



ATCO Gas and Pipelines Ltd.

**Amendment to Rider "A" with respect
to the City of Edmonton**

August 31, 2004

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2004-073: ATCO Gas and Pipelines Ltd.

Application for a Revised Franchise Rider in the City of Edmonton

Application No. 1330470

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**ATCO GAS AND PIPELINES LTD.
AMENDMENT TO RIDER “A” WITH
RESPECT TO THE CITY OF EDMONTON**

**Decision 2004-073
Application No. 1330470
File No. 6675-E6-1**

1 INTRODUCTION

By letter dated January 23, 2004, ATCO Gas and Pipelines Ltd. (ATCO Gas), applied to the Alberta Energy and Utilities Board (the Board or EUB) for revisions to its franchise fee rider as billed by both ATCO Gas - North and ATCO Pipelines - North, to be applied in the City of Edmonton (the City), as indicated on Rate Rider “A” attached as [Schedule A](#) to this Decision.

A Notice of Applications was published in the Edmonton Journal and Edmonton Sun on April 12, 2004 in respect of Application No. 1330470 and the City’s related application for an amendment to its gas distribution agreement (the Franchise Agreement) with ATCO Gas. The Board received three responses to the notice. The Board initially scheduled a hearing of the applications for July 22, 2004 and a Notice of Hearing was served on all interested parties on May 10, 2004. At the request of ATCO Gas, the Board, by letter dated May 20, 2004 changed the format of the hearing from an oral hearing to a written proceeding, which was completed on August 4, 2004.

The Board considers that the record for this proceeding was closed on August 4, 2004.

Gordon Miller, Presiding Member, T. M. McGee, Member, and Becky Torrance, Acting Member, as the Board Panel, reviewed the material filed as part of the application. A list of those who participated in the proceeding is contained in [Appendix 1](#) to this Decision.

2 BACKGROUND

In Application No. 1330469, the City applied for approval of an amendment to its Franchise Agreement with ATCO Gas. The amendment changes the provisions for the franchise fee to be paid by ATCO Gas to the City from 22.7 to 32 percent of ATCO Gas - North and ATCO Pipelines - North’s revenues from providing delivery service within the City.

The Board notes that these changes in rates result from the provisions included in the franchise agreement between the City and ATCO Gas. The amendment changes the provisions for a franchise fee from a fee based on 22.7 to 32 percent of ATCO Gas’s revenues from the delivery of natural gas in lieu of property taxes and other fees payable. Since the City applied for an annualized rate of 32 percent for 2004, ATCO Gas requested that the change in the franchise fee rate be implemented on an interim refundable basis in order to minimize the rate shock to ATCO Gas customers in Edmonton. Depending on the effective date of the interim rate approval, the applicable percentage shall be deemed on the first day of the month immediately following the Board’s approval as set out below:

Table 1. Delayed Implementation Percentages

Franchise Effective Date	Franchise Fee Percentage (%)
Before Board Approval	22.7
Board Approved Occurring Between:	
January 1 – 31, 2004	33.40
February 1 – 29, 2004	34.00
March 1 – 31, 2004	37.00
April 1 – 30, 2004	39.00
May 1 – 31, 2004	41.00
June 1 – 31, 2004	43.00
July 1 – 31, 2004	46.00
August 1 – 31, 2004	49.00
September 1 – 30, 2004	54.50
October 1 – 31, 2004	65.50
November 1 – 30, 2004	102.50

In Decision [2004-011](#),¹ the Board approved an interim refundable rate rider of 33.4 per cent effective February 1, 2004 for the remaining 11 months of 2004, which when combined with the rate of 22.7 per cent for January 2004, would equate to an annual rate of 32 per cent for 2004.

3 VIEWS OF THE PARTIES

3.1 ATCO Gas

ATCO Gas has indicated that there is no basis for the Rate 13 Group's² request for a delay in the implementation of the fee.

ATCO Gas has stated that the Board found in Decision [2003-082](#)³ that a franchise fee is in exchange for the right to use municipal lands and the right to deliver gas and that franchise fees are properly recovered from the customers as a cost of doing business of the utility.

ATCO Gas argued that if the Board approves the amendment of the Franchise Agreement with the City, which allows for an increased level of franchise fee, the increased costs should be recovered from the customers within the City.

3.2 Rate 13 Group

The Rate 13 Group has requested that if the Board approves Application 1330469 of the City, the increase in franchise fee be delayed until the end of the current term of the franchise agreement with the City.

The Rate 13 Group has pointed out that pursuant to section 16 and 35 of the *Gas Utilities Act*, R.S.A. 2000, c. G-5 (GUA), the Board has the mandate to review and approve the applied for

¹ Decision 2004-011 – ATCO Gas and Pipelines Ltd., Application for a Revised Franchise Rider in the City of Edmonton, dated January 31, 2004

² Rate 13 Group representing Canadian Forest Products Ltd., Alberta Distillers Limited, Alberta Processing Company, Northern Alberta Processing, and Canada Malting

³ Decision 2003-082 – City of Grande Prairie, Natural Gas Franchise Amendment with ATCO Gas and Pipelines Ltd., dated November 12, 2003

increase in ATCO Gas's tariff resulting from the proposed increase in Franchise Fees imposed by the City in order to ensure that any toll or tariff is just and reasonable and that it does not unduly discriminate between customers. The Rate 13 Group submitted that the Board cannot approve the proposed rate increase on the basis that it unjustly discriminates between types of customers due to the fact that the proposed increase will disproportionately increase rates to industrial customers since franchise fees are based on consumption as opposed to property values.

