ATCO Gas

A Division of ATCO Gas and Pipelines Ltd.

(This Decision is also applicable to Direct Energy Regulated Services and AltaGas Utilities Inc.)

Deferred Gas Account Limitation Period

May 11, 2006

Alberta Energy and Utilities Board

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2006-042: ATCO Gas – A Division of ATCO Gas and Pipelines Ltd.
(This Decision is also applicable to Direct Energy Regulated Services and AltaGas Utilities Inc.)
Deferred Gas Account Limitation Period
Application No. 1407502

May 11, 2006

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ALBERTA ENERGY AND UTILITIES BOARD
Calgary Alberta

ATCO GAS
A DIVISION OF ATCO GAS AND PIPELINES LTD.
(ALSO APPLICABLE TO DIRECT ENERGY REGULATED SERVICES AND ALTAGAS UTILITIES INC.)
DEFERRED GAS ACCOUNT LIMITATION PERIOD

Decision 2006-042
Application No. 1407502

1 INTRODUCTION

In Decision 2005-036,[1] dated April 28, 2005, the Board dealt with Application No. 1347852 from ATCO Gas (AG) for adjustments to its deferred gas accounts (DGAs) for certain errors it had discovered in its records for gas shipment imbalances applicable to each of its North and South gas distribution service territories. Presently, AG maintains a separate DGA for each service territory. The imbalance errors had occurred over the period from January 1998 to February 2004.

Participating interveners in Application No. 1347852 were concerned with the timeliness and types of adjustments that should be allowed to be made to a DGA. Under the DGA process differences between actual and forecast costs fall to the account of the customer and, since the inception of the DGA, there has been no time period limiting a utility's ability to include adjustments to a DGA resulting from corrections to costs recovered in a prior period. Consequently, the Board considered that a proceeding was needed to examine whether a policy should be implemented that would limit the extent to which prior period adjustments could be made. The Board therefore directed AG to submit an application:

> … that sets out AG's views on the merits of a policy that would limit prior period adjustments to the DGA, to a specific limitation period, and which may also determine any restrictions on the types of adjustments which should be allowed to flow through the DGA.[2]

Pursuant to that direction, AG filed the application (the Application) on June 30, 2005. The Panel assigned to deal with the Application consisted of B. T. McManus, Q.C. (Presiding member), J. I. Douglas, FCA (member), and C. Dahl Rees, LLB (acting member). The Board published Notice of the Proceeding on July 8, 2005 in the daily newspapers published in AG's service territories and served the Notice electronically on interested parties registered for the application leading to Decision 2005-036.

The Board considered it efficient to have AG comply with a direction from Decision 2005-036 to submit the Application as a way of initiating the process of reviewing a limitation period. However, as the Board had previously outlined in its correspondence, the intention of this proceeding was always to be that of a generic application and therefore this Decision will apply to those utilities that use a DGA, presently AG, Direct Energy Regulated Services (DERS) and AltaGas Utilities Inc.[3]

[1] Decision 2005-036 – ATCO Gas, A Division of ATCO Gas and Pipelines Ltd. Imbalance and Production Adjustments – Deferred Gas Account (Application No. 1347852) (Released: April 28, 2005)
[2] Decision 2005-036, p. 14
[3] The Parties who participated in the proceeding, and acronyms used for them, are listed in Appendix 1.

Consequently, any reference herein to the DGA, unless otherwise specified, would apply equally to the DGAs used by AG, DERS and AUI.

The Board dealt with the Application in a written process. The Board considered that the record for the proceeding closed on February 14, 2006, being the final date on which Reply Argument was filed.

2 BACKGROUND

In Decision 2005-036 the Board reviewed the origin of the DGA, which was initially approved by the Board in 1987 and finally approved in 1988 for AG's predecessors, Northwestern Utilities Limited and Canadian Western Natural Gas Company Limited, at the request of those utilities when gas prices became volatile. At later dates, when requested by other utilities, DGAs were approved on the same principles.

Previous to the establishment of the DGAs, a utility treated all estimates for its gas supply, both volume and price, as prospective in its General Rate Application (GRA). The establishment of the DGA provided a means by which a utility could make corrections and adjust for the actual price of the gas supplied and thereby correct the customer rates. The regulated sales rate used to recover the cost of gas was called the gas cost recovery rate (GCRR). Use of the DGA takes into account that, under a regulated gas sales rate, customers pay only the actual costs of the gas consumed by them and the utility is neither to incur a profit nor suffer a loss in the course of procuring and selling the gas.

In 1987 parties believed that the DGA would be a temporary feature because the continuing volatility of gas prices was not anticipated. However, contrary to these expectations, the purpose and need for the use of DGAs has continued. Initially, the DGAs were reconciled twice a year on a winter/summer seasonal basis.[4] During the period from 1987 to March 2002, the Board allowed prior seasonal adjustments to be made in reconciliation of the DGA in respect of the preceding same season.

Beginning in April 2002, setting the GCRR changed from a seasonal basis to a monthly basis.[5] Present DGA procedures utilize a four-month period, which includes the forecast month and the immediately preceding three months. The prior months are used as a rolling period for reconciling the actual costs with the forecast costs of gas. When a utility is unable to obtain all of its suppliers' charges or credits, as may be the case, within the three-month rolling period concerned, those outstanding amounts have ordinarily been allowed to be included in the DGAs as prior period adjustments. During the period since April 2002, adjustments made to a DGA have been allowed by the Board from earlier periods that were over one year prior to the forecast month. For example, in

[4] A winter period includes the months of November through March; a summer period includes the months of April through October.

