ATCO Gas South

Carbon Facilities
Part 1 Module – Jurisdiction
(2005/2006 Carbon Storage Plan)

February 5, 2007

Alberta Energy and Utilities Board

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2007005: ATCO Gas South
Carbon Facilities - Part 1 Module - Jurisdiction
(2005/2006 Carbon Storage Plan)
Application No. 1357130

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ALBERTA ENERGY AND UTILITIES BOARD
Calgary Alberta

ATCO GAS SOUTH
CARBON FACILITIES
PART 1 MODULE - JURISDICTION **Decision 2007-005**
(2005/2006 CARBON STORAGE PLAN) **Application No. 1357130**

1 BRIEF SUMMARY OF DECISION

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

2 INTRODUCTION

On June 10, 2004, the Alberta Energy and Utilities Board (the Board or EUB) received a letter from the Consumer Group[1] and the Utilities Consumer Advocate (collectively the CG). The letter requested the Board to initiate a collaborative process regarding the use of the Carbon storage facilities (Carbon Storage) and the related natural gas producing properties (Producing Properties) for the 2005/2006 gas year. Collectively Carbon Storage and the Producing properties are herein referred to as "Carbon." The letter also requested the Board to initiate a proceeding to address the concerns raised by ATCO Gas South (AGS or ATCO Gas), an operating division of ATCO Gas and Pipelines Ltd., in prior Board proceedings with respect to the Board's jurisdiction as it relates to Carbon.

In a letter of July 23, 2004 the Board did not require a collaborative process for the 2005/2006 gas year, but directed AGS to file an application which would address a 2005/2006 Carbon storage plan and the basis on which AGS took issue with the Board's jurisdiction over Carbon.

On August 16, 2004, AGS submitted an application to the Board regarding the 2005/2006 Carbon Storage Plan (the Application). The submission by AGS was made in compliance with Decision 2004-022[2] and the Board's letter of July 23, 2004.

During the course of this proceeding both the CG and the City of Calgary (Calgary) have participated as interveners, filing a number of submissions and expert reports. The Board notes

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

[2] Decision 2004-022 – ATCO Gas South 2004/2005 Carbon Storage Plan (Application 1314634) (Released March 9, 2004)

that Calgary in particular filed a large volume of historical decisions and information on Carbon in this proceeding. All parties have participated in various motions, an oral hearing and in argument and reply.

In accordance with various decisions, directions and schedules issued by the Board, the Board issued Decision 2005-063[3] dealing with certain Preliminary Questions relating to Carbon. In Decision 2005-063 the Board determined that the question of the Board's jurisdiction with respect to Carbon could best be addressed through an examination of whether or not Carbon is used or required to be used, or should otherwise remain in rate base. In particular, the Board determined that there were two "uses" for Carbon which were relevant to the Board's analysis. These two uses were revenue generation and distribution system load balancing.[4]

The Board addressed the load balancing use in Decision 2006-098.[5] The Board concluded that Carbon 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.[6]

The remaining use to be considered in determining whether or not Carbon is used or required to be used to provide service to the public, or should otherwise remain in rate base, is revenue generation. The Board must then consider the implications of its determination with respect to using Carbon for revenue generation purposes, on its jurisdiction in respect of Carbon. This Decision addresses this use and these implications.

The Panel assigned to deal with this proceeding consists of B. T. McManus, Q.C. (Presiding Member), J. I. Douglas, FCA, Member and C. Dahl Rees, LL.B., Acting Member.

Decision 2006-098 was issued on October 10, 2006 and an Errata Decision was issued on November 7, 2006. The Board considers the record for this portion of the Application closed as of November 7, 2006.

3 BACKGROUND

This Background section of the Decision will review both the historical development and evolution of Carbon and the extensive procedural history of the present proceeding.

The history of Carbon and its development over the years and related Board decisions must be considered to understand the context of this Decision. Accordingly, a summary of the history of Carbon follows in this Section. A detailed compilation of references to prior Board Decisions relating to Carbon can be found in Appendix 6.

The procedural background to this Decision has been lengthy and complex, necessitating the presentation below of a certain amount of detail to assist the reader in understanding the chronology of events leading up to this Decision. Additional detailed procedural background

[3] Decision 2005-063 – ATCO Gas South 2005/2006 Carbon Storage Plan Preliminary Questions (Application 1357130) (Released: June 15, 2005)
[4] Decision 2005-063, p. 21
[5] Decision 2006-098 – ATCO Gas Retailer Service and Gas Utilities Act Compliance Phase 2 Part B (Application 1411635) (Released: October 10, 2006); Decision 2006-098 Errata (Released: November 7, 2006)
[6] Decision 2006-098, p. 51

relating to the Board's decision to consider certain Preliminary Questions regarding its jurisdiction over Carbon and the proper uses of Carbon for consideration, can be found in the Board's letter of December 23, 2004 which is attached as Appendix 3 to this Decision and in Section 2 "Background" of the Preliminary Questions Decision, Decision 2005-063.

3.1 General Comments on Carbon as a Storage Facility

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

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

3.2 Development and Uses of the Carbon Facilities

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

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

From 1959 to 1967, CWNG used the Carbon field to meet the gas supply requirements of its regulated customers. When first acquired by CWNG, the Carbon field provided COP usually in

the form of seasonal and/or peaking gas for customer use. Following initial low production levels, COP grew from 577 MMCF in 1962 to 5,355 MMCF in 1967.

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

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

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

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

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

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

The TCPL storage arrangement expired in 1992. From 1993 until approximately 1996, capital expansions were undertaken at Carbon, and approved by the Board, relating to the storage

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

reservoir, compression equipment, dry gathering lines, wells and meter stations, all of which increased storage capacity and enhanced reliability for CWNG and services to Northwestern Utilities Limited (NUL). The services to NUL, an affiliated distribution utility operating in northern Alberta, were provided by CWNG under the Firm Service Gas Storage Agreement dated February 1, 1993. This contract was for 9 PJ of storage and had a 20-year term with a 5-year termination notice. AGS elected to treat the contract as terminated in early 2001. From 1996 to the present, it appears that capacity expansions were undertaken to provide benefits to ratepayers and additional third party storage contracts.

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

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

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

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

The record in respect of the percentage of Carbon storage capacity and deliverability reserved for the utility uses in the years since the termination of the TCPL agreement in 1992 is incomplete. What is clear is that the amount of capacity so used has been variable. At present the Carbon

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

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

storage facilities consist of 38.7 BCF (43.5 PJ) of working gas capacity, 48 BCF (54 PJ) of base or cushion gas,[11] twenty four injection and withdrawal wells, one well with withdrawal only, four observation wells, two Joules-Thompson plants and a total of 11800 HP of compression. The Producing Properties associated with Carbon consist of production wells, compression, gathering lines, refrigeration and approximately 19 PJs[12] of recoverable gas.

3.3 Evolution of ATCO's Use of Carbon

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

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

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

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

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

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

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

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

Commencing in 1998 AGS leased the portion of Carbon capacity which was surplus to the utility needs and third party contracts to its affiliate, Midstream. Midstream then operated an unregulated storage business utilizing that portion of Carbon capacity and the lease payments were treated as revenue offsets to regulated rates. The Board fixed a rate for this lease at 32¢/GJ in Decision 2000-9,[15] and subsequently updated this rate in Decisions 2002-072[16] and 2004-022 to its current rate of 45¢/GJ.

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

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

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

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

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

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

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

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

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

21 Decision 2001-75, p. 49

22 Ibid, p. 52

23 Refer to p. 55, Decision 2001-75

development of the retail gas market.[24] These credits to customers, reflected in credit riders for storage and COP, remain in place today by order of the Board, pending final disposition of the issue of the Board's jurisdiction over Carbon, and related matters.[25]

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

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

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

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

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

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

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

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

[26] Decision 2002-072, p. 22

[27] Decision 2002-072, pp. 52–55

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

[29] Decision 2003-021, dated March 11, 2003

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

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

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

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

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

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

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

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

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

34 Decision 2004-022 dated March 9, 2004

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

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

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

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

3.4 Present Proceeding

As indicated above, on June 10, 2004, the Board received a letter from the CG requesting the Board to: (a) instruct AGS to initiate, as soon as possible, a collaborative process to discuss alternative proposals for the use and operation of the Carbon storage facilities for the gas year 2005/2006; and (b) initiate a proceeding "as soon as can be conveniently arranged" to address the jurisdictional concerns expressed by AGS.

In a letter of July 23, 2004 the Board did not require a collaborative process for the 2005/2006 gas year, but established a procedural schedule and directed AGS to file an application by August 16, 2004 which would address a 2005/2006 Carbon storage plan and the basis upon which AGS took issue with the Board's jurisdiction over Carbon.

On August 16, 2004, AGS submitted the Application which AGS amended by letter of August 23, 2004 by withdrawing the 16.7 PJ storage option for utility purposes.

Between August and October 2004 the Board received and dealt with several Motions and procedural submissions presented by both AGS and interveners, including submissions from AGS relating to an application to the Alberta Court of Appeal for leave to appeal Decision 2004-022.

The Board published an Issues List in its letter of September 13, 2004. The issues list is repeated as the first attachment to the Board's letter of December 23, 2004 which is attached as Appendix 3 to this Decision. The Board established three parts to the Issues List. In summary these three Parts are:

- Part 1 – whether the Carbon facilities are used or required to be used to provide service to the public in Alberta or should otherwise remain in rate base;
- Part 2 – if the facilities are used or required to be used, what should be the lease rate paid by Midstream, and
- Part 3 – if the facilities are not used or required to be used, what should be the process and accounting treatments in removing them from rate base.

In the Board's letter of December 23, 2004, the Board indicated that it would proceed with Part 1 matters before proceeding with either Part 2 or Part 3 of the Issues List. It also determined that it should focus the proceeding on appropriate uses for Carbon, which should be considered in determining whether the facilities are used or required to be used to provide service to the public. To focus and expedite the process the Board posed four preliminary questions (the Preliminary Questions) that were to be examined separately before proceeding to Part 1. The four questions are set out in Appendix C to the Board's letter of December 23, 2004.

The Preliminary Questions can be summarized as follows:

1) What should be the criteria for the Board to remove a regulated asset from rate base when requested to do so by a utility?

2) Is it appropriate for the Board to attach conditions to the removal of an asset from rate base that might allow the Board to direct the asset to be added back to rate base in the future?

3) To what extent should the Board be involved in directing the use of a particular asset?

4) What is the appropriate scope for the Board in examining whether Carbon is used or required to be used to provide service to the public or should otherwise remain in rate base? To that end, should the Board consider historical uses, proposed uses, possible contingent, alternative or reversionary uses?

AGS, Calgary and the CG provided their submissions on the Preliminary Questions on January 24, 2005 and reply submissions on February 7, 2005.

On March 8, 2005, AGS filed correspondence (the Withdrawal Letter) with the Board, in which AGS stated that it would withdraw the 2005/2006 storage plan. AGS had filed the storage plan in accordance with the Board's orders in Decision 2004-022. The Withdrawal Letter confirmed the judgement of AGS management that Carbon was not required to provide utility service and indicated that AGS would not include any Carbon-related costs or revenues in connection with the 2005/2006 storage operation in its jurisdictional rates for distribution service, effective April 1, 2005. AGS further provided notice that all related riders (Riders G, H and I) would be discontinued effective April 1, 2005.

Following submissions by the interested parties, the Board issued a letter dated March 23, 2005 in respect of the Withdrawal Letter. The Board considered that an order preserving the status quo with respect to Carbon would be appropriate in the circumstances related to the Withdrawal Letter. Accordingly, the Board issued Interim Order U2005-133 concurrently with its letter of March 23, 2005. The Order directed AGS to maintain Carbon and all related assets in rate base, authorized a lease of the entire storage capacity to Midstream at a placeholder rate equal to the existing storage rate of 45¢/GJ and directed AGS to maintain Rate Riders G, H and I, all until such time as the Board may otherwise determine. The Order was to remain in place until such time as the Board determined that there has been a final disposition of:

(a) the matters relating to Carbon that were then before the Court of Appeal;
(b) the matters being considered by the Board relating to Carbon;
(c) any additional matters relating to Carbon that the Board may be required to decide as a result of subsequent filings of AGS or an intervener; and
(d) any additional matters resulting from any direction from the Court of Appeal.

In accordance with the Board Order, AGS continues to include costs associated with Carbon in its regulated revenue requirement, and continues to account for applicable revenue credits.

The Board issued the Preliminary Questions Decision 2005-063 on June 15, 2005 and the four findings therein are summarized on pages 19-21 of that Decision. The Board's findings can be summarized briefly as follows:

1) First Preliminary Question - The central criterion with respect to the inclusion of a particular asset in rate base, or of its subsequent exclusion, is whether the asset is "used or required to be used to provide service to the public within Alberta".

2) Second Preliminary Question - Although the Board may have the ability to attach conditions to an approval for the removal of an asset from rate base that would allow for the asset to be re-included into rate base at some future time, it should not do so in most circumstances.

3) Third Preliminary Question - The Board has the ability, when necessary in the public interest, to direct a utility to utilize a particular asset in a specific manner, even over the objection of the utility. The directed use must be consistent with the public interest in the circumstances.

4) Fourth Preliminary Question - The relevant uses to be further reviewed by the Board in the Part 1 Module are the present use employed for Carbon (revenue generation through the storage lease and through COP sales from the Producing Properties) and load balancing, a potential use for Carbon that was before the Board for determination. It is these uses which the Board determined to be relevant to the question of whether or not Carbon is used or required to be used or should otherwise remain in rate base.

Further, in regard to the Fourth Preliminary Question the Board considered arguments raised by the interveners, and in particular the CG, that potential uses of Carbon by other parties such as DERS, ATCO Pipelines, or indeed any parties providing transmission, distribution or gas supply services to customers, should be considered proper rate base uses of Carbon. The Board found such arguments problematic and declined to consider as appropriate such potential uses which might involve compulsion of ATCO Gas, ATCO Pipelines or DERS to use Carbon.[38]

The Board issued a procedural letter concurrently with the Preliminary Questions Decision to commence the Part 1 Module process, and revised the process schedule on July 5, 2005.

Following an exchange of letters and submissions by interested parties the Board issued a letter dated October 3, 2005 in which it outlined a revised schedule for the Part 1 Module and for the ATCO Gas – Retailer Services and Gas Utilities Act Compliance - Application No. 1411635 (GUA Compliance Process). The Board decided that the consideration of Carbon's use for load balancing would be dealt with and finalized in the GUA Compliance Process, and that the consideration of Carbon's use for revenue generation would continue to be dealt with in the Part 1 Module of this Application.

On October 31, 2005 the CG and Calgary submitted their evidence in respect of this proceeding. On November 8, 2005 AGS filed a Motion for Exclusion of Intervener Evidence (the Motion) objecting to certain parts of the interveners' evidence. In particular, AGS objected to certain "unsponsored" evidence and evidence on economic value filed by Calgary, and to the deliberate re-introduction by the CG of DERS using Carbon, even though the Board had indicated in Decision 2005-063 that such a use would not be considered as appropriate.

Following comments by the interveners on November 18, 2005 and reply from AGS on November 23, 2005 the Board issued its Ruling on December 9, 2005 (see Appendix 4) in which it allowed the Motion in part, confirming the exclusion of evidence on the potential use of Carbon by DERS, which had been reintroduced by the CG. The Board also cautioned Calgary

[38] Decision 2005-063, pp. 17–19

against including detailed evidence on valuation at this stage. The Board noted its reservations with the premise that evidence as to the potential value of Carbon for revenue generation, and the potential rate impacts of removing Carbon from rate base, would be relevant to the present question of whether revenue generation is an appropriate use for Carbon. The Ruling also included a revision to the process schedule.

On December 16, 2005 the CG and Calgary made a joint submission with respect to Board Order U2005-133, dated March 23, 2005. In light of the approaching commencement of the 2006/2007 storage year on April 1, 2005, they asked the Board to implement an expedited process to both:

a) Determine if there are other alternatives to the simple storage lease to an affiliate, ATCO Midstream, for capturing [the]value of Carbon for the 2006/2007 storage year, and
b) Determine the appropriate simple lease placeholder (or a method for determining the simple lease placeholder) for 2006/2007. This placeholder could be used as either the placeholder for a 100% simple lease option, or as a base case for consideration of other alternatives in accordance with (a) above.

On December 20, 2005 the Board issued its Ruling denying this request.

On February 8, 2006, AGS submitted its Rebuttal Evidence in this proceeding. An oral hearing was held on April 26 and 27, 2006. Argument and Reply were filed in this proceeding on May 19 and June 2, 2006, respectively. As noted previously, the Decision for this Application was planned to be made following the decision in the GUA Compliance Process, which was finalized on November 7, 2006. As indicated in Section 2 of this Decision, the relevant finding of the Board in that Decision was that Carbon 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.

3.5 Observations of the Board on Background Matters

The Board considers that some key underlying themes emerge clearly in reviewing the development of Carbon over the years.

