

ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

APOLLO GAS INC. COMPLAINT AGAINST NORTHWESTERN UTILITIES LIMITED AND ATCO GAS AND PIPELINES LTD. OPERATING AS ATCO GAS WITH RESPECT TO TERMINATION OF BILLING SERVICES

**Decision 2000-10
Application No. 990494
File No. 8060-A3-1**

1 INTRODUCTION

The Alberta Energy and Utilities Board (the Board) received a letter of complaint dated November 9, 1999, from Apollo Gas Inc. (Apollo) respecting the decision of Northwestern Utilities Limited and ATCO Gas and Pipelines Ltd., collectively known as ATCO Gas (ATCO), to cease providing billing and collection services for Apollo's customers effective February 1, 2000. Apollo requested the Board investigate the matter and require ATCO to provide consolidated billing services for Apollo on the terms and conditions that the Board determined to be fair.

In its written submissions, Apollo elaborated on the relief it is seeking from the Board:

1. order ATCO to continue to provide consolidated billing and collection service for ABMs; and
2. order ATCO to implement an unbundling of the rates charged by ATCO to separately identify metering, billing, collection, bad debts and other similar costs to allow for greater flexibility for competitors to ATCO. This should be done in a manner so as to facilitate a methodical transition period to deregulation and to proceed with the unbundling of rates charged by ATCO to permit competition to services provided by ATCO, including, but not limited to, billing and collection service costs.

Notice of Hearing was published in the major newspapers in Edmonton and Calgary on January 18, 2000. Notice was also directly served on interested parties. A hearing was convened on February 9 and 10, 2000, in the Board offices in Calgary, before T.M. McGee, M.J. Bruni, Q.C. and R.D. Heggie sitting as the Board Panel. A list of those who appeared at the hearing is contained in Appendix A to this Decision.

Recognizing that a hearing and decision could not be achieved by February 1, 2000, the Board requested comments from interested parties on whether the February 1 deadline for termination of consolidated billing should be extended. ATCO responded by agreeing on a without prejudice basis to continue to provide billing and collection services until March 1, 2000.

The question of the Board's jurisdiction to hear and determine the complaint by Apollo was raised early in the proceeding. The Board determined that this important question should be dealt with as a preliminary matter at the outset of the hearing. In light of submissions raised

during the jurisdictional part of the hearing, the Board determined that it needed to hear evidence as to whether the market for billing and collection services was competitive. The evidentiary portion of the hearing was held on February 10, 2000, after which, the proceedings were adjourned sine die.

2 BACKGROUND

ATCO is a gas utility within the meaning of the Gas Utilities Act (GUA) and enjoys a monopoly to deliver gas to customers in its franchise areas. ATCO also prepares and collects bills for the gas delivered to its customers.

Until fairly recently, the Board fully regulated all aspects of the distribution of natural gas in Alberta. Direct sales to industrial customers did commence in the late 1970s, but ATCO does not provide billing services for companies providing direct gas sales to these customers. Then, in 1995, pursuant to amendments to the GUA, the Government of Alberta enacted the Gas Utilities Core Market Regulation (Core Market Regulation) allowing core market consumers, who are essentially residential and commercial customers, to purchase natural gas directly from marketers. The marketers are sometimes termed agents, brokers or marketers (ABMs) and Apollo is one such ABM. ABMs are not gas utilities within the meaning of the GUA. Through this new legislative scheme, the government has created a market for the sale of natural gas to core market consumers in Alberta. This new competitive market was previously part of the natural monopoly enjoyed by ATCO.

In order to facilitate direct sales of natural gas to consumers, ATCO was directed to file for approval by the Board, rates, terms and conditions of service that would allow ABMs, through various options, to deliver natural gas to their customers. The Board considered those applications in Decision U96052 (the Core Market Decision). In that proceeding, no party raised the issue and the Board, therefore, did not consider or comment on how billing services should be provided for those customers pursuing direct gas supply through an ABM.

ATCO, however, voluntarily entered into certain Billing and Collection Service Agreements with Apollo commencing in 1998 (the Agreements). ATCO did not submit the Agreements to the Board for its approval.

Pursuant to the Agreements, ATCO prepares and delivers to Apollo's customers consolidated bills that include both the delivery charges levied by ATCO and the cost of the natural gas supplied by Apollo. ATCO charges Apollo a fee for this billing and collection service. Problems arose between ATCO and Apollo as a result of which ATCO gave notice of its intention to terminate the Agreements in accordance with their terms. ATCO's notice gave rise to Apollo's complaint, in which Apollo has asked that the Board direct ATCO to continue providing billing and collection services, for a fee, on its behalf.

3 ISSUES

The key question raised by the complaint is whether the Board has jurisdiction to order ATCO to provide billing and collection services to Apollo. In light of the submissions and evidence heard during the hearing, the Board believes that two related questions are bound up in this issue, which must be dealt with separately.

3.1 The Board's jurisdiction to regulate the relationship between a gas utility and participants in a fully competitive market

The first, and broader, question is whether the Board has jurisdiction to regulate the relationship between a gas utility and participants in a fully competitive market.

