



ATCO Gas North

Disposition of Red Deer Operating Centre

December 14, 2005

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2005-141: ATCO Gas North
Disposition of Red Deer Operating Centre
Application No. 1421444

December 14, 2005

Published by

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1 INTRODUCTION

On October 3, 2005 ATCO Gas North (AGN), a division of ATCO Gas and Pipelines Ltd., filed an application (the Application) with the Alberta Energy and Utilities (the Board or EUB) requesting approval for the sale of AGN's old Red Deer Operating Centre assets pursuant to section 26(2)(d) of the *Gas Utilities Act* (GUA). AGN submitted that it was prepared to defer the issue of the disposition of the proceeds of the sale transaction until the Supreme Court of Canada renders a judgment in the appeal regarding the ATCO Gas South Calgary Stores Block disposition and allocation of proceeds (SCC Stores Block Appeal).¹ As a condition of the purchase agreement, Board approval of the sale would be required by December 19, 2005. This Decision approves the sale of the old Red Deer Operating Centre assets from AGN to 1135968 Alberta Ltd. with conditions.

2 BACKGROUND

The old Red Deer Operating Centre was removed from utility service on April 18, 2005 concurrent with the completion and occupation of AGN's new Red Deer facility. The need for a new facility was approved in Board Decision [2003-072](#), ATCO Gas 2003/2004 General Rate Application, dated October 1, 2003.

On September 26, 2005 AGN reached an agreement with 1135968 Alberta Ltd. for the sale of AGN's old Red Deer Operating Centre located at 5439 47th Street, Red Deer, Alberta. The assets included in the sale were 0.967 hectares (2.39 acres) of fenced yard area² with a two storey commercial/light industrial structure with a total area of approximately 18,900 square feet.³ The net proceeds from the transaction were \$2.02 million.

AGN obtained three estimates of the market value for the old Red Deer Operating Centre from Soderquist Appraisals. Two valuations were performed of the land with improvements and the final appraisal considered the value of the land as a vacant lot. The results of these valuations with the most recent assessment for tax purposes are included in Table 1 following:

¹ Supreme Court of Canada Case #30247

² BR-AGN 2(a) Attachment 1, p. 4

³ Ibid, p. 16

Table 1. Red Deer Operating Centre Valuations

Income Approach to Value	\$1,600,000 ⁴
Direct Comparison Approach	\$1,500,000 ⁵
Value as Vacant Lot	\$989,000 ⁶
2004 Tax Assessment	\$1,036,700 ⁷

The allocation of the gross proceeds of the sale set out in the sales agreement was as follows:⁸

Land value	\$1,800,000
Building value	\$300,000 ⁹

Process

Notice of Application was issued October 7, 2005 to parties that a written proceeding would be held to consider the Application. The Board advised that a written proceeding be used with respect to the Application. The following schedule was proposed:

Register as an intervener and comments on AGN's proposal to defer	October 13, 2005
Information Requests to AGN	October 17, 2005, 2 PM
Information Responses from AGN	October 21, 2005, 2 PM
Argument	November 4, 2005, 2 PM
Reply	November 14, 2005

The division of the Board assigned to hear the Application was Mr. B. T. McManus Q.C. (Chair), Mr. J. I. Douglas, FCA, and Mr. G. J. Millar.

The following parties registered as interveners in this proceeding:

Consumers Coalition of Alberta (CCA)
 Public Institutional Consumers of Alberta (PICA)
 Alberta Urban Municipalities Association (AUMA)
 City of Edmonton (Edmonton)
 Nova Gas Transmission Ltd. (NGTL)
 AltaGas Utilities Inc. (AUI)
 Office of the Utilities Consumer Advocate (UCA)

The CCA and UCA, by letters dated October 13, 2005, and PICA, by letter dated October 14, 2005, stated their support to defer this matter until the Supreme Court of Canada considers a similar matter. On October 14, 2005 AGN submitted a clarifying letter which stated:

The comments could be interpreted to indicate that parties believe ATCO Gas has proposed that the entire Disposition Application be deferred until the Supreme Court Ruling. To be clear, that is not the case. ATCO Gas has requested in the Application that

⁴ Ibid, p. 37

⁵ Ibid

⁶ BR-AGN-2(a) Attachment 2, p. 25

⁷ BR-AGN-2(b) Attachment 1, p. 1

⁸ Gross proceeds of the sale were \$2.1 million (BR-AGN-2(c) Attachment 1, p. 1)

⁹ BR-AGN-2(c) Attachment 1, p. 1

the Board address the sale of the property at its earliest convenience. ATCO gas has only recommended deferral of any consideration of the proceeds until the Supreme Court ruling has been released.¹⁰

The Board was the only party to submit Information Requests to AGN and AGN was the only party to submit argument in this proceeding. No parties submitted reply argument. The record for this portion of the Application was closed as of November 14, 2005.