First, Carbon and its usage have evolved along with the development and evolution of the gas market in Alberta. Today the gas market is very large, liquid and sophisticated and includes competitive market supply and competitive storage services. Generally speaking, the number of market participants has increased dramatically over the decades that Carbon has been owned by AGS, and particularly since deregulation of the gas market in the 1980's. The restructuring and deregulation of the regulated retail sector of the gas market since 2003 has increased the number of parties specifically available and capable of supplying gas to end use customers. The vertically integrated natural gas utility which had the responsibility to procure, transport, distribute and sell natural gas, all at regulated prices, to utility customers is no longer required by the legislation.

As the Board indicated previously, ATCO Gas has been consistent in its views since 2000 that Carbon is no longer required for regulated utility service. In fact ATCO Gas has expressed frustration and concern that the Carbon facility still remains in regulation and is an anomaly as such:

> MR. ENGLER: …I would say that the only asset that's an upstream asset that's regulated is Carbon. And so the motion or whatever has caused this to happen has impeded the full deregulation of the upstream gas market.
> … Now, on the downstream side, on the retail side, I would hazard -- I would venture to say, if this one asset wasn't there, gas would be as far or further down the road as the electric -- electricity is. The whole retail or service module is being captured, taken over by Carbon. And so the --
> Q So for some reason we're stuck in this one piece?
> A MR. ENGLER: -- issues around this asset have --
> Q And we're doing it slower?
> A MR. ENGLER: Yes. We are certainly doing it slower, and sometimes I get quite impatient, because I don't see why it's happened. It is the only asset that is regulated in the upstream side right now in gas. And it's not critical to gas supply in the province, by no means. You know, as I said, we could go and we could remove that from service, stop using it, and the only impact would likely be an increase in storage rates for a time being, because a storage market continues to evolve and become more robust, just as the gas supply market has since 1990.[39]

Second, with respect to the storage capacity of Carbon, the Board considers that there is a lack of clarity on the record with respect to the extent to which Carbon has been utilized by the utility for regulated system operational and security of supply purposes as opposed to revenue generation purposes, since the date of conversion of the gas field to a storage reservoir in 1967. Currently the usage of Carbon storage capacity is 100% for revenue generation purposes to provide an offset to regulated revenue requirement, in accordance with Board Order U2005-133. Since 1967 however, the percentage uses for utility operational purposes and revenue generation from the capacity over and above utility requirements have fluctuated over the years.

Third, the Board notes the divergence in the views of the parties which have developed over the past years, as to the usefulness of Carbon as a utility asset in service to the public. ATCO tends to focus on valid utility uses of Carbon in the market today, in the context of both the evolution of the gas industry and the current legislation in Alberta. The customers on the other hand tend to focus on the value of Carbon and its potential to provide benefits to them.

The Board has been somewhat concerned that one of the key drivers of the processes before it in recent years has been the underlying value of the Carbon facility and not squarely its utility uses, as the market and industry restructuring in Alberta legislation have both evolved. With respect to the views of the customers, the Board notes that in the Carbon Transfer proceeding both Calgary and the CG acknowledged that Carbon was not specifically required for utility operational purposes. Both interveners stressed the economic value of the facilities and the economic benefits they provided to customers. Calgary maintained that the economic benefits of the facilities presented the key criterion for any determination that the facilities were appropriately in rate base. The CG maintained that the facility should continue to be used until “no-harm” compensation was paid to customers based on operation of Carbon in whatever manner was most beneficial to customers.[40] To a large extent, these positions of Calgary and the CG have remained fundamentally unchanged over the years from 2002 to the present.

[39] Extracts from Transcript pp. 254-256
[40] Decision 2002-072, pp. 15–16

One of the key outcomes of the Preliminary Questions process was to bring focus to the present proceeding on the Part 1 Module. The Preliminary Questions Decision responded to the arguments of customers that it is the economic value of Carbon and its potential to be maximized for customer benefits that should govern the determination of whether the facility should be in or out of rate base, not whether it is actually used or required to be used to provide service to the public. The Board has responded to differing interpretations as to the appropriate role for the Board in requiring specific management strategies for Carbon. As noted in its determination with respect to question 3 in the Preliminary Questions decision, the Board does not support the concept that it should engage in detailed management of utility assets. The concerns of customers to "capture" the value of Carbon through alternatives imposed by the Board upon ATCO Gas, DERS or other parties are a recurring theme in recent years, and one which the Board found to be problematic in the context of the Preliminary Questions and one which the Board continues to find problematic.

The Board recognizes that there may be something of a "grey area" in considering whether to include in, or to exclude a particular asset from, rate base. On occasion, the public interest could be served by either result, provided questions of fairness and potential harm to both the utility and ratepayers are addressed. Questions arise as to the discretion of utility management to determine which assets are best to provide utility service as well as the limitations imposed by the GU Act on management's discretion to dispose of assets that may result in harm to customers. Where this "grey area" is concerned, the decision as to whether an asset is used or required to be used to provide service to the public and therefore whether it should remain in rate base must ultimately be based on the legislation and the authority of the Board as defined therein.

4 ISSUES

The purpose of this Decision is to determine whether or not Carbon is used or required to be used or should otherwise remain in rate base in order to provide a revenue generation service for the benefit of regulated customers. As previously noted, the Board had considered the question of whether or not Carbon should be used for load balancing in a separate proceeding. The Board's findings in respect of load balancing were included in Decision 2006-098. The findings in Decision 2006-098 and this Decision have been considered together in determining the implications for the Board's jurisdiction in respect of Carbon and in establishing the next module of the Application.

Specifically, this Part 1 Module Decision will address the following matters from the Issues List:

Part 1. Used or Required to be Used[41]

(a) What assets make up the Storage Facilities and the Producing Properties?
(b) Are either the Storage Facilities or the Producing Properties used or required to be used by ATCO Gas or ATCO Pipelines to provide service to the public?
(c) In the event that either the Storage Facilities or the Producing Properties are not used or required to be used by ATCO Gas or ATCO Pipelines to provide service to the public, should the assets remain within rate base on some other basis?

[41] Refer to Decision 2005-063, Appendix 3 and see Appendix A to the Board's letter of December 23, 2004

5 DISCUSSION OF ISSUES

The Board has reviewed the evidence, argument and reply argument related to each of the issues from parties to the proceeding. Any references to specific parts of the record are intended to assist the reader in understanding the Board's decision, but should not be taken as an indication that the Board did not consider the entire record as it relates to that issue.

5.1 Carbon Assets – Part 1(a)

Part 1(a) of the Part 1 Module was to determine what assets "make up the Storage Facilities and the Producing Properties."

The Board has included as Appendix 5, two maps showing the Carbon area facilities and land holdings.

Parties have not to date provided the Board with much assistance in respect of identifying which assets relate specifically to Carbon Storage and which relate specifically to the Producing Properties. The record indicates that Carbon Storage and the Producing Properties have a common, integrated history such that they have generally been considered as a single set of interrelated assets.[42] This, in part, has resulted from their common origin and from the addition of properties surrounding the storage operation in order to protect the integrity of the storage reservoir. AGS stated in its evidence:

> The Carbon Storage business is an integrated operation involving wells, compressors, reservoirs and related buffer lands which operate at very high pressures in injecting and withdrawing gas for those third parties who subscribe for those services.[43]

Buffer land protection was considered necessary both to protect against possible communication between different natural gas horizons, which could potentially result in the migration of storage gas into these adjoining horizons, and to prevent drainage by third parties of both injected and base gas from wells drilled on adjoining lands. The focus of parties has been on keeping the assets together as a package in order to protect the storage operations, rather than on how to split up these assets. In the Carbon Transfer proceeding that resulted in Decision 2002-072, various parties dealt with the issue of potential incursions and interactions between the storage reservoir and the Producing Properties. The Board dealt with these issues in a summary fashion and generally agreed with AGS that a prudent storage operator would retain in its control a buffer land position around the storage field to guard against the risk of geological uncertainty. In that Decision the Board did not specify any division as between the storage lands and the Producing Properties but concluded that it would "… expect to see a fully defensible land packaging proposal from ATCO Gas on any future application to sell or otherwise dispose of Carbon. This proposal would involve transfer of ownership or control of potential migration or drainage lands or wells…"[44] To date, AGS has not made such an application for a sale and therefore has not

[42] See for example CG evidence dated October 31, 2005 at page 18, Calgary Argument dated May 19, 2006 at pp. 24-25 and pp. 50-51, CG-AGS-22 and pp. 8, 10 and 20 of AGS Written Direct Evidence dated July 22, 2005.
[43] AGS Written Direct Evidence dated July 22, 2005, p. 8
[44] Decision 2002-072, p. 25

specified the individual lands and properties associated with Carbon or how they might be separately considered on a transfer.

In this proceeding Calgary referred to testimony filed by its experts in the Carbon Transfer proceeding, which indicated that there are certain production wells and gas producing zones within the Producing Properties which are not geologically linked to the storage operation and which would not have to be retained by the storage operator in order to maintain a viable storage operation.[45]

Evidence submitted by AGS provided the following general description:

> The Carbon facility itself encompasses 60 production wells, production well site facilities and gathering lines, 24 storage wells, storage well site facilities and gathering lines, 5 storage compressors, 3 production compressors, two Joules-Thompson plants, condensate stabilization, refrigeration and numerous ancillary utility systems. The lowest normal operating pressure of any of these facilities is in excess of 2000 kpa.[46]

The Board understands that the above facilities are the assets relate to what could be referred to as the Carbon Glauconitic Unit, Carbon South and Carbon East, which encompass both storage and COP. All involve Glauconitic pools. In addition, some production comes from Non-Glauconitic pools.

In this Decision, the Board has considered the Carbon Storage and Producing Properties assets as a single set of assets collectively referred to as Carbon. The identification of these assets has been at a relatively high level. Detailed asset accounts with respect to identification of specific wells and related pipelines, compressors and other equipment, segregated by reference to storage assets or COP assets does not form part of this record. Further, for the purposes of this Decision it is not necessary to consider a complete separation of lands and properties into specific storage and COP categories, as all the assets in the foregoing description by AGS have customarily been treated together, apparently integrated and linked since their first inclusion in rate base and throughout their regulated history. Further, all such assets serve a revenue generation function at the present time, and it is revenue generation, as a valid or invalid use of these assets, which is the fundamental issue before the Board for determination.

As discussed later in this Decision, this lack of clarity with respect to which assets are most appropriately considered to form part of the Carbon Storage and therefore associated with revenue generation from the storage operations and which Producing Properties assets could be considered as independent of the necessary buffer lands and could therefore be said to generate revenue separately from the storage operations, has led the Board to direct an additional Part 1B Module proceeding. One of the purposes of this additional proceeding will be to consider if there is any basis for considering the Carbon Storage assets differently from the non-buffer portions of the Producing Properties in terms of the continued appropriate use of all Carbon assets to generate revenue for the benefit of ratepayers.

[45] Calgary Argument filed May 19, 2006, pp. 24-25
[46] AGS Evidence filed July 22, 2005, (Exhibit 160), Attachment 1, p. 6

5.2 Used or Required To Be Used – Part 1(b)

Sections 36 and 37 of the *Gas Utilities Act*, RSA 2000 c. G-5 (the GU Act) and the parallel provisions of sections 89 and 90 of the *Public Utilities Board Act*, RSA 2000 c. P-45 (the PUB Act) establish the basis for including in utility rates the costs associated with a return of, and a return on, the capital employed to provide service to the public. Section 37(1) of the GU Act provides:

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

Prior to the Board allowing into rate base the costs associated with any particular asset or class of assets, the utility must be able to demonstrate that the asset or class of assets is "used or required to be used to provide service to the public within Alberta".

As noted in Decision 2005-063,[47] the phrase "used or required to be used" has been considered by the Alberta Court of Appeal[48] which drew a parallel to the similar phrase "used and useful" often used in legislation in the United States. The Court of Appeal concluded its review of the jurisprudence and determined:

> …whether a particular item is to be brought within the rate base is essentially a question for the judgement of the board which does not involve a question of jurisdiction or law: B.C. Hydro and Power Authority v. West Coast Transmission Co. Ltd. et. al. (1981), 36 N.R. 33 at 56.[49]

As a result of Decision 2005-063, the Board was to determine if Carbon is used or required to be used in the context of either revenue generation or load balancing.

5.2.1 Load Balancing

As discussed earlier, the use of Carbon for the purpose of load balancing AGS' distribution system was discussed and determined in Decision 2006-098, wherein the Board concluded:

> Accordingly, for all of the above reasons, 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.[50]

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47 Decision 2005-063, p. 14
48 *Alberta Power Ltd. v. Alberta (Public Utilities Board)*, [1990] A.J. No.147, 102 A.R. 353
49 *Alberta Power Ltd. v. Alberta (Public Utilities Board)*, (1990), 102 A.R. 353 at paragraph 51
50 Decision 2006-098, p. 51

For purposes of this Decision, revenue generation is the sole use left to consider in determining if Carbon is used or required to be used or should otherwise remain in rate base.

5.2.2 Revenue Generation

As indicated above, presently Carbon generates revenue in two ways. First, the entire storage capacity of Carbon Storage is leased to Midstream. Lease payments are paid to AGS which are then credited to all customers of AGS through the Company Owned Storage Rate Riders H and I (COSRR). This leasing rate of 45¢/GJ was last revisited in Decision 2004-022 and Board Order U2005-133. Secondly, natural gas is produced from the Producing Properties as COP and net revenues are credited to all customers of AGS through the Company Owned Production Rate Rider G (COPRR).

Is Carbon used or required to be used to generate revenue to provide service to the public within Alberta? As previously canvassed, the historical background, development and evolution of Carbon are essential to the consideration of this question. There is no doubt that Carbon is used presently to generate revenue and has been used, to one degree or another, for revenue generation purposes since the Carbon gas field became a storage field in 1967. The more difficult question is whether Carbon is still required to be used to generate revenue to provide service to the public. The Board will consider this question in this Section of the Decision.

In Decision 2005-063 the Board referred to the unique history of Carbon in these words:

> The Board notes the unique circumstances in which Carbon was acquired and developed, and that revenue generation was among the uses for Carbon in the past.
>
> With respect to revenue generation as a stand-alone use of an asset, the Board believes it would have difficulty approving the inclusion in revenue requirement of costs associated with a new asset, where the function of the asset was unconnected to utility service and where its sole purpose was to generate revenue to offset rates otherwise payable. Revenue generation as a sole use pending some potential future use of an asset for regulated service is also problematic. Revenue generation which is a by-product or an associated benefit of the use of an asset to provide regulated services would be less problematic. However, the Board is not prepared at this time, to dismiss stand alone revenue generation as a potential justifiable use of Carbon when considering if Carbon is used or required to be used, particularly where it has clearly been one of the uses for Carbon for the majority of its history. The need for an understanding of this historical context is underscored by AGS in its submission quoted under clause (a) of the Fourth Preliminary Question: "The fact that only a portion of the storage facility had been used from time to time but that all costs and revenues have been treated as utility use merely reflects an arrangement that was considered to be beneficial to all parties at the time and to which no one took exception". In considering whether or not revenue generation is an appropriate ongoing use for Carbon, the Board believes that it will be necessary to consider the historical basis for the continued inclusion of Carbon in rate base subsequent to its conversion into a storage facility. This Preliminary Questions Module was not intended to delve into the specific detailed history of the Carbon facility. In its letter of December 23, 2004, the Board identified the next phase of the current Board process (the Part 1 Module discussed in Section 7 of this Decision) as the appropriate time to consider the detailed circumstances relating to Carbon, including the conversion of the production

> field into a storage facility and the ongoing justification for retaining Carbon within rate base at the time of conversion and thereafter.[51]

The history of Carbon as indicated in Section 3 above reveals a set of circumstances wherein all parties appear to have accepted that a large amount of capacity excess to utility requirements would remain in rate base. This excess capacity was then employed with the agreement of all parties to generate revenue in the form of revenue credits which had the effect of reducing rates otherwise payable. It is obvious that this is not a typical arrangement for utilities in respect of the treatment of excess capacity, particularly to the degree noted in reference to Carbon. The Board from time to time will permit a utility to include some amount of excess capacity associated with a facility in rate base over a limited period of time. This may occur, for example, in situations where planned facilities may have been brought into rate base in advance of the full usage expected with reasonably forecast load growth. However, it is not at all typical to see a facility remaining in rate base with significant excess capacity (in the range of 50% or more in some years) over a period of forty years. The degree to which Carbon has consistently and materially included capacity surplus to the needs of the utility over an extended period of time appears to be unique in the Alberta regulatory experience. The Board notes that ATCO Gas' witness also considered Carbon to be unique in respect of its size and its evolution:[52]

> Q Do you know of any other asset similar to Carbon that's a rate base asset that has a certain amount of excess capacity? Perhaps that in some years a large amount of excess capacity to customer needs, that's used as a revenue offset. … I am just wondering if it's a somewhat unique situation.
> A MR. ENGLER: I don't know of anything. I think it's unique in the sense of the size. We have certainly have had assets that were generating revenue but not generating enough revenue. But they were kicked out of revenue requirement. NGV is an example of that. But I think what makes Carbon unique is its size and its evolution. It is a unique asset in that it did provide a very important utility purpose, and basically with the evolution of the gas markets, it no longer does. And it – as I've said, we could, quite frankly, bulldoze the facility away and life would continue on for Albertans. So in that regard it's unique as well.[53]

With respect to the revenue generated from the Carbon capacity that was surplus to utility needs over the years, the Board notes that the degree to which the facilities were used to generate revenue has been inconsistent over time. In some years the amount of income credits was less than the costs of the related storage capacity.[54] Nevertheless the facility remained in rate base. This is another aspect which points to a unique course of dealing or arrangement among all parties and a unique regulatory treatment of Carbon storage over the years. As AGS noted in the extract from Decision 2005-063 quoted above:

> The fact that only a portion of the storage facility had been used from time to time but that all costs and revenues have been treated as utility use merely reflects an arrangement that was considered to be beneficial to all parties at the time and to which no one took exception.

