



ATCO GAS SOUTH

Removal of Carbon Related Assets from Utility Service Preliminary Questions

June 26, 2009



ALBERTA UTILITIES COMMISSION

Decision 2009-067: ATCO Gas South

Removal of Carbon Related Assets from Utility Service

Preliminary Questions

Application No. 1579086

Proceeding ID. 87

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**ATCO GAS SOUTH
REMOVAL OF CARBON RELATED ASSETS FROM
UTILITY SERVICE – PRELIMINARY QUESTIONS**

**Decision 2009-067
Application No. 1579086
Proceeding ID 87**

1 INTRODUCTION

1. This decision is the second in a series of decisions relating to Application No. 1579086, Proceeding ID 87 (Application) by ATCO Gas South (ATCO or AGS), a division of ATCO Gas and Pipelines Ltd. which was filed on July 11, 2008. The Application requested the Alberta Utilities Commission (AUC or the Commission) to set aside Order [U2005-133](#)¹ and Decisions [2005-063](#)² and [2007-005](#),³ which were issued by the AUC's predecessor, the Alberta Energy and Utilities Board (EUB or Board), and to grant a new Order implementing the findings of the Alberta Court of Appeal in a Decision issued May 27, 2008⁴ (Carbon Appeal Decision). The Carbon Appeal Decision dealt with the Carbon natural gas storage facility and associated producing properties (collectively, Carbon) owned and operated by ATCO and presently 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 (BP Canada), The City of Calgary (Calgary) and the Public Institutional Consumers of Alberta (PICA).

4. The first decision in this Proceeding, Decision [2009-004](#),⁵ established the Final Issues List for the entire Proceeding.

5. The Commission issued a letter on March 6, 2009 stating:

It has become apparent to the Commission as a result of the above developments that there are three high level questions with respect to the applicable regulatory principles to apply in addressing the matters identified in the Final Issues List that if addressed by the Commission would significantly enhance the efficiency of the process, reduce the potential scope of intervenor evidence, the need for rebuttal evidence and reduce overall costs. To that end, the Commission will defer ruling on the UCA Motion and has

¹ EUB Order U2005-133 – ATCO Gas South, 2005/2006 Carbon Storage Plan Interim Order (Application No. 1357130) (Released: March 23, 2005)

² EUB Decision 2005-063 – ATCO Gas South, 2005/2006 Carbon Storage Plan – Preliminary Questions (Application No. 1357130) (Released: June 15, 2005)

³ EUB 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)

⁵ 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)

cancelled the oral hearing and instead will seek written argument and written reply argument on the three preliminary questions listed on Schedule A (the Preliminary Questions). After reviewing parties' submissions on the Preliminary Questions, the Commission may request counsel to appear at a one day oral hearing to summarize their positions and to address questions of clarification, or the Commission may proceed directly to issue a decision in respect of these three matters. Following the release of a decision on the Preliminary Questions, the Commission will establish further process for the balance of the Proceeding.

6. Attached to the March 6, 2009 Commission letter were the following preliminary questions (Preliminary Questions) which the Commission requested parties to address in written Argument to be filed by March 20, 2009 and Reply Argument on March 30, 2009:

1. 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)?
2. Should amounts included in approved revenue requirements prior to the Adjustment Date in respect of depreciation or net negative salvage on the Carbon assets be refunded to customers and if so, on what basis?
3. Should the net amount to be potentially recovered by AGS from ratepayers in respect of the Carbon assets be determined on the basis of the actual cost of service incurred by AGS in respect of the Carbon assets or should it be determined on the basis of the forecasted cost of service for the Carbon assets included in the approved revenue requirement?

7. Argument and Reply Argument were received simultaneously from ATCO and Calgary on March 20, 2009 and March 30, 2009, respectively. Citing budgetary constraints, the UCA did not submit a separate Argument or Reply Argument but did file a letter in which it agreed with the position of Calgary.

8. The Division of the Commission assigned to hear the proceeding was W. Grieve (Chair), N. A. Maydonik Q.C., and T. Beattie Q.C.

2 BACKGROUND

9. 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. The culmination of the Pre-hearing Conference was the release of Decision 2009-004.