[5] Refer to Decision 2001-75, dated October 30, 2001, Methodology for managing Gas Supply Portfolios and Determining Gas Cost recovery rates (Methodology) Proceeding and Gas Rate Unbundling (Unbundling) Proceeding. Also refer to Decisions 2002-034, 2002-035 and 2002-036, all dated March 21, 2002 approving the monthly GCRR format for AGS, AGN and AUI, respectively and Decision 2003-106, dated December 18, 2003 for DERS's monthly GCFR.

Decision 2004-013,[6] the Board allowed an adjustment to AG South's DGA to be made in 2004 for a measurement correction applicable to the period from April 2000 to October 2001.

Adjustments made by AG to a DGA applicable to its North or South service territory are passed from AG to AG's default supply provider (DSP),[7] DERS, for input into DERS's corresponding DGA. Costs used in the determination of DERS's gas cost flow-through rates (GCFRs) are accumulated in these DGAs. A GCFR, like a GCRR, is a regulated rate determined for the sale of natural gas.

3 ISSUES

The Board has identified three issues which must be addressed. First, the Board will consider whether it has the jurisdiction to provide for adjustments from prior fiscal periods to be incorporated into a DGA. If the answer to the first issue is yes, the Board will turn to the second issue of examining the merits of establishing a limitation period for adjustments to a DGA. If the answer to the first issue is no, it will not be necessary to make a determination on the second issue. Regardless, the Board will thirdly review the extent to which the DGA should be used for updates and corrections other than for price and actual gas sales or deliveries.

3.1 Jurisdictional Authority

Calgary questioned the Board's legislative authority to allow adjustments to be incorporated into the DGA from periods prior to the current fiscal period.[8] Calgary submitted that any jurisdiction the Board has should be established through powers expressly given to the Board to allow the DGA to be a repository for any and all cost adjustments beyond 12 months.

Calgary argued that there is no provision in the *Gas Utilities Act,* RSA 2000, c. G-5 (GUA) or the *Public Utilities Board Act,* RSA 2000, c. P-45 which would allow the Board to permit the recovery of historical costs by a utility outside of current or forecast fiscal periods. Calgary submitted that both Acts define the basis upon which the Board may consider the recovery of revenues and costs over a fiscal period and refer specifically to recovery in a current fiscal year or for two or more subsequent fiscal years. To allow historical cost recovery would constitute retroactive rate-making.

AG argued that Calgary overlooked the well-known regulatory principle that deferral accounts are an exception to the rule against retroactive rate-making. Consequently, AG submitted that Calgary's argument, that the Board does not have the legislative power to implement a limitation period in connection with prior period adjustments to the DGA, was without merit. In addition, AG objected to the timing of the jurisdictional issue raised by Calgary and stated that by raising this matter in argument, Calgary denied interested parties, as well as the utilities, an opportunity to appropriately address the matter.

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[6] Decision 2004-013 – ATCO Gas South Jumping Pound Meter Station – Gas Measurement Adjustment (Application No. 1314487) (Released February 17, 2004)

[7] Effective May 4, 2004, DERS became the DSP in each of AG's North and South service territories.

[8] Calgary filed Leave to Appeal Decision 2005-036 on May 26, 2005. The Application for Leave was heard before Mr. Justice Martin on April 18, 2006 and the matter was reserved.

Views of the Board

With regard to the issue of retroactive rate-making raised by Calgary, the Board does not accept the position advanced by Calgary. The Board has broad discretion to set just and reasonable rates and, in the case of setting gas cost recovery and flow-through rates, sets these rates in accordance with the use of DGAs. In doing so, the deferral nature of the DGAs is specifically contemplated and acknowledged when the rates are set. Deferral accounts, by their nature, anticipate adjustments such as the ones at issue in this matter and, as such, cannot be said to constitute retroactive rate-making. The Supreme Court of Canada has approved the use of deferral accounts for gas and has further noted that such a mechanism is a purely administrative matter.[9] In EPCOR Generation Inc. v. AEUB, 2003 ABCA 374, the Alberta Court of Appeal adopted the same approach and stated that as the deferral account in issue in that decision was not closed, it was not a final order, and was not retroactive rate making or procedurally unfair.

Consequently, the Board considers that a DGA has not been subject to any limitation regarding jurisdiction either by way of legislation, past Board decision or court ruling which would have prevented the Board from considering prior period adjustments to a DGA. In fact the Board has dealt with prior period adjustments to DGAs since their inception in 1987, with the prior periods being of varying lengths.

Nonetheless, as noted in Section 1 of this Decision, the Board was sufficiently concerned in Decision 2005-036 as to the appropriate scope and time frame for adjustments to DGAs, that the Board directed the initiation of the current proceeding.

3.2 Establishment of a Limitation Period for Adjustments to a DGA

Since the Board considers that there is no jurisdictional impediment that would prevent it from considering adjustments to the DGA which arose prior to the current fiscal period, the Board will now determine whether it is prudent to establish a policy which would impose a limitation period for adjustments to a DGA.