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51 Decision 2005-063, pp. 16-17
52 Extracts from Transcript pp. 251-252
53 Extract from Transcript pp. 251-252
54 For example, see CAL – AG.9(d) (Revised)

5.2.2.1 Submissions on Revenue Generation

In reply argument Calgary provided its understanding that "revenue generation" referred to the historical method of Carbon storage operation. That is, all of the owning and operation costs formed part of the cost of service of the utility. Revenues generated from storage were credited against the cost of service. Ratepayers bore the risks of whether the cost/benefit of storage was negative or positive in any given year. The only 'liability' of AGS arose if it did not behave in a prudent manner.

Calgary noted in argument[55] that there appeared "to have been no dispute over the continued inclusion of Carbon in rate base when it was converted to a storage operation in the late 1960's or at any time when its primary use was revenue generation." Calgary also noted that after the TCPL contract had expired "…expansion was triggered by the utility (CWNG) identifying opportunities for additional revenue generation."[56]

Calgary also observed that there was no expectation that the revenue generation model would consistently provide positive value every year and that past experience showed this to be true. When net revenues were negative, the customers absorbed the costs. Calgary submitted it was not expecting a guarantee of positive results every year, but rather prudent operation.

Calgary submitted that the value and impact on rates was relevant when considering the removal of an asset from rate base or its retention in rate base. The loss of revenue credits received by customers through the COSRR and COPRR must be taken into account. Calgary contended that storage had significant value and could serve to reduce rates if used in a revenue generation capacity.

Calgary observed that when first developed as a storage reservoir it appears that virtually none of the storage capacity was used to deliver gas directly to CWNG customers at their point of consumption. Instead, the primary purpose was the contracting with TCPL and the primary benefit derived from the storage operation was the generation of revenues from TCPL. Following expiration of the TCPL contract, increases were made in Carbon working capacity. Calgary argued that a minimal amount of this increased capacity was used for increased service to utility customers. The utility customer use never exceeded 40% of the total cycle capacity or 50% of the deliverability, or daily injection or withdrawal capacity of the facility prior to expansions. The balance of the capacity was used for revenue generation, which was credited against the utility cost of service.

Calgary argued that the fact that "used or required to be used to provide service to the public" includes revenue generation is supported by the recent Supreme Court decision in the Stores Block Case[57] (SCC Stores Block Decision) which stated that:

> Assets are indeed considered in rate setting, as a factor, and utilities cannot sell an asset used in the service to create a profit and thereby restrict the quality **or increase the price of service.**[58] [emphasis added by Calgary]

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55 Calgary Argument, p. 31
56 Decision 2000-9, pp. 41-42, 133, 135-137
57 *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140
58 SCC Stores Block Decision, supra, para 69

Calgary believed that it was clear from the language used by the Supreme Court that the economic benefit or contribution of an asset was a relevant consideration.

Calgary submitted that a review of the history of Carbon storage as a rate base asset showed that the Board has been employing the concept of "used or required to be used" to obtain "just and reasonable rates" since the outset, rather than focusing on looking at whether Carbon Storage provided a direct and immediate physical service to ratepayers. When Carbon was converted to a storage reservoir and retained in rate base its primary use was the generation of revenue through a long term contract with TransCanada. Under a strict physical service requirement for "used or required to be used" the entirety of Carbon storage would not have been retained in rate base if its economic use as a production asset was considered to be at an end. Throughout its history as a rate base asset, Carbon has never been used solely, or even primarily, to provide physical service to the ratepayers of AGS. However, customer rates included the full owning and operating cost of Carbon, net of revenue received.

The CG submitted that what is known is that neither the Board nor interveners opposed the acquisition of Carbon as a source of COP and subsequently as a storage facility, or the various additions which were made to these facilities and their inclusion in rate base. This was notwithstanding the fact that they were used from time to time for revenue generation purposes.

The CG noted that except for the initial years of operation from 1958 to 1967, when Carbon functioned as a peak winter gas supply source for AGS (then CWNG) customers, from 1968 to the present the Carbon assets had an unbroken history of being used in varying degrees as a revenue generation asset. The CG submitted that the evidence, particularly as advanced by Calgary, was convincing in its demonstration that for the duration of the TCPL storage contract from 1972 to 1992 in particular,[59] Carbon assets were primarily used for purposes of revenue generation. In the post 1992 period, there continued to be very significant third party storage contracts and the maximum utilization of the Carbon storage capacity by AGS of 16.7 PJs (which only represented a few years of Carbon history) was still less than 40% of the total Carbon storage capacity of 43.5 PJ. The evidence was that approximately 50% of the deliverability of Carbon was allocated to AGS.[60] The net result was that since storage value was related to a combination of capacity and deliverability, the use of Carbon for the vast majority of its history had always been less than 50% allocated to AGS.

The CG submitted that the record was clear that, except for the initial years of operation as a winter peaking gas supply, Carbon had always had a majority of its operation related to revenue generation, which had evolved to the present status of its 100% utilization as a revenue generation source.

The CG also referred to its ‘proxy’ concept as support for continued use of Carbon for revenue generation. The CG suggested that the COSRR credit was an implicit recognition by the Board that the use of Carbon storage provided a storage proxy benefit to all gas customers.

With respect to the R3 Regulation, Calgary argued that the use of storage by a gas distributor that was not for the provision of gas to the end use customer was not prohibited by the R3

[59] Exhibit 176, para. 20-23
[60] Exhibit 176, para. 48

Regulation. Also, the use of storage for revenue generation to set just and reasonable rates for the gas distributor was not prohibited by section 3 of the R3 Regulation.

In addition, Calgary submitted that the enactment of the R3 Regulation did not preclude the use of Carbon by AGS. Calgary submitted that AGS' interpretation that the R3 Regulation directed AGS to remove Carbon from rate base was inconsistent with legislative practice in dealing with the removal of major assets from rate base. Calgary submitted that the manner in which the Alberta legislature deals with the removal of major assets from regulation is found in the decisions related to the deregulation of the electric industry and the establishment of the Transmission Administrator. Calgary submitted that where the legislature is deregulating and restructuring the industry, and removing assets from regulation, it does so explicitly and directs the holding of hearings to address the manner of removal, and the impacts of the changes and the process to be followed.[61] Calgary proposed that the R3 Regulation did not prohibit a gas distributor from engaging in storage.

The CG agreed with Calgary's argument regarding the interpretation of the new legislation.[62] The CG argued that there was no indication as to how the management and operation of Carbon by Midstream could be construed as a storage function by AGS and as the evidence indicated, some time ago, AGS assigned all responsibility for the "storage function" to its affiliate and is, accordingly, in full compliance with the R3 Regulation. The CG noted that ownership of storage assets does not offend this regulation.

The CG considered the following section of the GU Act supported the Board's jurisdiction to deal specifically with Carbon:

> 22(1) The Board shall exercise a general supervision over all gas utilities, and the owners of them, and may make any orders regarding equipment, appliances, extensions of work or systems, reporting and other matters, that are necessary for the convenience of the public …

AGS disagreed with the positions taken by the interveners. With respect to the Board's authority with respect to particular rate base assets, AGS stated that the Board's jurisdiction to deal with Carbon was narrower. The Board must make its rate base determination as part of the process of fixing just and reasonable rates for distribution service. In AGS' view, a rate base determination only relates to a valuation of the assets AGS' management chooses or proposes for that purpose as part of the exercise of fixing just and reasonable rates.[63]

AGS argued that the use or function to which the Board directed AGS to use Carbon in Order U2005-133 was inconsistent with the legislation. Revenue generation is not a listed function of a gas distributor. Directing a gas distributor to provide non-distribution service to third parties outside the distributor's service area falls well beyond the purpose and objects of gas utilities legislation in Alberta. No issue of partial use arises since the sole present use is revenue generation.

AGS argued that based on any reasonable interpretation, the present use of Carbon directed by Board Order U2005-133 is inconsistent with the legislative scheme governing the roles,

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[61] Calgary Evidence October 31, 2005, para. 59 and 60
[62] CG Reply Argument, June 2, 2006, p. 3
[63] AGS Submission January 24, 2005, Preliminary Question, p. 7

relationships and responsibilities of gas distributors in the Province of Alberta. Gas distributors were not required to provide non-distribution customers any services. Second, no broad supervisory powers nor implied powers exist for the Board which would overcome those inconsistencies with the new legislative scheme which focuses upon providing assurances of safe and reliable utility service while affording protection against monopoly abuse. Third, there are no separate customer entitlements to control the utility's assets or the benefits arising therefrom. Customers are not harmed from withdrawal of assets from rate base when there is no valid distribution utility purpose for deployment of those assets.

AGS submitted that neither the GU Act nor the R3 Regulation nor any other legislation touching upon utilities in the Province provide any support for the view that a gas distributor can be required to provide non-monopoly services, such as storage, to non-utility customers utilizing its property purely to generate a subsidy for distribution rates.

AGS argued that the context, legislative intention and objective of Alberta's gas utility legislation have been well established. It centers upon the prevention of monopoly abuse and the provision of safe and reliable gas distribution service to distribution customers at fair and reasonable rates.

5.2.2.2 Board Views

"Proxy" Use of Carbon

The CG used a 'proxy' concept in support of the continued use of Carbon for revenue generation. The CG suggested that the COSRR credit was an implicit recognition by the Board that the use of Carbon storage provided a storage proxy benefit to all gas customers.

The Board has considered the proxy argument of the CG and finds it is not in keeping with Decision 2005-063 in which the Board stated:

> The Board also does not believe it would be justifiable to consider the compulsion of DERS to utilize Carbon as a storage facility in order to provide default supply service, as a possible use of Carbon, on the basis of the historic use of the facility for peaking supply or for risk management.[64]

Given that the Board has determined that it would not consider the compulsion of DERS to use Carbon storage in supplying gas to customers, the Board is of the view that it should not now consider revenue generated from the use of Carbon as a proxy for such a use by DERS and/or retailers.

Is AGS Prohibited from Utilizing Carbon for Revenue Generation?

Before determining if Carbon is used or required to be used for revenue generation purposes it is necessary to deal with the arguments of AGS that it is prohibited from using Carbon in that manner. AGS argued that the new legislation and in particular the provisions of sections 3, 4(1), 4(3) and 5(1) of the R3 Regulation and the definition of "gas services" in the GU Act, prohibited it from retaining storage as a regulated asset. As a gas distributor, AGS argued that it is prohibited from providing "gas services" which are identified as the responsibility of the default supply provider and retailers in the R3 Regulation, and are defined to include storage services in the provision and delivery of natural gas.

[64] Decision 2005-063, p. 19

The Board disagrees with AGS' position that the legislation prohibits the ownership or use of storage for revenue generation. As the Board indicated in Decision 2006-098,[65] the Board does not agree that the legislation prohibits AGS, as a gas distributor, from owning or operating a storage facility so long as the asset is not used by AGS, in its capacity as a gas distributor, to provide gas services.[66] AGS is not utilizing Carbon storage to provide gas services to distribution customers. The Board is of the view that the use of Carbon to generate revenue for the utility is not in direct contravention of the legislation.

AGS has indicated on several occasions that its management, not the Board, has the capability to decide what assets are in or out of rate base and should or should not be dedicated to public service.

For example, in its Rebuttal Evidence AGS submitted:

> …the law permits the utility to withdraw that property from use where its management has determined that it is no longer required for the provision of the safe, reliable utility service designated by the governing legislation.[67]

The Board further notes AGS' position as expressed in its Preliminary Questions submission:[68]

> While Section 26(2)(d) of the GUA does permit the Board to require approval of sales of private property outside the ordinary course of business, the authority conferred in Section 37 of the Act to determine a rate base, does not contemplate any right on the part of the Board to direct the utility in the use of its private property or to transfer it elsewhere.

While the Board agrees that utility management has a great deal of discretion to determine how services will be provided to the public, particularly where the "grey areas" are concerned (for example, owning or leasing, or providing services in-house or contracting out), in broad terms the Board considers that it has the overriding legislated responsibility to review and approve which assets are in rate base. The sections of the GU Act and PUB Act noted at the beginning of this Section 5.2 clearly provide for the Board's jurisdiction to be specific about which assets are in rate base. The Board would need to be specific if it is to "require an owner of a gas utility to establish, construct, maintain and operate,…., any reasonable extension of the owner's existing facilities…"[69] Also when determining rate base, the Board again would need to consider specific assets if it is to "give due consideration (a) to the cost of the property when first devoted to public use and to prudent acquisition cost to the owner of the gas utility…"[70] This issue was also addressed by the Board when reviewing the Third Preliminary Question[71] referred to above wherein the Board was consistent in its conclusion with regard to its ability to direct a utility's utilization in respect of a particular asset.

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65 Pp. 16 and 18

66 In the event AGS was required to resume the responsibilities of the default supply provider, the use of storage in connection with the provision and delivery of gas would be available to be used by AGS acting in its DSP capacity.

67 AGS Rebuttal Evidence, Exhibit 259, p. 21

68 AGS Preliminary Questions Submission January 24, 2005 p. 8

69 GU Act section. 36(d) and PUB Act section 89(e)

70 GU Act section. 37(2) and PUB Act section 90(2)

71 Decision 2005-063, pp. 11-13

Is Carbon Used or Required to be Used for Revenue Generation?

The Board will now consider the historical and unique aspect of Carbon and its possible implications with respect to revenue generation as a continued use for Carbon.

The Board has reviewed above the history and evolution of the utilization of Carbon, including its initial acquisition as a production asset, its conversion to a storage facility (with continuing production from the Producing Properties), and its subsequent development and expansion. The Board has also noted the exceptional and unique nature of Carbon among utility assets in the province. This uniqueness is relevant to a consideration of whether or not Carbon continues to be used or required to be used for revenue generation. Ordinarily, revenue generation on a stand alone basis would likely not satisfy the used or required to be used test for inclusion in rate base. As discussed in Decision 2005-063:

> With respect to revenue generation as a stand-alone use of an asset, the Board believes it would have difficulty approving the inclusion in revenue requirement of costs associated with a new asset, where the function of the asset was unconnected to utility service and where its sole purpose was to generate revenue to offset rates otherwise payable.[72]

With respect to Carbon, the Board determined in its review of the history of the asset that Carbon has been used for multiple purposes by the utility (including COP, operational security, system balancing, peaking supply, emergency use and revenue generation). The Board has also noted that the Producing Properties have been fully intertwined with the acquisition, development, protection and evolution of the storage facilities, such that Carbon has generally been considered as a single set of assets. Revenue generation was part of the reason why Carbon was used or required to be used from the time it was converted into a storage facility and why it continued to be so through its various evolutionary stages.

As AGS has noted, Carbon has been contracted to a third party for many years.[73] AGS originally began to provide third party service in 1967, and third party service has continued to the present day. The revenues generated have provided income credits to reduce the rates for customers. As Calgary noted there has been little or no opposition to revenue generation as a use for the past 40 years. The CG submitted that the majority use of Carbon since at least 1972 has been to provide the revenue generating service that has contributed to the ongoing establishment of just and reasonable rates.

The Board considers that the intermittent and variable use of Carbon for operational purposes and the ultimate decline of such service does not detract from the very significant impact on rates that the revenue generation function has provided for the majority of Carbon's existence. The fact that revenue generation has played such an important role to the satisfaction of all parties throughout the history of Carbon as a storage facility, emphasizes its unique character.

Ratepayers and the utility alike have viewed revenue generation as an inherent part of why Carbon was used or required to be used, at least from the time it was converted into a storage facility, regardless of the degree to which Carbon was utilized for other purposes. Accordingly, in the Board's view, it is not material whether or not revenue generation was a stand alone use or

[72] Decision 2005-063, p. 16
[73] AGS Reply Argument, p. 1

an ancillary use associated with a utility service or function whose purpose was to indirectly offset the costs of providing this utility functionality. It is clear that there has been a unique course of dealing acceptable to all parties with respect to Carbon. Revenue generation has been an integral, long standing and accepted use of Carbon for approximately forty years driven by the specific characteristics of the Carbon assets. As a consequence, revenue from Carbon has been used to offset regulated revenue requirement and has been part of the Board's determination of just and reasonable rates to customers for this same extensive period. This aspect of the of Carbon assets continues today and the Board sees no reason why Carbon should be considered as no longer used or required to be used for this purpose.