3.1.1 Views of the Parties

Apollo

Apollo asserted that the Board clearly has both explicit and implicit authority to grant the relief sought by Apollo. In summarizing its submission on jurisdiction, Apollo stated that "the Gas Utilities Act of this province affords you jurisdiction to deal with this application in explicit terms as well as by implication; that your authority in this regard is similar to that exercised by similar tribunals in other jurisdictions; the purpose of your constituent statutes... and your expertise all lead to the inevitable conclusion that the Apollo application falls squarely within your jurisdiction." (Transcript, pp. 16-17)

Apollo pointed to a number of sections of the GUA as providing the Board with explicit jurisdiction, including sections 22, 24, 25, 26.01 and 28. In particular, Apollo stated that Section 26.01 gives the Board the express authority to order a gas utility to provide a service, especially as regards a direct seller supply. While it agreed that ATCO clearly had the contractual right to terminate the Agreements, Apollo contended that the Board still had the power pursuant to Section 26.01 to order ATCO to provide the service contemplated by the Agreements, on whatever terms and conditions the Board deemed to be reasonable.

Apollo also asserted that the Board should review the complaint in light of the current maturity of the natural gas market. It referred to the Core Market Decision, in which the Board affirmed its role in ensuring a level playing field to allow for the development of a truly competitive market for natural gas. In this context, Apollo submitted that the termination of consolidated billing and collection by ATCO would give ATCO an unfair advantage in the sale of natural gas because the added costs and complexities associated with separate billing by both ATCO and Apollo would create a significant impediment to the use of direct purchase services by core market consumers. In addition, Apollo asserted that ATCO is currently billing all system customers for the costs of billing, collection and bad debt. If Apollo were to take over billing

and collection for its customers, additional billing costs would have to be borne by these customers, which would be unreasonable and discriminatory. Further ATCO would continue to receive payment from Apollo customers for services that it was no longer providing, which would constitute a preferential rate or toll. “As a result of the dual billing and the extra costs to be borne by ABM customers and the excess profits to be obtained by the Companies, a distinct market preference and advantage will emerge.” (Exhibit 2, p. 8)

In support of its position, Apollo indicated that consolidated billing and collection by a gas utility on behalf of ABMs, often referred to as “ABC-T Service”, has been approved in other Canadian provinces, including Ontario, Manitoba and British Columbia. In particular, Apollo noted several decisions of the Ontario Energy Board (OEB) respecting ABC-T Service in which the OEB approved this Service. Apollo urged the Board to assume jurisdiction with respect to consolidated billing and collection services for the same reasons as the OEB, namely that this issue “is a matter of practical reality for the benefit of the development of a competitive core marketplace for the supply of natural gas in this province.” (Transcript, p. 37)

ATCO

ATCO submitted that while the GUA gives the Board broad jurisdiction over the activities of ATCO, that jurisdiction only extends to those activities that ATCO conducts as a gas utility. The test for determining whether the Board has jurisdiction over a particular matter depends upon what the Legislature intended the Board to regulate. It was ATCO’s position that the Legislature only intended the Board to have jurisdiction with respect to the monopoly functions of a utility, and not with respect to those activities which are competitively available in the marketplace. ATCO likened the provision of billing and collection services to the sale of natural gas appliances, as both are activities that are otherwise available competitively in the marketplace. Accordingly, the provisions of the GUA cited by Apollo should not be interpreted to give the Board jurisdiction over Apollo’s complaint.

ATCO also stated that Section 26.01 of the GUA should not be viewed as giving the Board the authority to order ATCO to provide billing and collection services. It was ATCO’s submission that this Section only confers authority upon the Board to determine rates and terms and conditions for the transportation of the ABM’s gas through ATCO’s pipes. Indeed, ATCO argued that Section 26.01 actually constrains the Board’s jurisdiction, rather than extending it. Subsequent to the enactment of that provision, there is now an important area relating to the sale of gas by direct sellers over which the Board does not have control. ATCO stated that “to now attempt to bring billing and collection for an unregulated gas sales activity within the scope of active, or within the purview of active regulation by the Board is inconsistent with the spirit and letter of that legislation.” (Transcript, p. 82)

ATCO stated that this argument is supported by the fact that the Board, while establishing terms and conditions for the transportation of natural gas to the core market in the Core Market Decision, did not set regulations with respect to billing and collection services. ATCO also

pointed out that direct sales to industrial customers have taken place in Alberta for a number of years using unregulated billing services.

Similarly, ATCO noted that the Government of Alberta has enacted a regulation with respect to billing in the electricity market. ATCO stated that the mere existence of this Billing Regulation is clear recognition that legislative authority is required to determine a billing model, as opposed to that function falling within the regulatory responsibility of the Board.

With respect to Apollo's reliance on the approach to billing and collection services taken in other provinces, ATCO argued that these examples are unhelpful to the Board given the different regulatory frameworks that exist across the country. In determining its jurisdiction the Board should only look to the Alberta statutes which delineate its authority. In addition, ATCO noted that in these other regulatory arenas the jurisdictional issues were either not raised, or they were unresolved. Finally, ATCO pointed out that the OEB has now classified ABC-T Service as non-utility.

EPCOR

EPCOR contended that the Board has ample jurisdiction to deal with the issues that arise out of the Apollo complaint. In support of this position, EPCOR referred to past case law, where the Courts have stated that the Legislature has given the Board a mandate of the widest proportions to safeguard the public interest.

