadline for the conclusion of the negotiations which was subsequently extended.

24. By letter dated September 16, 2009 the Commission stated the question to be addressed in the R&V Proceeding as follows:

> In light of the guidance provided by the Alberta Court of Appeal in the Salt Cavern Letters Appeal Decision should the Commission rescind, vary or modify its determinations in respect of the Disposition Issue in Decision 2009-004 and/or the Adjustment Date in Decision 2009-067?

25. On September 21, 2009 ATCO advised by letter that the negotiation process was being terminated as the likelihood of reaching a settlement appeared very low.

26. By letter dated September 25, 2009 the Commission confirmed its earlier directions to parties to file their respective submissions in this R&V Proceeding by October 13, 2009 and reply submissions by October 20, 2009.

27. In reaching its determinations set out within this Decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the submissions 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.