The determination of whether an asset is used or required to be used must be made subjectively in light of the circumstances surrounding the particular asset. As the Court of Appeal found in the *Alberta Power Ltd. v. Alberta (Public Utilities Board)* decision discussed in Section 5.2, "whether a particular item is to be brought within the rate base is essentially a question for the judgment of the board which does not involve a question of jurisdiction or law." The Board is of the view that the same can be said with respect to the determination of whether an asset continues to be used or required to be used and thereby remains eligible for continued inclusion in rate base. In this instance, in light of the unique historical and present circumstances relating to the Carbon assets, it is the judgment of the Board that Carbon has been and remains used or required to be used for purposes of revenue generation and remains properly in rate base. Accordingly, using Carbon for revenue generation purposes is a valid use, the inclusion of Carbon within rate base is appropriate and the Board continues to have jurisdiction over the Carbon assets and revenues. The Board considers that revenue generation associated with Carbon storage capacity is the only valid rate base use of Carbon which still remains.

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.

5.3 Part 1(c) of the Issues List

Given the Board's conclusions with respect to Part 1(b) in Section 5.2 above, it is not necessary to consider the question posed in Part 1(c) of the Issues List.

5.4 The Need for a Further Part 1B Process

Although the Board has determined that revenue generation is a valid use of Carbon, it is apparent on the face of the record that the Board and parties never anticipated at the time of conversion of the Carbon production field into a storage facility, nor at any time that the facility

[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)

was subsequently expanded, that the utilization mix of Carbon would change at some point in the future and thereafter it would be used exclusively and permanently during its remaining period in rate base for revenue generation purposes. The Board observes that 100% of Carbon storage capacity has been used since 2005 for revenue generation, while noting AGS' objections to the Board's jurisdiction and management's insistence that Carbon was not required to provide distribution service to customers The Board also noted in Section 3 of this Decision, in some past years it also appears that revenue generation may have been the primary use of the facility (for example in relation to the TCPL contract, for some of the years between 1972 – 1992). In more recent years up to 2001, the proportion of the capacity used for revenue generation appears to have been in excess of 60% while the proportion of deliverability used for revenue generation appears to have been approximately 50%.[75]

Given the lack of clarity as to historical degree of usage of Carbon for revenue generation, it may, or may not, be appropriate that 100% of the Carbon assets should continue in rate base and that 100% of the revenues generated by those assets be used to offset revenue requirement. The utilization of the Carbon assets in this manner appears to have been outside the contemplation of the Board and parties and the historical record would indicate such an exclusive use, without the ability of the utility to impinge on storage capacity, on an indefinite basis to be inconsistent with the actual utilization of the asset during its years of service.

The possibility that the Board might determine Carbon to be used or required to be used for revenue generation, but that it might find it to be inappropriate that the entirety of the Carbon assets be used in that manner for the benefit (detriment) of ratepayers was not within the scope of the present proceeding. Accordingly, the Board did not seek, and parties have not been provided the opportunity to file, evidence or argument on the merits of this possibility. The Board considers it appropriate in these circumstances that an additional process, a Part 1B Module, be commenced to examine this issue.

In Section 5.1 above, the Board noted the lack of clarity with respect to which portion of the Producing Properties assets are most appropriately considered to form part of Carbon Storage and therefore associated with revenue generation from the storage operations, and which Producing Properties assets could be considered as independent of the necessary buffer lands protecting the storage facility and might therefore be said to generate revenue separately from the storage operations.

The possible division of the assets constituting the Producing Properties into buffer lands and non-buffer lands raises the issue of whether it would be appropriate to consider one category of Producing Properties assets (buffer lands) differently from the other group of Producing Properties assets (non-buffer lands) from the perspective of their continued inclusion in rate base and the continued use of these assets to generate revenue as an offset to revenue requirement. If for example, it can be said that the historical use of Carbon Storage for revenue generation purposes does not fully apply to the non-buffer portion of the Producing Properties, then it may be appropriate to consider that these assets only served a supply function for most of their existence. If that is the case, given that the provisions of the 2003 R3 Regulation provide that gas supply is a function to be carried out by retailers or the DSP, perhaps then these assets should be removed from rate base. In this context the Board notes Calgary's submission in relation to the

[75] Decision 2002-072, Table p. 3.

Preliminary Questions that it was indisputable that AGS does not now need producing wells to supply distribution service.[76]

The Board notes that Calgary considered that even though there was no need for the production wells, they did provide a benefit to ratepayers. Revenue generation however, from a sub-set of Carbon assets that does not share the same unique factors exhibited by the Carbon Storage assets which the Board has found to validate the use of Carbon Storage for revenue generation purposes, might merit different consideration.

The possibility of the Board determining that the Producing Properties might be further defined as buffer lands and non-buffer lands and the possible conclusion that buffer lands might be treated differently from non-buffer lands for purposes of revenue generation, was not within the scope of this Part 1 Module proceeding. The Board considers it appropriate in these circumstances that the Part 1B Module referred to above, should consider this issue.

Accordingly, the Board considers that a Part 1B Module should be commenced for the purpose of addressing the following questions:

- Given that the Board has determined revenue generation to be a valid use for Carbon, should all, or only a portion, of the Carbon Storage assets be utilized to generate revenue for the benefit (detriment) of ratepayers? In addressing this question parties should consider if there is a basis for a percentage division of the storage facilities based on the role that the revenue generation use played on an historical basis considering both storage capacity and deliverability.

- Is there a basis to distinguish different components of the Carbon assets when considering whether or not revenue generation is a valid use for each component? In addressing this question parties should consider if some portion of the Producing Properties should be treated differently than other portions of the Producing Properties given that some portion of the Producing Properties are required as buffer lands.

The Board will shortly provide parties with an Issues List for the Part 1B Module and provide parties with an opportunity to comment thereon. Following receipt of comments, the Board will establish a process which would commence with AGS filing its position and supporting evidence on these matters.

6 WOULD THE REMOVAL OF CARBON FROM RATE BASE CONSTITUTE A "DISPOSITION"?

In Section 5.2, the Board determined that Carbon should be considered to be used or required to be used to provide service to the public. As indicated in that Section, subject to the Part 1B Module process, all of Carbon is eligible to remain in rate base and accordingly shall remain in rate base subject to an application to dispose of Carbon as discussed further in this section.

Once the Part 1B process is complete the Board will direct AGS to file an application consistent with the results of the Part 1B decision, for a Part 2 Module in relation to the storage lease to

[76] Calgary PQ Submission dated January 24, 2005, p. 15

Midstream and/or a Part 3 application with respect to the removal of certain assets from rate base.

The Board recognizes, however, that AGS does not wish to continue to keep Carbon under regulation. AGS has made it clear that it wishes to remove Carbon from rate base and to continue operating Carbon as a non-utility asset and accordingly, it would not wish to file an application for a Part 2 Module application. Order U2005-133 requires AGS to maintain Carbon in rate base until otherwise directed by the Board. In these circumstances, it becomes necessary to address what further Board approvals, if any, would be required for AGS to remove Carbon from rate base. The parties have provided evidence and argument on the need for further Board approvals should AGS wish to pursue its stated intention of removing Carbon from regulation.

A finding that an asset is used or required to be used does not necessarily mean that the asset can not be removed from regulation. Rather, the Board must consider the circumstances and impacts of such an action in light of the legislation.

The Board has previously recognized AGS' desire to remove Carbon from regulation and has laid out a process in the Carbon Transfer Decision (Decision 2002-072) by which AGS may seek the approval of the Board under section 26(2)(d) of the GU Act to sell or transfer Carbon. At pages 22-23 of that Decision the Board stated:

> Therefore, the Board would be willing to consider a sale of the assets if certain conditions can be met, the foremost of which is keeping the customers harmless by establishing a no-harm value. The Board would apply the no-harm principle to any future application by ATCO Gas to dispose of Carbon and would require ATCO Gas to demonstrate that the no-harm test would be met in accordance with the conditions discussed later in this Decision.

AGS has indicated, however, that the guidance provided by the Board is not applicable to the present circumstances. AGS has made it clear that it does not wish to sell or transfer Carbon but to remove it from rate base and to continue operating Carbon as a non-utility asset. AGS has argued that the removal of an asset out of the ordinary course of business from rate base would not require the consent of the Board under section 26(2)(d) of the GU Act because such a removal would not be one of the transactions which would require the consent of the Board.[77] Section 26(2)(d) of the GU Act provides:

> **(2)** No owner of a gas utility designated under subsection (1) shall
>
> (d) without the approval of the Board,
> (i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of it or them, or
> (ii) merge or consolidate its property, franchises, privileges or rights, or any part of it or them,
>
> and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of

[77] AGS Argument dated May 19, 2006, p. 10 and Reply Argument dated June 2, 2006, p. 18

> the property of an owner of a gas utility designated under subsection (1) in the ordinary course of the owner's business.

Similar wording is also found in section 101(2)(d) of the PUB Act.

AGS submitted that the legislation does not require Board approval for the removal of an asset from rate base in the absence of a sale, lease, mortgage or other disposition or encumbrance of the asset. AGS submits that the definition of "disposition" connotes or is synonymous with a "transfer" of property[78] and the mere change of status of an asset from regulated to unregulated service does not constitute such a disposition. AGS points out that the ongoing lease to Midstream is not an issue to be considered within this Part 1 Module. Removal from rate base without something more, is not a disposition as no transaction has taken place. As there is no requirement to file an application with the Board for approval to remove an asset from rate base in the absence of an accompanying disposition, there is no basis for the Board to apply the "no harm" test to the removal of an asset from rate base.[79] AGS submitted that there is no jurisdiction which arises from the assets themselves which permits the Board to direct their use in the manner contemplated in Order U2005-133.[80]

CG Position

The CG noted that in the Application, AGS proposed to withdraw the Carbon assets from regulated rate base, not sell them, and to continue operating these assets as an ongoing storage project on a non-regulated basis. In the CG's view, this change in operation would still be an action that would be captured by the words "or otherwise dispose of" in section 26 of the GU Act, since the effective result would be that Carbon assets would have been removed from the regulated activities of AGS. In CG's view, the new legislation did not remove the requirement for the regulated utility to apply for a disposition of assets that would fall outside of the ordinary course of business.[81]

The CG referred to the AGS position on the lack of a requirement for Board approval for removal of an asset from rate base and to the SCC Stores Block Decision at page 8 of its argument:

> It seems clear to the CG that the removal of assets from regulated service is a "disposition" by the regulated entity and would require prior approval by the Board. ATCO Gas' reliance on dictionary definitions is not appropriate in the circumstances, are of little assistance to the Board and are in conflict with the Board's authority over utility assets as part of its rate making process. The CG also submit that the Board has already approved a leasing arrangements by the regulated entity which contemplated that the assets in question will remain in rate base with the revenue generated used to offset customer rates.
>
> Similarly, as noted above, the Court also made it clear that "… utilities cannot sell an asset used in the service to create a profit and thereby restrict the quality or increase the price of service."[18] [Emphasis added]. It is not difficult to suggest that this statement

[78] AGS Rebuttal Evidence, p. 10
[79] AGS Rebuttal Evidence, p. 11
[80] AGS Argument dated May 19, 2006, p. 11
[81] CG Evidence, p. 6, lines 30-34

would include any scheme which removes an asset from regulated service and, thereby results in an increase in the price of service.

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[18] SCC Decision, para.69

Calgary Position

Calgary observed that AGS had not made an application to remove Carbon from rate base, and instead AGS has asserted its purported right to simply declare the asset as non-utility and avoid the Board's scrutiny. In Calgary's view,[82] the language of section 26(2)(d)(i) of the GU Act is broad and contemplates much more than just a sale of property and is intended to give the Board broad authority over virtually any dealings connected with the assets of a designated utility out of the ordinary course of business, including the removal of Carbon from rate base:

> Anything which affects the use or utilization of a rate base asset by the utility is caught by s. 26 and its broad catch-all phrases of "or otherwise dispose of or encumber" and "its property, franchises, privileges or rights or any part of it or them". To conclude, as suggested by ATCO, that "dispose" is synonymous with transfer[56] is to ignore the plain reading of section 26(2)(d)(i). The use of the words "sell, lease, mortgage" before the broad phrase of "otherwise dispose of or encumber" clearly connote that "otherwise dispose of or encumber" mean something different and more than a sale, lease or mortgage. Otherwise there would be no point in the Legislature adding the catch-all phrase.[83]

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[56] ATCO Rebuttal (Exhibit 259), page 10, line 7

Calgary went on at pages 23-24 of its Argument to refer to the SCC Stores Block Decision:

> The purpose of Section 26(2)(d)(i) of the GUA has been articulated by the Supreme Court in the Stores Block Case as being:
>
> > … to protect the customers from adverse results brought about by any of the utility's transactions by ensuring that the economic benefits to customers are enhanced.[60]
>
> The Supreme Court further accepted three broad reasons for the requirement of section 26(2)(d)(i) that a sale must be approved by the Board:
>
> 1. It prevents the utility from degrading the quality, or reducing the quantity, of the regulated service so as to harm customers [*sic*];
> 2. It ensures that the utility maximizes the aggregate economic benefits of its operations, and not merely the benefits flowing to some interest group or stakeholder; and
> 3. It specifically seeks to prevent favouritism [*sic*] towards [*sic*] investors.[61] [84]

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[82] Calgary Evidence dated October 31, 2005, para. 54
[83] Calgary Argument dated May 19, 2006, p. 22.
[84] SCC Stores Block Decision, para 73 [*sic*] The paragraph quoted is para 76 and reads as follows:
1. It prevents the utility from degrading the quality, or reducing the quantity, of the regulated service so as to harm consumers;
2. It ensures that the utility maximizes the aggregate economic benefits of its operations, and not merely the benefits flowing to some interest group or stakeholder; and
3. It specifically seeks to prevent favoritism toward investors.

> While the Supreme Court was specifically addressing the issue of a sale of an asset the purpose behind section 26(2)(d)(i) and the reasons behind the requirement of an approval apply equally to a situation such as this where ATCO is attempting a transaction which seeks to favour its investors (and its affiliate), which will increase costs to ratepayers, and which will deprive rather than enhance economic benefits to ratepayers.

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[60] Stores Block Case, para 29
[61] Stores Block Case, para 73

Views of the Board

The Board agrees with interveners that the intent of section 26(2)(d)(i) of the GU Act was to provide the Board with the opportunity to consider any dealing with assets employed by a designated utility out of the ordinary course. The intent of the legislation appears to provide the Board with the authority to review any situation where the use of an asset might be withdrawn from utility service to the detriment of ratepayers. The Board finds support for this position in the recent SCC Stores Block Decision where Bastarache J. speaking for the majority of the Court stated at paragraph 29:

> The particular provision at issue, s. 26(2)(d)(i) of the GUA, which requires a utility to obtain the approval of the regulator before it sells an asset, serves to protect the customers from adverse results brought about by any of the utility's transactions by ensuring that the economic benefits to customers are enhanced (MacAvoy and Sidak, at page 234-36).

Further in paragraph 43 Justice Bastarache stated:

> I would note in passing that this power is sufficient to alleviate the fear expressed by the Board that the utility might be tempted to sell assets on which it might realize a large profit to the detriment of ratepayers if it could reap the benefits of the sale.

Although, the Court was considering a sales transaction, these words seem equally appropriate to a removal of an asset from rate base out of the ordinary course of business. It would be incomprehensible that a utility could cause harm to ratepayers by circumventing the Board approval process under section 26(2)(d)(i) by simply removing an asset from rate base and declaring it to be non-utility and thereafter retaining all economic benefit therefrom, when it would be unable to realize that economic benefit through a sale transaction without first obtaining Board approval, thereby accomplishing indirectly what it could not do directly. The legislation is intended to prevent diminution of service or adverse rate impacts from the disposition of assets out of the ordinary course. The unilateral removal of a major asset from rate base outside of the ordinary course raises the same potential for harm to ratepayers as does a sale, mortgage or other disposition of such property. Accordingly, the Board considers that AGS will require the consent of the Board pursuant to section 26(2)(d)(i) of the GU Act prior to any removal of Carbon assets from rate base and prior to operating such assets as non-utility property. Any such application will have to demonstrate to the Board that the removal of Carbon from rate base satisfies the no harm test commonly applied by the Board when considering applications under that provision of the legislation.

In assessing an application to remove Carbon from rate base, the Board would consider if harm would result to ratepayers from discontinuing revenue generation.

The Board notes the position of Calgary and the CG that the harm to ratepayers resulting from the removal of Carbon from rate base would take the form of an increase in rates.[85] Under cross examination by Board Counsel, Mr. Vander Veen on behalf of Calgary described the potential harm to ratepayers from the discontinuance of the rate riders by removing Carbon from rate base as follows:

> If it comes out of rate base, two things happen to the public. And I'm looking at it through the eyes of the ratepayer. The ratepayer loses roughly a $20 million contribution to the cost of service and his rates go up by approximately 7 million. In the eyes of the ratepayer, that's lose/lose or, as some people would say, harm/harm.[86]

The Board notes that the implications of removing Carbon storage from rate base were not fully canvassed in this proceeding nor fully within the scope of the proceeding except to the extent of demonstrating a net benefit to ratepayers of retaining Carbon, at a very high level. Accordingly, as the Board has indicated above, if AGS wishes to pursue the removal of Carbon from rate base, it must file an application pursuant to section 26(2)(d)(i) of the GU Act addressing the potential harm to ratepayers of ceasing to provide the revenue generation function, and in so doing must also address the issues established by the Board for the Part 3 Module in connection with the removal of Carbon from rate base.