10. Subsequent to the release of Decision 2009-004 on January 9, 2009, ATCO filed supplemental evidence, responses to information requests and several amendments or supplements to these responses. In addition, the Commission received four Notices of Motion and one Application for Review and Variance. The Commission has ruled on three of these Motions⁶ and on the Application for Review and Variance.⁷ The fourth Notice of Motion was

⁶ AUC letters of February 20, 2009 and March 2, 2009

⁷ AUC letter of February 13, 2009

filed on February 27, 2009 by the UCA (UCA Motion). The UCA Motion was filed pursuant to section 9 of the Commission's *Rules of Practice* and requested the Commission to direct ATCO to provide further and better particulars in response to certain UCA information requests (IR) filed following the Commission's Ruling in respect of ATCO IR Responses contained in Commission correspondence dated February 20, 2009. The subject IRs requested detailed information on actual versus forecasted gas volumes and cost of service amounts. The Commission will also deal with the UCA Motion in this Decision.

11. In its letter dated March 2, 2009, the Commission invited parties to comment on the prejudice, if any, to parties of cancelling the oral hearing and moving directly to written argument and written reply argument.

12. On March 2, 2009 and March 3, 2009, the Commission received comments from ATCO supporting a written process. The Commission also received comments from the UCA and Calgary on March 3, 2009, with respect to the value of continuing with the oral hearing.

13. The Commission had set March 3, 2009 as the date for the filing of intervener evidence for the Proceeding. On that date, both Calgary and the UCA advised the Commission that they were unable to provide evidence until such time as the Commission ruled on the UCA Motion. No other intervener filed evidence.

14. On March 4, 2009, the Commission notified parties that the oral hearing scheduled to commence on March 17, 2009, had been cancelled.

15. The Commission's letter of March 6, 2009 set out the Preliminary Questions and the procedural process referred to above.

3 ISSUES

16. In this Section the Commission reviews the positions of the parties in regard to the three Preliminary Questions. In reaching the determinations contained within this Decision, the Commission has considered all relevant materials comprising the record of the Proceeding, including the evidence and argument provided by each party. Accordingly, references in this Decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

3.1 First Preliminary Question

17. The first Preliminary Question is:

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)?

3.1.1 Background

18. On March 23, 2005, the Board issued Order U2005-133 following notification from ATCO that it intended not to include Carbon related costs or revenues in its regulated rates for

distribution services effective April 1, 2005 and that it intended to remove Carbon from rate base and to discontinue the Carbon production and storage riders (Riders G, H, and I). Noting ATCO's claim of prejudice if the assets remained in service over its objections and the claims of interveners of prejudice if the assets were unilaterally removed, the Order was intended to preserve the status quo while the process proceeded in respect of Application No. 1357130, which related to the jurisdictional issues surrounding Carbon. The Board's letter dated March 23, 2005 which was attached as Appendix A to Order U2005-133 stated at page 5:

...the Board considers that an order or direction preserving the status quo and the positions of AGS and the interveners would be useful in the present circumstances.

19. Order U2005-133 was called an "Interim Order" with the Board stating at page 5 in the letter dated March 23, 2005 attached as Appendix A to the Order:

Accordingly, the Interim Order shall remain in place until such time as it is *terminated* or otherwise modified by the Board. 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*. AGS may apply for new capital additions to rate base in the ordinary course *during the time period* that the Interim Order is in effect. It is contemplated that *at the time* that the Interim Order is *terminated*, the Board will address any *required adjustments* between AGS and ratepayers to reflect the Board's jurisdictional and rate base findings. **(emphasis added)**

20. Subsequent to the Order U2005-133 and prior to the conclusion of the Carbon jurisdictional proceedings, the Board dealt with ongoing costs of Carbon in the context of the ATCO Gas 2005-2007 General Rate Application. In Decision [2006-004](#),⁸ the Board approved the Carbon related costs stating at page 93:

...the Board concurs with AG that the status quo should be maintained *pending* the outcome of the Carbon process, and confirms that this is what was intended by Order U2005-133. **(emphasis added)**

Then at page 94 the Board stated:

The Board considers that the directions set out in Order U2005-133 require that nothing be done differently than has been the historical practice. Therefore, the Carbon related assets are to remain in Rate Base, the O&M expenses are to be included in the revenue requirement, and the revenue will be collected and distributed in the COSRR in accordance with the provisions of Order U2005-133.

21. In Decision 2005-063 (the First Preliminary Questions Decision) the Board determined that only two potential "uses" were relevant to the question of whether or not Carbon was used or required to be used in providing utility service: load balancing and revenue generation. These two potential uses would then be examined in subsequent proceedings.