The Rate 13 Group suggested that the Board should direct ATCO Gas to negotiate franchise fees with the City within the context similar to the Negotiated Settlement Guidelines to ensure validity and participation of interested parties.

3.3 CCG

The Care Centre Group (CCG)⁴ argued that since the franchise fee is in part for the exclusivity of the agreement, it should be recovered from ATCO Gas shareholders as opposed to Edmonton consumers. The CCG indicated that the Board should direct ATCO Gas and the City to apportion the fee between the right to exclusivity and the right to use municipal lands. CCG argued that since the exclusivity component of the fee or tax is not part of the cost of service, it is a benefit bestowed on the shareholders or owners of a gas utility and hence would not contribute to a higher fee to remaining customers if the organizations of the CCG were to be exempt.

CCG argued that the maximum amount payable by these customers should be only the cost of service amount and not the portion attributable to ATCO's rights of exclusivity. If the Board determines that the CCG must pay the fee in its entirety, CCG noted that the amount should be separated so as to identify those portions recovered for cost of service and those for portions allocated to exclusivity.

4 VIEWS OF THE BOARD

Rate setting pursuant to the GUA is designed to allow utilities to recover reasonably incurred costs. The Board approved Application No. 1330469 in Decision 2004-072⁵ for the reasons stated in that Decision. As the Board has accepted that the amendment to the franchise agreement is reasonable, it follows that the Board will also allow the related costs incurred by ATCO Gas to be passed on to customers, as contemplated in Application No. 1330470.

The Board does not consider that Decision [2003-082](#) specifically addressed the CCG's concern respecting the responsibility of customers to pay for the right of exclusivity included as part of a franchise fee. While the Board does not consider that it has previously addressed this issue, the Board does consider that customers benefit from the exclusivity granted through franchise agreements.

A utility's investment in its delivery system within a specified area would be influenced by its ability to recover that investment through its approved rates. Section 37 of the GUA sets out

⁴ Care Centre Group representing St. Michael's Extended Care Society, Devonshire Care Centre, the Good Samaritan Society, and the Ukrainian Catholic Eparchy of Edmonton

⁵ Decision 2004-072 – City of Edmonton, Natural Gas Franchise Agreement with ATCO Gas and Pipelines Ltd., dated, August 31, 2004

criteria to identify which capital expenses can be considered in the setting of rates. Section 37 states:

Rate base

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

ATCO Gas's ability to recover costs associated with capital expenditures is dependent on whether or not its property is "used or required to be used to provide service to the public within Alberta". Without an exclusive right to provide service in the City, ATCO Gas might consider it imprudent to make capital additions for the delivery of gas exclusively in the City that would require a long-term recovery of the costs.

Consequently the Board considers that costs related to exclusivity provisions should still be recovered from the customers.

The Board notes that the Rate 13 Group's primary argument has been that the revised franchise fee is not reasonable because it is not based on costs of the franchise rights such as the costs to administer the rights-of-way and a linear tax payment. The Rate 13 Group has argued that the higher level of franchise fee should not be approved because the City has not proven it is cost based. Such an argument would have bearing only in a rate application. The Board does not consider that the Rate 13 Group's request for a delay in implementation of the revised franchise fee, which has resulted from the City's application 1330469, is in the customers' best interests. With approval of the City's application, ATCO Gas is incurring a higher cost immediately and any delay in recovery of this cost would result in a higher rate to customers at a later date.

Accordingly, the Board considers it appropriate for ATCO Gas to recover the revised franchise fee from the customers within the City as a reasonable cost of providing service to those customers. The Board therefore considers it just and reasonable to approve ATCO Gas's application for revised rates in the City of Edmonton, without any delay in implementation of the rates.

The Board notes the CCG's submission that the portions recovered for cost of service and those portions allocated to exclusivity should be shown separately. This issue was not addressed by other parties to the proceeding, and the Board does not consider that there is any compelling reason before it to direct that these amounts be separated.

5 ORDER

The Alberta Energy and Utilities Board, pursuant to the *Public Utilities Board Act*, R.S.A. 2000, c. P-45 and the *Gas Utilities Act*, R.S.A. 2000, c. G-5, hereby orders as follows:

- (1) Application No. 1330470 by ATCO Gas and Pipelines Ltd. dated January 23, 2004, is approved, subject to the terms and conditions herein contained.