[85] Calgary Testimony – Transcript pp. 356, 401, 419 and 423. CG Testimony – Transcript pp. 356 and 430.
[86] Transcript p. 401

7 ORDER

IT IS HEREBY ORDERED THAT:

(1) Order U2005-133 is finalized in accordance with the terms of this Decision.

Dated in Calgary, Alberta on February 5, 2007.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

B. T. McManus, Q.C.
Presiding Member

(original signed by)

J. I. Douglas, FCA
Member

(original signed by)

C. Dahl Rees, LL.B
Acting Member

APPENDIX 1 – HEARING PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative (APPLICANTS)	Witnesses
ATCO Gas South (AGS) L. E. Smith, Q.C. K. L. Illsey	J. Engler D Wilson
Consumers Group (Utilities Consumer Advocate [UCA], First Nations, Alberta Irrigation Projects Association, Alberta Urban Municipalities Association, Consumers' Coalition of Alberta, and Public Institutional Consumers of Alberta) (CG) J. A. Bryan, Q.C.	R. Liddle
The City of Calgary (Calgary) R. Bruce Brander	H. Johnson Dr. Philip Walsh H. J. Vander Veen

Alberta Energy and Utilities Board Board Panel B. T. McManus, Q.C., Presiding Member J. I. Douglas, FCA, Member C. Dahl Rees, LL.B., Acting Member Board Staff B. McNulty (Board Counsel) R. Armstrong, P.Eng M. McJannet D. Popowich, P.Eng	

APPENDIX 2 – ABBREVIATIONS

Abbreviation	Name in Full
AGS or ATCO Gas	ATCO Gas South (operating division of ATCO Gas and Pipelines Ltd.)
BCF	billions of cubic feet
Board or EUB	Alberta Energy and Utilities Board
Calgary	The City of Calgary
CWNG or CWNG	CWNG Natural Gas Company Limited
Carbon	Carbon Facilities (storage and production facilities)
CG	Consumer Group: comprised of Aboriginal Communities, Alberta Irrigation Projects Association, Alberta Urban Municipalities Association, Public Institutional Consumers of Alberta and the Utilities Consumer Advocate
COP	company owned production
COPRR	company owned production rate rider
COSRR	company owned storage rate rider
DERS	Direct Energy Regulated Services
DSP	default supply provider
GCRR	gas cost recovery rate
GRA	general rate application
GUA or GU Act	*Gas Utilities Act*
Midstream	ATCO Midstream Limited
MMCF	millions of cubic feet
NUL	Northwestern Utilities Limited
PJ	petajoule
PUB	Public Utilities Board
PUB Act	*Public Utilities Board Act*
R3 Regulation	Alberta Regulation 186/2003, *GUA, Roles Relationships and Responsibilities Regulation*
SCADA	supervisory control and data acquisition
TJ	terajoule
TransCanada or TCPL	TransCanada PipeLines Limited

APPENDIX 3 – BOARD LETTER – PROCEDURAL DIRECTIONS, DECEMBER 23, 2004

Appendix 3 - Board Letter Procedural Dire

(consists of 16 pages)

APPENDIX 4 – BOARD LETTER – RULING ON CALGARY/CG SUBMISSION, DECEMBER 9, 2005

Appendix 4 - Board
Letter Ruling on Calga

(Consists of 8 pages)

APPENDIX 5 – MAP – CARBON

Appendix 5 - Map - Carbon

(Consists of 2 pages)

APPENDIX 6 – DECISION CHRONOLOGY RELATED TO CARBON

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

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

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

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

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

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

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

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

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

[87] Decision 23616, p. 10

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Specifically, the Board concluded that[90]

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

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

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

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

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

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

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

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34 Decision 2001-110, page 27

35 Exhibit 3, Appendix A, Ziff Energy Group, ATCO Gas (South) Storage Study, page 19.

36 CG Argument, page 7

37 Cal-AG.18 and Cal-AG.19

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

Decision 2002-072 ordered as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[91] Decision 2004-022, 2004/2005 AGS Carbon Storage Plan, p. 18

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

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

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

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

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

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

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

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ELECTRONIC NOTIFICATION

December 23, 2004

TO INTERESTED PARTIES

ATCO GAS SOUTH (AGS)
2005/2006 CARBON STORAGE PLAN – APPLICATION NO. 1357130

PROCEDURAL DIRECTIONS

The purposes of this letter are to:

(a) provide the ruling of the Alberta Energy and Utilities Board (the Board) in respect of two procedural requests made by AGS by letter of October 4, 2004 with respect to Part 2 of the Issues List (Issues List) set out in the Board's correspondence of September 13, 2004[1];
(b) consider a motion by the City of Calgary (Calgary) and a second motion by the Consumers Group and the Utilities Consumer Advocate (collectively the CG), filed on October 14 and 15, 2004, respectively. Both of these motions were in respect of obtaining additional responses from AGS in respect of certain Information Requests; and
(c) request submissions from the parties on several "Preliminary Questions" related to the appropriate scoping to be utilized by the Board when considering whether an asset is "used or required to be used to provide service to the public within Alberta" or should otherwise remain in rate base.

The writer has been requested to convey the Board's determination in respect of each of the above matters.

1. AGS Procedural Requests

By letter of October 4, 2004 AGS requested the Board to consider two requests. The first request was in respect to Part 2 of the Issues List (the **Part 2 Request**) and was stated as follows:

> AGS respectfully requests confirmation from the Board that Part 2 is no longer at issue in this proceeding and that it is not necessary to make supplementary evidentiary filings or to undergo a Part 2 interrogatory process in light of the foregoing.
>
> Failing such confirmation from the Board, AGS respectfully requests the Board's further directions as to how to proceed.

[1] The Issues List is attached as Appendix A to this letter.

The second request (**Request for Direction to Interveners**) related to the Board's jurisdiction to direct a refund to AGS in certain circumstances and was stated as follows:

> …AGS respectfully requests that intervenors be directed to identify in their evidence the following:
>
> > What is the appropriate mechanism for, and what is the basis of the Board's jurisdiction to direct, a refund to AGS of any net profits realized from operation of the Carbon storage business in the event it is determined that the Board has no jurisdiction to direct a 2005/2006 storage plan or to otherwise direct the use of the Carbon storage business or its assets.

By letter of October 8, 2004, the Board suspended the procedural schedule and requested comments from interested parties on the AGS procedural requests. The Board received submissions from Calgary and the CG on October 14, 2004.

1.1 The Part 2 Request

1.1.1 Background

In a letter dated September 13, 2004 the Board set out the Issues List. (As footnoted above, a copy of the Issues List is attached as Appendix A to this letter.) In the correspondence accompanying the Issues List the Board commented that:

> The Board must consider in this proceeding:
>
> (i) if the Storage Facilities and/or the Producing Properties are used or required to be used to provide service to the public or should they otherwise remain in rate base, and
>
> (ii) if the answer to any portion of (i) above is affirmative, the Board must deal with the requirement to have an approved storage plan in place by the start of the 2005/2006 storage year in April 2005.
>
> Given the nature and timing of matters to be considered in the Application, the Board is prepared to proceed to consider only the proposed lease option to ATCO Midstream for the 2005/2006 storage year even though a lease of the entire capacity of the Storage Facilities may not ultimately relate to any Board determination with respect to how the facilities are used or required to be used or are otherwise appropriate to remain in rate base.

Relevant to the portion of the Part 2 Request that suggests that additional evidence in respect of the Part 2 matters may not be necessary, the Board considered in its September 13, 2004 letter the potential need for additional evidence in respect of matters addressed in Part 2. The Board stated in that letter:

> An interrogatory process alone, however, may not be sufficient to provide an adequate informational base for proceeding with the application in the absence of additional information with respect to the appropriate price to be paid to ATCO Midstream in consideration of a lease of the entire Carbon storage facility should the Board determine

> that the Carbon assets remain used or required to be used. Accordingly, ATCO is directed to file evidence on or before **October 4, 2004** in support of ATCO's position on the appropriate consideration to be paid by ATCO Midstream to ATCO in respect of the storage lease. The Board requires ATCO to address the requirements of the ATCO Group Code of Conduct in its filing. The Board will permit additional information requests from interveners in respect of this additional evidence.

In its letter of October 4, 2004, AGS referred to Part 2 of the Issues List and pointed to clarifications made by AGS as to its intention in referring to a "lease option" in its correspondence of August 23, 2004. This clarification is contained in a Motion to Stay Proceedings dated September 20, 2004 where AGS referred to a continuation of the "status quo" which was further clarified in a letter of September 22, 2004 to mean:

> AGS intended the status quo relative to the 2005/2006 Carbon Storage Plan to mean that ATCO Midstream would use the entire storage capacity pursuant to the existing Uncontracted Capacity Agreement at the existing storage rate of $0.45 per GJ.

On November 22, 2004 the Board issued a letter establishing a placeholder in respect of the fee to be paid by ATCO Midstream in the 2005/2006 storage year for the entire storage capacity of the Carbon Storage facility (Carbon). It was noted that the need for, and the appropriateness of, the placeholder would be reviewed in due course through the balance of the proceeding.

1.1.2. Positions of Parties

With respect to Part 2(a) of the Issues List, AGS stated in its letter of October 4, 2004:

> The UCA [Uncontracted Capacity Agreement] with ATCO Midstream (which appears as an addendum to the Gas Storage Services Agreement dated February 20, 1998) has been the subject of extensive discussion before the Board on many occasions and the arrangement (subject to occasional price adjustment) has been consistently upheld (e.g. Decisions 2000-9; 2002-072; 2003-021; 2004-022). Indeed, under the UCA, ATCO Midstream has previously utilized the entire capacity at Carbon (in 2001/2002), at the same rate which the Board approved for years where it had less than the entire capacity at Carbon due to a direction that 16.7 PJ of capacity be reserved for "utility use" (2002/2003; 2003/2004; see for example Decision 2003-021 at page 16).
>
> It would appear, therefore, that it may no longer be necessary to address the issue identified in Part 2(a) relating to appropriate terms and conditions in light of AGS' clarification of the "status quo" option.

With respect to Part 2(b) of the Issues List, AGS stated in its letter of October 4, 2004:

> AGS notes Decision 2004-022 which ordered, in pertinent part, as follows:
>
> > (4) ATCO Gas South shall reflect revenues from ATCO Midstream Ltd. for uncontracted capacity at the Carbon storage facility for the 2004/2005 storage year based on a fee of $0.45/GJ <u>until such time that ATCO Gas South demonstrates to the Board's satisfaction that a different rate would be in order, or unless the rate is otherwise changed by the Board.</u> (emphasis supplied, at page 23)

> The appropriate consideration under the UCA, therefore, has already been determined in accordance with the Board's past findings earlier this year in Decision 2004-022. For the purposes of the "status quo" option for the 2005/2006 Storage Plan, AGS believes that it is proper to re(p)ly upon the existing $0.45/GJ rate.

AGS then concluded its letter of October 4, 2004 by stating:

> As both the existing UCA and the existing rate have been subject to prior Board reviews, no issue involving the Affiliate Code of Conduct would appear to arise.
>
> In the circumstances, therefore, AGS respectfully submits that the List of Issues Part 2 (a) and (b) were framed in contemplation of a new leasing arrangement with new terms and conditions which could give rise to a new pricing arrangement. With AGS' recent clarification that a new leasing arrangement is not contemplated, AGS respectfully submits that it is unnecessary to address the matters identified as Part 2 of the List of Issues.

The Board received comments from Calgary and the CG in respect of the AGS position. Both Calgary and CG disagreed with the AGS submissions and urged the Board to proceed with a consideration of the arrangements between AGS and ATCO Midstream.

1.1.3 Ruling

For the reasons stated below in Section 1.1.3.1, the Board will not proceed with a review of the terms and conditions of the UCA in the context of the 2005/2006 storage year (Part 2(a) of the Issues List) but will proceed in due course with a review of the consideration to be paid by ATCO Midstream for the uncontracted storage capacity (Part 2(b) of the Issues List) should it determine that it is appropriate for Carbon to remain in rate base.

In coming to these conclusions, the Board has considered the views of the parties, has reviewed relevant previous decisions, has considered the likelihood that a full consideration of the terms and conditions of the UCA would not be complete until well into the 2005/2006 storage year, and the decision of the Board, discussed below, to proceed with Part 1 matters before proceeding with either Part 2 or Part 3 of the Issues List.

A brief review of some of the prior decisions and related materials on these matters is found in Appendix B to this letter.

1.1.3.1. Part 2(a) Terms and Conditions of the UCA

The Board notes that previous decisions have concentrated on the compensation payable under that UCA and have not directly addressed other terms and conditions of the agreement. Accordingly, while the Board does not intend to review the terms and conditions of the UCA in the context of previous storage years, the Board does not agree with ATCO that the terms and conditions of the UCA have been expressly approved by the Board. In addition, AGS has the responsibility, as reinforced by the ATCO Group Inter-Affiliate Code of Conduct (Code), to continually ensure that its affiliate arrangements are prudent and appropriate and that they comply with the provisions of the Code.

The Board is of the view that the UCA, which is an addendum to the Gas Storage Services Agreement, is in the nature of For Profit Affiliate Services, as defined in the Code. The Board

notes that the definition of Services Agreement in the Code requires the detailing of several matters within the agreement, some of which would be appropriate for, but do not appear to be addressed by, the UCA. The standard for documenting For Profit Affiliate Services must at a minimum reflect the contractual standard for Shared Services (as defined in the Code) among utilities as discussed in the extract from Decision 2003-040 in Appendix B. In addition such arrangements must reflect the fair market value (FMV) pricing of the services provided.

The Board refers to the set of proceedings dealing with the For Profit Affiliate Service arrangements between various ATCO utilities and ATCO I-Tek as an example of the requirement that the terms and conditions of an inter-affiliate arrangement must be appropriate in the particular circumstances in order to comply with the Code and to safeguard the interests of ratepayers. At page 7 of Decision 2003-073[2] the Board made the following observation with respect to the information technology arrangements with ATCO I-Tek:

> The Board believes that ultimately it must be satisfied that the Renewal MSA is a contract that a prudent utility would enter into, having regard to appropriate IT service and maintenance, and the protection of its core business.

The above analysis would suggest that the Board should fully consider the terms and conditions of the UCA and whether or not they are appropriate for the use of the uncontracted storage capacity of the Carbon storage facility by an affiliate in the 2005/2006 storage year.

The Board notes the references in Appendix B to the Code compliance filings by AGS, the various changes effected by AGS in light of the Code and its representation that the UCA was among those agreements that comply with the Code. In these filing AGS has stated its ongoing commitment to the spirit and intent of the Code. These representations may, in part, rely on an interpretation of Board decisions and/or internal ATCO Group policies and arrangements which have not been explicitly considered to date in a Board proceeding, especially in relation to the UCA. At this time, the Board does not favor a course of action that may, as in the ATCO I-Tek proceedings, require the preparation and filing of a new UCA with a more expansive set of terms and conditions which would require specific scrutiny by all interested parties and adjudication by the Board. Such a course would most likely not permit sufficient time for a decision until well into the next storage year.

Accordingly, the Board, while still of the view that the matters raised in Part 2(a) of the Issues List remain relevant, is prepared in the context of the 2005/2006 storage year to remove consideration of the existing provisions of the UCA from the proceeding. Therefore the matters raised by Part 2(a) of the Issues List will be removed from the scope of the proceeding. To the extent however, that the terms and conditions of the UCA affect or impact pricing considerations [Part 2(b)], they will continue to be within the scope of the proceeding.

To be clear, the Board does not view the UCA as complying with the full spirit and intent of the Code for the 2005/2006 storage year and beyond, but is prepared to proceed in the fashion described for the reasons stated above. The Board would expect, should it continue to consider storage applications in respect of future storage years, that ATCO would turn its attention to the provisions of the Code and, consistent with its commitment to be guided by the spirit and intent of the Code, would negotiate a more comprehensive Services Agreement with ATCO

[2] Decision 2003-073, ATCO Electric, ATCO Gas and ATCO Pipelines, ATCO I-Tek Information Technology Master Services Agreement (MSA Module), September 26, 2003

Midstream. Such agreement should contain terms and conditions appropriate for the services being provided and the value of the transaction.