AUMA/PICA/EDM considered that that there should be a reasonable element of finality to adjustments resulting from errors on the part of the utility, particularly those which impact customer rates and for which the utility should be accountable. AUMA/PICA/EDM concluded that a limitation period should only apply to prior period adjustments that would result in a charge to the DGA. AUMA/PICA/EDM submitted that the asymmetrical application of a limitation policy was justified having regard to the fact that customers have no ability to detect problems in the gas supply delivery chain and that these types of errors will arise as a result of the management and operation of the distributing utility.

AUMA/PICA/EDM recommended[10] a limitation period of two years and adjustments to a DGA as follows.

1. Prior period adjustments within the two-year limitation period, which result in a charge to the DGA, should be identified and subject to review by the Board;
2. Prior period adjustments extending beyond the two-year limitation period should be considered by the Board on a case-by-case basis and not recoverable unless it can be

[9] Edmonton v. Northwestern Utilities [1961] SCR 391
[10] AUMA/PICA/EDM Argument, p. 10

established, to the satisfaction of the Board, that they arose as a result of matters that were beyond the management and control of the utility;

3. Prior period adjustments which result in a credit to the DGA should immediately be refunded to customers; and
4. Prior period adjustments should be identified in detail in the DGA filing and would be subject to the following:
   (a) Automatic review by the Board for amounts in excess of $1.0 million;
   (b) Review by customer representatives, on an exception basis, for amounts of $1.0 million or less.
5. Prior period adjustments which are atypical[11] should be clearly and fully explained in the DGA filing.

Calgary submitted that a policy limiting adjustments to the DGA was necessary because:

1. consumers are denied their entitlement to know with confidence that their gas bills are an accurate reflection of the cost of gas service provided to them;
2. a serious risk of intergenerational inequity between customers is created; and
3. utilities are given a disincentive to ensure that adequate checks and balances are in place to ensure that accounting and reporting systems are functioning correctly.

Calgary argued that there is no need or justification in the current environment to provide a utility with an open ended right to make adjustments through the DGA. Calgary considered that a broad two-year limitation period for allowing adjustments could potentially reward utilities for their own errors and mismanagement.

Calgary noted that, as provided in ATCO Gas' Terms and Conditions for Distribution Access Service, Section 12.4(b), where a meter inspection and test reveals that a meter is not accurate, an adjustment for the error is only allowed for the three months prior to the test, unless it is possible to determine when the error commenced. Calgary also noted that metering disputes between AG and DERS are governed by ATCO Gas' Sections 7.4.1 and 12.4 of the Terms and Conditions for Distribution Access Service, wherein the ability of AG and DERS to dispute a bill for service is limited to two years. Calgary considered that given the large population of customer meters, undetected meter errors will in large measure be self canceling.

In argument, Calgary provided information regarding terms and conditions respecting the "Back-Billing Tariff" as determined by the British Columbia Utilities Commission (BCUC Order No. G24-91), which dealt with the cause of billing errors and included provisions relating to back-billing to correct errors and limits to the time period for such back-billing.

AUI did not oppose the implementation of a limitation period for its own DGA if the limitation was structured in a manner to provide both predictability and certainty for AUI and its customers. However, AUI considered that while a limitation period may be reasonable for AUI, the same may

[11] Response to Information Request BR-AG-1(a) listed the following types of atypical adjustments:
- adjustments resulting from contract disputes;
- revisions and re-assessments of crown royalties;
- revisions to the reported transportation imbalances (i.e. the DGA Imbalances Adjustment, Application, No. 1347852);
- adjustments to prices.

not necessarily be reasonable for AG or DERS because of differences between each utility's DGA and their respective gas procurement strategies.

AUI submitted that the Board should not consider implementing any restriction on the types or categories of adjustments that flow through the DGA. AUI argued that the DGAs of Alberta DSPs are managed separately and differently from its DGA and any change to the types of adjustments that can flow through any respective DGA should be made on a utility-specific basis. AUI also submitted that a materiality threshold was not necessary.

AUI submitted that the Board should apply principles related to concepts of certainty, predictability and fairness to any limitation period it may adopt. AUI considered that AUMA/PICA/EDM set out similar principles in their submissions. AUI submitted that a limitation period policy can achieve predictability and certainty if it contains the following criteria:

(1) the limitation period is two years for all adjustments to the DGA;
(2) the limitation period applies equally to AUI and its customers, regardless of whether any particular adjustment results in a recovery or cost to AUI or customers; and
(3) the Board should retain discretion to allow prior period adjustments to the DGA occurring outside of the 2-year limitation period, on a case-by-case basis, where the circumstances surrounding the adjustment are prudent and beyond the control of the utility.

AUI recommended that the principles of "reasonable discoverability" should be considered regardless of a time limitation period. AUI considered that if a utility could not have reasonably discovered an error, recovery should be available, even if the limitation period had elapsed since the error took place, providing that the utility acts fairly and prudently in its interests and the interests of customers.

DERS submitted that no limitations respecting time or type should be placed on out-of-period adjustments. DERS argued that imposing a time limitation or restrictions on the types of eligible adjustments to be placed in the DGA would pre-judge the merits of the adjustments and reject all regardless of merit. DERS also submitted that, while such adjustments may originate in a sector of the gas industry outside of a utility's control, it may have to bear the charges associated with the adjustments because of contractual obligations, which in turn may have protracted resolution or settlement times because of well established industry practices. DERS considered that imposition of a limitation that would result in a utility not recovering its costs of providing the regulated gas sales service violates the basic intent of the regulated rate.

