



ATCO Gas

Code of Conduct Exemption

November 23, 2004

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2004-100: ATCO Gas

Code of Conduct Exemption

Application No. 1350414

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**ATCO GAS
CODE OF CONDUCT EXEMPTION**

**Decision 2004-100
Application No. 1350414**

1 INTRODUCTION

ATCO Gas (AG), by letter dated June 18, 2004, filed an application (the Application) with the Alberta Energy and Utilities Board (the Board or EUB) for approval of an exemption to Section 3.3.3, Sharing of Assets, 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). AG had previously applied for a similar exemption from the Code and this was denied by the Board in Decision 2004-039.

Sections 2.3 and 2.6 of the Code provide, respectively, the following:

2.3 To Whom This Code Applies

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 Exemptions

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.

AGN and AGS are recognized as separate "Utilities" as such term is defined in the Code and as such, are subject to the Board's jurisdiction respecting the Code.

The Board issued Notice of the Application on July 9, 2004. An amended notice was issued on July 14, 2004, in which the process schedule was extended by 30 days at the request of AG. The Board received no interventions to the Application.

The Board dealt with the Application by way of a written proceeding that called for receipt of written argument on September 9, 2004 and reply on September 17, 2004. The Board therefore considers September 17, 2004 to be the date for close of record for this proceeding.

2 APPLICATION

In its application of June 18, 2004, AG identified the Board's comments in Decision 2004-039, respecting its denial of the exemption request for Section 3.3.3. The Board stated:

Notwithstanding this assertion, AG does not provide an explanation respecting the manner in which it believes 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.

AG's renewed request for an exemption from Section 3.3.3 of the Code set forth its justification for an exemption and provided a detailed explanation outlining the limited extent to which an exemption to the Code was required.

Regarding the use of the majority of the PP&E (i.e. production, storage and distribution), AG advised that there was no sharing of assets between the north and the south. Therefore, it was not requesting an exemption from the Code for these transactions.

Rather, AG sought exemption from Section 3.3.3 of the Code for AG's General Assets. These are assets that may be recorded as an AGN or AGS asset but which are used, on occasion, to provide service in each other's service territory. Examples of General assets identified by AG included: fleet and heavy equipment, structures, software, leasehold improvements, and communication equipment.

AG advised it did not identify or track the instances where the sharing of General assets between the north and the south occurred, due to the administrative burden associated with such a task. In AG's view, the sharing of these assets was not significant, and tended to offset each other. Therefore, AG submitted that any benefit to be gained through tracking and charging the use of General assets on a Cost Recovery Basis between the north and the south would be lost as a result of the increased costs to customers associated with the administrative burden of doing so.

3 VIEWS OF THE PARTIES

Views of the Applicant

In its argument, AG stated that it had nothing further to add in addition to what it had stated in the application.

Views of the Interveners

The Board did not receive any interventions with respect to this application.

4 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 2003-040¹, 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

¹ Decision 2003-040, dated May 22, 2003, ATCO Group, Affiliate Transactions and Code of Conduct Proceeding, Part B: Code of Conduct

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 2003-072², 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 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 possibility of a future combination of the revenue requirements for AGN and AGS;
- (2) the absence of any objections received in response to the Application;
- (3) the recognition that the requested exemption from the Code apply to intra-affiliate business units; and
- (4) the limited nature of the request.

The Board has reviewed the evidence filed in this Application and considers that AG has provided a reasonable explanation as to how it allocates its fixed assets and allocates the cost of these assets between AGS and AGN. The Board also considers that AG has provided a reasonable explanation and context around its allocation of costs to those assets that may be shared between AGS and AGN as well as the circumstances in which these assets may be shared. The Board also notes that no intervener filed any objection to the Application.

Based upon the evidence filed in this proceeding, the Board does not consider that the sharing of the use of the General assets which AG identified as taking place between AGN and AGS amounts to a material cost and does not consider that it would be beneficial to consumers to enforce compliance with the Code. Therefore, the Board grants the exemption to Section 3.3.3 of the Code as requested by AG.

The exemption, however, is limited to the sharing between AGN and AGS of the use of the General assets identified by AG in this Application. The Board also expects AG to monitor the sharing of the use of these General assets between AGN and AGS to ensure compliance with the spirit of the Code and to propose additional controls and reporting mechanisms as may appropriate.

In addition to the above approved exemption, the Board directs AG to update its Schedule to the ATCO Code, which Schedule identifies all exemptions granted by the Board to its Code. The updated Schedule should identify the exemption granted in this decision 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.

² Decision 2003-072, dated October 1, 2003, ATCO Gas 2003/2004 General Rate Application Phase I

5 ORDER

IT IS HEREBY ORDERED THAT:

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

- (1) In respect of the shared use of General assets between ATCO Gas North and ATCO Gas South, exemption is granted from the requirements set out in Section 3.3.3 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 November 23, 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