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

Transfer of Carbon Storage Facilities

July 30, 2002

Alberta Energy and Utilities Board

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2002-72: ATCO Gas, a Division of ATCO Gas and Pipelines Ltd.
Transfer of Carbon Storage Facilities
Application No. 1237639

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ALBERTA ENERGY AND UTILITIES BOARD
Calgary Alberta

ATCO GAS, A DIVISION OF ATCO GAS AND PIPELINES LTD. TRANSFER OF CARBON STORAGE FACILITIES

Decision 2002-072
Application No. 1237639
File No. 6405-19

1 BACKGROUND

1.1 Introduction

By letter dated July 18, 2001 ATCO Gas, a division of ATCO Gas and Pipelines Ltd. (AGPL), filed an application with the Alberta Energy and Utilities Board (the Board) requesting approval of a process whereby the Carbon storage facilities and related producing properties (collectively referred to herein as "Carbon") owned by AGPL could be transferred to ATCO Midstream Ltd. (Midstream), an unregulated affiliated company. More particularly, the Application deals with ATCO Gas – South (AGS), a sub-division within ATCO Gas, which distributes and sells natural gas in franchise areas in southern Alberta and which includes Carbon in its rate base for rate making purposes. References herein to ATCO Gas refer to AGS, unless otherwise specified.

As a result of a pre-hearing meeting held on August 10, 2001 with respect to the proceeding dealing with the ATCO Group of companies Affiliate Transactions and Code of Conduct Applications (the Affiliate Proceeding), it was determined that issues concerning the Carbon transfer should be dealt with in a separate Carbon proceeding. Previously, in the Affiliate Proceeding, ATCO Gas had requested the Board to approve a leasing arrangement with Midstream for the use of Carbon. The Application superseded that request. In respect of the Affiliate Proceeding the Board issued Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues in Decision 2002-069, dated July 26, 2002, and will issue a further decision, Part B, dealing with Code of Conduct matters, in due course.

By letter dated August 14, 2001 the Board notified parties participating in the Affiliate Proceeding that associated issues involving transactions between AGS and Midstream that were otherwise being dealt with in AGS's recent general rate application (GRA) would instead be brought forward to the Carbon proceeding. Subsequently, by e-mail correspondence on August 20, 2002, the Board advised the same parties of a proposed schedule for the Carbon proceeding and requested that only those parties that wished to participate in the Carbon proceeding advise the Board accordingly. The Affiliate issues brought forward included the review of service agreements between ATCO Gas and Midstream for gas management, storage, and uncontracted capacity; the GRA matters included a review of forecasts for storage revenue and storage operations and maintenance costs.

To further support its request of July 18, 2001 for the removal of Carbon from regulation, ATCO Gas filed additional evidence on September 28, 2001. Collectively, the letters of July 18, 2001 and September 28, 2001 shall be referred to herein as "the Application".

1.2 Carbon History

1.2.1 Summary

The Carbon Glauconitic reservoir was discovered by a well drilled in 1955. In 1957 AGPL (then known as Canadian Western Natural Gas Company Limited (CWNG)) acquired rights in the Carbon field and in 1958 CWNG received a permit to construct a gathering system in the field and build a transmission line to Calgary. In 1959, in Decision 23616, the Board of Public Utility Commissioners, Alberta, stated "… this Board … is convinced beyond any doubt whatsoever that it was necessary for the company to acquire the Carbon gas rights and since they are used and useful in the operation of the company they are properly included in the rate base."[1]

From 1959 to 1967 CWNG used the Carbon reservoir to provide a peaking source to meet the peaking gas requirements of its customers. In 1967 CWNG applied for and received approval for the storage of gas in the Carbon field. In 1972, with a 20 year storage agreement with TransCanada Pipelines Limited, storage capacity underwent a major expansion. In the 1980s Carbon was the only commercial storage facility in Alberta. Carbon again underwent expansions in 1993, 1994 and 1995 and, presently, Carbon operations consist of twenty-four injection and withdrawal wells, one well with withdrawal only and a total of 9005 kilowatts (11,800 horse power) of compression.