DERS noted that under current DGA procedures, prior period adjustments involving a significant time lag or monetary amount can be reviewed by the Board on its own initiative or at the request of an interested party. DERS also noted that an adjustment exceeding $3 million or an adjustment causing a change of greater than 5% in the monthly GCFR would be considered significant in DERS' circumstances.

AG submitted that the purpose of the DGA is to ensure that regulated sales customers pay no more and no less than the actual cost of gas used to serve them and that the utility is not impacted (either positively or negatively) in the provision of the service. In addition, AG argued that the use of a deferral account is to manage costs that can be significant in nature, are difficult to forecast, and that the utility may have little ability to control. AG stated that it was not aware of any other deferral account where the utility was not allowed to recover the prudently incurred costs simply because of

the passage of time, unless there was a clear pre-stated end date to the deferral account. AG submitted that the implementation of limitations on a deferral account would defeat the intent and purpose of using a deferral account.

AG suggested that the DGA has been in transition since at least 2003. AG stated that, since its inception, the DGA has been the residual shipper on its distribution system and also on the transmission pipeline system of its affiliate, ATCO Pipelines (AP). However, AG noted that, subsequent to changes to the GUA in 2003, it filed its Retailer Service Application,[12] which in part, proposed the removal of the DGA from the residual shipper role, and that in the decision relating to AG's Retailer Service Application Phase 2, Part A,[13] the Board also ordered that the function of load balancing should be separated from the regulated supply. AG also noted that the Board previously approved AP's transmission load balancing proposal,[14] which removed that component from the DGA. AG submitted that, when final implementation of directions arising from these applications are complete, the DGA will no longer serve as the residual shipper and thus will no longer require valuation of load balancing. AG therefore submitted that, given these changes, implementing time limit restrictions on the DGA would be inappropriate at the present time.

AG submitted that establishing a threshold dollar limitation is not appropriate because it would result in varying treatment for the same energy when the gas market value changes. AG noted that the Board and parties can currently review DGA costs and recoveries in the present monthly GCFR process, under which the Board can direct that additional information be provided. AG also submitted that the imposition of a limitation on the recovery of actual costs in the DGA, whether by time period, by type or a combination of both, would defeat the purpose of having a DGA in that customers would not pay the actual costs incurred in the provision of utility service to them.

AG recommended that if the Board were to set a limitation amount above which a separate application seeking approval of the prior period adjustment would be required, the limitation amount should focus either on the quantity of energy adjustment, or on a percentage basis, such as having an impact of 5% or more of the monthly regulated gas rate. AG believed that this type of limitation would be more appropriate in that it would allow for a proper review of the adjustment which is fair to all parties involved, and it would likely be more cost effective.

In reference to Calgary's use of the British Columbia Utilities Commission Tariff AG considered that Calgary introduced new evidence in its argument. AG submitted that, as the Board and interested parties had not been given the opportunity to examine the document through the evidentiary portion of the proceeding, it should either be excluded or the process extended to allow full discovery and response by all parties.

Views of the Board

The Board has considered the submissions of parties regarding the establishment of some limitation criteria for processing adjustments to the DGA and notes that only AG and DERS do not favour limiting the period for prior period adjustments. The other parties appear to support a limitation period, generally two years, but with certain conditions attached.

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[12] Application No. 1308709, Decision 2003-102, Retailer Service and Gas Utilities Act Compliance – Phase 1, December 22, 2003

[13] Application No. 1380942, Decision 2005-081, Retailer Service and Gas Utilities Act Compliance – Phase 2, Part A, July 26, 2005

[14] Order U2005-261, ATCO Pipelines, Customer Account Balancing – Part B: Load Balancing, June 24, 2005

The Board considers that it is reasonable to provide some certainty with respect to finalizing the customer rates and to provide regulatory efficiency. Accordingly, the Board generally agrees with AUI on what would be a reasonable time frame. The Board believes that the objective of providing regulatory efficiency can be achieved by setting a two-year time limit for adjustments in the ordinary course, and the Board has decided to set a two-year limitation period for adjustments to the DGA. This will add 21 months in addition to the rolling three-month period which is provided to reconcile actual and forecast gas costs. The Board believes that, in order to establish efficiency, the two-year time limit on prior period adjustments should be determined relative to the date on which the monthly regulated GCRR or GCFR then under review by the Board becomes effective, not the date of "discoverability" of the causes that would otherwise precipitate adjustments.

Notwithstanding the imposition of a two-year limitation period, a utility may consider that special circumstances justifiably warrant an adjustment arising from an historical time period outside of the two-year limit, and that an adjustment from that earlier time period should be included in the DGA. The Board is prepared to make provision for such an event. Accordingly, any prior period adjustments which originate prior to the two-year limitation may be submitted by separate application to the Board. To this end the Board considers that a threshold value of the proposed adjustment must be greater than 5% of the average monthly DGA gas commodity costs of the previous 12 months before the Board would consider such an application by the utility to adjust the DGA owing to special circumstances.

