

**ATCO PIPELINES  
APPROVAL OF RATES, TOLLS, CHARGES, AND  
TRANSPORTATION SERVICE REGULATIONS;  
APPROVAL OF AMENDMENTS TO NORTH AND  
SOUTH TRANSMISSION TRANSPORTATION  
AGREEMENTS**

**Decision 2001-53  
Application No. 2000348  
File No. 5678-4**

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**1 INTRODUCTION**

By letter dated November 29, 2000, ATCO Pipelines (ATCO or the Company), a division of ATCO Gas & Pipelines Ltd. and Northwestern Utilities Limited, filed an application (the Application) requesting approval of rates and terms and conditions of service for Industrial and Producer customers in 2001 and 2002. The Application was the product of agreements (the Agreements) resulting from successfully negotiated settlements (the Settlement) with representatives of Industrial and Producer customers of ATCO Pipelines North and South.

The Board arranged for publication of the Notice for Objections on December 18, 2000, in the major daily newspapers with general circulation in the service areas of ATCO Pipelines. The Board also served notice on interested parties registered on the Company's mailing list for the Settlement. The Notice for Objections specified that, if no objections were received by January 5, 2001, the Board would continue to process the Application without further notice.

On December 22, 2000, the Board issued Decision 2000-84 approving implementation of the revised rates, tolls and charges, and terms and conditions of service, as set out in the Application, on an interim, refundable basis, effective January 1, 2001. As indicated in the Decision, the Board considered it appropriate that the potential benefits arising from the revisions to rates and terms and conditions of service should be passed on to customers as soon as possible. The Board confirmed that the interim rates would be further reviewed on completion of the notice period.

On January 4, 2001, the Canadian Association of Petroleum Producers (CAPP), on behalf of its member companies, filed a letter with the Board expressing support for the Settlement.

On January 5, 2001, the City of Calgary (Calgary) issued a letter objecting to approval of the Application. Calgary submitted that the Board should not approve the Application without examination of the impact of the Settlement on the revenue requirement of ATCO Pipelines South. Calgary noted that the 2001-2002 General Rate Application (GRA) filed by ATCO Pipelines South, concurrently with the Application, indicated that over 40% of the revenue requirement is attributable to Industrial and Producer customers, and the balance to distributing companies, primarily ATCO Gas South. In Calgary's view therefore, the Settlement has the potential to impact ATCO Gas core customer rates.

In a letter dated January 31, 2001 to ATCO Pipelines, the Board indicated agreement with Calgary's submission that there was need for a process whereby an assessment could be made of the impact of the Settlement on the ATCO Pipelines South revenue requirement and core

customers. However, the Board noted in the letter, that documentation filed with the Application implied that the Company was prepared to take the risk that any adjustments to the revenue requirement of ATCO Pipelines South, as identified in the GRA, could be allocated to customer classes other than core. Specifically, the Memorandum of Understanding filed with the Settlement indicated that the rates, tolls and charges outlined in the Agreements would be honoured for the duration of the Settlement regardless of the outcome of the ATCO Pipelines South GRA. Accordingly, the Board advised ATCO that the Board would issue a Decision with respect to the Application, on the understanding that ATCO was prepared to accept the risk as described.

After subsequent exchange of correspondence between the Board, the Company and interested parties, with respect to the matter, ATCO by letter dated March 1, 2001, agreed to take the risk as indicated by the Board, and requested that the Board proceed to issue a Decision with respect to the Application.

By letter dated March 8, 2001, the Board agreed to continue with its examination of the Settlement, and issue a Decision in the short term. The Board indicated that its examination would include consideration of information on the outcome of discussions scheduled to take place between ATCO and the North Core Committee, referred to in a letter from the North Core Committee dated February 20, 2001.

## **2 BACKGROUND**

The negotiations were undertaken by ATCO to activate re-openers established in existing Industrial/Producer North and South settlement agreements previously approved by the Board. The existing Industrial/Producer (North) agreement, approved in Decision U97131, dated October 30, 1997, established rates effective January 1, 1998. The existing Industrial/Producer (South) agreement approved in 2000-16, dated June 13, 2000, established rates effective July 1, 2000. The existing agreements were re-opened to identify the changes to rates, tolls and charges, required to maintain competitiveness with the tolls and tariffs of NOVA Gas Transmission (NGTL) approved by the Board on February 4, 2000.

ATCO met with its Industrial and Producer customers throughout the summer of 2000, with final negotiation meetings held in October and November 2000, resulting in the Agreements. ATCO submitted that the changes set out in the Agreements affect only Industrial and Producer transportation customers, and have no impact on core customers.