In addition to the broad implicit authority acknowledged by the Courts, EPCOR also pointed to Section 26.01 of the GUA as giving the Board explicit jurisdiction with respect to the Apollo complaint. "Whether or not the distributor is going to be required to provide billing services, the nature of those services, and whether or not the services and charges for the services are bundled or unbundled are all the subject matter of terms and conditions of service in the context of section 26.1 [sic]" (Transcript, p. 150)

EPCOR asserted that ATCO's decision to terminate billing and collection services for direct sales is contrary to clearly articulated policy of the Alberta Government, as reflected in Section 26.01 of the GUA. EPCOR also submitted that ATCO's termination was contrary to the findings of the Board in the Core Market Decision which was based on Section 26.01. In EPCOR's view, both the Government and the Board have recognized the importance of developing a framework to ensure that customer choice for gas supply is established and that the direct purchase of gas supply is made a reasonable, economical, and viable choice for Alberta consumers. According to EPCOR, the provision of consolidated billing and collection services is an important part of that framework, to ensure that customers are able to make economic decisions regarding direct sales. In EPCOR's view, the establishment of such a framework is definitely for the public convenience and, therefore, should fall within the mandate of the Board.

EPCOR also argued that a determination could not be made as to whether billing and collection services were monopoly (or "utility") services until the evidentiary portion of the hearing.

EPCOR asserted that the lack of availability from ATCO of billing information in the format required to enable ABMs to bill affords ATCO a virtual monopoly over billing and collection services, and hence this service should remain subject to the Board's jurisdiction.

Calgary

Calgary submitted that the Board has jurisdiction over the complaint of Apollo, noting there is a critical difference between the Board's jurisdiction and the exercise of its discretion. Calgary stated that ATCO is clearly the owner of a gas utility as defined in the GUA and that the definition of a gas utility encompasses both physical plant and services. Given that the GUA also provides the Board with broad supervisory powers over the owners of gas utilities, the Board has jurisdiction with respect to the provision by ATCO of billing and collection services to Apollo and other ABMs. In particular, Calgary referred to Sections 25, 26.01, 27 and 28 of the GUA as conferring jurisdiction upon the Board with respect to the complaint.

Calgary also noted that the Courts have consistently held the Board to have a mandate of the widest proportions to safeguard the public interest. According to Calgary, these powers recognized by the Courts extend to all matters respecting gas utilities, not just to those matters which are required for utility operations.

Calgary disagreed with the contention that the Board's jurisdiction was contingent upon billing being found to be a monopoly service. Calgary submitted that the GUA makes no distinction as to whether a service provided by an owner of a gas utility is a monopoly service. "(A)ny suggestion that the Act should be narrowed and interpreted to apply only to monopoly services is, in our view, inconsistent with the scheme of the Act. It is also inconsistent with the Supreme Court cases, which have referred to the Board's mandate of the widest proportion." (Transcript, p. 182)

While a determination as to changing economic and social considerations, including whether or not a service has become competitively available, may impact on how the Board exercises its discretion in a particular case, in Calgary's view, it should have no impact on whether the Board has jurisdiction to decide the matter at all.

Finally, given that ATCO is providing these services using utility assets, the associated costs of which are included in ATCO's regulated revenue requirement, Calgary suggested that billing and collection could not be viewed as an unregulated activity.

The Federation

The Federation pointed to numerous provisions of the GUA as providing the Board with jurisdiction over the complaint. In particular, Sections 22 and 24 were seen as granting the Board very broad jurisdiction over gas utilities in general, while Sections 25, 28 and 26.01 were viewed as giving explicit jurisdiction over the subject matter of the complaint.

With respect to Section 26.01 of the GUA, the Federation asserted that the self-evident intent of this Section was to clothe the Board with all the powers necessary to protect the right of the consumer to obtain a supply of gas from a direct seller. If the Board were persuaded on the basis of the evidence presented to it that the protection of the right of the consumer to obtain a supply of direct sales gas depended upon consolidated billing and collection, then the Board would have the jurisdiction to order this service pursuant to Section 26.01(3).

It was the Federation's submission that "the Board must have and does have the jurisdiction to consider and to determine whether or not the protection of that right requires that the Board grant the relief requested. It may be that in the determination of that issue, a factor to be weighed should be the availability of these services elsewhere, but that does not mean that you do not enter into the inquiry." (Transcript, p. 192)

PICA

It was PICA's position that the Board's finding on jurisdiction should be based on principles of public interest, rather than on a close examination of the various sections of the GUA. PICA argued that the Board should find it has jurisdiction based on a large and expansive view of its role with respect to the protection of the public interest.

PICA asserted that the Government, as the elected body chosen to uphold the public interest in its broadest sense, has indicated the intent to move to a more competitive market for natural gas. PICA contended that the Board has a role to foster such competition, as part of its own broad mandate with respect to the public interest. "It is clear...that the Board has a role to play to try and facilitate the move to that competitive situation as quickly and as fairly as possible." (Transcript, p. 197) As part of the Board's role in facilitating the transition to a fully competitive market, PICA considered that the Board should assert its jurisdiction and proceed to hear the merits of the complaint.

AIPA

AIPA also stated that the Board has the jurisdiction to hear the complaint, the major reason being that, currently, both ATCO's sales and transportation rates are regulated. According to AIPA, it therefore follows that all components of the rates, including the billing and collection components, should be regulated.