In addition, the Board considers that in order for it to allow any adjustment (positive or negative, resulting in either a recovery of amounts from customers or a refund of amounts to customers) relating to a period outside of the two-year limitation period, the adjustment must arise from special circumstances that were not within the utility's control. Consequently, the Board will require sufficient details to be provided with each request for prior period adjustments, including the timing and causes of the adjustments, in order to assess their merits before the application of the adjustment to the DGA is allowed.

Further, the Board is concerned about adjustments which may arise from circumstances relating to utility mismanagement or imprudence, and considers that such adjustments will require careful consideration before being allowed into the DGA, particularly where they would result in recovery to the utility.

The Board will consider other aspects of a limitation policy in Section 4 of this Decision and provide its views in that section.

3.3 Scope of DGA

In Decision 2005-036 the Board expressed its concern regarding whether it is appropriate for the DGA to be a vehicle for all and any updates and corrections other than for price and actual gas sales or deliveries. The Board noted that over the roughly 16 years that the DGA has been in place, its use has evolved considerably.

The Board notes that no evidence was presented that itemized the type of adjustments that would or should be acceptable or unacceptable. Consequently, the Board has not made any determination as to the type of adjustments that will be considered. The Board expects that the merits and prudence of any proposed adjustments can be dealt with in the ordinary course of examining the GCRR or

GCFR applications or any specific application presented by the utility for out-of-period adjustments. The Board notes, for example, that timing costs were not permitted to be recovered in the DGA in Decision 2004-013.

4 OTHER MATTERS

AG set out a number of concerns that could potentially affect the components of a DGA. These concerns are discussed in the following sections.

4.1 Gas Meters – *Electricity and Gas Inspection Act,* RS 1985, c. E-4 (EGIA)

AUMA/PICA/EDM did not consider that a limitation period as it may be applied to a DGA would offend the EGIA. AUMA/PICA/EDM submitted that issues related to customers' meters addressed under the EGIA were unrelated to DGA processes which are intended to recover gas-related costs.

Calgary argued that the EGIA, which provides a threshold for the testing of metering equipment, does not make a connection between costs recoverable by virtue of regulatory legislation and the standards for testing circumscribed in the EGIA and is not relevant to the limitation issues concerning a DGA.

AUI noted that if an inspection was triggered under the EGIA and a prescribed error found, the possibility exists that there would be no limit on recovery. AUI submitted that if an adjustment under the EGIA occurred and was outside of the limitation period, the Board could exercise its discretion to allow a refund or recovery.

AG noted that the rules applying to gas meters are governed by the EGIA and that the EGIA does not impose a limitation period for an adjustment to a meter in a circumstance where the adjustment can be determined. AG argued that if a limitation period was applied to the DGA, in circumstances where meter adjustments were found to be outside the limitation period, AG would be exposed to cost risks related to gas purchases or imbalances, which it previously would not have incurred. AG submitted that this situation would be inconsistent with the purpose of the DGA and hinder AG's ability to earn a fair return on its investment. AG also submitted that the rights of a claimant under the EGIA could not be restricted by any limitations imposed by the Board on the DGA.

Views of the Board

Both AG and AUI expressed concern for a potential conflict between a limitation period for the DGA and the EGIA. Calgary and AUMA/PICA/EDM both considered there was no relationship between the two.

The Board understands that the EGIA deals primarily with the custody transfer meter at the customer premises and is for the protection of the transaction between the utility and the customer. The Board tends to agree with the interveners that there is no direct relationship to the DGA. However, the Board accepts that metering errors may give rise to prior period adjustments. If a metering problem does arise the utility is free to include an adjustment in the ordinary course for the DGA, or to submit an application to address the situation if it is beyond the two-year limitation period.

In any event, the Board does not intend to make any decision or direction that would directly conflict with the federal EGIA or regulations relating to meters.

4.2 Unaccounted for Gas (UFG)

Calgary submitted AG would be protected by its UFG account for losses due to meter errors and theft.

AG disagreed with Calgary that disallowed costs resulting from an imposed DGA limitation could be recovered through the UFG procedures. AG noted that the purpose of calculating UFG is to determine the physical gas losses on the system using the best available measurement data at the time of calculation using the current Board-approved methodology in order to recover these losses in kind on a fair basis from customers. AG submitted that there was no relationship between an imposed DGA limitation, which could limit the recovery of costs from sales customers, and the use of gas measurement data for the purpose of determining UFG.

Views of the Board

With respect to the UFG account, the Board agrees with AG that its UFG account does not protect it from unaccounted-for losses due to metering errors. However, the current methodology to calculate UFG does provide for the UFG account to be updated annually using a three-year rolling average. This currently includes adjustments made to the receipts and deliveries during prior periods. Updating the UFG in this manner currently serves to mitigate the impact on the utility of measurement errors. The Board does not view it as necessary to alter its findings in respect of the two-year limitation period for the DGA or the availability of prior period adjustments by special application, in relation to the operations of the UFG account. The Board considers that a metering error in a prior period, whether or not it is related to the UFG account, should be dealt with in accordance with the limitation period rules set in this Decision if it will impact the cost of gas in a DGA.

4.3 Inappropriate Incentives to the DSP

DERS stated that it would have to identify its potential risk under a regime where there may be limitations on prior period adjustments. Given the change in circumstance that would arise with limitations, DERS also stated that it may have to change its gas procurement procedures in a wholesale gas market where supply and demand are tight.