1.1.3.2. Part 2(b) Compensation payable by ATCO Midstream

It is clear from Decisions 2002-072, 2003-021, 2003-040 and 2004-022 (see Appendix B), that the Board would prefer to see evidentiary support filed by ATCO which would address the proposed fee to be paid by ATCO Midstream to AGS in terms of the FMV for the use of the uncontracted storage capacity. The Board also notes that the proceedings resulting in Decisions 2003-021 and 2004-022 were directed in part to a consideration of alternative proposals for tendering the storage capacity or for determining the FMV of the fee to be paid by Midstream, or to AGS's submission that a continuation of the existing fee was inappropriately high. Thus, these decisions established a fee to be used in determining the revenue to be received from ATCO Midstream for the use of the uncontracted capacity in a particular period. Each Decision was in respect of the specific application and time period and provided direction that would prevent a reduction in the fee unless approved by the Board.

As discussed above, the Board is of the view that the UCA is in the nature of a For Profit Affiliate Service as defined in the Code. Pursuant to Section 4.1 of the Code, AGS has the obligation to periodically review the prudence of continuing For Profit Affiliate Service arrangements. Section 4.2.2 requires a utility to charge no less than FMV in respect of For Profit Affiliate Services. The onus is on the utility to demonstrate that For Profit Affiliate Services have been charged at a price that is not less than the FMV of these services. A review of the ATCO filings in respect of the Code confirms ATCO's commitment to comply with the spirit and intent of the Code.

Accordingly, the Board is of the view that the fee of $0.45/GJ, established in Decision 2004-022 in respect of the 2004/2005 storage year, has not been determined to be appropriate for any period of time subsequent to the end of the 2004/2005 storage season. The onus is on AGS to establish in due course the appropriate fee to be paid by ATCO Midstream for the uncontracted storage capacity for the 2005/2006 storage year.

1.1.3.3 Summary of Ruling on Part 2 Request

For the reasons stated above, the Board is of the view that the matters outlined in Part 2 of the Issues List continue to be relevant, but that it is appropriate in the context of the 2005/2006 storage year to focus on the compensation [Part 2(b)] payable to AGS by ATCO Midstream. AGS has the onus to show that the fee payable by ATCO Midstream for the use of the uncontracted storage capacity of the Carbon facility is appropriate and is not less than FMV. The appropriateness of the terms and conditions of the UCA [(Part 2(a)] will be reviewed in subsequent proceedings in respect of subsequent storage years, should the Board continue to exercise authority over the provisions of the storage arrangements and should use of the uncontracted storage capacity by Midstream continue to be applied for and found to be appropriate.

As noted in Section 1.1.1 of this letter, the Board issued a letter on November 22, 2004 establishing a placeholder in respect of the fee to be paid by ATCO Midstream in the 2005/2006 storage year for the entire storage capacity of Carbon. If the Board determines that Carbon

should remain in rate base, the appropriateness of the placeholder will be reviewed in due course through the balance of this proceeding.

In light of the Ruling on the Part 2 Request, the Board considers that AGS should prepare and submit evidence at a future date, as may be required, to address the appropriate compensation to be paid to AGS by ATCO Midstream with respect to the use of the uncontracted capacity of the Carbon Storage facilities during the 2005/2006 storage year. As specified in Section 4.5 of the Code, in such evidence the utility would be entitled to utilize any method to determine FMV that it believes appropriate in the circumstances. However, in light of the establishment of a placeholder in respect of the fee to be paid by ATCO Midstream in the 2005/2006 storage year and the Board's decision, as outlined below in Section 3 of this letter, to proceed with a Preliminary Questions Module and a Part 1 Module, the Board will not require the filing of any such evidence at this time.

As indicated below in Section 4 of this letter, the Board has decided to divide the present proceeding into three parts or modules. Should the Board determine in its Part 1 Module decision to proceed with Part 2(b) of the Issues List, ATCO will be permitted a further period of time in which to file evidence to address the appropriate compensation to be paid to AGS by ATCO Midstream with respect to the use of the uncontracted capacity of the Carbon Storage facilities during the 2005/2006 storage year.

1.2 Request for Direction to Interveners

1.2.1 Ruling

The Board views questions with respect to adjustment to revenue requirement, should the Board determine Issues 1(b) and (c) in the negative, to be relevant to Part 3 of the Issues List. The Board however, does not consider it necessary at this time to direct interveners to address the particular question suggested by AGS. The Board considers that the positions of interveners on this matter may be pursued by AGS through information requests or cross examination in relation to Part 3 matters, if required, in the Part 2/3 Module discussed below in Section 4.3 of this letter. The Board would also find an understanding of AGS's position on this matter to be of assistance in its consideration of Part 3 matters.

2. The Motions

2.1 The Calgary Motion

On October 14, 2004 counsel on behalf of Calgary filed with the Board a "Motion to provide full and adequate responses to Information Requests" (the Calgary Motion). The Calgary Motion requested Board direction on requiring additional responses from AGS with respect to information requests falling into two categories; those that related to the use, need or requirement of Carbon or the Producing Properties as outlined in Part 1 of the Issues List, and those that related to valuation of Carbon and the process of removing Carbon from rate base as outlined in Part 3 of the Issues List.

Calgary's Motion can be summed up in the following extract at page 2 of its letter of October 14, 2004:

> Following release of the Issues List, Calgary did not, and still does not, understand the Board's formulation of the questions before it, and the resulting Issues with respect to use and value, to be confined solely to the 2005/2006 Storage Year. In particular, when dealing with a rate base asset, issues related to "used or required to be used" in Part 1 obviously require an examination of what has been done with the asset in the past and what could be done with it in the future. It is inherent in the nature of assets in rate base that such considerations can hardly be addressed based on a "snap shot" of 2005/2006. The exact same consideration applies to the asset valuation and financial issues addressed by the Board in Part 3. It was on this basis that Calgary prepared its IRs, and on this basis that Calgary believes AGS should be required to answer all IRs.

2.2 The CG Motion

On October 15, 2004 the CG filed correspondence (the CG Motion), which also requested the Board to provide AGS with direction to provide better responses to certain information requests. It also requested the Board to direct ATCO Pipelines to produce witnesses who can speak to the storage requirements of the regulated core market gas service chain which may include representatives of ATCO Pipelines and/or Direct Energy Regulated Services (DERS). The position of the CG can be seen in the following quote from page 1 of its letter of October 15, 2004:

> With respect, the CG submit that this proceeding contemplates and requires the following:
>
> (a) Determination of whether storage is required and/or provides a benefit to core customers, irrespective of where its utilization occurs in the gas service chain.
>
> (b) If the answer to (a) is "yes", determination of which function is best able to provide that service and whether there are any legal impediments/obligations regarding the supply of that service.

AGS provided a response to the Calgary Motion and the CG Motion (the Motions) on October 19, 2004. DERS also provided a response to the CG Motion on October 19, 2004.

Counsel on behalf of AGS submitted that in answering the information requests, AGS had complied with the scope of the proceeding. At page 4 of its correspondence AGS stated:

> On the basis of the foregoing, it is absolutely clear that the instant proceeding was convened to consider AGS' objections to the Board's direction to file a storage plan or to implement any related Board directions over the period of the storage year commencing April 1, 2005 through March 31, 2006.

And at page 5 the letter stated:

> Its [AGS's] responses have been designed to provide the Board with the detailed evidence necessary to assist the Board in reaching a conclusion as to the merits of the "application". AGS notes that it was able to respond to all of the Board's Information Requests within the allotted time. AGS has carefully avoided straying into areas and

> *"other issues relating to the best use of Carbon which may need to be considered in future proceedings"* ("Issues List" at page 1). (emphasis included in AGS letter)

Further, at page 6 the letter provided:

> There is a narrow question to be determined and that relates to AGS' continued objection to the Board's jurisdiction to direct a gas distributor to implement a plan like the 2005/2006 storage plan. AGS is entitled to an answer before descending into a host of increasingly speculative and dramatically different alternatives. ….
>
> AGS is not proposing to destroy its business through a blowdown of the Carbon storage unit; AGS is not proposing to sell the Carbon storage business; AGS is not proposing to transfer the Carbon storage business to any other entity, whether affiliated or otherwise; and AGS is not proposing to conduct highly risky speculative ventures utilizing its storage assets. Rather, AGS proposes to conduct its affairs as described in its filings in the instant proceeding pending resolution of the jurisdictional objections registered with the Board and with the Alberta Court of Appeal.

Calgary and the CG provided responses to the submissions of AGS on October 21, 2004 reaffirming their positions and suggesting that AGS was inappropriately attempting to narrow the scope of the proceeding.

The Board considers that the purpose of preparing the Issues List was to provide for a relatively expeditious and focused process to address both the question as to whether Carbon is used or required to be used to provide service to the public, or whether it should otherwise remain in rate base, and the consequences of making either an affirmative or negative determination. It is apparent to the Board that matters relating to Carbon storage continue to raise a number of complex questions. In light of the events that have transpired to this point in the proceeding, the Board now believes that addressing issues in stages will be more effective going forward.

The Board considers that the Motions and the AGS response have raised an important initial question as to the proper scope of the Board's review. The Board believes this question should be addressed before it proceeds further to consider either the Motions or Part 1 of the Issues List.

Accordingly, the Board will not make determinations at this time on the merits of each of the Motions, but will proceed to address the initial or preliminary issues raised by the parties.

3. Preliminary Matters to Determine

Before the Board can determine if Carbon is used or required to be used to provide service to the public or should otherwise remain in rate base, the Board believes it must first determine the purview it has in considering the matter. Is it appropriate for the Board to consider alternative uses for Carbon or is it more appropriate to consider only the applied for use or the applied for use and historical uses of the facility?

In addressing this question, the Board must consider the criteria used in determining when a fully functional asset should be removed from rate base at the request of the utility and whether the regulated status of the asset should change at any given time, or from time to time, as the application of the criteria leads to differing results. Fundamental to an understanding of what uses are appropriate for the Board to consider when addressing the status of Carbon is an

examination of the scope of the Board's authority with respect to directing specific uses of an asset presently within rate base. The Board has prepared a list of Preliminary Questions relating to this matter, which are set out in Appendix C to this letter (the **Preliminary Questions**). The Board proposes to address these Preliminary Questions at a more general level without particular emphasis at this time on the detailed specifics of the Carbon facility or its present and historical operations. The Board is interested in receiving written submissions from parties on the Preliminary Questions, including supporting authorities and argument for each position taken. **Written submissions from all parties are requested to be filed with the Board by 2 p.m. January 24, 2005. Written reply submissions must be filed by all parties by 2 p.m. February 7, 2005.**

As discussed further in Section 4 of this letter, once the Board has considered the Preliminary Questions and determined the appropriate scope of uses of Carbon to be applied in a consideration of whether the assets are used or required to be used or should otherwise remain in rate base, the Board would then turn to a consideration of the detailed circumstances specific to Carbon in making its determination on Part 1 of the Issues List. Circumstances particular to Carbon, including the history of its usage, prior Board decisions, the retail sale to DERS, recent legislation, etc. would then be considered in determining if Carbon is used or required to be used to provide service to the public or should otherwise remain in rate base.

Following a determination by the Board on Part 1 matters, the Board would then proceed to deal with Part 2 of the Issues List, if the facility continues to be used or required to be used or should otherwise continue in rate base. Alternatively, if the Board determines that Carbon should no longer be included in rate base, the Board will proceed with Part 3 of the Issues List.

4. Process

The Board will divide the present proceeding into three parts or modules, the Preliminary Questions Module, the Part 1 Module and the Part 2/3 Module.

4.1 Preliminary Questions Module

In the first module (the **Preliminary Questions Module**), the Board will consider submissions from parties on the Preliminary Questions in accordance with the schedule set forth in Section 3 of this letter. The decision resulting from the Preliminary Questions Module will result in a better definition of the appropriate scope for a consideration of whether Carbon is used or required to be used or should otherwise be required to remain in rate base. In particular, the Board will determine which use(s) selected from a spectrum which includes the existing use and the range of possible alternative uses of Carbon, is (are) appropriate for consideration in addressing the issues set out in Part 1 of the Issues List.

4.2. Part 1 Module

Following a decision in the Preliminary Questions Module, the Board will proceed with the next module (the **Part 1 Module**). The purpose of the Part 1 Module is to make a determination on Part 1 of the Issues List in light of the detailed circumstances relevant to Carbon. The Part 1 Module will consider the uses for Carbon that were determined by the Preliminary Questions Module decision to be appropriate for an examination of whether Carbon is used or required to be used or should otherwise remain in rate base. This proceeding will consider all relevant

detailed information relating to these identified uses for Carbon in arriving at a determination of the Part I issues.

At the commencement of the Part 1 Module, AGS will be provided an opportunity to file additional evidence to be followed by information requests by interveners. Whether or not AGS elects to file additional evidence, Calgary and the CG will have the opportunity to resubmit any information requests that were the subject of the Motions and which remain relevant following the determinations reached in the Preliminary Questions Module. They will also be afforded the opportunity to submit new information requests related to the Board's determinations from the Preliminary Questions Module. This will be followed by evidence on Part 1 matters by interveners. AGS will have the opportunity to ask information requests followed by Rebuttal Evidence on Part 1 matters. After the filing of Rebuttal Evidence, the Board will seek advice from parties on whether to proceed to an oral hearing or directly to written argument.

A schedule in respect of the Part 1 Module will be provided by the Board following a decision on the Preliminary Questions Module.

4.3. Part 2/3 Module

Following a decision in respect of the Part 1 Module, the Board will determine a process for the third module (the **Part 2/3 Module**). The Part 2/3 Module, will consider the consequences of the determination made in the Part 1 Module.

Yours truly,

(original signed B. C. McNulty)

Brian C. McNulty
Senior Counsel

Attachments

APPENDIX A

ISSUES LIST

Part 1. Used or Required to be Used

(a) What assets make up the Storage Facilities and the Producing Properties?
(b) Are either the Storage Facilities or the Producing Properties used or required to be used by ATCO Gas or ATCO Pipelines to provide service to the public?
(c) In the event that either the Storage Facilities or the Producing Properties are not used or required to be used by ATCO Gas or ATCO Pipelines to provide service to the public, should the assets remain within rate base on some other basis?

Part 2. Storage Lease

If the Board determines 1(b) or (c) in the affirmative, then the following matters must be addressed:

(a) What are the appropriate terms and conditions of a storage lease with ATCO Midstream?
(b) What is the appropriate consideration to be paid by ATCO Midstream and how should it be determined?

Part 3. Removal From Rate Base

If the Board determines 1(b) and (c) in the negative, then the following matters must be addressed:

(a) process to remove assets from regulated service and rate base
(b) value to ascribe to the assets when removed from regulated service and rate base
(c) determination of entitlement to asset value
(c) value ascribed to these assets in rate base
(d) point in time these assets should be removed from rate base
(e) required adjustments to distribution revenue requirement to reflect the removal of the assets from regulated service and the revenue associated therewith
(f) appropriate treatment of depreciation, net negative salvage, and other monies previously collected through rates in respect of future liabilities in respect of the assets
(g) appropriate treatment of base gas (unproduced native gas)

APPENDIX B

Discussion of Previous Board Decisions and Related Materials

The Board notes Decision 2000-9[3], where at page 136 it found that the arrangement between Canadian Western Natural Gas Company Limited (CWNG) and ATCO Gas Services (now ATCO Midstream) "does not meet its expectations for prudent affiliate transactions". At page 137 the Board went on to find that CWNG was not receiving fair market value for the use of non-contracted capacity at Carbon. It then determined that:

> …for 1998 CWNG will be deemed to have received 32¢/GJ for the non-contracted capacity sold to AGS. This is reflective of the lowest price offered for storage service from third parties and is seen by the Board to be a conservative estimate of the value transferred to AGS from sales of uncontracted capacity at Carbon.

In Decision 2002-072[4] the Board considered certain GRA and Affiliate matters that had been transferred to that proceeding from the AGS 2001/2002 GRA and from the ATCO Group Affiliate proceeding. With respect to the uncontracted capacity storage arrangements between AGS and ATCO Midstream, the Board determined at page 46:

> Accordingly, for the 2001/2002 test years and remainder of the period up to end of 2002/2003 storage year, the Board directs AGS to reflect the revenues from Midstream based on a fee of $0.41/GJ. The Board expects that AGS will conduct a market based evaluation to determine the amount of the fee for storage years subsequent to 2002/2003. The Board considers that a tender process for the uncontracted capacity would reveal the FMV [fair market value] and that it would be preferable to use a tendering process in support of an application by AGS when submitting its evidence to demonstrate the prudence of the arrangement. The Board considers there are benefits to a prospective process rather than relying on consultant evaluations after the fact.

Decision 2003-021[5] considered the 2003/2004 storage year and various proposals and counter-proposals for conducting a request for bids (RFB) process. At page 14 of the Decision the Board reflected on the timing issues confronting the Board in proceeding with an RFB process for the 2003/2004 storage year:

> The Board notes that there is a significant divergence of positions between intervenors and AGS concerning the proposed RFB process. While the Board approves in principle the approach taken by AGS, it considers that, given the circumstances and the timing involved, it cannot approve the process in the proposed form and content.