1.2.2 Historical Observations

The Board believes it is instructive to consider how Carbon has been used by ATCO Gas in the past as a regulated asset in rate base, both in prior years and in more recent years. ATCO Gas provided in the Application a summary of extracts from various rate hearings and regulatory proceedings which indicates how and for what purposes it has historically used Carbon. Further, data was filed in the proceeding which indicates in some detail how Carbon has been used in the last five years. The Board has found it useful to consider all of this evidence in understanding the context of the past and more recent use of Carbon.

In the Application[2] AGS submitted the following extracts:

> **April 11, 1990 (1989-1999-1991 GRA)**
> Mr. Welsh stated on behalf of CWNG that there are essentially two reasons for storage. One is to take advantage of the price differential. Short-term spot prices in the summer are generally lower than long-term prices in the winter. The second reason relates to load factor consideration or having to purchase at a higher rate of take than can be absorbed by the market.
>
> **May 1990 (1989-1991 GRA Phase I)**
> CWNG submitted that Carbon is used to store and withdraw load factor differences, or differences between market demand supply. It also allows CWNG to take advantage of winter/summer price differentials. CWNG stated that it reassesses the use of the Carbon storage facility on a regular basis and attempts to provide the optimum economic use for the facility to the benefit of the Company and its customers.

[1] Decision No: 23616, dated March 4, 1959, page 10.
[2] Appendix B to the Application, dated July 18, 2001

Public Utilities Board Decision No. E93004
The City of Calgary submitted that it is unclear how and to what extent customers benefit form storage and suggested that a study be presented at the next GRA. CWNG stated that the purpose of increased storage utilization is to reduce gas costs and increase the contractual security of supply.

1993 DGA
In response to the Board direction in GRA Decision E93004 to demonstrate how storage facilities are used to minimize gas costs, CWNG submitted evidence on the benefits of storage. The first benefit noted was increased security of supply. CWNG submitted that storage withdrawals provide incremental supply and deliverability during peak winter demand periods when other supply options are limited. Second, storage creates flexibility for handling load and supply balancing and market changes due to weather. Third, storage gives CWNG the ability to contract gas at higher load factors. Summer storage injection increases summer demand, allowing CWNG to contract gas at the higher load factors directed in the marketplace. Fourth, gas cost savings due to summer and winter price differentials are associated with the use of storage. Last, storage provides increased control and flexibility for supply portfolio adaptations.

In recent years Carbon appears to have been used at least for operational supply purposes. The Board has reviewed five recent years of historical information filed in this proceeding[3] and has made some observations of aspects of Carbon's configuration and operation during the winter as it pertains to AGS. Some of the data from the record has been tabulated in the table that follows.

Winter Season	Total Winter Degree-days[4] Nov - Mar	AGS Capacity[5] (PJ)	% of Total Capacity[6]	AGS Deliverability[7] (TJ/Day)	% of Total Deliverability[8]
1996-97	3669	13.7	31.5	300	50
1997-98	3108	13.7	31.5	300	50
1998-99	2985	16.7	38.4	300	50
1999-00	2846	16.7	38.4	300	50
2000-01	3092	16.7	38.4	300	50

The winter of 1996-97 was the coldest of the five winter seasons being approximately 18% colder than the next coldest winter (1997-98) and 29% colder than the warmest winter (1999-00). This was at a time when AGS retained 31.5% of the working gas capacity and 50% of the deliverability for its own use. The withdrawals by AGS are observed to bear a correlation to the weather pattern expressed in degree-days throughout the winter, although with a lower working gas capacity than later in the 5 year period of data provided. The winter was coldest during the early part, November 15 to January 30, during which the withdrawals were the highest. It can also be observed that the total withdrawals at Carbon were roughly correlated with the weather pattern throughout the winter. ATCO Gas-North (AGN) also utilized some storage capacity.

3 CAL-AG.18; CAL-AG.19
4 CAL-AG.19
5 CAL-AG.5
6 Based on percent of 43.5 PJ
7 CAL-AG.5
8 Based on percent of 600 TJ/day (Transcript Vol. 7, page 716)

The winter of 1997-98 was the last winter before AGS increased its working capacity from 13.7 PJs and it still retained 300 TJ/day of deliverability. This winter was the reverse of the previous one, being relatively warm until January 3. It is observed from the data on the record that AGS made significant withdrawals from Carbon as the cold weather settled in. Again both AGS withdrawals and total withdrawals follow the trend of the degree-day pattern. This was the last year that AGN utilized capacity.