"In terms of gas, rates remain essentially bundled. With bundled rates, billing and collection remains a regulated activity subject to EUB jurisdiction. In the future, depending on the upcoming Canadian Western decisions and any new government legislation or regulations, the gas retail function may become nonregulated, but that is not the circumstance at this proceeding." (Transcript, p. 203)

CCA

The CCA also considered the Board to have jurisdiction over the complaint, in light of the broad supervisory powers conferred on the Board by the GUA.

It was the CCA's view that the Board has the ability to review a contract entered into by a gas utility in Alberta to ensure the prudence of that contract, especially as the costs and terms associated with such contracts may have an impact on utility rates.

Furthermore, the CCA argued that the Board should not relinquish any of its regulatory control over ATCO until such time as there has been a proper process to "wind up" this regulatory function, either through the promulgation of government policy or through regulatory decisions on unbundling.

3.1.2 Views of the Board

In determining questions of its jurisdiction the Board has generally applied the following key principles. They are similar to those expressed in the judicial review cases cited by various participants in the proceeding, although stated somewhat differently.

1. The starting point for an analysis of the Board's jurisdiction is the relevant enabling legislation.
2. The legislation is detailed and delineates the Board's jurisdiction by express terms.
3. The specific provisions of the legislation conferring jurisdiction on the Board should be examined in light of the purpose of the legislation, the reason for the Board's jurisdiction, the area of expertise of the Board and the nature of the problem before the Board.

The applicable legislation governing the Board's jurisdiction in this matter is the GUA. Apollo and the hearing participants other than ATCO, referred the Board to a number of provisions of the GUA said to confer jurisdiction over Apollo's complaint. These included Sections 22, 24, 25, 26.01 and 28.

Section 22 of the GUA empowers the Board with general supervisory jurisdiction over gas utilities. Section 24(1) provides the Board with a general investigatory power over "any matter concerning a gas utility". Section 28 authorizes the Board to fix "just and reasonable" standards, practices or services to be followed by gas utilities and also empowers the Board to require a gas utility to supply and deliver gas on the terms and conditions imposed by the Board. In all cases, however, the Board's power is limited to a "gas utility" as defined by Section 1(g) of the GUA:

- (i) any gas pipeline,
- (ii) any system, works, plant, pipes, equipment or service for the production, generating, conveying, transmission, transporting, delivery, furnishing or supplying of gas by retail or wholesale, either directly or indirectly, to or for the public or any member of the public, whether an individual or corporation....

That definition and the powers and duties conferred on the Board in terms of that definition must be interpreted in light of the purposes of the GUA and the Board.

The purpose of the Board under the GUA has been summarized by Courts on several occasions. The Board is charged with achieving a balance in the public interest between a monopoly, where a monopoly is accepted as necessary, and protection of the consumer provided by competition.¹ More specifically, the purpose of the GUA and the Board is to balance the right of the monopoly to receive fair compensation with the need to protect consumers (or ratepayers) from the abuse of the utility's monopoly powers. The provisions of the GUA giving the Board jurisdiction to regulate property, systems, services and rates of a gas utility, such as those referred to by the hearing participants, must be interpreted in light of this overall purpose.

Although in a general and historical sense, billing and collection services for natural gas sales could be considered part of the monopoly enjoyed by a gas utility, the Board does not believe that where a gas utility such as ATCO contracts on a level playing field to provide these services to an ABM in a fully competitive market, that these services can still be characterized as a "gas utility" function subject to regulation by the Board.

Viewed another way, the question is whether the Board has jurisdiction over every aspect of ATCO's business merely because ATCO is a gas utility. As noted by ATCO, the Board has traditionally not exercised jurisdiction over activities deemed to be "non-basic", or those services which are not monopolistic in nature. The example cited by ATCO was the sale of natural gas appliances. This issue has also been addressed by the Manitoba Court of Appeal in *Greater Winnipeg Cablevision Limited v. Manitoba (Public Utilities Board)* [1979] 2 W.W.R. 82. In that case, the Court considered whether the Manitoba Public Utilities Board had jurisdiction to regulate the amount of rent charged for coaxial cables by public utilities. The Court said at p. 87:

It is common ground that MTS is a public utility within the definition, with respect to its telephone and telegraph services ... It does not necessarily follow that everything done by MTS is subject to the regulatory supervision of the board.

¹ See, for example, *Dome Petroleum Ltd. v. Alberta (Public Utilities Board)* (1976) 2 A.R. 453 (C.A.), affirmed without reasons [1977] 2 S.C.R. 822.

It is possible for an undertaking to be a public utility as defined in the Act for some purposes and not for others.²

In the Board's view, a similar argument can be made in relation to the provision of consolidated billing and collection services by ATCO on behalf of Apollo pursuant to the Agreements. Like the renting of coaxial cables by the telephone system in the Manitoba case, ATCO's provision of billing and collection services would, in the absence of other factors, be considered by the Board to be outside the scope of ATCO's activity as a gas utility. They can, therefore, only be subject to the jurisdiction of the Board if the gas utility's ratepayers are impacted negatively as a result of the provision of the service.

Apollo says, however, that Sections 25 and 26.01(3) are directly applicable in this case to confer jurisdiction on the Board.