3 ISSUES

In the Application AGN is seeking two distinct approvals. First, AGN is requesting that the Board approve the sale of the Red Deer Operating Centre assets to 1135968 Alberta Ltd. Second, AGN is asking the Board to defer the issue of the disposition of the net proceeds of the sale until after the Supreme Court of Canada renders a decision in the Calgary Stores Block Appeal.

4 DISCUSSION OF ISSUES

4.1 Disposition of Red Deer Operating Centre

In Decision 2003-072,¹¹ the Board approved the construction of a new Red Deer Operating Centre. It was acknowledged at that time that the disposition of the old operating centre would have to be approved in a new application:

...ATCO indicated that the Company would seek EUB approval of the sale of the existing Red Deer Operating Centre, but because the disposition was not expected to take place until at least 2005, the matter of the disposition is unrelated to the 2003/2004 GRA.¹²

The Board notes that AGN stated that it had removed the old Red Deer Operating Centre from rate base and also notes that this occurs in the same time frame as the new Red Deer Operating Centre is to be added to rate base. The Board assumes that AGN will be using the mid-year convention to calculate the rate base for the removal and inclusion of the two facilities in 2005. The Board expects it will have the opportunity to review the accounting treatment in a compliance filing following a decision to be issued for the current ATCO Gas 2005-2007 General Rate Application (GRA) No. 1400690. The accounting of the rate base for the Red Deer Operating Centres will be treated as a placeholder for the purpose of setting the overall rate base in the 2005-2007 GRA. The final determination of rate base treatment will be included with the process for the Disposition of Red Deer Operating Centre that is to continue subsequent to release of the decision on the SCC Stores Block Appeal referred to in section 4.2 of this Decision.

The Application before the Board was made by AGN pursuant to section 26(2)(d) of the GUA. This requires that the utility obtain Board approval prior to disposing of its property outside of the normal course of business.

¹⁰ ATCO Gas, Letter dated October 14, 2005, p. 1

¹¹ ATCO Gas 2003/2004 General Rate Application, dated October 1, 2003

¹² Decision 2003-072, p. 52

In determining whether or not to approve a disposition of utility property, the Board applies a no-harm test to review the impact of the disposition on customers. In Decision [2003-098](#),¹³ the Board described the no-harm test as follows:

The Board's no-harm test considers the transaction in the context of both potential financial impacts and service level impacts to customers. The Board also assesses the prudence of the sale transaction. As well, the Board considers whether the availability of future regulatory processes might be able to address any potential adverse impacts that could arise from a transaction.¹⁴

In other decisions, the Board has summarized the no-harm test as having two criteria - assessing the continuity of safe and reliable operation of the utility as a result of the transaction, and assessing the impact to customers, financial or otherwise from the completion of the transaction.¹⁵

In its Application and argument, AGN pointed out that the old Red Deer Operating Centre had been removed from rate base and was no longer being used to provide utility service. Therefore, AGN argued that "...there should be no reason to object to the proposed sale..."¹⁶ The Board notes that none of the interveners provided any commentary or objections.

The assets are no longer being used to provide gas distribution service and they have been removed from the utility rate base. There has been no evidence or argument brought forward that the safe and reliable operation of the utility or customer service has been adversely impacted by the fact that the assets are no longer being used to provide gas distribution service. Given this, and in the absence of any evidence to the contrary, the Board expects that if it approves the sale of the assets, there should not be an adverse impact on the service levels or the safe and reliable operation of the utility. With respect to financial impacts, the Board notes that the net proceeds from the sale will exceed all the valuations as shown in Table 1. Based on these factors, the Board finds that the disposition of the old Red Deer Operating Centre should not harm customers and should be approved.

However, it should be noted that by approving the sale, the Board is not approving AGN's proposed allocation of proceeds between land and buildings. This matter will be decided subsequently in the same proceeding as the disposition of the gain on sale.

4.2 Deferral of Disposition of the Proceeds

Regarding the disposition and allocation of proceeds resulting from the sale, AGN recognized that similar issues were pending before the Supreme Court of Canada with respect to the SCC Stores Block Appeal. For this reason, AGN suggested that this issue be deferred until after the Supreme Court of Canada decision has been released.