At page 16 of that Decision the Board stated:

> The Board considers that AGS did not provide conclusive evidence from which the Board could determine that the rate to be charged to Midstream for uncontracted capacity should be less than the $0.41/GJ as set out in Decision 2002-072. The Board thus

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[3] Decision 2000-9, Canadian Western Natural Gas, 1997 Return on Common Equity and Capital Structure, and 1998 GRA-Phase I, March 2, 2000

[4] Decision 2002-072, ATCO Gas, a Division of ATCO Gas and Pipelines Ltd., Transfer of Carbon Storage Facilities, July 30, 2002

[5] Decision 2003-021, ATCO Gas South, Determination of the Fair Market Value of Uncontracted Carbon Storage, March 11, 2003

> considers that the said rate should continue to apply during the 2003/2004 storage season for such capacity at Carbon that is contracted with an affiliate of AGS, until such time that AGS demonstrates to the Board's satisfaction that a different rate would be in order, or unless the rate is otherwise changed by the Board.

In Decision 2004-022[6] the Board considered an Application in respect for the 2004/2005 storage year. The Board considered several options in respect of the utilization of the storage facility, including an RFB process for the entire capacity of the storage facility. The Board found that in the circumstances there was again insufficient time to permit an RFB process. It therefore approved the continuation of the storage plan in place for the previous year. With respect to the fee to be paid by ATCO Midstream in respect of the uncontracted capacity the Board stated at page 20:

> With respect the storage rate used for the uncontracted volume, the Board notes the CG's point that the existence of the number of commercial storage facilities in operation in Alberta confirmed that there must be a sustainable seasonal price differential available to support the continued economic operation of these facilities. The Board also notes EnCana's submission that the storage rate of $0.41/GJ was out of date and not the current market price, as Midstream would not otherwise be offering to take it at that rate. The Board notes EnCana's suggestion that an approximate 50% premium to the $0.41/GJ rate or a minimum bid level of $0.60/GJ should be established for the 2004/2005 gas storage year to recognize the likely escalation in value since the $0.41/GJ rate was chosen in July of 2002. EnCana, however, did not substantiate nor provide support for its recommendation. The Board nevertheless considers that the market for storage is strong and that a properly conducted, timely RFB would demonstrate such. The Board is persuaded that the storage rate of $0.41/GJ is currently too low. Accordingly, in the absence of an RFB the Board agrees that an increase to at least take into account the rate of inflation is appropriate. Since the current rate of $0.41/GJ was initially applicable to the year 2001, inflation calculated over three years to 2004 would produce an increase of $0.04/GJ. Therefore the Board approves a rate of $0.45/GJ, to be used in conjunction with Option 2.
>
> Accordingly, when submitting the final Compliance Filing for the AGS 2003/2004 General Rate Application, AGS is directed to adjust the 2004 amount for Carbon storage revenue from Midstream, to reflect the rate of $0.45/GJ. (footnote omitted)

As referred to above, Order 4 to this Decision provided:

> ATCO Gas South shall reflect revenues from ATCO Midstream Ltd. for uncontracted capacity at the Carbon storage facility for the 2004/2005 storage year based on a fee of $0.45/GJ until such time that ATCO Gas South demonstrates to the Board's satisfaction that a different rate would be in order, or unless the rate is otherwise changed by the Board.

In Decision 2003-040[7] the Board established an ATCO Group Inter-Affiliate Code of Conduct (Code). The Board notes several provisions of the Code that appear to be applicable to the arrangements between AGS and ATCO Midstream. For example, Section 4.1 of the Code imposes the obligation on utilities to periodically review the prudence of continuing For Profit Affiliate Services (as defined in the Code). Section 4.3 requires a utility to enter into a Services

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[6] Decision 2004-022, ATCO Gas South, 2004/2005 Carbon Storage Plan, March 9, 2004

[7] Decision 2003-040, ATCO Group, Affiliate Transactions and Code of Conduct Proceeding Part B: Code of Conduct, May 22, 2003.

Agreement (as defined in the Code) with respect to any For Profit Affiliate Service it acquires or provides. The definition of Services Agreement requires that certain elements be included in the contractual language of the arrangement as appropriate in the circumstances. These elements include a description of the services and pricing, confidentiality provisions, apportionment of risk, dispute resolution and a representation by each party that the agreement complies with the Code. Section 4.2.2 requires a utility to charge no less than Fair Market Value (as defined in the Code) (FMV) in respect of For Profit Affiliate Services. The provision provides that the onus is on the utility to demonstrate that For Profit Affiliate Services have been charged at a price that is not less than the FMV of those services.

The Board also references page 63 of Decision 2003-040 which addressed the level of detail required in documenting Shared Services (as defined in the Code) which are provided on a Cost Recovery Basis (as defined in the Code) among utilities:

> The Board, as previously noted in this Decision, and in Decision 2002-069, considers that a services agreement or an equivalent contract must be entered into with respect to any shared services the Utility provides to, or acquires from, an Affiliate. The Board found in Decision 2002-069 that ATCO's master services agreements formed a suitable framework for most such services. The Board considers that, as with many matters, 'the devil is in the detail'. For the purposes of the Code, a service agreement similar to those considered in Decision 2002-069 should be sufficient to address most services. Where the services are complex, and the dollar amount of the agreement is significant, the onus is on the Utility, as with any arrangement, to justify the prudence of the arrangement.

A contract in respect of a For Profit Affiliate Service, would at a minimum, be required to meet this standard, plus address the pricing for the services provided in terms of FMV.

Section 2.4 of the Code required the ATCO Group of companies to ensure that all arrangements in place at the time of the Affiliate Decision were brought into compliance with the Code by October 31, 2003. The Board notes certain correspondence from AGS which was filed by way of follow-up to this direction.

On August 29, 2003, AGS filed correspondence from Mr. Jerome Engler, President, attaching an Appendix C which enumerated transactions that were being reviewed for compliance with the Code. The UCA was one such agreement. On October 31, 2003 AGS filed correspondence from Mr. Engler, on Board Application No. 1319534 which stated that: "We do want to confirm that we are operating in full compliance and we remain fully committed to the spirit and intent of the Code." Appendix 3 to that letter contained a list of affiliated transactions. Page 16 of that appendix indicated that the documentation necessary to bring the UCA into compliance with the Code had been completed. The Board also notes correspondence from Mr. Engler dated April 29, 2004, also in respect of Board Application No. 1319534, which contained the AGS 2003 Compliance Report. Section 2.5 of that correspondence on page 6 again indicated that "AGS is operating in compliance with all provisions of the Code and is fully committed to the spirit and intent of the Code." Section 3.0 at page 11 contains the conclusion: "AGS believes it has fully complied with and operated within the provisions, spirit and intent of the ATCO Group Inter-Affiliate Code of Conduct."

APPENDIX C

PRELIMINARY QUESTIONS

1. In general, once an asset or capital expenditure has been approved by the Board for inclusion in rate base, what should be the criteria for removing it from rate base at the request of the utility?

2. In general, is it appropriate for the Board to attach conditions to the removal of an asset from rate base that would require the utility to add the asset back into rate base at some future time should subsequent application by the Board of the criteria identified in Question 1 lead to a different result?

3. In general, to what extent can (should) the Board direct a utility to deal with a particular asset presently included within rate base in a specific manner?

4. What is the appropriate scope for the Board to adopt in conducting an examination of whether or not Carbon is used or required to be used to provide service to the public or should otherwise remain in rate base? In particular, the Board would like submissions and argument, without reliance on detailed operational or technical Carbon specifics, on which of the following uses or potential uses of Carbon can (should) the Board consider in addressing this question:

   (a) historical uses

   (b) proposed use(s)

   (c) possible contingent uses by AGS should obligations presently being performed by DERS revert to AGS

   (d) potential alternative uses by AGS, ATCO Pipelines or DERS.

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ELECTRONIC NOTIFICATION

December 9, 2005

TO INTERESTED PARTIES

ATCO GAS SOUTH (AGS)
2005/2006 CARBON STORAGE PLAN – APPLICATION NO. 1357130

RULING ON AGS'S MOTION FOR EXCLUSION OF INTERVENER EVIDENCE AND REVISED PROCESS SCHEDULE

On November 8, 2005 AGS filed a Motion for Exclusion of Intervener Evidence (the Motion) with the Alberta Energy and Utilities Board (the Board). The Motion objected to certain evidence filed by the Consumer Group (CG) and The City of Calgary (Calgary) in the ATCO Gas South 2005/2006 Carbon Storage Plan Part 1 Module (the Part 1 Module).

By letter dated November 9, 2005, the Board requested submissions from interveners on the Motion by November 18, 2005 and reply submissions from AGS by November 23, 2005 and suspended the balance of the procedural schedule until the Board ruled on the Motion.

The CG and Calgary each provided a submission in respect of the Motion on November 18, 2005 (the CG Submission and Calgary Submission, respectively). AGS provided a response on November 23, 2005 (AGS Reply).

The Board has requested that I convey its rulings in respect of the Motion.

Summary
The Board has allowed the Motion in part. The Board will exclude the CG Disputed Evidence (as defined below) but shall permit, with certain reservations, the Calgary Disputed Evidence (as defined below) to remain on the record. The Board will not require Calgary to itemize the portions of the attachments it wishes to rely on at this stage in the proceeding. Finally, the Board will discount the weight of any unsponsored evidence.

AGS Objection to CG Evidence
AGS objects to the CG evidence relating to a potential use of Carbon in fulfilling the default supply provider function by Direct Energy Regulated Services (DERS). The CG evidence suggests that Carbon should be made available to DERS as a source of physical storage and that the use of Carbon might result in the reduction of Other Pipeline Receipt (OPR) charges from ATCO Pipelines. Specifically, the Motion requests the Board to exclude the following passages from the CG evidence dated October 31, 2005 (the CG Disputed Evidence):

Page 2, Lines 16-25 and 34
Page 3, Lines 1-2
Page 5, Lines 2-11
Page 12, Line 22 to Page 18, Line 15
Page 19, Lines 14-24
All related footnotes and references.

Decision 2005-063[1] determined the "uses" that would be examined by the Board in the Part 1 Module in determining whether Carbon is used or required to be used or should otherwise remain in rate base. These uses were summarized at page 19 of the Decision as follows:

> The Board considers that the relevant uses to be further reviewed by the Board in the Part 1 Module are the present use employed for Carbon (revenue generation through the storage lease and through COP sales from the associated producing properties) and a use that is presently before the Board for determination (load balancing). It is these uses which the Board has determined to be relevant to the question of whether or not Carbon is used or required to be used or should otherwise remain in rate base.

The load balancing "use" was directed to be addressed in the ATCO Gas Retailer Service and Gas Utilities Act Compliance Phase 2 Part B Process (Application No. 1411635) by virtue of the Board's letter of October 3, 2005.

In determining the uses of Carbon to be considered by the Board in the Part 1 Module, Decision 2005-063 expressly addressed the potential for use of Carbon for other regulated utilities or service providers and made the following finding at page 18:

> The Board does not believe it is appropriate to require AGS to maintain Carbon as a rate base asset for potential use by other gas utilities or service providers. If these other parties determine that they need storage services, or if storage is a prudent management or portfolio option for them, then it would appear that commercial storage arrangements could be made in the market at Carbon or elsewhere and the pricing and contract choices would be weighed at the time of contracting.

Further, the Board also considered the potential use of Carbon by DERS to possibly offset OPR charges and made the following finding at page 18:

> With respect to the possible use of Carbon to defer transmission charges, the CG argued that Carbon may be useful to AGS as a distributor on the ATCO Pipelines system. The CG pointed out that transmission charges passed on to distributors will be increasing as a result of the recently approved Other Pipeline Receipt (OPR) charges on the ATCO Pipelines system and that core customers will be incurring higher costs associated with gas sourced off of the NGTL system. The CG suggested that Carbon storage capacity might be useful to reduce the amount of gas required to be sourced from NGTL in the winter months, thereby reducing transmission charges.
>
> The Board does not consider the CG's argument persuasive with respect to distribution service provided by AGS. Since AGS has transferred its retail business to DERS, DERS is the shipper on the ATCO Pipelines system that may incur the OPR commodity charges. The DERS contracting strategy, and whether its use of a storage service might be prudent as a method of reducing or avoiding OPR charges, are matters outside the scope of this proceeding.

[1] Decision 2005-063 – ATCO Gas South 2005/2006 Carbon Storage Plan Preliminary Questions, dated June 15, 2005

At page 4 of the CG Submission, the CG appears to recognize the difficulty of establishing the relevance of the disputed evidence:

> The CG can understand and accept, given the fact that DERS is specifically identified in the findings of the Board in Decision 2005-063, that, arguably, there is a basis for questioning whether or not the contested evidence of the CG regarding DERS should, in fact, be considered relevant and within the scope of the Part 1 Module proceeding.

And at page 6 of the CG Submission it states:

> In view of all of the above reasons, the CG respectfully submits that it did not "wilfully [sic] disregard" but, rather, deliberately reintroduced the possibility of DERS utilization of Carbon as a potential future source of "revenue generation".

Given that the Board may always assign the appropriate weight to any evidence in its deliberations, the Board is ordinarily hesitant to exclude evidence, especially in highly contested proceedings where the full context is important to properly appreciate the issues involved. However, the Board must also be on guard for potential inefficiencies in its processes or unfairness through attempts to "reintroduce" or reconsider issues that have already been the subject of submissions and a Board decision in a proceeding. In light of the Board's previous findings on the very subject of the CG Disputed Evidence, the Board agrees with AGS that the CG Disputed Evidence should be excluded. The Board finds that it is neither efficient nor appropriate at this point in the present proceeding to reintroduce "the possibility of DERS utilization of Carbon" arising from potential developments.

AGS Objections to Calgary Evidence

AGS objects to the following portions of Calgary's evidence filed on October 31, 2005 (the Calgary Disputed Evidence):

> Page 33, Paragraphs 70(f)(i)(j)
> Page 39-47, Paragraphs 85-110 inclusive
> Page 52, Paragraphs 127-128
> Appendices A-F
> Exhibits O, P and R
> All related footnotes and references
> All other documents referenced in the above noted sections of Calgary's evidence.

AGS has two objections to the Calgary Disputed Evidence. Firstly, AGS objects to the consideration of different ways of leasing the capacity of Carbon for purposes of revenue generation other than the existing lease to ATCO Midstream (Midstream). Secondly, AG objects to the inclusion in the Calgary Disputed Evidence of value assessments and rate impacts should Carbon be removed from rate base. Each of these objections will be considered below:

AGS Objection - Lease to Midstream as Sole Lease Option to be Considered for Revenue Generation

AGS points to the following passage, among others, from Decision 2005-063 to support its position that the existing lease to Midstream and COP sales from the associated producing properties are the only uses to be considered in the Part 1 Carbon Module for purposes of revenue generation:

> The Board considers that the relevant uses to be further reviewed by the Board in the Part 1 Module are the present use employed for Carbon (revenue generation through the storage lease and through COP sales from the associated producing properties) and a use that is presently before the Board for determination (load balancing). It is these uses which the Board has determined to be relevant to the question of whether or not Carbon is used or required to be used or should otherwise remain in rate base.2

Calgary argues at page 3 of the Calgary Submission:

> …it was Calgary's understanding that the terms "present use" and "storage lease" in Decision 2005-063 referred to the practice of leasing 100% of the capacity for revenue generation."

Further at page 6 Calgary states:

> Again, it is Calgary's view that the issue before the Board is the use of Carbon for revenue generation through leasing storage and the Board has not in any way limited the examination of how such leasing is carried out or limiting the consideration to a lease to ATCO Midstream.

The Board agrees with Calgary's interpretation. Revenue generation through the leasing of capacity at Carbon plus COP sales from associated producing properties constitute the scope of the Part 1 Module. Should the Board determine, however, that revenue generation in this context is an appropriate use and that Carbon should remain in rate base, only the leasing arrangements with Midstream would be considered in the context of the 2005/2006 storage year. As outlined by the Board in the Issues List attached to its correspondence of September 13, 2004:

> Given the nature and timing of matters to be considered in the Application, the Board is prepared to proceed to consider only the proposed lease option to ATCO Midstream for the 2005/2006 storage year even though a lease of the entire capacity of the Storage Facilities may not ultimately relate to any Board determination with respect to how the facilities are used or required to be used or are otherwise appropriate to remain in rate base. The Board recognizes that should either the Storage Facilities or the Producing Properties continue to be required for utility purposes, or if it is otherwise appropriate for them to remain in rate base, there may be other issues relating to the best use of Carbon which may need to be considered in future proceedings.

Accordingly, should revenue generation utilizing a storage lease of Carbon capacity be found to be an appropriate use, the Board will proceed in the Part 2 Carbon Module to review the consideration to be paid by ATCO Midstream for the uncontracted storage capacity (Part 2(b) of the Issues List) for the 2005/2006 storage year.

The Board will allow the Calgary Disputed Evidence relating to various ways in which capacity leasing could be employed to remain on the record. The Board is inclined to accept evidence onto the record that relates to the issues before the Board, or which presents a clearer context for the issues. In permitting this evidence to remain on the record, the Board however, reminds Calgary and parties that the key question is whether or not using Carbon for revenue generation purposes through the leasing of its storage capacity (in any form) is an appropriate "use" for a

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2 Decision 2005-063, page 19

rate base asset in light of all of the relevant circumstances, not what all the various options might be for leasing it in order to maximize its value to stakeholders.