The winter of 1998-99 was the second warmest of the five seasons of data and the first year that AGS had increased its working capacity to 38.4% (16.7 PJ) of the total available storage capacity. Retained deliverability remained unchanged. There is a general correlation again between the weather and total withdrawals. Of note is that, at times, the data indicates that withdrawals by those other than AGS exceeded 300 TJ/day. Therefore, others must have used some of AGS's deliverability.

The winter of 1999-00 was the warmest of the five seasons of data on the record. Again a general correlation can be observed between the weather and the pattern of withdrawals by AGS. It is also the first winter that AGS appears to have set a flat withdrawal pattern (or a ceiling) starting in early January. Of note again is that the data indicates that withdrawals by those other than AGS exceeded 300 TJ/day, again indicating use by others of the deliverability reserved by AGS.

The winter of 2000-01[9] was not an unusual one, having the coldest periods in December and February. While AGS retained 300 TJ/day of deliverability, it did not use it and this was the first year it used a flat withdrawal pattern each month without responding to the changes in weather. However, it is observed that the total withdrawals from the reservoir did follow the weather pattern showing a significant correlation. It is also noteworthy that there was an increased frequency of withdrawals by others exceeding 300 TJ/day, indicating increasing use by others of the deliverability reserved by AGS.

The Board will consider these observations in its views in the balance of this Decision.

During the 2001/2002 storage season, Carbon was not used by AGS, but was entirely under contract to Midstream. However, in consultation with customer representatives, AGS contracted for 11 PJ of storage capability with third parties.

1.3 Confidentiality

The Carbon proceeding involved a procedural first for utilities under the *Alberta Energy and Utilities Board Rules of Practice* (Alberta Regulation 101/2001 to the *Alberta Energy and Utilities Board Act* (Rules of Practice). ATCO Gas had objected to the filing of certain information requested pursuant to information requests filed by the City of Calgary (Calgary). ATCO Gas took the position that some of the requested information was confidential or that it was commercially sensitive. In response to a Motion filed by Calgary on October 30, 2001 to compel disclosure of the requested information, the Board issued a ruling on the Motion dated November 15, 2001, directing that relevant information be filed and indicating that information which ATCO Gas wished to maintain as confidential could be filed pursuant to Rule 12 of the Rules of Practice. On November 27, 2001, ATCO Gas filed a request for confidentiality pursuant

[9] Subject of Decision 2001-110

to Subsection 12(3) of the Rules of Practice. By letter dated November 28, 2001 the Board invited comments on ATCO Gas' request for confidentiality from interested parties.

Subsections 12(1), 12(2), 12(3) and 12(4) of the Rules of Practice state:

> 12(1) Subject to this section, all documents filed in respect of a proceeding must be placed on the public record.
>
> (2) If a party wishes to keep confidential any information in a document, the party may, before filing the document, file a request for confidentiality and serve a copy of the request on the other parties.
>
> (3) The request for confidentiality must
>
> (a) be in writing,
>
> (b) briefly describe
>
> (i) the nature of the information in the document, and
>
> (ii) the reasons for the request, including the specific harm that would result if the document were placed on the public record,
>
> and
>
> (c) indicate whether all or only a part of the document is the subject of the request.
>
> (4) The Board may, with or without a hearing, grant a request for confidentiality on any terms it considers appropriate
>
> (a) if the Board is of the opinion that disclosure of the information could reasonably be expected
>
> (i) to result in undue financial loss or gain to a person directly affected by the proceeding, or
>
> (ii) to harm significantly that person's competitive position,
>
> or
>
> (b) if
>
> (i) the information is personal, financial, commercial, scientific or technical in nature,
>
> (iii) the information has been consistently treated as confidential by a person directly affected by the proceeding, and
>
> (iii) the Board considers that the person's interest in confidentiality outweighs the public interest in the disclosure of the proceeding.