With respect to Section 25 of the GUA, Apollo argues that ATCO's withdrawal of billing and collection services through termination of the Agreements will result in an unduly discriminatory rate as against those consumers exercising their right to a direct supply of gas from Apollo. That is because, Apollo says, the cost of providing billing and collection services is a component of the delivery charge that is included in the bills ATCO sends both to its own customers and those of Apollo. If ATCO is allowed to terminate the Agreements and discontinue its provision of billing and collection services in relation to the supply function, Apollo says that its customers will effectively be paying twice for billing and collection service.

Again, the Board considers that Section 25 must be interpreted in light of the overall purpose of the GUA discussed above. In the Board's view, Section 25 confers on the Board jurisdiction to ensure that a gas utility does not unduly discriminate between ratepayers so as to give an unduly preferential rate to a specific business, person or rate class. That jurisdiction would be limited to ensuring that whatever rates are in place do not negatively affect the utility's ratepayers. That jurisdiction would not extend, however, to the contractual relationship between a gas utility and an ABM for the provision by the utility of a competitively available service such as consolidated billing and collection.

The Board is charged with ensuring that whatever relationship is entered into between a gas utility and an ABM does not negatively affect ratepayers. The Board considers that Apollo's argument based on Section 25 does raise the issue of rate unbundling, which is beyond the scope of this complaint and should be dealt with in another forum as discussed later in this decision. That argument does not, however, satisfy the Board that it can grant the remedy sought by Apollo in this case in the absence of other compelling factors.

Finally, Apollo says that Section 26.01(3) of the GUA provides the Board with the jurisdiction required in this case. That section confers on consumers a right to obtain a supply of gas from a

² The Board notes that this decision of the Manitoba Court of Appeal was not considered by the same Court in its later decision in *Centra Gas Manitoba Inc. v. Manitoba (Public Utilities Board)* [1997] 6 W.W.R. 301 relied on by Apollo.

direct seller and, to that end, requires a gas utility to transport gas on its distribution system for delivery to consumers on behalf of ABMs. Gas utilities can be required to transport direct sales gas on “terms and conditions” imposed by the Board. Apollo argues that the Board’s power to impose terms and conditions includes the power to order a gas utility to provide consolidated billing and collection services on behalf of an ABM. This is required, according to Apollo, because absent that service, ABMs will not be able to compete in the deregulated market of gas sales.

It is clear to the Board that when the GUA came into force the Legislature would not have contemplated the development of a competitive market for some aspects of traditional monopoly businesses like natural gas supply and related billing and collection services. Through the introduction of section 26.01 of the GUA, the legal foundation was laid for the direct sale of gas by ABMs to core market consumers. However, for the following reasons, the Board concludes that Section 26.01(3) does not provide assistance in the manner suggested by Apollo in this case.

First, the Board does not consider that the right of the consumer to obtain a supply of gas from a direct seller was intended by the Legislature to be a right of access to a competitive market in a general sense. In other words, Section 26.01(3) presumes the existence of a market in which direct sellers agree to supply gas to consumers. Where a consumer has agreed to obtain a supply of gas from a direct seller, the right that Section 26.01(3) confers on the consumer is the right to receive the supply. For that purpose, a gas utility is required to transport the direct supply of gas by its distribution system. The Board’s power to impose terms and conditions on the distributor must be read in this light. The Board would need to imply that in directing gas utilities to transport direct sales gas, the Legislature also intended that the gas utility could be ordered to provide billing and collection services on behalf of the ABM. Having regard to the Board’s interpretation of the right conferred by Section 26.01(3) and the power to require distributors to transport direct sales gas, the Board considers its jurisdiction to set “terms and conditions” to be limited to the provision by a gas utility of transportation service on its distribution system to ABMs. Competitively available billing and collection services would not fall within the provision of transportation services as contemplated by Section 26.01(3).

Some of the participants urged the Board to adopt the approach to consolidated billing and collection services (or ABC-T Service) taken in other provinces such as Ontario, Manitoba and British Columbia. The Board does not find the experience in these jurisdictions to be helpful in Alberta, particularly because the regulators in those provinces have not explicitly addressed their own jurisdiction to regulate consolidated billing and collection services in the natural gas sales market.

The Board commenced this part of the discussion with the question of whether the Board has jurisdiction to regulate the relationship between a gas utility and participants in a fully competitive market. The Board considers that, with respect to Sections 22, 24, 25 and 28 of the GUA, it has jurisdiction to regulate this relationship only to the extent that it affects the gas utility’s ratepayers. Section 26.01 does authorize the Board to regulate the provision of transportation services required by ABMs to deliver gas to their customers, but this would not authorize the Board to regulate consolidated billing and collection services for ABMs in a fully

competitive market. In the result, the Board concludes that, subject to what is set out later in this Decision, it does not have a general jurisdiction in a fully competitive market to require ATCO to continue to provide Apollo with consolidated billing and collection services as requested in the complaint, absent an impact on ratepayers.

Having said that, the Board recognizes that competition in the direct gas sales market is a desirable end. That is implicit in the right to obtain a direct sales gas supply over a distributor's system conferred on consumers by Section 26.01(3). Consistent with the overall purpose of the GUA, if the Board is to have any jurisdiction in relationship to Apollo's complaint, therefore, it must be satisfied that ATCO is in some way taking advantage of its monopoly power (i.e. its power as a "gas utility") to impede the achievement of a level playing field for the transition to a fully competitive market.

