



**ATCO Gas, a division of
ATCO Gas and Pipelines Ltd.**

**Amendments to Customer Terms and Conditions for
Gas Distribution Service**

August 17, 2018

Alberta Utilities Commission

Decision 23532-D01-2018

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Amendments to Customer Terms and Conditions for Gas Distribution Service

Proceeding 23532

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1 Decision summary

1. The Alberta Utilities Commission finds that the amendments proposed by ATCO Gas, a division of ATCO Gas and Pipelines Ltd., in its May 2, 2018 application either raise general rate design issues, the implications of which cannot be fully considered outside of a rate design application; or, constitute proposals which have not been adequately supported by the filed evidence. Consequently, the Commission denies the application without prejudice to the ability of ATCO Gas to reapply for the proposed amendments.

2 Introduction and background

2. On May 2, 2018, ATCO Gas, filed an application with the Commission requesting approval for amendments to its customer terms and conditions (T&Cs) for gas distribution service to address issues identified through discussions with potential non-standard customers. ATCO Gas stated that “the proposed amendments are narrow in scope, with changes proposed only to Section 7(e) of the Terms and Conditions, Schedule D – Custom Service Letter Agreement and the Custom Service Contract Demand Section of the High Use Delivery Service Rate Schedule.”¹

3. On May 4, 2018, the Commission issued a notice of application that required interested parties to file a statement of intent to participate (SIP) by May 18, 2018. The Commission received a SIP from the Consumers’ Coalition of Alberta (CCA) on May 28, 2018. The Commission exercised its discretion to admit the CCA’s SIP notwithstanding that the deadline had passed.

4. The Commission issued information requests (IRs) on June 13, 2018, and the CCA issued IRs on June 14, 2018. The Commission set a deadline of June 29, 2018, for submissions on the need for further process. ATCO Gas provided a submission on the specified deadline expressing its view that no additional process was required. The CCA did not file a submission on the need for further process.

5. The Commission issued a letter on July 12, 2018, indicating that the record of this proceeding closed on June 29, 2018.

6. In reaching the determinations set out in this decision, the Commission has considered all relevant materials comprising the record of this proceeding. Accordingly, reference to specific materials are intended to assist the reader in understanding the Commission’s reasoning relating

¹ Exhibit 23532-X0001, Application, paragraph 1.

to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to a particular matter.

3 Proposed amendments

7. ATCO Gas proposed changes to Section 7(e) of the T&Cs; Schedule D – Custom Service Letter Agreement (the CSLA); and, the Custom Service Contract Demand Section of the High Use Delivery Service Rate Schedule (collectively, the proposed amendments). Each of the proposed amendments are outlined below.

3.1 Section 7(e) of the Terms and Conditions

8. ATCO Gas proposed an amendment to Section 7(e) of the T&Cs giving it the sole discretion to waive the existing requirement that all new customers using greater than 500,000 gigajoules (GJ) per year should sign a CSLA. ATCO Gas stated, “where a customer application is non-standard (as an example, where expected demand is >500,000 GJ/year),^[2] but it is determined to be routine and does not require special facilities that necessitate significant investment, that ATCO Gas may waive the requirement for the Custom Service Letter Agreement to be completed.”³

9. In a Commission IR, ATCO Gas was asked in what circumstances, and how, it intends to exercise the requested discretion to waive the requirement for a CSLA. In response, ATCO Gas explained that it would look at each potential customer on a case-by-case basis, considering the expected investment, the length of time it would take for the expected revenue to offset the cost of the connection and any risk factors associated with the customer. ATCO Gas also explained that it does not have a specific threshold for what it would consider a significant investment, nor did it specify a minimum investment amount when deciding whether to require a CSLA. ATCO Gas argued that having the ability to waive the CSLA requirement would reduce the administrative burden in cases where a potential customer that uses more than 500,000 GJ per year could be accommodated under ATCO Gas’s typical investment practices. ATCO Gas also confirmed that if a CSLA is not required, the customer would be subject to the standard T&Cs.⁴

3.2 The CSLA

10. ATCO Gas proposed amendments to Section 3.0 and the addition of Section 5.0 to the CSLA.

² Exhibit 23532-X0010, AG-AUC-2018JUN13-003(f): A non-standard service is defined as any service that is not “Standard Service,” as defined in ATCO Gas’s T&Cs. “‘Standard Service’ is Gas Distribution Service whereby:

- (i) the Gas is delivered to the Customer at Standard Delivery Pressure, or at the Company’s sole discretion, the prevailing operating pressure in the Gas Pipeline System at the Customer Site but with no guarantee of pressure greater than Standard Delivery Pressure,
- (ii) no additional Specific Facilities are required beyond those that would otherwise be required to accommodate the Customer Load at Standard Delivery Pressure, with the exception of the equipment described in Article 8.8, and
- (iii) annual consumption is less than 500,000 GJ.”