## **3 PARTICULARS OF THE APPLICATION AND AGREEMENTS**

The following is a summary of the proposed changes and other matters set out in the Agreements:

### 3.1 Rates, Tolls and Charges

- Rates, tolls and charges have been revised to maintain competitiveness with NGTL tolls, approved in Decision 2000-6, dated February 4, 2000, while recognizing the principles of simplicity and revenue neutrality.
  - The principle of simplicity results in changes to the rates, tolls and charges being as minimal as possible from the original settlement agreements, and in the combination of separate North and South schedules into a single document where possible.
  - The principle of revenue neutrality results in ATCO's total annual revenue using the revised rates, neither increasing nor decreasing substantively from the revenue that would have been generated using the original rates, tolls and charges.
- Term Differentiated Rates have been established for Firm Service Delivery (FSD) customers as follows:
  - 1 or 2 year term - 105% of standard FSD rate
  - 3 or 4 year term - 100% of standard FSD rate
  - 5 years or greater - 95% of standard FSD rate.
- Firm Service Receipt Rates have been changed to 100% demand from 90%/10% demand/commodity, to be consistent with NGTL toll structure.
- Seasonal Short-Term Firm rates have been established for Firm Service Receipt customers. The term is for either the five winter months or seven summer months. No partial season is allowed. In addition, customers whose volumes transfer from the South zone to the North zone will be assessed an additional charge equal to the difference between the Firm Service Receipt Charges in the North and South.
- Monthly overrun is to be calculated on a monthly basis rather than on a daily basis.
- A new transportation toll for service from ATCO Pipelines to Alliance Pipeline has been established.
- In the South, the current Agrium (Carseland) rebate has been increased from 2.4¢/GJ to 5.0¢/GJ. The incremental amount of the rebate (2.6¢/GJ) will be funded by ATCO.
- In the North, a new rebate for Agrium (Redwater) and Dow has been introduced. The rebate will go directly to Agrium and Dow, and will be funded by other North Industrial customers, as the standard rate has increased from 5.0¢/GJ to 5.3¢/GJ. These rebates are required to counteract bypass options.

### 3.2 Exchange Fee

- Exchange fee was revised to incorporate the cost of NGTL Fuel, which is now more significant than was the case when the fee was established in the existing settlements.
- Gas plants that are dually connected to the ATCO Pipelines system, and either the NGTL or Alliance pipeline systems will receive a discounted exchange fee recognizing the higher competitive pressures at these locations:
  - An exchange fee discount in the North has been introduced, which will encourage shippers to market their gas on the ATCO Pipeline system, as market exceeds supply.
  - The current exchange fee discount (1.0¢/GJ) available to dually connected plants in the South and funded by ATCO has been discontinued and replaced with a flat 2.0¢/GJ exchange fee. Exchange discounts in the South do not necessarily encourage shippers to

market their gas on the ATCO Pipelines system recognizing that supply exceeds market in the South.

- An Exchange Deferred Revenue Account will be established in the North, similar to the Deferred Account already in place in the South:
  - The first 3.4¢/GJ of exchange fee revenue will be rebated to the North Core as per the current North Core agreement. Any exchange fee revenue in excess of 3.4¢/GJ will be collected in a North Exchange Revenue Deferred Account.
  - This Deferred Account will be used to pay NGTL Fuel and ATCO Unaccounted for Gas (UFG) as required to provide exchange service.
  - ATCO will pay a portion of NGTL receipt tolls incurred to provide exchange service in the North.
  - ATCO commits to clarify details of the Core rebate with the North Core Committee. Any shift from the Core rebate arising from these discussions will be to the benefit of the North Exchange Revenue Deferred Account.

### **3.3 Settlement Re-openers**

- The following situations will allow re-opening of the settlements:
  - Significant change to NGTL or Alliance tolls and tariffs; and
  - The regulatory outcome of a proposed ATCO application with respect to the UFG rate charged to ATCO Pipelines South customers (see [3.5] below).

### **3.4 Industry Committee**

- ATCO commits to work with the Industry Committee to improve the curtailment process.

### **3.5 Other Matters**

#### **3.5.1. Discounted Tolls and Tariffs**

Situations may arise in the future where ATCO's receipt and delivery tolls are no longer competitive at certain locations. Although the specifics cannot be foreseen at this point in time, discounted tolls may be required to address these situations. ATCO will notify the EUB before any such discounted toll becomes effective. Discounted tolls will be provided where necessary to maintain existing throughputs, or acquire new throughputs provided that:

- A competitive alternative for the customer(s) affected can be demonstrated and quantified, and;
- the discounted toll provides revenue in excess of marginal costs and provides a net benefit to customers.