⁸ EUB Decision 2006-004 – ATCO Gas, 2005-2007 General Rate Application Phase I (Application No.1400690) (Released: January 27, 2006)

22. In Decision 2006-098⁹ the Board dealt with the first of the two potential uses determined by Decision 2005-063, load balancing, and concluded that:

...the Board does not see the need for ATCO Gas to own, maintain and operate a storage facility for the purposes of meeting its load balancing obligations on the distribution system. Similarly, the Board does not see the need for ATCO Gas to own, maintain and operate the natural gas producing properties associated with the Carbon storage facility for the purposes of performing its load settlement obligations. Based on the facts, evidence and argument of the parties on the record of this proceeding, the Board finds that the Carbon storage facility (including the associated producing properties) is 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.¹⁰

23. In Decision 2007-005, the Board determined that revenue generation was a valid use for the Carbon assets and then finalized the Interim Order stating at page 27:

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. (**emphasis added**)

⁷⁴ Decision 2006-004 – ATCO Gas, 2005-2007 General Rate Application Phase I (Application 1400690) (Released: January 27, 2006); Decision 2006-014 – ATCO Gas, Errata of Decision 2006-004 (Application 1400690) (Released: February 24, 2006); Decision 2006-064 – ATCO Gas 2005-2007 General Rate Application Compliance Filing to Decision 2006-004 Part A - Interim Rates ATCO Gas South (Application 1452948) (Released: June 27, 2006); Decision 2006-083 – ATCO Gas 2005-2007 General Rate Application – Phase I Compliance Filing to Decision 2006-004 Part B (Application 1452948) (Released: August 11, 2006); and Decision 2006-133 – ATCO Gas 2005-2007 General Rate Application - Phase I Second Compliance Filing to Decision 2006-004 Part B (Application 1478363) (Released: December 28, 2006)

24. In the Carbon Appeal Decision released on May 27, 2008, the Alberta Court of Appeal determined that the Board, in Decision 2007-005, erred in law or jurisdiction when it included Carbon 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. The Carbon Appeal Decision overturned the Board's finding that revenue generation was a proper utility use for Carbon and indicated that only operational purposes were legitimate uses for assets in utility service and stated in paragraph 28:

...If the Carbon storage facility does not now meet the requirements of s. 37, the appellant is entitled to a ruling to that effect.

25. Consequently, as an interim measure, pending the filing of an application to remove Carbon from utility service and revenue requirement effective April 1, 2005, AGS proposed that

⁹ EUB Decision 2006-098 – ATCO Gas Retailer Service and Gas Utilities Act Compliance Phase 2 Part B Customer Account Balancing and Load Balancing, (Application No. 1411635) (Released: October 10, 2006); Decision 2006-098 (Errata) (Released: November 7, 2006)

¹⁰ Decision 2006-098, page 51

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) be eliminated from its rate schedules, effective July 1, 2008. In Order U2008-213,¹¹ the Commission concluded that:

The Commission has reviewed the Application and considers that, in the circumstances surrounding the Court of Appeal Decision regarding Carbon, there appears to be questionable merit in AGS continuing to pay the monthly COPRR and COSRRs. However, as the matter of the continued use of Carbon for utility purposes is expected to be dealt with in an upcoming application to be filed by AG, and as the review and variance application by Calgary concerning Decision 2006-098 has not been finalized, the Commission considers that the final elimination of the riders and rate on July 1, 2008 as proposed by AG would be inappropriate. Instead, the Commission will suspend Rider “G”, Rider “H”, Rider “I” and the P&SC effective July 1, 2008, which on an interim basis will also relieve AGS of the requirement for making its monthly filing with the Commission for acknowledgement of the Riders.

3.1.2 ATCO’s Position

26. ATCO made two points in support of its argument that the Adjustment Date should be April 1, 2005. First, it referred to the Carbon Appeal Decision and submitted that the Court overturned Order U2005-133 in determining that the Board had committed an error of law or jurisdiction. As a consequence, the Board’s order was no decision at all or a nullity¹² and that the effect of overturning Order U2005-133 was that ATCO must be put back in the position it would have been had Order U2005-133 not been issued.¹³ ATCO pointed to the language of the Alberta Court of Appeal referred to above and noted that the use of Carbon had not changed since the Order’s effective date of April 1, 2005 and therefore it did not meet the requirements of section 37 of the *Gas Utilities Act*, R.S.A. 2000, c. G-5 (GUA) at and ever since that time. Accordingly, implementation of the Court’s decision required an adjustment back to April 1, 2005. ATCO submitted that an application under section 26(2)(d) of the GUA is not necessary given the Court’s decision that the Board erred in maintaining Carbon in rate base under section 37.