³ Exhibit 23532-X0001, Application, paragraphs 8-9.

⁴ Exhibit 23532-X0010, AG-AUC-2018JUN13-002, pages 2-3.

11. In Section 3.0, ATCO Gas proposed the removal of a portion of the existing language referencing the performance-based regulation (PBR) formula. ATCO Gas identified this proposed amendment as being similar to an amendment it proposed in its 2017 PBR annual rate filing in Proceeding 21981.⁵ In Decision 21981-D01-2016,⁶ the Commission determined that the proposed revisions to the CSLA were beyond the scope of an annual PBR rate adjustment proceeding and declined to issue a decision on revisions to the CSLA. ATCO Gas explained that the current wording of this section does not allow ATCO Gas to tie the amount of utility investment to the revenue expected based on customer usage and demand. Instead the current wording caps utility investment at the revenue per customer by rate class as determined by the approved PBR formula. ATCO Gas argued that this severely limits the amount ATCO Gas may invest in the specific facilities required to allow custom service for high-use customers. The proposed change would decrease customer contributions for non-standard customers that sign a CSLA and increase ATCO Gas's investment amount.⁷

12. Also within Section 3.0 of the CSLA, ATCO Gas proposed that new language be added to address the consequences of early termination. ATCO Gas argued that the proposed wording will protect ATCO Gas and ratepayers in the event of early termination of the CSLA. The amendment sets out payments that the customer will be required to make to ATCO Gas immediately upon early termination of the CSLA. The proposed payments include costs, liabilities and expenses incurred by ATCO Gas in connection with the specific facilities and provision of the custom service; any other additional customer considerations; and the net present value of future regulated earnings forgone as a result of the termination less the value of any revenue received.⁸ In response to a Commission IR with respect to a customer paying ATCO Gas the net present value of future regulated earnings forgone as a result of an early termination, ATCO Gas responded that it included this clause simply as a form of penalty or disincentive to prevent a customer from backing out or breaching the terms of the agreement.⁹

13. ATCO Gas also proposed the addition of a new Section 5.0 to the CSLA in order to capture additional comments and considerations. ATCO Gas explained that "customers may approach ATCO Gas with unique project considerations and the expectation that such considerations will be captured in the Custom Service Letter Agreement."¹⁰ However, ATCO Gas did not specifically identify what would be included in this section or how it would function. Related to this amendment, ATCO Gas also proposed changes to Section 7.0 of the CSLA to define "Customer Contribution as the difference between the estimated costs of the Specific Facilities in Section 4.0, Additional Customer Considerations as specified in Section 5.0 of this agreement and any amount of ATCO Gas Investment as specified in Section 3.0 of this agreement."¹¹

⁵ Proceeding 21981, ATCO Gas, a division of ATCO Gas and Pipelines Ltd., 2017 Annual Performance-Based Regulation Rate Adjustment Filing.

⁶ Decision 21981-D01-2016: ATCO Gas, a division of ATCO Gas and Pipelines Ltd., 2017 Annual Performance-Based Regulation Rate Adjustment Filing, Proceeding 21981, December 21, 2016.

⁷ Exhibit 23532-X0001, Application, pages 5-7.

⁸ Exhibit 23532-X0001, Application, pages 7-9.

⁹ Exhibit 23532-X0010, AG-AUC-2018JUN13-004, page 1.

¹⁰ Exhibit 23532-X0001, Application, page 9.

¹¹ Exhibit 23532-X0001, Application, page 14.

3.3 Custom Service Contract Demand Section of the High Use Delivery Service Rate Schedule

14. ATCO Gas proposed an amendment to the Custom Service Contract Demand Section of the High Use Delivery Service Rate Schedule to enable it to recover additional costs if the customer exceeds the contract demand. ATCO Gas did not provide information on what additional costs require recovery, the driver(s) of the additional costs or effects on other rate classes. ATCO Gas's proposed language states that if a customer's actual billing demand exceeds its contract demand, the customer will be billed the greater of the contract demand, as stated in the CSLA, or the actual metered demand used by the customer.¹²

4 Commission findings

15. The proposed amendments have potentially material implications for the allocation of capital costs on new facilities serving larger customers and the utility's investment policy, or otherwise impact rate design with consequent impacts to rate base and customer rates. The Commission considers that such issues should not be considered in isolation as proposed amendments to the T&Cs. The proposed amendments would best be considered in a forum where the implications to the utility's cost of service and rate design can be fully considered and tested. The reasons for this finding are as follows.