AG submitted that an imposed DGA limitation could inappropriately cause the DSP to adjust its gas procurement practices in order to avoid any exposure to adjustments that it could not control, regardless of the merits of any particular procurement opportunity. AG disagreed with Calgary that a DSP’s price risk could be avoided under a contractual arrangement. AG argued that where price risk was involved, a prudent seller would ensure it was well compensated for taking on the risk, resulting in an increase in costs to customers.

Views of the Board

The Board does not agree that a limitation period should cause the DSP to alter its procurement practices. There is no evidence to indicate the magnitude of a possible problem that could not be resolved by an application for an adjustment in special circumstances, assuming that the cause of the problem was outside the control of the utility and the other threshold requirements were met.

4.4 *Regulated Default Supply Regulation* [Alberta Regulation (AR) 168/2003 (Repealed)] to the *Electric Utilities Act,* SA 2003, c. E-5.1

AUMA/PICA/EDM noted that the Alberta Government in AR 168/2003, as reinforced in AR 262/2005, provided for a limitation of 12 month before the date of an electricity bill for certain billing errors otherwise charged to customers but no restrictions with respect to customer refunds. AUMA/PICA/EDM considered that there was merit in obtaining some consistency between electric and gas distribution utilities.

Calgary noted that the legislation set out in section 9(2) of AR 168/2003 was a specific subordinate piece of legislation, which places parameters around the collection of amounts from customers. Calgary argued that, notwithstanding there is no similar regulation under the GUA, unless there is a specific legislative provision governing the matter, then general provisions cannot be construed as being more liberal or beneficent to the utility. Calgary saw no basis for discriminating between the limitations placed on the recovery from customers under the *Electric Utilities Act* and the limitations placed upon customers under the GUA.

DERS concluded that AR 168/2003 only related to billing adjustments and had no relevance to prior period adjustments in the DGA.

AG noted that AR 168/2003 did not apply to gas utilities, and only related to billing adjustments, which are not the type that can be incorporated into the DGA. Consequently, AG stated that Section 9(2) of AR 168/2003 had no bearing on prior period adjustments related to the DGA. AG considered that the comments of interveners with respect to the Regulation being an appropriate comparison or guideline for gas utilities were wrong, and did not recognize that circumstances in the natural gas industry are not the same as in the electric industry. AG noted that similar legislation had not been enacted for gas utilities.

Views of the Board

The Board agrees that AR 262/2005 is not applicable to gas utilities. While the Board considers that some degree of consistency with electric utilities for treatment of billing adjustments may be desirable, the electric utility regulations are aimed at the point of transfer with the customer rather than at the overall revenues and costs included in a DGA. The Board considers that the limitation period herein approved will assist in providing a fair outcome for the customers and the utility with respect to the prudent operation of the DGAs.

4.5 Intergenerational Equity

AG submitted that argument made by interveners relating to intergenerational inequity was a red herring. AG argued that the potential for intergenerational inequity has existed within the DGA since its inception. AG noted that initially the DGA was maintained on a seasonal basis in which outstanding balances were carried forward from one season to the next succeeding like season.

AUMA/PICA/EDM submitted that AG's comments with respect to inter-generational inequities being prevalent in past DGA procedures that applied to a seasonal basis are not reflective of issues raised by AUMA/PICA/EDM and Calgary. Similarly, AUMA/PICA/EDM considered that AG's comments on the matter are not reflective of the current DGA process that provides for monthly adjustments.

Calgary argued that intergenerational inequity has been an important issue for the Board and interested parties for many years, including in the recent Imbalance and Production Adjustments Application.[15] Calgary submitted that concern for intergenerational inequity is particularly more important when a highly mobile and growing population exists than when a population is static.

Views of the Board

While intergenerational equity questions may generally arise to some degree in many utility matters, particularly in relation to deferral accounts, the Board believes in this case that the imposition of a limitation period for DGAs assists in addressing the intergenerational issue raised by Calgary and AUMA/PICA/EDM because it limits the adjustments in the ordinary course. AG is correct in pointing out that deferred accounts have an inherent intergenerational aspect; however, the Board considers that it is important to not allow too long a period before dealing with adjustments.

4.6 Asymmetry of Limitations

AUMA/PICA/EDM was concerned about billing adjustments caused by delays in remitting information to DERS by AG. AUMA/PICA/EDM thus argued that there should be no limitation period for refunds of over-recovered amounts.

Calgary submitted that a two-year limitation for adjustments after the event occurred be imposed for the recovery of any adjustment related to any factor or event beyond the control of the utility. Calgary further submitted that, in respect of adjustments related to errors or omissions due to internal accounting and reporting systems subject to management's control, a limitation of one year should be imposed on any such adjustments that favour the utility. Calgary however considered that no limitation should be imposed on adjustments that result in a refund to customers, because under no conditions should a utility be allowed to benefit from the mismanagement of its accounts or systems or from imprudent behaviour. Calgary stated that the DGA was never intended to be a mechanism to protect the utility from itself.

AUI submitted that any limitation period must apply equally to AUI and its customers. AUI submitted that the unbalanced and asymmetrical proposals advanced by other parties should be rejected as these approaches are not contemplated by the GUA or the *Default Gas Supply Regulation* (GUA AR 184/2003), which clearly provides for the recovery by the utility of gas purchase costs.