¹³ 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 Limited and Proposed Arrangements with Direct Energy Regulated Services to Perform Certain Regulated Retail Functions, dated December 4, 2003

¹⁴ Decision 2003-098, p. 4

¹⁵ For example, see Decision [2002-069](#), ATCO Group Affiliate Transactions and Code of Conduct Proceeding. Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues, dated July 26, 2002, pp. 28-29 and Decision [2005-118](#), Upper Lakes Group Inc. Sale of Shares in Thornmark Utilities Corporation and Thornmark Waste Management Corporation, dated November 2, 2005, pp. 6-7

¹⁶ ATCO Gas Argument Application No. 1421444, p. 2

This suggestion was supported by the CCA and PICA. In its October 13, 2005 letter the CCA stated that the “CCA agrees that the proposal to defer is proper.”¹⁷ The UCA stated in its letter that “The UCA strongly supports the ATCO Gas North proposal to defer consideration of this issue until the Supreme Court of Canada releases its decision in the ATCO Gas South Calgary Stores Block case.”¹⁸ In its letter dated October 14, 2005, PICA asserted that it “supports a deferral of this matter pending the outcome of the Supreme Court of Canada decision related to the Calgary Stores Block.”¹⁹

The issue before the Supreme Court of Canada is whether the Board has jurisdiction to allocate a portion of the net gain on the sale of a utility asset to customers where, at the time the Board approved the sale, the Board found that no harm to customers would be caused by the removal of the asset from utility service. The appeal arose from two decisions of the Board wherein ATCO Gas South applied for approval of the sale of the Calgary Stores Block assets and approval of its proposed disposition of the proceeds of sale. The Board established a two part process to deal with the approvals requested. In the first proceeding, the Board approved the sale, deferring the consideration of the disposition of sale proceeds to the second proceeding.²⁰ In the second proceeding, the Board approved a different allocation of sale proceeds than that applied for by ATCO Gas South.²¹

ATCO Gas South appealed the Board’s decision regarding the allocation of sale proceeds to the Alberta Court of Appeal. While the Court of Appeal generally found in favour of ATCO Gas South, some uncertainty regarding the Board’s jurisdiction remained. This is illustrated by the fact that while it was the City of Calgary that appealed to the Supreme Court of Canada, ATCO Gas South filed a cross-appeal from the Court of Appeal decision relating to the Board’s jurisdiction.

Given the lack of judicial clarity regarding the jurisdiction of the Board in these matters, the Board agrees that deferring the matter of the allocation of net sale proceeds, until after the Supreme Court of Canada’s decision is released, is appropriate. It is anticipated that this deferral will provide for greater certainty regarding the Board’s jurisdiction regarding disposition of the sale proceeds and also result in a more efficient process. However, the Board must emphasize that its agreement to a deferral of the disposition of the sale proceeds does not affect its jurisdiction to consider the disposition and AGN must still obtain Board approval for its proposed disposition. Further, as indicated in section 4.1 above, this includes obtaining approval for the allocation of the sale price between land and buildings.

This Decision is a partial decision with respect to the Application and therefore once the Supreme Court of Canada has issued its decision, AGN is directed to submit a filing addressing the disposition of the proceeds from the sale.

¹⁷ CCA Letter dated October 13, 2005 p. 1

¹⁸ UCA Letter dated October 13, 2005 p. 1

¹⁹ PICA Letter dated October 14, 2005 p. 1

²⁰ Decision [2001-78](#), ATCO Gas And Pipelines Ltd. Disposition Of Calgary Stores Block And Distribution Of Net Proceeds – Part 1, dated: October 24, 2001

²¹ Decision [2002-037](#), ATCO Gas and Pipelines Ltd. Disposition of Calgary Stores Block and Distribution of Net Proceeds - Part 2, dated March 21, 2002 [SEE Addendum released as Decision [2004-030](#), dated March 30, 2004]

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) The sale of the old Red Deer Operating Centre is approved.
- (2) ATCO Gas North will hold the net proceeds from the sale in trust until the disposition of the net proceeds is decided by the Board.
- (3) After the Supreme Court of Canada releases a decision in the Calgary Stores Block matter, ATCO Gas North shall submit a filing to the Board to approve the disposition of the net proceeds of the sale of the Red Deer Operating Centre.
- (4) The issue of allocation of the net proceeds between land and building value is a matter that will be determined in the disposition of proceeds filing.

Dated in Calgary, Alberta on December 14, 2005.

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)

Gordon J. Miller
Member