16. The proposed amendment to Section 7(e) of the T&Cs grants ATCO Gas the sole discretion to waive or require a CSLA on a case-by-case basis. The exercise of such discretion could result in different investment levels for customers in the same class who have similar delivery service requirements and comparable bills and therefore, unfair and inconsistent treatment of customers within the same rate class. Further, the waiver of the requirement for a CSLA may have implications for ATCO Gas's investment level, affecting rate base and therefore potentially the rates paid by other customers. Even though ATCO Gas's distribution rates are largely separated from its costs during the current 2018-2022 PBR term, changes to rate base over the PBR term may affect customers at the time of the PBR plan rebasing.

17. Likewise, the proposed amendment to Section 3.0 of the CSLA, which would increase the investment by ATCO Gas, is a change in investment policy affecting rate base, and therefore a change that potentially affects other distribution customers.

18. According to ATCO Gas, the proposed addition of Section 5.0 to the CSLA is to capture customer-specific additional comments and considerations. Although ATCO Gas did not specifically identify what would be included in this section or explain how it would function, the Commission notes a relationship between the proposed Section 5.0 and a proposed amendment to Section 7.0 of the CSLA. Section 7.0 would, as a consequence of the proposed amendments, utilize the comments and considerations in the calculation of Customer Contribution. The method for calculating Customer Contribution described in Section 7.0 is unclear. However, in view of the intention to link customer-specific comments and considerations to the Customer Contribution calculation, the Commission considers that this proposal may also relate to, or have implications for, overall investment policy practices. Further, the lack of clarity around the proposed Section 5.0 creates the potential for inconsistent treatment between customers, and

¹² Exhibit 23532-X0001, Application, page 9.

makes the calculation of the potential Customer Contribution less transparent to ATCO Gas's stakeholders, such as customers and intervener groups, and the Commission.

19. The Commission finds that the proposed amendment to the Custom Service Contract Demand Section of the High Use Delivery Service Rate Schedule also has the potential to affect investment policy practices and Phase II rate design because it purports to impose a new charge on customers and may give rise to issues associated with cost causation. Further, because application of this proposed amendment is dependent on or linked to execution of a CSLA, it is subject to the same concerns raised in relation to the proposed amendment to Section 7(e) of the T&Cs discussed above. Those concerns include the potential for differential treatment among high-use non-standard customers depending on whether they have been required to sign a CSLA. There may also be an impact to other rate classes as a result of the additional revenue received.

20. The final change proposed by ATCO Gas was the addition of new language to Section 3.0 of the CSLA to address the consequences of early termination. ATCO Gas argued this was to protect ATCO Gas and ratepayers in the event of an early termination of service. The Commission notes that certain of the proposed amendments to this section address the risk of unrecovered investment in the event of early termination. However, from the evidence on the record, it is not clear whether this proposed amendment and the protection ATCO Gas asserts it is intended to provide is required as a consequence of the increase to investment level proposed as part of the amendments to Section 3.0 of the CSLA, or is being requested independent of the proposed increase in investment level.

21. If this amendment is required as a consequence of the proposed amendment to Section 3.0, which as noted would allow ATCO Gas to increase its investment, for the reasons already described, the Commission considers that investment level issues are not properly considered a "narrow in scope" amendment to T&Cs; but rather, are rate design issues.

22. If this amendment was proposed independent of the proposed increase in investment level, the Commission has not been persuaded that the proposed changes are required or that they protect ratepayers and if so, how. More specifically, ATCO Gas did not provide sufficient evidence on the record to demonstrate that the amounts to be paid by a customer in the event of early termination are commensurate with ATCO Gas's investment or why such an investment would be recovered from other ratepayers in the event of such a termination. Further, regarding the portion of the amount to be paid that consists of "the net present value of future regulated earnings foregone as a result of such termination," the Commission is not convinced that payment of this amount as a penalty, in addition to the recovery of "all costs, liabilities and expenses incurred, or committed to, by ATCO Gas," is fair to the CSLA customer or required to protect ATCO Gas. It is even less clear why it would protect ratepayers.

23. For all of the reasons described, the Commission denies ATCO Gas's application without prejudice to ATCO Gas to reapply for the proposed amendments in the context of an application that would fully address the matters raised within this decision.

4 Order

24. It is hereby ordered that:

- (1) The application by ATCO Gas, a division of ATCO Gas and Pipelines Ltd., to amend its Customer Terms and Conditions for Gas Distribution Service is denied.

Dated on August 17, 2018.

Alberta Utilities Commission

(original signed by)

Carolyn Hutniak
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) Company name of counsel or representative
ATCO Gas, a division of ATCO Gas and Pipeline Ltd.
Consumers' Coalition of Alberta (CCA)

Alberta Utilities Commission
Commission panel C. Hutniak, Commission Member
Commission staff D. Reese (Commission counsel) A. Spurrell P. Howard A. Corsi K. Clark A. Laroia