For the duration of the Agreements, ATCO will not attempt to recover from other customers, any loss of revenue attributed to the discounted tolls. Other than discounted tolls, all receipt and delivery tolls as set out in the Application will remain unchanged for the duration of the settlements.

### **3.5.2. Unaccounted For Gas**

- ATCO intends to file an application with a proposal to split UFG between ATCO Pipelines South and ATCO Gas South based on where UFG actually occurs. The same UFG rate is currently used for both the core customers served by ATCO Gas and the Industrial/Producer customers served by ATCO Pipelines. The Company commits to have the UFG for ATCO Pipelines North addressed in a similar manner as soon as practical after the proposal for the South has been addressed.

The termination date of December 31, 2002, established in the original North and South settlements, remains unchanged in the revised settlements.

## **4 TIME LIMITED AMENDMENT TO THE APPLICATION**

By letter dated March 28, 2001, ATCO made application for a time-limited amendment to the negotiated rates as set out in the Application. The amendment proposed by ATCO was filed in accordance with the provisions set out in paragraph 3.5 above, and related to the calculation of the exchange fee discount applicable to the Lloyd Creek receipt point in the North Zone. ATCO proposed to increase the exchange fee discount at Lloyd Creek from 3.3¢/GJ to 7.4¢/GJ from April 1, 2001 to October 31, 2001 in order to remain competitive with NGTL for the upcoming summer season. ATCO anticipated that the exchange fee discount would revert to 3.3¢/GJ effective November 1, 2001, at which time the charges at the Lloyd Creek receipt point are expected to return to a competitive situation.

The Board invited comments on ATCO's proposal in a letter to interested parties dated April 5, 2001. The following feedback was received by April 12, 2001:

### **4.1 Producers Marketing Ltd (ProMark)**

ProMark expressed the view that:

- The inclusion of a "plant usage fee" in the calculation of the ATCO Pipelines cost is inappropriate.
- The proposed exchange fee discount should be reduced from \$0.074/GJ to \$0.05/GJ.
- A similar competitive advantage issue appears to exist relative to another receipt point.
- A simple comparison of 100% load factor receipt rates is not a full assessment of competitiveness.

### **4.2 Rio Alto Exploration Ltd (Rio Alto)**

Rio Alto submitted that, if ATCO proposes to include "plant usage fees" in the cost calculation used to determine competitiveness, similar fees must be considered for all dually connected gas plants.

#### **4.3 Mirant Americas Energy Marketing Canada Ltd (Mirant)**

Mirant submitted that, since ATCO is clearly responsible for the loss in revenue resulting from the amendment to the exchange fee discount, ATCO should contribute the related revenue shortfall to the Exchange Deferred Account.

#### **4.4 Industrial Gas Consumers Association of Alberta (IGCAA)**

IGCAA expressed agreement with ATCO's proposed amendment to the Lloyd Creek exchange fee discount.

By letter dated April 24, 2001, ATCO filed its submission with respect to the issues raised. ATCO stated that while the "plant usage fee" is not common, it is a real cost to shippers at Lloyd Creek, and therefore needs to be considered in assessing total transportation costs. Specifically, the 2.0¢ usage fee is charged by the plant owners to service their capital invested to connect their plants to the ATCO Pipelines system.

ATCO took issue with Mirant's concern that the Company should contribute to the Exchange Deferred Account any loss in revenue resulting from the amendment to the exchange fee discount. ATCO noted that Mirant's rationale was based on the wording of Section 13 of the Settlement Agreement, which states that ATCO will not attempt to recover from other customers, any loss in revenue attributed to tolls discounted to maintain existing throughputs or acquire new throughputs. ATCO submitted that Mirant had used this clause out of context, indicating that the clause applied to revenue generating transportation tolls, and not to exchange fees. ATCO stated that exchange fees are not designed to generate revenue, but rather as an offset to NGTL tolls that have to be paid from time to time, to provide exchange service.

The Board's findings with respect to this issue are reflected in Paragraph 5.4 of this Decision.

## **5 BOARD FINDINGS**

### **5.1 Background**

As stated in the Board's Negotiated Settlement Guidelines, the Board is committed to supporting the negotiated settlement process in keeping with its objective of achieving greater regulatory efficiency and effectiveness. Negotiated settlements can allow applicants and intervenors to agree among themselves on rates without resorting to the Board's litigated process. Parties should not view this support for the process as a relinquishment by the Board of its responsibility to uphold the public interest. The negotiated settlement must be supported with cogent rationale, must be reviewed by the Board and must be found to be just, reasonable and in the public interest.

