



ATCO GAS

Code of Conduct Exemption

May 11, 2004

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2004-039: ATCO Gas
Code Of Conduct Exemption
Application No. 1317782

Published by

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1 INTRODUCTION

ATCO Gas (AG), a Division of ATCO Gas and Pipelines Ltd. (AGPL), by letter dated October 22, 2003, filed an application (the Application) with the Alberta Energy and Utilities Board (the Board or EUB) for approval of a general exemption for each of its business units, ATCO Gas North (AGN) and ATCO Gas South (AGS), pursuant to Section 2.6 of the ATCO Group Inter-Affiliate Code of Conduct (the Code).

The Code was developed as a result of the ATCO Group Affiliate Transactions and Code of Conduct Proceeding Part B.¹ This Affiliate proceeding reviewed relationships and transactions amongst the ATCO Group of Companies and approved the Code to set out standards and conditions for interaction amongst the various ATCO utilities and their non-regulated affiliate companies.

AGN and AGS are presently recognized as separate utilities subject to the Board's jurisdiction. Sections 2.3 and 2.6 of the Code provide, respectively, the following:

- 2.3 All Utilities directly or indirectly owned, controlled or operated by ATCO are obligated to comply with this Code and all Affiliates of these Utilities are obligated to comply with the Code to the extent they interact with the Utilities.
- 2.6 A party to whom this Code applies may apply to the EUB for an exemption with respect to compliance with any provision of this Code. Any such application will specify if the requested exemption is in respect of a particular transaction, series of transactions, for a specified period of time, or is for a general exemption from a particular provision.

The Board published Notice of the Application in AG's service areas on November 13, 2003. No objections to the Application were received by the due date, November 21, 2003. The Board dealt with the Application by way of a written proceeding. The Board issued correspondence on February 5, 2004 seeking further comments, if any, from the parties. The applicant responded on February 13, 2004. No comments were received from the interested parties by February 20, 2004, the due date for their submissions. The Board therefore considers February 20, 2004 to be the date for close of record for this proceeding.

¹ Refer to [Decision 2003-040](#), dated May 22, 2003.

2 THE APPLICATION

2.1 General Exemption

In the Application, AG requested a general exemption from the Code for AGS and AGN. AG explained that AG had been formed by the transfer of all of the assets and liabilities of Northwestern Utilities Limited (NUL) to Canadian Western Natural Gas Company Limited (CWNG), as approved in Board Order U99130. AG noted that this combination had provided benefits to customers. Those benefits were achieved through economies of scale by the combining of functions that previously resided separately within CWNG and NUL. In the Affiliate proceeding, it was submitted by the ATCO utilities that the benefits, as a result of the sharing of services between AGN and AGS, would be lost if the AEUB required code of conduct type rules between the two entities. AG noted that its expert witness, Dr. Gordon, agreed with the ATCO utilities that this type of separation was not warranted, given the policies in place governing the sharing of costs, the minimal level of allocations required, and the regulatory oversight that existed.²

AG noted that it functioned as one company. It did not have separate AGN and AGS employees and did not have separate management for each of the two entities. AG maintained introducing segregation between AGN and AGS through the adherence to the Code would result in a reduction of those benefits and increased costs to customers. The requested exemptions would apply only to intra-affiliate transactions between AGS and AGN, not inter-affiliate transactions between AGN or AGS and other members of the ATCO Group of Companies. AG requested general exemptions to the following specific sections of the Code:

2.2 Accounting Separation (Code Section 3.2.1)

AG indicated that it used the same financial systems for the maintenance of the accounts for AGN and AGS. Significant costs would have to be incurred in order to accommodate two complex financial entities within the AG financial systems, which would result in a reduction in the benefits customers have realized since the formation of AGPL.

AG noted it maintains Policy 10.08, Shared Services, and Policy 10.09, Financial Statement Development, to govern the accounting separation between AGN and AGS. These policies were reviewed and approved in [Decision 2002-069](#)³, are provided with the Annual Information Filings with the Board, and can be reviewed in general rate application (GRA) proceedings if required. AG submitted these policies provide a suitable substitute to compliance with the Code.

2.3 Separation of Information Services (Code Section 3.2.3)

AG noted that due to the performance of functions applicable to both AGN and AGS by various groups, departments or individuals within AG and the use of the same financial systems, there is no segregation of Confidential Information between the AGN and the AGS business units of AG. Significant costs would have to be incurred in order to address the financial system segregation. Furthermore, AG maintained it would have to segregate staff between AGN and AGS in order to segregate the Confidential Information, which would lead to higher costs, as economies of scale would be lost as employees become more limited in the functions they can perform. AG noted it

² Affiliate proceeding, Exhibit 78

³ [Decision 2002-069](#), dated July 26, 2002, ATCO Group, Affiliate Transactions and Code of Conduct Proceeding, Part A: Asset Transfer, Outsourcing Arrangements and GRA Issues.

is bound by the Code with respect to the separation of information services with other affiliates and submitted the sharing of Confidential Information between AGN and AGS in the provision of the same utility service could not result in harm to customers.