27. Second, ATCO referred to the interim nature of Order U2005-133 itself, and the use of the Board’s words in subsequent decisions referring to the fact that Carbon costs were dealt with in a certain manner “pending” resolution of jurisdictional issues and the need for a “reconsideration” of Carbon costs and revenues upon resolution of these issues. ATCO submitted that these factors all point to the need to reconsider the rate implications of Carbon once the Commission made its jurisdictional determinations, as of the date of the interim Order. Accordingly, the effective date of adjustment should be the effective date of Order U2005-133, April 1, 2005.

¹¹ Order U2008-213 – ATCO Gas Suspension of Riders and Rates (Application No. 1574733, Proceeding ID. 61) (Released: June 20, 2008), pages 2-3

¹² *Minister for Immigration and Multicultural Affairs v. Bhardwaj* (2002, 187 A.L.R. 117 (H.C.) and *Telus Communications Inc. v. Canada (Canadian Radio-Television and Telecommunications Commission)*, [2004] F.C.A. 365

¹³ ATCO Argument dated March 20, 2009, pages 10-12

3.1.3 Calgary's Position

28. Calgary suggested that Order U2005-133 was meant to freeze matters until resolution of the jurisdiction could be achieved. Once jurisdiction was determined, any adjustments should be made prospectively. Order U2005-133 was interim in the sense of retaining Carbon in rate base on an interim basis to avoid it being removed. Order U2005-133 could not be made permanent until the jurisdictional question was determined. Once jurisdiction was determined, the consequences of that decision would flow.

29. Calgary submitted that the Adjustment Date is the date the Commission approves an application under section 26(2)(d) of the GUA to “dispose” of the Carbon assets. The Commission has repeatedly stated that an application under this section is required before Carbon can be removed from rate base. In Decision 2009-004, the Commission deemed ATCO to have made an application under section 26(2)(d). Accordingly, the Adjustment Date can not be any earlier than a Commission decision on the deemed section 26(2)(d) application. Anything earlier would be an exercise in retroactive ratemaking.¹⁴

3.1.4 Commission Findings

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

31. Until Decision 2006-098 was released, it was still an open question as to whether or not Carbon had an operational purpose. The fact that Decision 2006-098 was subject to both a review and variance application by Calgary (R&V) and an application for Leave to Appeal (Leave Application) does not, in an of itself, act as a stay of Decision 2006-098. The R&V was subsequently denied in the Commission's Decision 2008-110.¹⁶ The Leave Application is to be set down for argument in September 2009.

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 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

¹⁴ Calgary Argument dated March 20, 2009, page 8

¹⁵ Carbon Appeal Decision, paragraphs 25 and 27

¹⁶ Decision 2008-110 – City of Calgary, ATCO Gas and Pipelines Ltd.

Decision on Preliminary Question, Review and Variance of Alberta Energy and Utilities Board Decision 2006-098 and Decision on Preliminary Question, Review and Variance of Alberta Energy and Utilities Board Utility Cost Order 2006-064 (Application No. 9500-1494570) (Released: November 3, 2008)

Adjustment Date of October 10, 2006, the date of Decision 2006-098, would not be retroactive ratemaking.

33. The Commission does not agree with Calgary that the Adjustment Date should be the date that the Commission issues a decision with respect to the removal of Carbon from rate base pursuant to section 26(2)(d) of the GUA. While the Commission decided in Decision 2009-004 that an application, or deemed application, prior to the removal of a material asset from rate base out of the ordinary course of business is required in order to permit the Commission to determine if an asset is used or required to be used and, if it is so determined, can it be removed from utility service without causing harm to customers, in the case of Carbon, both of these issues have already been determined. Carbon does not have an operational use for providing utility service and its removal will not harm customers.¹⁷ Accordingly, the Adjustment Date need not be the date of approval to remove Carbon from rate base is granted under section 26(2)(d) of the GUA.

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.

3.2 Second Preliminary Question

35. The second Preliminary Question is:

Should amounts included in approved revenue requirements prior to the Adjustment Date in respect of depreciation or net negative salvage on the Carbon assets be refunded to customers and if so, on what basis?

