ATCO Gas

Fee for Gas Management Services Provided by ATCO Midstream

November 4, 2003

Alberta Energy and Utilities Board

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2003-078: ATCO Gas
Fee for Gas Management Services Provided by ATCO Midstream
Application No. 1311673

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1 INTRODUCTION

On July 30, 2002, the Alberta Energy and Utilities Board (the Board) issued Decision 2002-072 dealing with an application by ATCO Gas South, a sub-division within ATCO Gas and Pipelines Ltd. (ATCO or the Company),[1] requesting approval of certain matters relating to the Carbon storage facilities[2], including a gas management services fee payable to ATCO Midstream Ltd. (Midstream), an unregulated affiliated company. In Decision 2002-072 the Board approved the fee of $500,000 forecast by ATCO Gas South for gas management services provided by Midstream for 2001/2002, and directed ATCO Gas South, at the termination of the existing gas management services contract, to establish future agreements for services through use of a request for proposal process or by use of consultants to determine the fair market value of services provided by Midstream.

By letter dated June 17, 2003, ATCO indicated that, while the Company was prepared to address the Board's direction through a benchmarking process, the usefulness of such a process was questionable pending the outcome of the application to transfer the ATCO retail function to Direct Energy Marketing Limited (Retail Sale Application). ATCO indicated that if the Retail Sale Application is approved, the Company would no longer be procuring natural gas for recovery through the Gas Cost Recovery Rate (GCRR), and that the agreement with Midstream would be cancelled. ATCO considered that it did not appear to be cost effective to embark on a benchmarking study to deal with a service, which would no longer be necessary if the Retail Sale Application is approved.

ATCO therefore requested relief from the direction in Decision 2002-072 pending the outcome of the Retail Sale Application. ATCO proposed that, if the Board approved the Retail Sale Application, the Company would include, in its 2003/2004 General Rate Application (GRA), the forecast costs under the Midstream gas management services agreement for 2003 (prorated to reflect the period during which ATCO had the responsibility for provision of natural gas), and remove the forecast costs under the agreement for 2004. On the other hand, in the event that the Board denied the Retail Sale Application, ATCO committed to proceeding with the benchmarking study.

On July 29, 2003, the Board advised ATCO that the request for relief was reasonable given that the process to deal with the Retail Sale Application was underway. The Board noted that, in the 2003/2004 GRA, ATCO had proposed that the test year forecasts for Midstream gas management services costs would be identified as placeholders in the revenue requirement, pending replacement by approved amounts after completion of the benchmarking study. The

[1] ATCO Gas is a division of ATCO Gas and Pipelines Ltd. (AGPL)
[2] The Carbon storage facilities and related producing properties are owned by AGPL.

Board also noted that, since the record for the GRA was closed, ATCO was at risk for the 2003 forecast costs given that the amount had not been supported or tested in the GRA. Nevertheless, the Board acknowledged that there was no longer a requirement to conduct the benchmarking study, unless the Retail Sale Application was rejected.

In a letter dated August 28, 2003, ATCO acknowledged the Board's comments, noting that the gas management fee included in the GRA was $1,000,000 in each test year, split evenly between ATCO Gas North and South. ATCO requested that the Board approve the 2003 forecast, on the understanding that the amount could be subsequently prorated based on the potential approval of the Retail Sale Application. ATCO considered that the cost of processing a benchmarking study for 2003 alone would not be in the best interests of customers. ATCO submitted that, should the Retail Sale Application be denied, the benchmarking study would be conducted for 2004 and beyond, but proposed that the fee for 2003 be approved as forecast.

By letter dated September 18, 2003, the Board requested that interested parties file submissions with respect to the options proposed in ATCO's August 28 letter no later than October 6, 2003 and that ATCO provide a response to those submissions by October 20, 2003.

Submissions were received on October 6, 2003 from the City of Calgary (Calgary) and on October 7, 2003 from the Alberta Urban Municipalities Association (AUMA) and the City of Edmonton (AUMA/EDM). ATCO filed its reply to the submissions of interested parties by October 21, 2003. Accordingly, the Board considers that October 21, 2003 was the close of the record for this proceeding.

2 SUBMISSIONS FROM ATCO AND INTERESTED PARTIES

2.1 Views of Calgary

Calgary agreed with ATCO that the Midstream fee of $1,000,000 for 2003 was a material amount, and that the cost of proceeding with a benchmarking module could be in the range of $100,000 to $200,000.

Calgary expressed concern that interveners and the Board had been placed in a position as a result of actions taken by the Company, where it was no longer economically feasible to properly test and address the costs being charged to ATCO by its affiliate, ATCO Midstream. Calgary therefore, made the following alternative recommendations to resolve the matter:

- The Midstream service fee be reduced for the year 2003 by 10%; or
- A steering committee be established, consisting of a representative from each of ATCO, Calgary, the Board, and any other interested party who wishes to be involved, to determine and appropriate terms of reference and select an independent party to determine a fair market value. All parties would agree to be bound by the results of that determination; or
- That ATCO carry out the benchmarking study as directed in Decision 2002–072 and that all costs associated with that benchmarking in excess of $100,000 be to the account of the ATCO shareholders.

Calgary submitted that, if the Board did not approve the Retail Sale Application or if the sale of the retail function was delayed for a significant period of time, a full benchmarking exercise should be carried out.

2.2 Views of AUMA/EDM

AUMA/EDM noted that ATCO had not filed the terms of reference for a benchmarking study as required by the Board, and did not consider that there was any urgency to proceed with the benchmarking process at this time. AUMA/EDM recommended that ATCO be required to await the decision on the Retail Sale Application before proceeding with any benchmarking activities. AUMA/EDM stated that, if the Retail Sale Application is denied, ATCO should proceed with a benchmarking process to determine the 2003 and 2004 Midstream gas management fees. If however, the Retail Sale Application is approved, AUMA/EDM submitted that parties should be provided the opportunity to comment on the appropriate means of determining the Midstream gas management fees for 2003, at that time.