### **5.2 Legislative Provisions and General Principles**

The Board has examined the Application in light of Section 36.1 of the *Gas Utilities Act* (GU Act) and the Board's Negotiated Settlement Guidelines (distributed as an attachment to IL 98-4).

This approach was extensively described previously in Decision 2000-85 (NUL North Core Re-Opener) in relation to three types of settlements and will not be repeated in detail in this decision. Primarily, where the Board is presented with a consensus settlement, it must be satisfied that important principles of negotiated settlements, as outlined in the Negotiated Settlement Guidelines, have been followed. These include that: proper notice has been provided to interested parties with no adverse response; all parties with a direct interest have been afforded a meaningful opportunity to participate in the negotiation; all interested parties have signed off on the settlement; and, satisfactory evidence and argument support the agreement.

In addition, such settlements must be evaluated by the Board in order to determine whether the agreement will result in rates that are fair and reasonable and that the settlement conforms to the principles of incentive regulation (i.e. surrogate for competitive market).

If satisfied that the above-described criteria have been met, the Board will not exercise its discretion to alter the agreement unless it concludes that the effect of the overall agreement or specific terms are patently against the public interest or contrary to law.

A review of the application and proposed settlement follows.

### **5.3 Board Views Regarding Circumstances of the Application**

As noted above, the first issue for the Board to address is whether the settlement process was fair and conducted in accordance with the Negotiated Settlement Guidelines. The Board notes that documentation filed with the Application included a copy of the Public Notice issued by the Company to initiate the negotiation process, copies of minutes of meetings held during the process and documentation on the “straw models” presented for discussion during negotiations. The Board is satisfied that these materials provide a level of assurance that interested parties were provided with the opportunity to participate, and participants afforded due process.

The Board is being asked to approve a settlement unopposed by participants, although the Agreements were filed without any evidence of overt support from participants. However, on January 4, 2001, the Board received a letter from CAPP, a participant at the negotiations, expressing support for the Settlement. In its letter, CAPP stated that its 160 member companies produce approximately 95% of Canada’s natural gas and crude oil.

The Board notes that no objections were received or issues raised by any participant during the notice period for objections, or arising from the subsequent exchange of correspondence between the Board and interested parties on related matters.

The Board is satisfied, therefore, that the representations of CAPP and the absence of objections by participants during the course of protracted correspondence on issues arising from the Application provide evidence of unanimous support for the Settlement.

The second question for the Board to address is whether the settlement contains elements which could produce rates that are not just and reasonable.

The objection filed by Calgary on January 5, 2001 represents “an issue raised by a non-participant” as specified in paragraph 12.4 of the Board’s Negotiated Settlement Guidelines. Paragraph 12.4 of the Guidelines states that the Board will determine the process for dealing with such an issue. As described in Section 1 of this Decision, Calgary expressed concern with approval of the Application in the absence of examination of the potential impact of the Settlement on the core customers of ATCO Gas.

As discussed in Section 1, the Board agreed with Calgary’s submission that there was need for a process whereby an assessment could be made of the impact of the Settlement on the ATCO Pipelines South revenue requirement and core customers of ATCO Gas. The Board advised ATCO that the Board would defer approval of the Settlement until any issues relating to cross-subsidization of costs between core and transportation customer groups can be fully identified and addressed in the GRAs scheduled for ATCO Gas and ATCO Pipelines later in the year. The Board’s position confirmed the following advice to the Company by the Board in approving the existing Industrial/Producer South rates in Decision 2000-16:

...any changes to the Industrial/Producer Settlement made to reflect the impact of changes to NGTL’s rates and services may not be accepted by the Board without a further opportunity to examine the implications to the core customers.

The Board considers that the potential for cross-subsidization represents an element in the Settlement that could result in rates which are not just and reasonable to core customers of ATCO Gas South. However, in a letter to the Board dated March 1, 2001, ATCO agreed to take the risk that any eventual adjustments to the revenue requirement of ATCO Pipelines South, as identified in the GRA, could be allocated to customer classes other than core.

The Board is satisfied that ATCO’s acceptance of risk in this regard addresses Calgary’s immediate concern and the Board’s responsibility to ensure that the Settlement has no adverse impact on core customers of ATCO Gas South. Issues relating to the appropriate allocation of costs between transportation and core customers will be identified and addressed in the upcoming GRA proceeding.