In the Board's view, the question then becomes whether the billing and collection services market in relation to the supply of natural gas is a competitive market or whether there are factors tending to establish that the billing and collection function is still subject to the monopoly power of the gas utility. That leads the Board to consideration of the second issue, which came to light only during the course of submissions on the broader jurisdictional question just discussed.

3.2 The Board's jurisdiction to consider the effects of a gas utility on the development of competitive markets

The Board has concluded above that it has jurisdiction to regulate the relationship between a gas utility and participants in a fully competitive market to the extent that the relationship impacts the utility's ratepayers. The Board has also concluded, however, that it lacks jurisdiction to directly regulate commercial relationships in a fully competitive, deregulated market, absent impacts on ratepayers. These conclusions assume fully competitive, deregulated markets in natural gas marketing and sales, including the billing and collection services function. With respect to the latter function, the Board heard submissions during the jurisdictional argument suggesting that a competitive market did not exist due to the control exercised by ATCO over customer information necessary for ABMs either to carry out their own billing and collection or to contract that function to a third party service-provider. Therefore, the Board determined that it required evidence on this specific question in order to determine its jurisdiction with respect to the Apollo complaint.

3.2.1 Views of the Parties

Apollo

Apollo submitted that the mere existence of billing service providers and billing software packages in the province does not create a competitive market for billing and collection services. Rather, Apollo argued that the billing and collection services market was not currently

competitive, due to the lack of adequate information to enable ABMs to efficiently and effectively bill their customers.

Apollo stated that ATCO had only agreed to provide it with data regarding current consumption. According to Apollo, it also requires information respecting consumption history, billing history, payment history and the customer's credit history in order to properly carry out the billing and collection function. It was Apollo's position that "all the information that ATCO currently uses to manage their customers and bill our customers... would be required by us to effectively manage the billing and collection and customer service and customer care side of our business." (Transcript, p. 247) For example, Apollo contended that it was important to have billing history data in order to respond to customer inquiries concerning comparative usage from one year to another. Similarly, collection and billing history was viewed as necessary to enable Apollo to know its customers in order to ensure that good customers are not being forced to subsidize those with bad payment histories. Apollo asserted that its customer contracts authorize the release of all such information by ATCO.

Although Apollo noted ATCO's willingness to discuss whether requested information was reasonable, necessary and practical, it doubted whether an agreement for disclosure would be possible. Likewise, Apollo stated that it was not reasonable to expect Apollo to wait for legislation requiring ATCO to disclose this information.

Absent this billing information, the only third party able to provide adequate billing and collection services for Apollo would be ATCO Singlepoint, an unregulated affiliate of ATCO. Apollo asserted that ATCO Singlepoint is the only other entity in Alberta, apart from ATCO itself, that has access to the necessary billing information for Apollo's purposes. This would see customers continuing to receive two bills, a scenario which, according to Apollo, hinders competition.

Furthermore, Apollo indicated that there would be a high cost involved if it were to implement an independent billing system, with estimated costs of up to \$800,000. Apollo submitted that under the current circumstances in Alberta, the most effective, least-impact billing solution would be to have ATCO continue to provide consolidated billing and collection service.

Apollo concluded that the Board's jurisdiction was made even clearer on the basis of this evidence.

ATCO

ATCO submitted that there was overwhelming evidence to show that billing and collection services are competitively available in the Alberta marketplace. ATCO offered evidence of a lengthy list of billing and collection service providers and software packages. It also gave evidence of municipal utilities and other gas utilities having either contracted out their billing and collection services to third party providers or having used or adapted commercially available software packages to carry out their own billing. For example, ATCO stated that AltaGas

Utilities Inc., a gas utility with approximately 55,000 customers, has been able to adapt the Oricom package for its billing purposes. In light of this evidence as well as Apollo's own evidence that it had consulted three potential service providers, ATCO concluded that there is clearly a competitive market for billing and collection services.

ATCO also stated that it was willing and able to provide whatever information is required by ABMs to enable them to "put their bills out."

"We are prepared to make available whatever information people reasonably need to put their bills out, no question. We are not trying to withhold information for any reason of corporate advantage or anything. We are prepared to make information available. But as Ms. MacDonald indicated, there are practical issues around the exchange of information, and these practical issues often involve cost and time. So what we want to do in this discussion that we tried to have with EPCOR and Apollo, is find out what they really need and what is the practical amount of information that they need, and we will provide that, no question."
(Transcript, p. 341)

However, ATCO indicated that it would not be willing to release information about a customer's credit history or payment history without the customer's express consent.

ATCO also questioned the necessity of some of the other types of information requested by the ABMs. For example, ATCO suggested it should be sufficient for an ABM to know the customer's consumption for the billing period, as opposed to obtaining actual meter readings. Similarly, ATCO saw no need to supply information respecting franchise tax payments, as requested by EPCOR, as ABMs would not be required to pay such charges.

ATCO also raised a concern about whether the current billing technology would permit the transfer of all the data requested. It indicated that there would likely be both time and cost involved in building a system that would enable all the requested information to be transferred. However, ATCO asserted its willingness to work with the ABMs to transfer all necessary, reasonable and practical information. While this would take some time, it should not be viewed as a barrier to competition.