3.2.1 Background

36. Utilities are entitled to a recovery of their investment (depreciation) and a return on their investment (return on equity). Depreciation expense included in regulated rates is made up of a life cycle component and a net salvage component. The life cycle component is intended to reflect the consumption of an asset employed in providing utility service over its useful service life. The net salvage component is intended to reflect the costs to be incurred in removing an asset from regulated service at the end of its service life, including abandonment, reclamation and remediation costs net of disposition or salvage proceeds received on the disposition of the asset. "Negative net salvage" refers to the circumstance when the costs of removing an asset from service at the end of its regulated service life are anticipated to exceed the salvage value (proceeds of disposition) of the asset.

3.2.2 ATCO's Position

37. ATCO argued that no amounts in respect of depreciation or negative net salvage in respect of Carbon prior to the Adjustment Date should be returned to customers. Those amounts were collected based upon depreciation studies and abandonment and salvage cost studies that were tested and approved by the Board in past rate proceedings. To require a refund of these amounts would be retrospective ratemaking.¹⁸

¹⁷ Decision 2009-004, page 18

¹⁸ ATCO Argument dated March 20, 2009, page 26

38. ATCO also pointed to the Supreme Court of Canada's Calgary Stores Block Decision (Stores Block Decision)¹⁹ which specifically addressed the issue of double recovery, or the fact that allowing the shareholder to retain the proceeds of disposition could be seen as providing the utility with an over collection of depreciation.²⁰ At paragraph 71 of the Stores Block Decision, the Court stated:

...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 throughout the various provinces that utilities boards do not have the authority to retroactively change rates.

3.2.3 Calgary's Position

39. The majority of net salvage costs should be returned to customers. Although Calgary agreed that customers should pay for the costs associated with the assets while they are providing services, the asset mix of ATCO is continually changing and, as end-of-life estimates change, so too should the amounts collected/refunded to customers in respect of depreciation and negative salvage. When the depreciation and salvage studies were done by the utility, they did not include a residual value for the base gas as the assumption was that customers would receive the benefit of the base gas prior to the asset being fully decommissioned. As the assumption now appears incorrect, the value of the base gas at the end of the life of the asset should be determined. Taking base gas into account, the retirement of Carbon will result in a positive salvage amount signifying that ATCO has over collected salvage costs, which thus should be refunded to customers.²¹ Calgary concluded that the Commission should direct ATCO to calculate the amounts collected as salvage on each Carbon related asset account, the amounts related to retirements or abandonment charged to those accumulated depreciation accounts, the Asset Retirement Obligation at the Adjustment Date and the value of the base gas at the Adjustment Date.²²

3.2.4 Commission Findings

40. Order U2005-133 preserved the status quo as it related to rate base, inclusion of forecast operation and maintenance cost, and riders for ATCO until the Board determined otherwise. Order U2005-133 on page 2, provides in part:

(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.

¹⁹ *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140

²⁰ ATCO Argument dated March 20, 2009, pages 24-26

²¹ Calgary Argument dated March 20, 2009, pages 11-13

²² Calgary Argument dated March 20, 2009, page 13

41. The question about the legality of inclusion in revenue requirement of the costs and revenues associated with Carbon was tied to the outcome of the Board's consideration of the jurisdictional questions relating to the asset. ATCO's responsibility to justify and support Carbon related costs in rate cases after the issuance of Order U2005-133, and while the jurisdictional issues were being considered, did not change. Similarly, interveners had the opportunity to test the reasonableness of those costs in rate cases considered during this period.

42. This understanding of the effect of Order U2005-133 is evident in the 2008-2009 GRA Phase I decision, Decision 2008-113. At page 96, the Commission commented on the inclusion of abandonment costs using deferral account treatment as follows:

Consequently, as with the Carbon Storage matters discussed elsewhere in this decision, the Commission considers that the *status quo* should be maintained, in this case, pending resolution of the above noted proceedings. Therefore, AG is directed to account for these abandonment costs using the current deferral account treatment. On this basis the Commission approves AG's forecast production and abandonment costs.

In addition, the Commission noted at page 119:

The Commission notes that in Interim Order [U2005-133](#) (made final in Decision [2007-005](#)) and in Decision 2006-004, it provided directions to AG in relation to Carbon Storage, such that carbon storage facilities and associated producing properties would continue to be part of rate base, and all operating expenses, working capital, depreciation, taxes, return and other related costs would continue to be included in revenue requirement. Associated production and storage riders and charges would also continue in place. (footnotes omitted)

43. The Commission considers that a determination of an Adjustment Date also determines the date for finalizing rates with respect to the previously approved costs and credit riders associated with Carbon.