In Decision 2000-85, dated December 22, 2000, the Board approved the rates, tolls and terms and conditions of service for core customers of ATCO Gas North for service provided for years 2001 and 2002. Those rates therefore, remain in place for the duration of the Settlement. The Board also notes the submission of the North Core Committee, in its letter dated June 7, 2001, that recent discussions with ATCO provide assurance that the Settlement “will not in any way affect or alter the current North Core Agreement”. The Board therefore is satisfied that the Settlement has no impact on core customers of ATCO Gas North.

The Board notes that the Settlement agreement states that the existing rates, tolls and charges for Industrial/Producer customers were revised to maintain competitiveness with NGTL tolls, approved in Decision 2000-6. The Board recognizes that the Company needs to ensure that its rates, tolls and charges are set at a level sufficient to maintain its position in an increasingly



competitive market. The Board acknowledges that in meeting this objective, the Settlement agreement must reflect an overall balance of risk and rewards between ATCO and its customers. Examples of rate revisions designed to encourage retention of volumes on the system include establishment of Term Differentiated Rates for Producers, adjustments to rebates for Industrial customers, and revisions to exchange fee discounts. The Board notes ATCO's submission that the changes to rates, tolls and charges, as set out in the Agreements, were designed to address competitive issues, while recognizing the principles of simplicity and revenue neutrality.

Having examined the Settlement agreement, the Board accepts ATCO's submission that the principle of simplicity results in minimal changes to existing rates, tolls and charges as approved pursuant to the original settlement agreements. The Board is also prepared to accept the Company's representation that this principle will result in total annual revenue using the revised rates, remaining at a level neither substantially higher nor lower than the revenue that would have been generated using the original rates, tolls and charges. The Board considers that these representations, together with evidence of support for the Settlement by participants in the process, as indicated above, are of considerable comfort to the Board in assessing the justness and reasonableness of the rates for Industrial and Producer customers.

The Board is satisfied that the Settlement reflects an overall balance of risk and rewards between ATCO and its customers, designed to maintain competitiveness with NGTL tolls and contribute to retention of volumes on the system. Recognizing that the Settlement results in relatively minor changes to rates, and maintains the principle of revenue neutrality, the Board is satisfied that the Settlement will result in rates, tolls and charges that continue to be just and reasonable. In addition, the Board is comfortable that no public interest considerations have been identified that extend beyond the immediate concerns of the negotiating parties and which have not been addressed. Therefore, the Board approves the Settlement as filed.

#### **5.4 Proposed Time Limited Amendment to the Exchange Fee Discount at Lloyd Creek**

The Board considers that ATCO has satisfactorily addressed the concerns raised by interested parties with respect to the Company's proposed amendment to the exchange fee discount at the Lloyd Creek receipt point. The Board agrees that the "plant usage fee", which is a real cost to shippers at Lloyd Creek, is a required component of the calculation to determine competitiveness. Accordingly, the Board disagrees with the submissions of parties that the proposed exchange fee discount should be reduced by 2.0¢/GJ.

The Board also disagrees with Mirant's submission that ATCO should contribute to the Exchange Deferred Account any loss in revenue resulting from the amendment to the exchange fee. The Board notes that exchange fees are not designed to generate revenue, but rather as an offset to NGTL tolls required to provide exchange service. The Board agrees with ATCO that the amendment to the exchange fee discount will have no effect on the revenue-generating toll at that receipt point, and will not result in any loss of revenue ultimately recoverable from other customers.

The Board notes that IGCAA expressed agreement with ATCO's proposed amendment to the Lloyd Creek exchange fee discount.

For these reasons, the Board approves ATCO's proposal to amend the exchange fee discount at the Lloyd Creek receipt point from 3.3¢/GJ to 7.4¢/GJ from April 1, 2001 to October 31, 2001.

## **6 ORDER**

Having regard for the evidence presented and considered and having regard for the Board's own knowledge herein, the Board hereby orders:

- (1) The ATCO Pipelines Rate Schedules attached as Schedule "A" to Decision 2000-84, are hereby approved as final for service on and after January 1, 2001.
- (2) The ATCO Pipelines Transmission Transportation Service Regulations attached as Schedule "B" to Decision 2000-84, are hereby approved as final, effective January 1, 2001.

Dated in Calgary, Alberta on June 11, 2001

### **ALBERTA ENERGY AND UTILITIES BOARD**

*(original signed by)*

B. F. Bietz, Ph.D., P.Biol.  
Presiding Member

*(original signed by)*

Gordon J. Miller  
Member

*(original signed by)*

C. Dahl Rees  
Acting Member