DERS supported the view that any limitations imposed on the DGA should apply equally to all parties.

AG agreed with AUI that any limitations applied to a DGA should pertain equally to the utility and customers, regardless of whether the adjustment results in a recovery or cost to customers. AG argued that asymmetric adjustments would not take into consideration the impact on the utility's ability to function in today's marketplace and the resultant increase in its risk profile.

[15] Application No. 1347852, which led to Decision 2005-036

Views of the Board

Asymmetry in limitation periods for dealing with adjustments is an issue which had the utilities and customer representatives polarized, with the utilities advocating that adjustments that require recovery or refund should be treated with symmetry.

The Board is sympathetic to the customer position that the company should not benefit from errors or mismanagement. The Board considers that, as a matter of principle, a utility should not be allowed to recover amounts from customers, either within or outside the two-year limitation period, to the extent the adjustment arose due to its own mismanagement or imprudent operations. However, if the adjustment resulted in a refund to customers, even if it arose to some extent from mismanagement or imprudent operations by the utility, the Board considers that the adjustment could be allowed if the circumstances so warrant.

Overall, however, the Board would not find it fair to establish an asymmetrical approach to limitation periods for adjustments to the DGA, for example, where the utility would face threshold amounts or time limits for collections from customers but would face no such threshold amounts or time limits for rebates to customers. The Board expects that any adjustments either within or outside the limitation period will be processed by the utility regardless of who benefits. For those adjustments outside the limitation period that exceed the threshold and require a special review, the Board trusts the utility to bring adjustments forward to the Board for review regardless of the beneficiary. In such circumstances the Board believes the utility will operate with integrity.[16] Given such a perspective, the Board expects that adjustments, plus and minus, will balance out over time.

Accordingly, the Board directs that the DGAs be adjustable for both refunds to customers and recoveries from customers, subject to potential restrictions on adjustments where the Board has found imprudent operations or mismanagement by the utility.

4.7 Alberta *Limitations Act,* RSA 2000, c. L-12 (*Limitations Act*)

AUMA/PICA/EDM submitted that the *Limitations Act* was a means to provide guidance in setting a two-year limitation period for the DGA. AUMA/PICA/EDM considered that the ten-year provision under the *Limitations Act* would for practical purposes be irrelevant and of no comfort to customers.

Calgary noted that parties have not disputed that the *Limitations Act* does not apply to matters of rate regulation but submitted that this Act arose out of the policy need to have certainty and finality. Calgary regarded the policy considerations under issue in this proceeding to be different than those giving rise to the limitation periods deemed appropriate by the legislature under the *Limitations Act*. Calgary argued that an issue of concern in this proceeding is one of protecting the public interest as it relates to determining a reasonable amount of time for corrections to be made to a DGA, within and beyond the control of the utility, versus the interests of the consumers, who have no control over, or ownership of, equipment and methodologies by which costs are captured, calculated and charged.

AUI considered that a two-year period is consistent with limitation periods applied under the *Limitations Act*. AUI did not recommend that the Board limit recovery under the “reasonable discoverability” principle to ten years as set out in the *Limitations Act.*

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[16] For example, the adjustments proposed by AG in Application No. 1347852 provided a refund to the customers in the North.

DERS agreed that the *Limitations Act* did not apply to the DGA.

AG disagreed with AUMA/PICA/EDM that the *Limitations Act* provided a guideline with respect to a two-year limitation period for adjustments to the DGA. AG noted that under the *Limitations Act*, subject to certain exceptions, an action for what is described as a remedial order must be commenced within either two years after the person making the claim knew or ought to have known of the claim, or ten years after the claim arose, whichever period first expires. AG submitted that if AUMA/PICA/EDM wanted to be consistent with the *Limitations Act*, its recommendation should have provided for the two-/ten-year limitation structure.

Views of the Board

The Board agrees that the *Limitations Act* does not strictly apply to the DGA and has not given it preeminent consideration when reaching its conclusions in this Decision. However, the Board does note AUI's position and agrees that the two-year limitation period is appropriate and is consistent in that respect with the *Limitations Act.* The Board also agrees with AUI that it is not necessary to utilize the "reasonable discoverability" principle in this case.

4.8 Presumption of Prudence

Calgary considered that a period of one year should be sufficient for utilities to discover errors that they may have made through accepted and prudent accounting and auditing practices. Calgary also considered that, as the value of a commodity rises, related internal accounting and operating controls should become more stringent. Therefore, Calgary submitted that the cost of errors discovered after one year should be considered to be imprudently incurred.

AG noted that accurate measurement of natural gas is a complex undertaking that requires human intervention to maintain the relationship between the underlying flowing conditions and the corresponding measurement equipment and associated calculations. AG acknowledged that errors will occur from time to time despite best efforts to prevent them. AG submitted, however, that there is a difference between an adjustment that that arises from an error or oversight and one that arises from an imprudent action. AG also submitted that judgment is involved in the assessment of prudence, and it is almost certain that the utility will have differing views from the interveners as to whether the utility's actions were prudent with respect to a prior period adjustment impacting the DGA. AG further submitted that where differences of opinion existed with respect to the prudence of prior period adjustments proposed to be made to the DGA, the Board would be required to hold proceedings to address these differences, resulting in an increase in regulatory proceedings to deal with routine adjustments and thus increased costs for customers.