44. The Commission agrees with ATCO that directing a refund of amounts collected in respect of approved rates would be retroactive ratemaking. The amounts to be included in rates were considered to be just and reasonable at the time they were approved, based on the assumptions and evidence before the regulator at that time. Parties had the opportunity to object to the recovery of depreciation amounts and negative net salvage amounts or to challenge the assumptions or methodology employed in the supporting studies at the time. Subject to the resolution of the jurisdictional matters related to Carbon the amounts to be included in rates (other than lease fee amounts payable by Midstream for the 2005/2006 storage year and subsequent years) were considered as settled and there is no basis to re-open them.

45. Therefore, subject to the settlement of any outstanding amounts related to the lease fee amounts payable by Midstream, ATCO's rates and revenue requirements as they relate to Carbon and Riders G, H and I should be considered final for 2005 and for the period up to October 10, 2006.

3.3 Third Preliminary Question

46. The third Preliminary Question is:

Should the net amount to be potentially recovered by AGS from ratepayers in respect of the Carbon assets be determined on the basis of the actual cost of service incurred by AGS in respect of the Carbon assets or should it be determined on the basis of the forecasted cost of service for the Carbon assets included in the approved revenue requirement?

3.3.1 ATCO's Position

47. ATCO submitted that the purpose of Order U2005-133 was to maintain the status quo of Carbon with respect to the calculation of the cost of service and collection of revenues from leasing the storage facility. Order U2005-133 on page 2, provides:

- (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.
- (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.

48. Given that costs for Carbon were prepared on a forecast basis and storage revenues from Carbon were collected and credited to customers on an actual basis, these mechanisms should be the ones utilized respectively in making any adjustments back to the Adjustment Date.²³

49. ATCO also argued in its Reply Argument that changing the methodology for the determination of Carbon costs to an actual cost basis would result in customers actually paying ATCO \$1.1 million more if the Adjustment Date was April 1, 2005.²⁴

3.3.2 Calgary's Position

50. If the Adjustment Date decided by the Commission is a past date, as opposed to the date that the Commission approves a section 26(2)(d) application, Calgary submitted that the adjustment should be calculated using the actual storage revenues credited to customers and the actual cost of service amounts billed to customers, which is a function of actual throughput, not the approved forecasted costs.²⁵

3.3.3 Commission Findings

51. The purpose of Order U2005-133 was to preserve the status quo, including the methods used in determining and collecting the Carbon cost of service costs and in determining the storage revenue credit riders. It is consistent with the intention of Order U2005-133 and with the intervening rate decisions, to unwind events back to the Adjustment Date using these same

²³ ATCO Argument dated March 20, 2009, page 30

²⁴ ATCO Reply Argument dated March 30, 2009, page 18

²⁵ Calgary Argument dated March 20, 2009, pages 14-15

methods. 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 considers that any adjustments should be applied using the same methods. It would be inconsistent to calculate costs and revenue credits one way prior to the Adjustment Date and a different way after that date.

52. Given the Commission's determination that October 10, 2006 is the Adjustment Date, ATCO is directed to file, by July 10, 2009, an update to the proposed Carbon recovery rate rider calculations assuming a start date of November 1, 2009, using the Adjustment Date of October 10, 2006. ATCO should clearly indicate all calculations and assumptions made, the time period for collection and the interest rate it proposes to use. Additionally, ATCO is directed to file by July 10, 2009 evidence with respect to the finalization of all remaining placeholder amounts relating to the lease or operations of Carbon by ATCO Midstream up until the Adjustment Date.

4 RULING ON UCA MOTION

53. The Commission will now consider the relief requested by the UCA in the UCA Motion in light of its findings in respect of the Preliminary Questions. The UCA requests the Commission to direct ATCO to provide supplemental responses with respect to certain UCA IRs.

UCA-AG-10(b) and (f)

54. In UCA-AG-10(b) and (f) the UCA made the following requests:

(b) Provide for the period April 1, 2005 through June 30, 2008 the actual volumes by month by rate Schedule, 1, 3, 5 and 11 and 13 where applicable, and the actual rates used and the amounts actually credited to customers through Riders G, H and I for the July 11, 2008 Application, Schedule 1 and the January 15, 2009 Application, Schedule 7.