ATCO disagreed that its affiliate, ATCO Singlepoint, was being accorded preferential treatment. ATCO stated that ATCO Singlepoint was the "servant" of ATCO and was given the information that ATCO needed them to have in order to prepare and send out bills and conduct the "customer service centre" function also handled by ATCO Singlepoint. ATCO submitted the information was not available for any other purpose and therefore no preferences or advantages were conferred upon ATCO Singlepoint in the market insofar as billing and collection services were concerned.

EPCOR

EPCOR indicated that it has the same billing arrangements with ATCO as does Apollo. Notwithstanding ATCO's assurances that ATCO would provide whatever information may be reasonably necessary for ABMs to provide competitive billing services, EPCOR stated that necessary information had been requested and had been refused.

More specifically, EPCOR indicated that it had requested meter data (including start and end meter reads), historical consumption information, customer information and information as to whether the bill was actual or estimated. Additionally, EPCOR would like billing determinants provided to enable it to calculate ATCO's regulated charges, including franchise tax amounts. However, EPCOR did not request or require credit history, as did Apollo. EPCOR asserted that ATCO had only agreed to provide information respecting the billing period and the consumption for that period in gigajoules. This limited information was not sufficient to enable EPCOR to be competitive. More specifically, EPCOR noted that customers have a legitimate interest in verifying consumption against meter readings. EPCOR also suggested that customer consumption patterns are useful for marketing purposes. EPCOR concluded that to be effective within a competitive market and to provide the level of service that a customer would expect in that market, it would require "all the information that ATCO currently has in order to produce a bill which would detail the entire charges for the gas service provided to that customer." (Transcript, p. 288)

EPCOR went even further, contending that it would not be able to fully compete with ATCO, even were the information requested to be provided. EPCOR asserted that there will not be a competitive billing model until such time as ABMs are in a position to provide their customers with one bill, similar to that currently provided by EPCOR to its industrial customers. EPCOR argued that billing should remain a regulated monopoly function until such time as an ABM is able to provide the customer with a consolidated bill.

Calgary

Calgary submitted that it was clear from the record that ATCO had refused to supply ABMs with anything except the most basic gas consumption data. Calgary suggested this led to different classes of customers being treated differently. Calgary indicated that in the industrial and commercial market, the consumer only sees one bill from its supplier for both delivery and commodity supply. Calgary stated that ATCO Singlepoint, an ATCO affiliate, received preferential treatment in that it received all of the data that ATCO denies ABMs. Consequently Calgary suggested that Singlepoint was able to use this data to provide a "combined billing" for gas and municipal services in Red Deer, an option not available to the ABMs.

Furthermore, Calgary noted that ATCO has "spent tens of millions of customer dollars designing a new billing system". (Transcript, p. 439) Calgary stated that it is clearly unreasonable for ATCO to allow an "unregulated affiliate to use that billing system and the data", and yet to suggest that anyone who wants to send out a bill should "fire up their desktop PC or look in the

Yellow Pages to set up a utility billing service.” (Transcript, p. 439) Calgary submitted that was not what ATCO had done, nor was it what any of the other gas utilities in this country would do.

Calgary suggested that ATCO’s sudden offer to provide reasonable, necessary and practical data to ABMs should not divert the issue. Calgary stated that it was difficult to define what ABMs considered necessary. Calgary submitted that the data issue missed the simplest solution which was for ATCO to use the multi-million dollar billing system that customers have been paying for to provide the requested billing service.

The Federation

The Federation stated that the evidence supported the view that there is a competitive market for billing and collection of accounts. However, the Federation submitted that the database access was regulated and the Board has jurisdiction over it. The software and the data used to create that database were included in the rate base assets, thereby giving the Board jurisdiction over any access to that database and the costs of that access. Whether access should be ordered was an exercise of the Board’s discretion that could only be considered after a full hearing on the merits.

3.2.2 Views of the Board

EPCOR and Apollo argued that access to customer information is a critical component of an effective, competitive retail billing and collection service market. The Board agrees that access to comprehensive customer information will facilitate a level playing field in a competitive billing and collection services market.

Although with current consumption data alone, ABMs would be in a position to bill their customers, the Board agrees with the ABMs that more comprehensive information is necessary in order for them to offer competitive customer service. For example, Apollo indicated that in order for it to compete effectively it was critical that historical consumption data be available so Apollo could respond to billing inquiries from its customers. In addition the Board is persuaded that customers have a right to expect sufficient information on their bill to allow them to confirm its accuracy. Such information would include meter readings and whether the bill is based on actual or estimated consumption.

Specifically, the Board considers that ABMs are entitled to the following types of information:

- customer information, including name, address and telephone number;
- billing history (including consumption, billing and payment histories);³

³ The Board understands that under the draft Roles, Relationships and Responsibilities Regulation, retailers will be entitled to historical consumption information for the 12 month period preceding the date of the request for information. Therefore, the Board considers it reasonable to expect ATCO to provide the same information to ABMs if required by them.

- meter readings;
- information as to whether meter readings are actual or estimated; and
- information regarding the heat content of gas to generate consumption data in gigajoules.