AGS Objection – Rate Impacts Should be Excluded

AGS objects to the portion of the Calgary Disputed Evidence related to the potential value of Carbon and the rate impacts of removing Carbon from rate base as being irrelevant to the question of whether or not Carbon should be used for revenue generation purposes. AGS argues that the potential value of the Carbon facility and the potential rate impacts of removing it from regulated service are issues related to the Part 3 Carbon Module (if relevant at all). The Part 3 Carbon Module will deal with the removal of Carbon from rate base should the Board determine that Carbon is not used or required to be used.

In response, Calgary submitted:

> As is inherent in Calgary's evidence, and, Calgary's believes, the Board's various rate base decisions, economics are a key element to any rate base decision. When the Board's fundamental responsibility is the determination of just and reasonable rates it is obvious that no asset is going to be placed into rate base without an assessment of its economics and potential rate impacts. Equally obvious, in Calgary's view, removal of an asset from rate base will involve similar considerations. In fact, it is hard to imagine how the functionality of a utility asset and its economic usefulness can be examined without looking at economics and rate impacts. Just because economic and rate impact analysis may also come into play in assessing "harm" should the Board decide to allow an asset to be removed from rate base does not, in Calgary's view, eliminate the need to examine economic issues when making the initial decision on whether the asset is "used and useful".[3]

Further at page 5, Calgary states:

> In Calgary's view it is also obviously impossible to have a meaningful discussion of whether Carbon can be used or required to be used for revenue generation without actually looking at the evidence on the potential for revenue generation.

The Board has some reservations with the premise that evidence as to the potential value of Carbon for revenue generation and the potential rate impacts of removing Carbon from rate base is relevant to the present question of whether revenue generation is an appropriate use for Carbon. Certainly, there must be some evidence to support the basic premise that the benefits of retaining Carbon in rate base outweigh the costs to ratepayers of maintaining Carbon in rate base. Without this basic starting point, the use of Carbon for revenue generation purposes would not make sense on any level. Aside however from a basic understanding of the value and rate impacts of removing Carbon, the Board would question a need for copious and detailed analyses of potential values and rate impacts at this stage in the proceedings.

The Board also agrees with AGS that evidence related to the value of Carbon and the potential rate impacts or potential harm to ratepayers would fall more directly within the scope of the Part 3 Carbon Module, should it be required.

[3] Calgary Submission, page 3

Despite the above reservations, the Board is not convinced, however, that the disputed evidence is wholly unrelated to the present question of whether revenue generation is an appropriate use for Carbon. As was the case with respect to the first objection to the Calgary Disputed Evidence, the Board is inclined to allow evidence which is related to the question before the Board, or which presents a clearer context for the issues, to remain on the record rather than possibly excluding evidence that may ultimately prove useful in making the Board's decision. Accordingly, the Board will permit the Calgary Disputed Evidence to remain on the record. The Board will assess the contribution of this evidence again when considering the cost claims submissions of parties.

Itemizing Attachments and Naming of Witnesses

AGS requested the Board to direct Calgary to specify the particular parts of the expert reports filed in evidence and listed on pages 3-6 of the Calgary Evidence, which Calgary claims to be relevant to the present proceeding. AGS asserts that Calgary has failed to show the relevance of any of the named attachments to the issues to be reviewed in the Part 1 Module. Calgary defended the relevance of the material at page 6 of the Calgary Submission by stating:

> …one goal of Calgary's evidence was to state Calgary's understanding of Carbon's regulatory history, and identify the materials on which Calgary has relied in reaching that understanding. Calgary believes this history is relevant to the Part 1 issues.

Calgary further stated that "The Evidence identifies the materials relied on and states the facts and conclusions reached."[4]

Given the Board's ruling above not to exclude any of the Calgary Disputed Evidence and given Calgary's assertion that it considers it has done a satisfactory job in identifying the portions of the attachments that it is relying upon, the Board will not exclude any of the documents at this time on the basis of relevance nor will it require Calgary to provide further references to portions of the attachments being relied on. However, the Board will assess cost submissions bearing in mind the extent to which any paring down of the evidence occurred throughout the balance of the proceeding and if such efforts could have been made more efficient through a more careful selection of relevant materials that ultimately were relied upon.

Unsponsored Expert Evidence

The Motion requested the Board to direct Calgary to identify the witnesses that would be able to address questions in respect of the expert reports filed in evidence. Calgary replied at page 7 of the Calgary Submission that a witness is not required to be produced to support every document filed in evidence and that Calgary witnesses are entitled to:

> …reference documents prepared by others, so long as they clearly identify those documents and are prepared to defend their reliance on the document. If the Board has concerns with any such evidence it can assess the weight to be given.

Both parties reference a ruling by the Board related to unsponsored expert evidence which arose during the Carbon Transfer Proceeding (Application No. 1237639) which resulted in Decision 2002-072.[5]

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[4] Calgary Submission, page 6

[5] Decision 2002-072 – ATCO Gas, A Division of ATCO Gas and Pipelines Ltd., Transfer of Carbon Storage Facilities, dated July 30, 2002

The Board notes that there are two matters to consider with respect to the admission of unsponsored evidence that is relevant to the proceeding. First, there is the question of weight with respect to unsponsored evidence. Second, the Board must consider procedural fairness, specifically, the ability of AG to test and refute the unsponsored evidence.

With respect to the first matter, the weight to be accorded the evidence, the Board has considered the context of the Board's ruling on January 25, 2002 in the Carbon Storage Transfer Application. In that proceeding the Board was considering the concept of a "rolling record" from one proceeding to another and was required to address the situation where expert evidence from one proceeding was relied upon in a subsequent related proceeding but where the party relying on such evidence did not proffer the author of the evidence to address the continued relevance and accuracy of the information. That ruling provided:

> To the extent that a party wishes to rely on evidence produced by an expert witness and filed in a prior proceeding, but elects not to supply the expert witness to confirm the continued accuracy and relevance, to provide context for such evidence, and to permit the testing of such matters under cross-examination, the Board will discount the weight of such evidence, or may attribute no weight at all to such evidence. Given this context, the Board considers that it is up to each individual party to decide which witnesses it believes are required in order to support its position.

The Board finds this prior ruling appropriate for application in the present circumstances. To the extent that a party wishes to rely on expert evidence in this proceeding, whether or not filed in a previous related proceeding, but does not offer the author of the evidence, or another qualified expert that adopts the report as his own evidence, to speak to the continued relevance and accuracy of that evidence, the Board will appropriately discount the weight of the evidence or may attribute no weight at all to such evidence.

Although unsponsored evidence does not provide AGS the ability to test it through examination of the expert that prepared it, AGS will be provided the opportunity to test and refute the unsponsored evidence through several other avenues. AGS will be able to address information requests to Calgary with respect to the reasons Calgary relies on such evidence, the expertise of the persons asserting that reliance and the efforts made, if any, to confirm the continued accuracy and relevance of such evidence. As well, AGS will have the opportunity to file rebuttal evidence, should it consider it necessary to do so. AGS will be able to present argument with respect to the appropriate weighting of the unsponsored evidence and with respect to any prejudice AGS may feel it has suffered as the result of not being able to challenge the author of the unsponsored evidence.

Further, in order to assist in the efficiency and fairness of the information request process, Calgary is directed to provide the Board and parties with notice on or before December 16, 2005 as to which of the filed expert reports, if any, will be sponsored by the author of the report or other expert witnesses and the names and qualifications of such other witnesses, if any.

Accordingly, the Board will not exclude the Calgary unsponsored evidence in the present proceeding at this time. The weight accorded to any such evidence, however, will be subject to the limitations described above.

Part 1 Module - Revised Process Schedule

The following schedule has been set to resume the Part 1 Module:

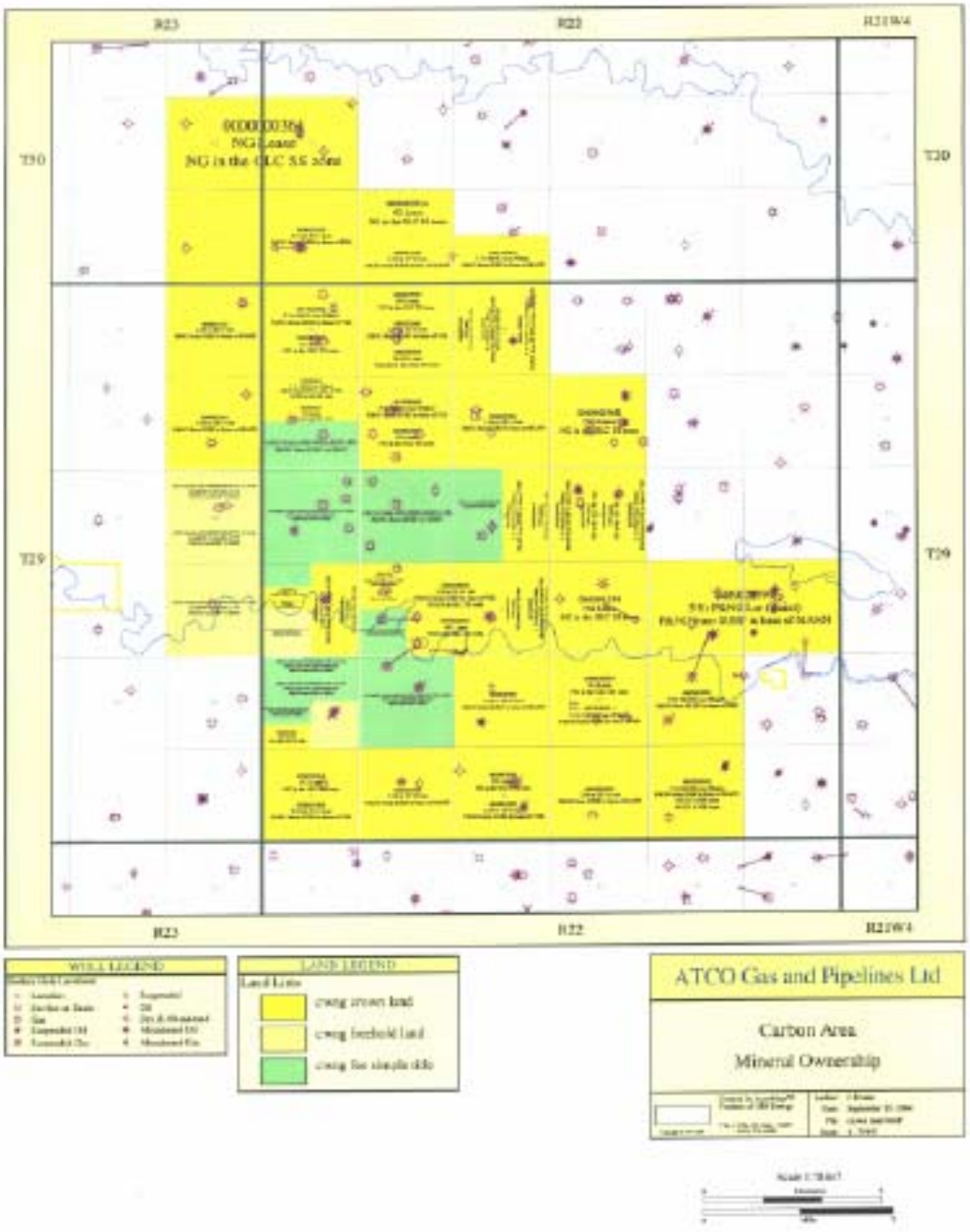
Calgary confirmation of Expert Witnesses to address filed Reports	December 16, 2005 2 PM
Information Requests to Interveners	December 30, 2005 2 PM
Responses to Information Requests from Interveners	January 20, 2006 2 PM
Rebuttal Evidence, if any	February 3, 2006 2 PM
Advice from parties on the need for an oral hearing	February 10, 2006 2 PM

Any concerns with respect to the schedule should be communicated to the writer at (403) 297-3650 (e-mail Brian.McNulty@gov.ab.ca) or to Rob Armstrong at (780) 427-8557 (e-mail Rob.Armstrong@gov.ab.ca) as soon as possible.

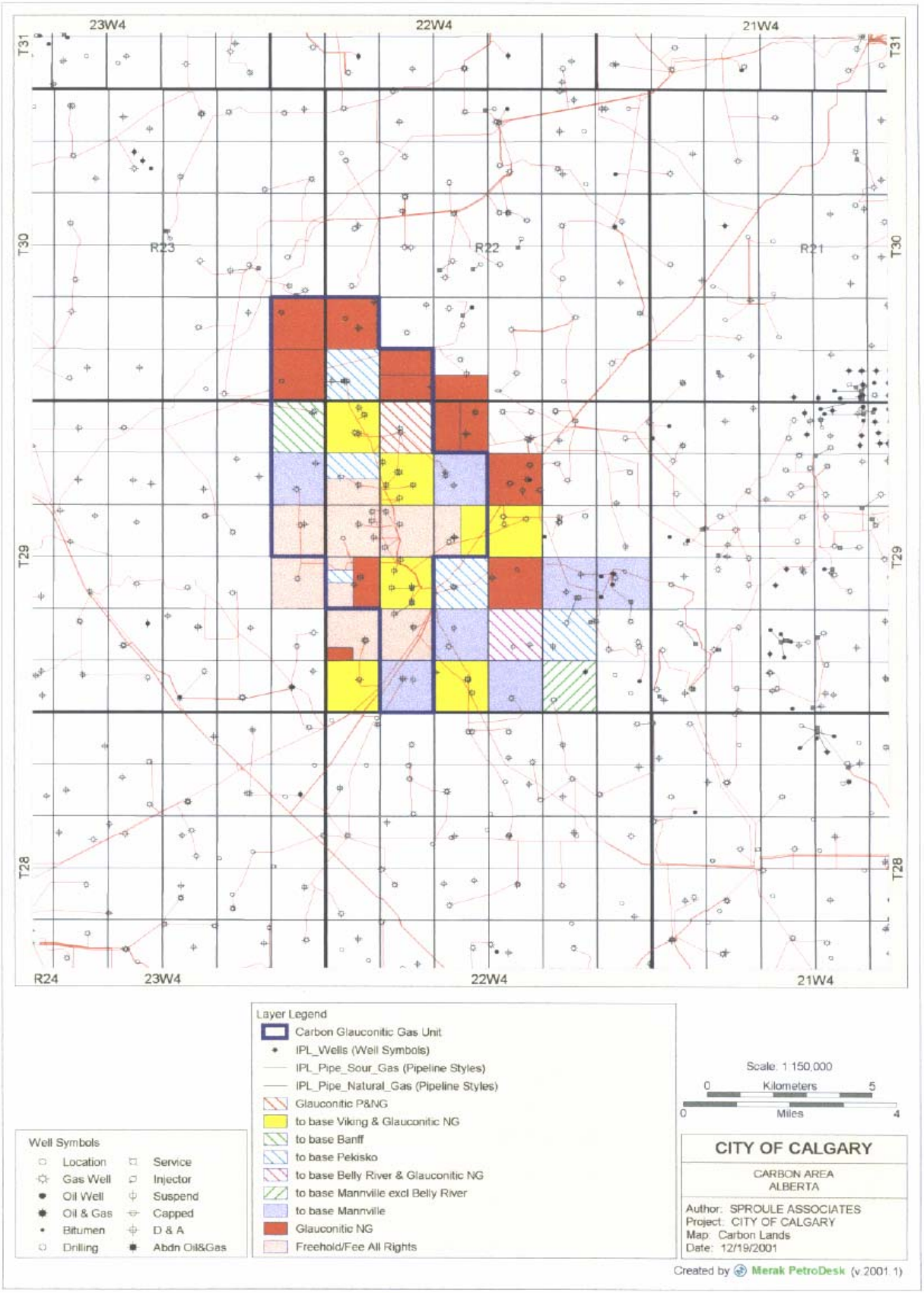
Yours truly,

(original signed B. C. McNulty)

Brian C. McNulty
Senior Counsel



CAL-AGS-018(b) Attachment 1
AGS 2005/2006 Carbon Storage Plan
Application No. 1357130
Submitted: October 1, 2004
Page 1 of 1


23W4
22W4
21W4
T31
T30
T29
T28
R24
R23
R22
R21
Layer Legend
Carbon Glauconitic Gas Unit
IPL_Wells (Well Symbols)
IPL_Pipe_Sour_Gas (Pipeline Styles)
IPL_Pipe_Natural_Gas (Pipeline Styles)
Glauconitic P&NG
to base Viking & Glauconitic NG
to base Banff
to base Pekisko
to base Belly River & Glauconitic NG
to base Mannville excl Belly River
to base Mannville
Glauconitic NG
Freehold/Fee All Rights
Well Symbols
Location
Gas Well
Oil Well
Oil & Gas
Bitumen
Drilling
Service
Injector
Suspend
Capped
D & A
Abdn Oil&Gas
Scale: 1:150,000
0 Kilometers 5
0 Miles 4
CITY OF CALGARY
CARBON AREA
ALBERTA
Author: SPROULE ASSOCIATES
Project: CITY OF CALGARY
Map: Carbon Lands
Date: 12/19/2001
Created by Merak PetroDesk (v.2001.1)