The Board set out matters pertaining to confidentiality in its letter dated December 10, 2001, to interested parties. The Board indicated that considering the purpose and principles of Section 12,

ATCO Gas's request for confidentiality and the comments of interveners, it found that ATCO Gas had satisfied the requirements of Subsection 12(4). The Board thus granted ATCO Gas' request for confidentiality with respect to specific information and upon set terms and conditions. As a result, a process ensued that provided for the filing of confidential information responses, evidence, rebuttal evidence and then supplemental information requests and information responses, evidence and argument. In order to be entitled to access or receive designated confidential data, interveners had to request the Board for access, demonstrate a need to access this confidential information and execute a Confidentiality Undertaking in a form prescribed by the Board. Copies of the Board's December 10, 2001 letter together with the various forms of Confidentiality Undertakings and Statutory Declarations relating to the timely return or destruction of such information are attached as Appendix 2 to this Decision. Parties are reminded of their obligations under the Confidentiality Undertaking.

Views of Interested Parties

Calgary

In its comments on ATCO Gas' request for confidentiality, Calgary stated that the onus is on ATCO Gas to prove that the information over which it requests confidentiality is in fact confidential or sufficiently commercially sensitive in nature so as to render it confidential. Calgary noted that ATCO Gas is operating a public utility, and that Carbon is still in its rate base and therefore, the public interest should favour disclosure of all aspects of the operation of Carbon unless proven to be harmful.

Calgary submitted that ATCO Gas provided no evidence that the information was confidential or sufficiently commercially sensitive so as to require it to be confidential beyond merely stating that it should be so. Calgary stated that, in a regulatory context, the public interest must be protected, interveners, and the Board, must be in a position to review, analyze, challenge, or confirm the information filed by ATCO Gas.

Calgary further submitted that where ATCO Gas provided no proof that the information was commercially sensitive to any substantial degree and that there was a significant risk of harm to ATCO Gas the Board must weigh the public interest in disclosure of the information involved. Calgary also stated that the Board should also consider that it is dealing with public utility interests and not "private interests" and should not be persuaded by assertions of ATCO Gas that disclosure will cause financial prejudice, or impair negotiations, without having any details provided by ATCO Gas.

Calgary also submitted that when ATCO Gas refers to financial prejudice that could result from disclosure, ATCO Gas should specify whether it is referring to prejudice to the public interest, to ratepayers, to a "private interest", to ATCO Gas' shareholders through an eventual prudence review, to Midstream as the current operator, or to Midstream (and the ATCO Group) as the intended future operator. In Calgary view, the involvement of affiliates and the failure by ATCO Gas to be specific were reasons for the Board to deny a blanket confidentiality request.

Consumers Group (CG)

The CG agreed with Calgary that ATCO Gas did not provide any adequate basis for confidential treatment of information requested by Calgary. It supported Calgary's position that the requested information was relevant to the Carbon proceeding and should be provided by ATCO Gas.

The CG was concerned with the process proposed for the treatment of confidential information, particularly with respect to the liability implications associated with the requirements for signing confidentiality agreements by parties wishing access to the confidential information. It noted that the process would necessitate the filing of two forms of evidence and submissions and two decision reports (non-confidential and confidential). Further, the process would unduly prejudice the rights of parties who were unable or unwilling to assume potential financial liability associated with signing a confidentiality agreement.

Encana and Unocal

Encana and Unocal did not submit any technical data on the Carbon storage facility and did not obtain access to any material filed on a confidential basis in the hearing. In their final argument they stated that they chose not to burden themselves with confidentiality obligations. In their view Carbon has been around for a long time, it has been a regulated facility and there is a great deal of information respecting the facility which is already in the public domain. According to Encana and Unocal there are no great secrets about Carbon, and given enough time and money to research the public record and analyze it, one could get a fairly accurate picture of the facility.

Views of ATCO Gas

In its request for confidentiality ATCO Gas submitted that it regarded the information in question to be commercially sensitive, and thereby confidential because most of the capacity at Carbon was subject to competition and disclosure of such information would cause it harm relative to its competitors. It noted that similar information pertaining to its competitors was not available in the public domain. ATCO Gas believed that it could not even explain why the information was commercially sensitive without damaging its competitive position in the storage market.