2.4 Sharing of Employees (Code Section 3.3.1)

In order to share employees on a cost recovery basis, AG maintained it would have to segregate staff between AGN and AGS in order to determine who is providing service to whom, which would lead to higher costs as economies of scale would be lost as employees become more limited in the functions they can perform. AG submitted Policy 10.08 provided a suitable substitute to compliance with the Code.

2.5 Transferring of Employees (Code Section 3.3.2)

In order to comply with this Section of the Code, AG stated it would have to segregate staff between AGN and AGS. This separation would lead to higher costs, as economies of scale would be lost as employees become more limited in the functions they can perform. AG noted it is bound by the Code with respect to the transferring of employees to other affiliates but maintained the transferring of employees between AGN and AGS without a confidentiality agreement could not result in harm to customers.

2.6 Sharing of Assets (Code Section 3.3.3)

AG stated that in the event that assets clearly provide service to both the AGN and AGS, the cost of those assets is allocated appropriately between the PP&E accounts. While there may be some minimal sharing of other assets between AGN and AGS in the provision of utility service, AG stated considerable administrative resources would be required to determine whether any further allocation of capital related costs should occur. AG submitted any sharing of assets which was not addressed through the maintenance of distinct PP&E accounts would not be significant, and that any benefit to be gained through compliance would be lost as a result of the cost of performing that compliance.

2.7 Services Agreement (Code Section 3.3.5)

AG noted the designation of AGN and AGS employees was a pre-requisite to service agreements. The maintenance of and adherence to service agreements also required resources in and of themselves. AG submitted complying with this Section of the Code would result in increased costs to customers with no benefit. AG further noted Policy 10.08 would govern the allocation of costs between AGN and AGS and provided a suitable substitute to compliance with the Code.

2.8 Occasional Services Permitted – Emergency Services Permitted (Code Sections 3.3.6 and 3.3.7)

AG noted the designation of AGN and AGS employees was a pre-requisite to occasional service identification. AG also claimed complying with this Section of the Code would result in increased costs to customers. AG submitted Policy 10.08 would govern the allocation of costs between AGN and AGS and provided a suitable substitute to compliance with the Code.

2.9 No Release of Confidential Information (Code Section 6.3)

As explained above, AG noted significant costs would have to be incurred in order to segregate Confidential Information between the AGN and AGS in the financial systems of AG. AG also noted it would also have to segregate staff between AGN and AGS in order to segregate the Confidential Information, which would lead to higher costs as economies of scale would be lost as employees become more limited in the functions they can perform.

AG noted it was bound by the Code with respect to the release of Confidential Information to other affiliates. Given that AG is a province-wide provider of natural gas distribution service, and that AGN and AGS are not in competition with each other, AG submitted the sharing of Confidential Information between AGN and AGS in the provision of the same utility service should not result in harm to customers.

2.10 The Compliance Plan and The Compliance Report (Code Sections 7.5 and 7.6)

AG proposed that it would file one Compliance Plan and one Compliance Report on behalf of AG in total. With respect to transactions between AGN and AGS, AG noted that scrutiny was available in GRA proceedings between AGN and AGS, compliance with the Code would result in increased costs to customers, and there were measures that are in place to otherwise address the concerns with respect to these exemptions. In the event that the Board did not grant the exemptions requested above, AG stated it would require considerable time to evaluate how it would attain compliance with the Code for transactions between AGN and AGS. Once that evaluation had been made, AG maintained it would have to address the considerable costs of compliance, as those costs have not been included in the 2004 revenue requirement.

3 Views of the Board

In arriving at its decision in this Application, the Board is mindful of previous comments it has made in past decisions respecting the Application of a code of conduct and, in particular, the regulation of AGS and AGN as separate entities.

In [Decision 2003-040](#)⁴, the Board recognized that a code of conduct should not be so restrictive as to preclude economically efficient transactions, so long as ratepayers are not harmed by those transactions. Moreover, the Board noted that the standards and rules of a code of conduct are intended to provide the utility with clearly defined flexibility to enter into affiliate transactions while promoting fairness and accountability and thereby building ratepayer confidence and trust.

In [Decision 2002-069](#), the Board recognized that certain provisions of a code might be problematic or unnecessary when dealing with shared services between regulated affiliates and could otherwise harm customers or the Applicants, in which case an exemption could be sought.

In [Decision 2003-072](#)⁵, the Board noted AG's position that uniting AGN and AGS for regulatory purposes would foster greater understanding for customers and the Board. While the Board did not grant the relief requested by AG to merge the revenue requirements of AGN and AGS and

⁴ [Decision 2003-040](#), dated May 22, 2003, ATCO Group, Affiliate Transactions and Code of Conduct Proceeding, Part B: Code of Conduct.