To the extent that the scope of any of these items is unclear, the Board expects the parties to work together to clarify what data is required. If necessary, Board staff can assist in delineating the type of customer information to be provided. More importantly, in order to protect customers' privacy, an ABM must have the written consent of the customer to access this information. The Board expects specific protections to be developed by the parties, with the assistance of Board staff, if required.

While the Board is aware that much of this information would be available to customers through ATCO, the Board concurs that it would be an impediment to the development of true competition should ABMs not be in a position themselves to provide customers with the level of service they previously enjoyed as customers of ATCO in relation to the supply function. The Board therefore considers that a level playing field will not exist until ATCO provides equal access to this essential customer information.

The Board concludes that it has jurisdiction to order ATCO to provide this information to ABMs such as Apollo. Utility metering, billing and data operations have been funded by customers who pay the expenses associated with those activities and provide the gas utility with a return on its capital employed for metering and billing service. The Board has a role to ensure that a gas utility service, in this case the provision of customer data, is just and reasonable (GUA, Section 28(c)). The Board considers that its specific oversight of metering, billing and data operations along with its general oversight of gas utilities provide it with sufficient authority to require ATCO to provide customers access to their data through an ABM.

The Board accepts that lack of access to customer data has inhibited the development of a competitive market. Until this information is provided to the ABMs, the Board is prepared to order ATCO to continue to provide billing and collection services to Apollo on the same terms and conditions as contained in the Agreements (other than the right to terminate the Agreements) and to EPCOR in accordance with its arrangement with ATCO (again, other than any right of termination).

3.3 Ancillary Issues

There were two other issues raised by some of the hearing participants that require the Board's consideration.

EPCOR, Apollo and others raised the issue of whether this Board should require the implementation of a one-bill model. EPCOR more specifically asked the Board to adopt the billing model set out for the electric industry in the recently enacted Billing Regulation under the Electric Utilities Act, in which the retailer assumes responsibility for determining the billing

model. The Board notes that the development of the Billing Regulation involved a multi-stakeholder consultation process that took two years to complete. The Board considers that the development of the gas model should be similarly comprehensive. The issues involved have important, wide-ranging impacts and should not be considered in the narrow confines of this complaint proceeding. Therefore, the Board will make no decisions in this regard. However, it will advise the Government of the views expressed by the participants on this important issue.

Finally, both EPCOR and Apollo asked the Board to direct ATCO to unbundle costs relating to retail billing. Given the broad rate-making implications inherent in such unbundling, the Board considers that this issue is more appropriately dealt with in another forum, either through a specific general rate application or a generic unbundling proceeding. The Board further notes that the issue of rate unbundling is currently before the Board with respect to the 1997/1998 general rate application for ATCO Gas and Pipelines Ltd. Consequently, the Board will not address this issue in the context of this complaint proceeding.

4. BOARD ORDER

Having regard to the evidence and argument presented and considered, and having regard to our knowledge and findings herein, the Board hereby orders that:

1. Subject to paragraph 2 of this Order, ATCO shall provide the following information to Apollo, EPCOR and other ABMs (as may be requested by them):
 - (a) customer information, including name, address and telephone number;
 - (b) billing history (including consumption, billing and payment histories) for the preceding 12 month period, as may be required;
 - (c) meter readings;
 - (d) information as to whether meter readings are actual or estimated ;
 - (e) information regarding the heat content of gas to generate consumption data in gigajoules.
2. The information referred to in paragraph 1 of this Order shall not be released by ATCO until appropriate measures to protect the privacy of affected customers have been implemented in accordance with the reasons set out in this Decision Report.
3. Until it provides the information set out in paragraph 1 of this Order, ATCO shall continue to provide consolidated billing and collection services to Apollo on the same terms and conditions as contained in the Agreements (other than the right to terminate the Agreements) and to EPCOR in accordance with its arrangement with ATCO (again, other than any right of termination).

Dated in Calgary, Alberta on February 28, 2000.

ALBERTA ENERGY AND UTILITIES BOARD

T. M. McGee
Presiding Board Member

M. J. Bruni, Q.C.
Acting Board Member

R. D. Heggie
Acting Board Member

APPENDIX A TO DECISION 2000-10

THOSE WHO APPEARED AT THE HEARING

Principals and Representatives (Abbreviations Used in the Decision)

Witnesses

Apollo Gas Inc. (Apollo)
J. H. Smellie, Esq.
A. D. Little, Esq.
J. A. Dubchak, Esq.

G. Jarvis

Northwestern Utilities Limited and
ATCO Gas and Pipelines Ltd. (collectively, ATCO)
L. E. Smith, Q.C.

C.K. Sheard
R. Trovato

EPCOR Energy Services Inc. (EPCOR)
H. D. Williamson, Q.C.

C. MacDonald
C. Kolisniak

City of Calgary (Calgary)
R. B. Brander, Esq.

Federation of Alberta Gas Co-ops Ltd.
& Gas Alberta Inc. (collectively, Federation)
T. D. Marriott, Esq.

PanCanadian Petroleum
S. McDonough

Public Institutional Consumers of Alberta (PICA)
R. T. Liddle

Alberta Irrigation Projects Association (AIPA)
J. H. Unryn

Consumers Coalition of Alberta (CCA)
J. A. Wachowich, Esq.

Alberta Energy and Utilities Board Staff

A. E. Domes, Esq.,

B. Torrance

R. Betker

L. Anderson

Board Counsel