Views of the Board

Generally speaking the Board considers that prudence has not been a typical issue in the ordinary course of the monthly GCRR or GCFR applications to date. However, as indicated earlier, the Board considers that a party is free to raise prudence as an issue when reviewing monthly submissions for recovery of gas costs. Outside the limitation period the Board previously noted in this Decision that prudence could be an issue during the review of any application for DGA adjustment applied for by the utility.

4.9 Utility Risk

AUMA/PICA/EDM submitted that the measurement and gas costs accounting processes are such that prior period adjustments should be relatively small and therefore would not impact AG's risk profile. AUMA/PICA/EDM noted that prior to the creation of the DGA process, gas distribution utilities were required to forecast gas costs and absorb any variance from actual.

Calgary submitted that the risk that utilities associated with DGA limitations and the nature of the systems or measures required to eliminate the risk were grossly overestimated. Calgary also submitted that there are commercial means available to protect a utility and its customers from exposure to certain risks. Calgary considered that adjustments related to imprudently incurred costs or internal corporate or management errors should not be included in a utility's business risk profile.

AUI submitted that utility risk will increase materially if an asymmetrical limitation was allowed. AUI further submitted that it would require a corresponding increase in return or the equity component of capital structure to compensate for the added risk if the Board sanctioned limitations that did not apply equally to the utility and to its customers.

DERS disagreed that a utility is compensated in its allowed and achieved return for costs that may be disallowed because of a time restriction. DERS stated that its allowed return on working capital does not provide compensation for such risk.

AG submitted that utilities are not currently at risk for the prudently incurred costs of the components approved for inclusion in the DGA and that there have been no indicators that a limitation of prior period adjustments exists under current DGA procedures, providing that costs are prudently incurred. AG, however, argued that the imposition of a limitation on the recovery of these costs places it at risk for these types of adjustments and, given the frequency and uncertainty of the adjustments, would require a significant increase to its capital structure. AG argued that if it was required to absorb the impact of prior period adjustments it should be allowed to increase its revenue to compensate for the risk involved and earn a level of return commensurate with an unregulated business facing the same risks.

Views of the Board

The utilities considered that their risk and costs would increase with a limitation period, although AUI seemed to restrict such a view to a provision for asymmetrical limitation which has not been approved by the Board. The Board does not consider that utility risk should increase given the structure of the limitation period herein approved and the capability of the utility to bring forward any significant adjustment under special circumstances, that would be found prudent and outside the company's control.

4.10 Incremental Costs [Including Additional Proceedings Required]

AUMA/PICA/EDM considered that that adjustments contemplated and affected by a limitation period should not be construed as "routine adjustments" and that a properly administered limitation period should ordinarily result in fewer adjustments. AUMA/PICA/EDM submitted that ensuring that DGA adjustments are properly understood and verified to the satisfaction of the Board is a small price to pay.

AG submitted that, in addition to costs associated with an increased number of regulatory proceedings and the increase in common equity ratio that would be required, there could be other incremental costs associated with control measures necessary to achieve the target specified by an imposed DGA limitation.. AG cited monthly metering reading and a change in the inspection frequency cycle on meters as examples.

Views of the Board

There is no history on which to rely to reach a conclusion that costs will increase to a point that would make a limitation period unacceptable. The Board agrees with AUMA/PICA/EDM that ensuring that DGA adjustments are properly understood and verified is a small price to pay.

5 ORDER

IT IS HEREBY ORDERED THAT:

(1) Effective as of the date of this Decision, and in accordance with the terms and provisions of this Decision, a limitation period of two years prior to the effective date of the proposed GCRR or GCFR will be instituted for making adjustments in the ordinary course of business to a DGA, for both refunds of amounts to customers or recoveries of amounts from customers.

(2) The utility may apply to the Board in a separate application for approval of an adjustment to the DGA, where the cause of the adjustment originates outside the two-year limitation period, provided the following conditions are met:

  (a) the adjustment sought exceeds the threshold value by being greater than 5% of the average monthly DGA gas commodity costs of the previous 12 months; and

  (b) the adjustment arose from special circumstances that were not within the utility's control.

(3) This Decision is applicable to the DGA of ATCO Gas, Direct Energy Regulated Services and AltaGas Utilities Inc.

Dated in Calgary, Alberta on May 11, 2006.

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, LLB
Acting Member

APPENDIX 1 – HEARING PARTICIPANTS

Name of Organization	Abbreviation
ATCO Gas, a Division of ATCO Gas and Pipelines Ltd.	AG
AltaGas Utilities Inc.	AUI
Alberta Urban Municipalities Association, the Public Institutional Consumers of Alberta and the City of Edmonton, jointly	AUMA/PICA/EDM
The City of Calgary	Calgary
Direct Energy Regulated Services, a business unit of Direct Energy Marketing Limited	DERS
NOVA Gas Transmission Ltd.*	NGTL

Alberta Energy and Utilities Board

Board Panel
B. T. McManus, Q.C., Presiding Member
J. I. Douglas, FCA, Member
C. Dahl Rees, LLB, Acting Member

Board Staff
C. Wall (Board Counsel)
R. Armstrong, P.Eng.
D. R. Weir, CA

*NGTL took no position on the DGA limitation period as it does not utilize a DGA. It did however respond to information requests from the Board and AG.