⁵ [Decision 2003-072](#), dated October 1, 2003, ATCO Gas 2003/2004 General Rate Application Phase I

directed AG to continue to maintain separate record keeping until the issue of combined versus separate revenue requirements could be resolved, the Board did not foreclose the possibility of the eventual combination of AGN and AGS in the future.

Given the above, the Board has considered the following factors in arriving at its decision:

- (1) the nature of the business of the applicant;
- (2) the possibility of a future combination of the revenue requirements for AGN and AGS;
- (3) the absence of any objections received in response to the Application;
- (4) the presence of Board –approved operating policies; and
- (5) recognition that the requested exemptions from the Code apply to intra-affiliate business units and are physical in nature.

Accounting Separation (Code Section 3.2.1)

The Board reviewed the Application for an exemption from the requirement to create two separate accounting systems for AGN and AGS. The Board notes the applicant's submission that it currently maintains Policy 10.08 – North and South Shared Services and Policy 10.09 North and South Financial Statement Development to govern the accounting separation between the north and south divisions. The Board further acknowledges that both of these policies have been approved by the Board⁶, and are subject to Board review in GRA proceedings if required.

The Board finds that it would be in the best interests to customers of both AGS and AGN, to continue with the sharing requirements rather than to impose the cost that would be required to establish new, separate financial systems for each of AGN and AGS.

In granting approval for the requested exemption under this section, the Board limits the exemption to shared activities that are currently provided for under Policies 10.08 and 10.09. In the event that there are ongoing accounting activities that must be conducted outside of the scope of these policies, the Applicant is advised to provide details of such activities for consideration before the Board as part of a further exemption application.

Separation of Information Services (Code Section 3.2.3)

The Board reviewed the Application for an exemption from the requirement to segregate Confidential Information for AGN and AGS as the business units share Information Services.

The Board finds that it would be in the best interests to customers of both AGS and AGN to continue with the sharing requirements rather than to impose the costs that would be required to establish separate computer data access protocols and data management systems to support the creation and segregation of separate financial systems for AGN and AGS.

In granting approval for the requested exemption under this section, the Board limits the exemption to shared activities that are currently provided for under Policies 10.08 and 10.09. In the event that there are ongoing-shared Information Services containing Confidential Information that fall outside of the activities provided for in the scope of these policies, the Applicant is advised to provide details of such activities for consideration before the Board for a further exemption.

⁶ [Decision 2002-069](#)

Sharing of Employees (Code Section 3.3.1)

The Board reviewed the Application for an exemption from the restrictions placed on the sharing of employees between AGN and AGS.

The Board finds that it would be in the best interests to customers of both AGS and AGN to continue with the sharing requirements rather than to impose the requirement that AG employees be segregated into either AGN or AGS divisions thereby limiting the scope of activities that AG employees are currently able to perform for both AGS and AGN.

In granting approval for the requested exemption under this section, the Board limits the exemption to shared activities that are currently provided for and for which costs can be allocated under Policy 10.08. In the event that there are ongoing-shared activities that fall outside of the activities provided for in the scope of this policy, the Applicant is advised to provide details of such activities for consideration before the Board for a further exemption.

Transferring of Employees (Code Section 3.3.2)

The Board reviewed the Application for an exemption from the requirement to restrict the transfer of employees between AGN and AGS to those employees that have executed a Confidentiality Agreement. The Board notes that AG employees are not currently segregated into AGN and AGS divisions.

The Board finds that it would be in the best interests to customers of both AGS and AGN to grant an exemption to the transfer requirement respecting employees of AG rather than to impose the requirement that AG employees be segregated into either AGN or AGS divisions.

In granting approval for the requested exemption under this section, the Board limits the exemption to employees transferred within AG.

Sharing of Assets (Code Section 3.3.3)

The Board reviewed the Application for an exemption related to the sharing of assets between AGS and AGN.

The Board notes that AG maintains distinct Property, Plant & Equipment accounts between the north and the south. The Board further notes AG's assertion that the costs of those assets are allocated appropriately between the north and south. Notwithstanding this assertion, AG does not provide an explanation respecting the manner in which it believes that these assets are appropriately allocated, nor does it reference any Board-approved policy in this regard. Given the absence of a clear explanation outlining the need for an exemption from the requirements of this provision of the Code to share assets on a Cost Recovery Basis, the Board will require compliance.

Services Agreement (Code Section 3.3.5)

The Board reviewed the Application for an exemption from the requirement to enter into a Service Agreement with respect to any Shared Services provided between AGS and AGN.