2.3 Views of ATCO

ATCO submitted that the options proposed by Calgary were not helpful to the issue at hand, and that there was no evidence currently before the Board to suggest that a 10% cost reduction in the fee for 2003 was justified. ATCO considered that the option proposed by Calgary for establishment of a steering committee did not answer the question of whether or not a further benchmarking study was required at this time. ATCO also considered that Calgary's third option suggested that the decision on the need for a benchmarking study should be made on the basis of who would have to pay for it, rather than on the need to do the study.

ATCO stated that the Gas Management Services Agreement Fee was reviewed in the Affiliate proceeding, where the Board determined that the fee was reasonable based on consideration of the Ziff Energy report, filed in that proceeding. ATCO pointed out that since the time of the agreement establishing the fee, the fee had not changed to reflect the impact of customer growth and inflation, the required services had not changed, and the interveners in the Affiliate proceeding had not filed any studies disputing the level of the fee.

ATCO submitted that Calgary had provided no compelling reasons why the benchmarking study should be done at this time, and that its proposals were arbitrary and underscored the futility of attempting to resolve Carbon-related matters without Board adjudication. ATCO considered that its own proposal was sensitive to the interests of customers and the potentially short-term nature of the issue. ATCO stated however, that if the Board viewed that any of Calgary's proposals had merit, the Company would have no alternative but to proceed with the benchmarking process, the costs of which should be appropriately borne by customers.

ATCO stated that it continued to hold the view that benchmarking for 2003 was unnecessary, regardless of the disposition of the Retail Sale Application.

3 VIEWS OF THE BOARD

The Board notes that ATCO had indicated that if the Retail Sale Application is approved, it would no longer procure natural gas for recovery through the GCRR, and the agreement with Midstream would be cancelled. Given this possibility, ATCO has suggested that conducting a study for 2003 alone might not be cost effective and requests that the fee for 2003 should be approved as forecast. The Board agrees that in the circumstances, the need for a benchmarking study to determine the fee pursuant to the agreement must be addressed. With respect to Calgary's recommendations for resolving the matter, it appears to the Board that, in presenting its options, Calgary has not focused on the question of whether or not a benchmarking study is required at this time. The Board notes that AUMA/EDM holds the view that there is no urgent need to proceed with a benchmarking study pending the outcome of the Retail Sale Application.

The Board notes that AUMA/EDM urge a further process to examine the fee in the event that the Retail Sale Application is approved, and that the forecast fee amount for 2003 has not been supported or tested in the GRA. The Board acknowledges ATCO's comment that no interested parties have filed studies to support a revision to the level of the fee, at any time since the date of the original agreement establishing the fee. The Board also notes ATCO's submission that that the services required pursuant to the initial agreement have not changed and that the fee has not been revised to reflect the impact of customer growth and inflation. The Board also notes that no party has taken the position that the services were not required.

While recognizing that further discussion would provide an opportunity to consider these matters and issues such as ATCO's proposal to prorate the forecast amount and Calgary's proposal for a 10% reduction, the Board is not persuaded that the additional regulatory scrutiny, time and cost involved in carrying out a detailed review process to address this issue would be warranted given the potential range for adjustment to the amount involved.

On this basis, the Board is prepared to accept ATCO's proposal for approval of the management fee for 2003 in the event that the Retail Sale Application is approved. Accordingly, in that event, the Board will approve the management fee for 2003 in the annual amount of $1 million, on the understanding that the amount would be prorated to reflect the period during which ATCO had the responsibility for provision of natural gas. The Board also recognizes that, in the event that approval of the Retail Sale Application results in transfer of the retail function on a date after the end of 2003, there will be a need to allow for a continuation of the fee to provide for the period of time in 2004 that ATCO still has responsibility for provision of natural gas. In that event, the Board expects that the fee for that period will be based on an appropriate pro rata portion of $1 million.

The Board notes ATCO's view that a benchmarking study for 2003 is not necessary regardless of the disposition of the Retail Sale Application. This position is inconsistent both with the positions of Calgary and AUMA/EDM, and the Board's expectation that ATCO would proceed with a benchmarking study for 2003 if the Retail Sale Application were denied as reflected in the Board's letter of July 29, 2003, wherein the Board acknowledged that there was no requirement to conduct the benchmarking study, unless the Retail Sale Application was rejected

Accordingly, the Board directs ATCO to initiate a benchmarking process to determine the fee for 2003 and 2004 in the event that the Retail Sale Application is denied.

4 ORDER

THEREFORE IT IS ORDERED THAT:

(1) In the event that the application to transfer the ATCO retail function to Direct Energy Marketing Ltd. (the Retail Sale Application) is approved, the fee for gas management services provided by ATCO Midstream Ltd. for 2003 will be approved in the annual amount of $1 million, which amount is to be prorated to reflect the period during which ATCO Gas had the responsibility for provision of natural gas. If an approval of the Retail Sale Application results in transfer of the retail function on a date after the end of 2003, the fee for the period of time in 2004 that ATCO still has responsibility for provision of natural gas will be based on an appropriate pro rata portion of $1 million.

(2) In the event that the Retail Sale Application is denied, ATCO Gas shall take steps to initiate a benchmarking process to determine the fee for gas management services provided by ATCO Midstream Ltd. for 2003 and 2004.

Dated in Calgary, Alberta on November 4, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

B. T. McManus, Q.C.
Presiding Member

(original signed by)

Michael J. Bruni, Q.C.
Member

(original signed by)

C. Dahl Rees
Acting Member