(f) Provide for the period July 2008 through December 2008 the actual volumes by month by rate Schedule, 1, 3, 5 and 11 and 13 where applicable and Low Use and High Use where applicable and the actual rates used and the amounts actually credited to customers through Riders G, H and I.

55. In the Commission's February 20, 2009 ruling, AGS was directed to file the supporting calculations showing the actual volumes and rates that were utilized in determining Rider G, H and I on a monthly basis for the periods referenced in part (b) and (f) of the IR. No further data respecting monthly information by rate classes was required.

56. In its response dated February 24, 2009 ATCO stated:

(b) ATCO Gas has provided the actual rates that were used for the Carbon riders and production and storage charge in the response to UCA-AG-8(e), which are the approved rates as provided on ATCO Gas' website. The Rider amounts on Schedule I are not calendarized (ie they exclude unbilled estimates) and therefore each month's rider amount would be a combination of so many days of throughput at one rider rate and so many days at a different rider rate for each billing cycle. Billing adjustments

would also impact the monthly rider amount that has been reported. It is therefore not possible to provide the information requested.

(f) Please refer to the response to part (a) and (b) of this question.

57. On March 2, 2009 ATCO further responded:

With respect to UCA-AG-10, ATCO Gas has provided the only throughput information that it has available to it. The forecast throughput approved by the Commission for the 2005 – 2007 GRA can be found in Schedule I of Appendix A. The actual throughput for this same period of time can be found in UCA-AG-26. The 2008 annual forecast, actual and normalized throughput and the 2009 annual forecast throughput can be found in UCA-AG-12(a) Supplemental Attachment. The monthly forecast throughput for 2008 can be found in Tab 7.6 of ATCO Gas' 2008/2009 GRA compliance filing. The 2009 monthly forecast throughput can be found in Appendix A. No other throughput information exists. The Commission acknowledged in its ruling that "AGS does not have the ability to provide the monthly information at different rates".

58. Given the Commission's findings in Section 3.1.4 of this Decision, the Commission considers that the scope of the Carbon credit riders and the underlying revenues and costs that remain in dispute are limited to the period between the Adjustment Date of October 10, 2006 up to the date on which the riders were suspended in Order U2008-213, which would thus preclude a portion of the information requested. The Commission notes that AGS has provided the actual consumption amounts requested in UCA-AG-10(b). On further review of the information requests, the Commission considers that the UCA has not adequately supported to the Commission's satisfaction the reasons for the level of detail it requested in respect of monthly volumes by rate class. Additionally, ATCO has stated that it has provided all of the throughput information available. Consequently, the Commission will not accede to the UCA request for a direction to provide the additional information.

UCA-AG-11(a) and (c)

59. In UCA-AG-11(a) and (c) the UCA made the following requests:

- (a) Using the cited rates, provide in Excel format by month by rate schedule, 1, 3, 5, and 11 and 13 where applicable and Low Use and High Use where applicable, the rate, applicable forecast volumes and amount charged to customers for the Carbon Cost of Service for the period September 2007 through June 2008.
- (c) Provide using the same methodology used to develop the Carbon Storage and Production Rider rates of \$0.12 or \$0.121 equivalent rates by month for the period April 1, 2005 through August 2007 showing all calculations in Excel format accompanied with a full explanation and description of the derivation of the monthly rates.

60. In the Commission's February 20, 2009 ruling, AGS was directed to respond to 11(a) and 11(c).

61. In its response dated February 24, 2009 ATCO stated:

- (a) ATCO Gas does not understand what forecast volumes it is to use for this calculation or the relevance of the calculation requested. Please refer to part (b) of this response

as to what information ATCO Gas believes is pertinent to this proceeding with respect to the identification of the revenue requirement related to the Carbon assets.

- (b) ATCO Gas does not understand the relevance of the information being requested. The Commission approved the revenue requirement forecast for the years 2005 – 2007 including the Carbon assets, despite ATCO Gas’ determination that those assets were not required for the provision of utility service. While a production and storage charge rate was approved in the 2007 Phase II proceeding, it did not commence until September 1, 2007, and in the year 2008, it would not have reflected the 2008 forecast revenue requirement related to Carbon (because it was based on 2007 information). Furthermore, ATCO Gas was required to assume the forecast risk related to the recovery of Carbon costs. Therefore, the appropriate calculations related to the removal of the Carbon assets from utility service need to be based on the 2005 – 2007 approved revenue requirements, and the 2008/2009 forecast revenue requirements related to the Carbon assets, which ATCO Gas has provided. ATCO Gas only included these assets in its revenue requirement for those years under compulsion of Order U2005-133, the appeal of which the Court of Appeal has allowed. Finally, as a result of billing adjustments that occur, ATCO Gas is unable to perform the calculations requested. Please refer to UCA-AG-10(b) for additional information related to this.
- (c) The production and storage charge rate that commenced on September 1, 2007 was based on the approved 2007 Cost of Service Study. ATCO Gas does not have an approved cost of service study for each month in the period April 1, 2005 – August 31, 2007 and is therefore not able to provide the requested information, which ATCO Gas notes is not relevant to the matters before the Commission in this proceeding, as discussed in part (b) of this response.