The Board finds that it would be in the best interests to customers of both AGS and AGN to continue with the sharing requirements governed by Policy 10.08 rather than impose the

requirement that AG employees be segregated into either AGN or AGS divisions in order to impose a Services Agreement.

In granting approval for the requested exemption under this section, the Board limits the exemption to shared activities that are currently provided for and for which costs can be allocated under Policy 10.08. In the event that there are ongoing-shared shared activities that fall outside of the activities provided for in the scope of this policy, the Applicant is advised to provide details of such activities for consideration before the Board for a further exemption.

Occasional Services Permitted – Emergency Services Permitted (Code Sections 3.3.6 and 3.3.7)

The Board reviewed the Application for exemption related to the requirement to enter into a Service Agreement with respect to any Occasional or Emergency Services provided between AGS and AGN.

The Board finds that it would be in the best interests to customers of both AGS and AGN to continue with the sharing requirements governed by Policy 10.08 rather than impose the requirement that AG employees be segregated into either AGN or AGS divisions in order to impose a Services Agreement for the provision of Occasional or Emergency Services.

In granting approval for the requested exemption under this section, the Board limits the exemption to shared activities that are currently provided for and for which costs can be allocated under Policy 10.08. In the event that there are ongoing-shared shared activities that fall outside of the activities provided for in the scope of this policy, the Applicant is advised to provide details of such activities for consideration before the Board for a further exemption.

No Release of Confidential Information (Code Section 6.3)

The Board addressed the Application for an exemption from the requirement to segregate Confidential Information for AGN and AGS in the previous section respecting Shared Information Services.

The Compliance Plan and The Compliance Report (Code Sections 7.5 and 7.6)

For purposes of this Application, the Board notes that the exemptions sought by AG relate solely to intra-affiliate transactions between AGN and AGS, not inter-affiliate transactions between AG and other members of the ATCO group. The Board notes that no objections to the Application were received from interested parties. Moreover, the Board notes that the exemptions sought are of a physical nature. That is, the applicant does not seek relief from the Board's requirements to maintain separate books of account for AGS and AGN; rather, it is seeking to avoid adding increased infrastructure costs to replace Board approved policies that provide for separate accounting and cost allocation. The Board will therefore grant the specific exemptions as outlined above and allow AG to file one Compliance Plan and One Compliance Report as it has requested.

In addition to the above approved exemptions the Board directs AG to maintain on its website the current version of the Board approved Code along with copies of its Policies 10.08 and 10.09. Further, as the Board has granted the exemptions relying, in part, on the presence of Policies 10.08 and 10.09, the Board would expect that any material change to either of these policies that would directly impact the exemptions granted in this decision would be submitted to the Board for approval. Further, the Board directs AG to attach a Schedule to the ATCO Code, in the form

provided for in Appendix 1 of this Decision, which will be updated from time to time, which will identify all exemptions granted by the Board by reference to the Board's Decision number, the date of issuance of the decision granting the exemption and the sections of the code to which the exemption applies.

4 ORDER

IT IS HEREBY ORDERED THAT:

For ATCO Gas, a Division of ATCO Gas and Pipelines Ltd.

- (1) One Compliance Plan that includes the business units ATCO Gas North and ATCO Gas South shall be prepared in accordance with Section 7.5 of the ATCO Group Inter-Affiliate Group Code of Conduct;
- (2) One Compliance Report that includes the business units ATCO Gas North and ATCO Gas South shall be prepared in accordance with Section 7.6 of the ATCO Group Inter-Affiliate Group Code of Conduct;
- (3) In respect of transactions between ATCO Gas North and ATCO Gas South, exemption is granted from the requirements set out in Sections 3.2.1, 3.2.3, 3.3.1, 3.3.2, 3.3.5, 3.3.6, 3.3.7, and 6.3 of the ATCO Group Inter-Affiliate Group Code of Conduct solely for the purposes and in the manner described in the Application and approved by this Decision.

Dated in Calgary, Alberta on May 11, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

T. McGee
Presiding Member

(original signed by)

B. T. McManus, Q.C.
Member

(original signed by)

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

APPENDIX 1 – LIST OF EXEMPTIONS

	<u>EUB Decision No.</u>	<u>Date</u>	<u>Sections of Code to which Exemption Applies</u>
1.	Decision 2004-039 Note: Please refer to the AG application resulting in Decision 2004-039 and to the full text of the Decision for the complete context of the exemptions granted.	May 11, 2004	Section 3.2.1 – Accounting Separation Section 3.2.3 – Separation of Information Services Section 3.3.1 – Sharing of Employees Section 3.3.2 – Transferring of Employees Section 3.3.5 – Services Agreement Section 3.3.6 – Occasional Services Permitted Section 3.3.7 – Emergency Services Permitted Section 6.3 – No Release of Confidential Information Section 7.5 – Compliance Plan Section 7.6 – Compliance Report