- (2) ATCO Gas's rate of 33.4 percent for recovery of its franchise fee in the City of Edmonton is approved on a final basis for the period from February 1, 2004 to December 31, 2004, as indicated on Rate Rider "A", attached as [Schedule A](#) to this Decision.
- (3) ATCO Gas's rate of 32 percent for recovery of its franchise fee in the City of Edmonton is approved effective January 1, 2005, as indicated on Rate Rider "A", attached as Schedule A to this Decision.
- (4) If the Amending Agreement approved in Decision 2004-072 is not executed by the City of Edmonton and ATCO Gas, ATCO Gas is directed to apply as soon as is practical for a revised Rider "A" that would allow for a refund of the over-collections of the Edmonton franchise fee to its customers within the City of Edmonton.

Dated in Calgary, Alberta on August 31, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

Gordon J. Miller
Presiding Member

(original signed by)

T. M. McGee
Member

(original signed by)

B. Torrance
Acting Member

APPENDIX 1 – PARTIES PARTICIPATING IN THE PROCEEDING

Principals and Representatives (Abbreviations Used in Report)
ATCO Gas and Pipelines Ltd. (ATCO Gas) H. M. Kay
Care Centre Group (CCG) A. O. Ackroyd, Q.C. R. Bellows
Rate 13 Group L. Manning
Direct Energy Regulated Services K. Miller

SCHEDULE A – RATE RIDER "A"

Effective With Decision 2004-073

On February 1, 2004

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**ATCO GAS AND PIPELINES LTD. – NORTH
ATCO GAS - NORTH AND ATCO PIPELINES - NORTH
RIDER "A" TO ALL RATES AND ANY OTHER RIDERS THERETO**

All charges under the Rates, including any charges under other Riders, to Customers situated within the communities listed on this Rider "A" are subject to the addition of the percentage shown. The percentage shown is to be applied as an addition to the billings calculated under the Rates including charges as allowed under other Riders in effect.

Method A. - Applied to gross revenues.

Method C. - Applied to gross revenues and Rider "E".

<u>Municipality</u>	<u>%</u>	<u>Method</u>	<u>Municipality</u>	<u>%</u>	<u>Method</u>	<u>Municipality</u>	<u>%</u>	<u>Method</u>
Edmonton *	33.40	A	Eglesham	5.26	C	Minburn	15.00	A
Red Deer	17.00	A	Eckville	24.00	A	Mirror	12.60	A
Camrose	15.00	A	Edgerton	15.00	A	Mundare	20.00	A
Fort McMurray	8.70	C	Edson	5.26	C	Nampa	16.84	A
Grande Prairie	34.75	A	Entwistle	17.32	A	Onoway	5.00	A
Lloydminster	7.00	C	Fairview	21.63	A	Oyen	8.70	C
Spruce Grove	8.26	C	Falher	15.00	A	Peace River	7.25	C
St. Albert	5.26	C	Fox Creek	12.93	A	Point Alison	5.26	C
Wetaskiwin	8.27	C	Gibbons	8.70	C	Ponoka	5.26	C
Alberta Beach	10.61	A	Girouxville	20.00	A	Provost	11.00	A
Alix	6.75	C	Golden Days	25.00	A	Rimbey	24.00	A
Amisk	9.10	A	Grand Centre	3.00	C	Rocky Mtn. House	5.26	C
Andrew	9.00	C	Grimshaw	28.00	A	Rycroft	5.25	C
Bashaw	15.00	A	Hardisty	5.26	C	Ryley	5.00	A
Beaverlodge	8.70	C	Hines Creek	5.25	C	Sangudo	9.25	A
Bentley	0.00	A	Hinton ***	8.00	A	Seba Beach	6.00	C
Berwyn	7.25	C	Holden	5.25	C	Sexsmith	5.25	C
Bittern Lake	17.68	A	Hughenden	10.98	A	Sherwood Park	6.00	C
Blackfalds	19.12	A	Hythe	8.70	C	Silver Beach	5.26	C
Bon Accord	8.70	C	Innisfree	17.50	A	Slave Lake	5.26	C
Breton	12.47	A	Irma	5.26	C	Spirit River	24.00	A
Bruderheim	10.00	A	Itaska	5.26	C	Stony Plain	8.11	C
Caroline	5.26	C	Jasper	5.25	C	Swan Hills	8.16	A
Chipman	5.26	C	Kitscoty	5.25	C	Sylvan Lake	20.00	A
Clive	16.17	A	Lacombe	22.00	A	Thorsby	11.69	A
Clyde	9.47	A	Lamont	35.00	A	Tofield	10.00	A
Cold Lake	5.26	C	Lavoy	5.25	C	Vegreville	8.11	C
Consort	22.00	A	Legal	5.26	C	Vermilion	15.00	A
Coronation	10.05	A	Lougheed	16.67	A	Veteran	9.73	A
Czar	11.84	A	Mannville	5.26	C	Viking	5.25	C
Donnelly	5.25	C	Mayerthorpe	9.42	A	Warburg	8.83	A
Drayton Valley	6.26	C	McLennan	6.25	C	Whitecourt **	5.26	C
			Millet	6.75	C			

* Includes a \$408,333 maximum annual allowable assessment (Max) on any individual metered account. Effective January 1, 2005 the percentage will be 32 per cent.

** The deemed value of natural gas is applied only to Customers using less than 300,000 GJs per year.

*** Includes a \$10,000 maximum annual allowable assessment (Max) on any individual metered account.