62. In its letter dated March 2, 2009 ATCO further responded:

Regarding UCA-AG-11(a), the Commission indicated the following:

The UCA clarified that 11(a) is requesting the forecast volumes initially utilized by AGS for the Carbon Cost of Service.

ATCO Gas provided this information in the UCA-AG-11(a) Supplemental Attachment.

Regarding the development of 29 monthly Production and Storage charges the UCA requested of ATCO Gas in UCA-AG-11(b), ATCO Gas has indicated that it would need to develop a Cost of Service study for each of the years 2005 and 2006 in order to do this.

63. In light of the Commission’s finding in Section 3.3.3 of this Decision, the Commission now considers that ATCO’s responses to UCA-AG-11(a) and (c) are adequate.

UCA-AG-12(a)

64. In UCA-AG-12(a) the UCA requested the actual number of customers by rate schedule at December 31, 2004, 2005, 2006, 2007 and 2008 and those forecast for 2009, 2010 and 2011 and corresponding consumption for the same years.

65. In the Commission’s February 20, 2009 ruling, AGS was directed to provide forecast 2009-2011 customer and throughput information.

66. Based on a review of responses filed by ATCO, the Commission is of the view that ATCO has provided the forecast throughput for 2009-2011 in UCA-AG-11(c) and provided forecast customer information in UCA-AG-12(a) for 2009, but has not provided the forecast customer information for 2010 and 2011. Therefore, ATCO is directed to file the forecast customer information for 2010 and 2011 by July 10, 2009.

5 PROCESS SCHEDULE

67. In light of the within Decision on the Preliminary Questions and on the UCA Motion, the Commission considers it procedurally fair to allow interveners an opportunity to file written evidence on the remaining matters to be determined by the Commission in this proceeding as provided for in the Final Issues List established in Decision 2009-004. Accordingly, the Commission has established the following procedural schedule to complete the written evidentiary portion of this Proceeding:

Additional Information and Response to UCA-AG-12(a) from ATCO	July 10, 2009, 4 PM
Intervener Evidence (if any)	July 16, 2009, 4 PM
Information Requests on Intervener Evidence	July 24, 2009, 4 PM
Information Responses on Intervener Evidence	August 5, 2009, 4 PM
Rebuttal Evidence	August 25, 2009, 4 PM

In addition, the Commission has set aside **September 14-15, 2009** in the Commission's Edmonton offices as tentative dates for an oral hearing if necessary. In the event that intervener evidence is filed, Parties shall advise the Commission on or before **August 31, 2009** if they consider an oral hearing to be necessary. In the event that intervener evidence is not filed, parties shall advise the Commission on or before **July 20, 2009** if they consider an oral hearing to be necessary. In the event that an oral hearing is not required, the Commission will proceed directly to written argument and reply argument.

6 ORDER

68. IT IS HEREBY ORDERED THAT:

- (1) ATCO Gas is directed to provide further evidence as noted in paragraph 52 of this Decision.
- (2) ATCO Gas is directed to provide a further response to AG-UCA-12(a) as noted in paragraph 66 of this Decision.

Dated in Calgary, Alberta on June 26, 2009.

ALBERTA UTILITIES COMMISSION

(original signed by)

Willie Grieve
Chair

(original signed by)

N. Allen Maydonik, Q.C.
Commissioner

(original signed by)

Tudor Beattie, Q.C.
Commissioner

APPENDIX 1 – PROCEEDING PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative (APPLICANTS)
ATCO Gas South (ATCO) L. Smith, Q.C.
BP Canada Energy C. Worthy
The City of Calgary (Calgary) B. Brander P. Quinton-Campbell
Public Institutional Consumers of Alberta (PICA) N. McKenzie
Office of the Utilities Consumer Advocate (UCA) J. Bryan, Q.C.

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