Board Findings

The Board notes the submission of Calgary, supported by the CG, that much of the material for which ATCO Gas requested confidentiality lacked an evidentiary basis for such treatment. The Board is cognizant that a public utility is a for-profit business and that matters of commercial sensitivity can arise which could affect both shareholders and customers negatively if not treated properly. However, having now gone through the confidential and non-confidential portions of the entire proceeding and having more fully considered the nature of the evidence in both portions, the Board recognizes that certain information for which ATCO Gas claimed confidential treatment, particularly reservoir-related technical information, is in fact available on the public record.

In circumstances where the Board has granted confidentiality, only the specifically designated information will be kept confidential, and only when it meets all tests of confidentiality. For example, information in the public domain would not be subject to confidential treatment. This is reflected in the Undertakings signed by parties with access to the confidential information in this case.

The Board is an administrative tribunal whose proceedings and records are ordinarily open to the public and should as far as possible remain so. The Board has considered the concerns of interveners in this case and the potential for unwarranted claims of confidentiality, and believes

that confidentiality of information will be the exception, not the rule, in its proceedings going forward. The Board's preference is to consider the issues and make decisions based on an open, non-confidential record wherever possible, in order to maintain the public nature of the Board's determinations and reasons for decision.

In this case the Board has considered the evidence and has determined that for the purposes of this Decision, which is focused on broad high level process directions as requested by ATCO Gas, it is not necessary to address confidential evidence or issues separately in a confidential decision report. The Board believes it can base all determinations necessary for this Decision on the non-confidential record, and has done so.

1.4 Impacts of Decision 2001-75 and Decision 2001-110

Two Decisions recently issued by the Board are directly related to the operations of Carbon. The Board notes that AGS expressed concern in the hearing regarding its attempts to understand the Board's rationale behind these decisions. The Board has summarized the key passages from both decisions below. The Board will consider views of the parties concerning the decisions and reflect its views of those decisions in so far as they apply to this proceeding.

1.4.1 Decision 2001-75, dated October 30, 2001

In this Decision the Board made the following statements:

> The Board is concerned that continued or increased utility gas price hedging programs would seriously affect the potential for retail gas market development, and that such development should be provided a reasonable opportunity to succeed. Therefore, the Board is of the view that utility gas price hedging programs, of any nature, are not seen as necessary at this time.
>
> The Board notes the concerns of marketers that including gas price hedges in the regulated gas portfolio may create difficulties in establishing a level playing field between regulated and competitive gas offerings. The Board is of the view that provision of an un-hedged regulated gas rate eliminates these complications, and will create a reasonable opportunity for the further development of the retail gas market.
>
> The Board notes that there are already physical hedge assets owned by the utilities. In the case of ATCO Gas, there are specific company owned gas production assets and gas storage assets that can, by nature, provide gas price hedging. The treatment of company owned production assets has been addressed by the NCC in its proposal that the costs savings of company owned gas production should be passed to all Core consumers via a credit to base rates, while the gas commodity rate should be charged at the market price for gas. This proposal for company owned production is discussed further in section 5.1 of this Decision.
>
> The Board considers that the use of storage facilities as a price hedging mechanism presents some of the same attributes as company owned production. In both cases the facilities can be described as "legacy assets", assets that have been paid for by all gas consumers in the previously fully regulated market. In both cases, crediting the benefits arising from the facilities directly to the gas commodity rate creates an economic bias towards regulated gas rate offerings, and implies that customers taking competitive gas

> supply do not receive any of the benefits from these assets. The Board is of the view that both of these results are undesirable.
>
> Therefore, the Board directs that company storage facility costs and benefits related to gas price stabilization or hedging are to be treated in accordance with the NCC COP Rider proposal. The gas withdrawn from storage will be valued at the current GCRR portfolio cost for inclusion in gas commodity rates.
>
> Until such time as the Carbon facility is removed from regulated service, the Board expects AGS to operate the Carbon storage facility for the benefit of customers, and to allocate the costs and benefits of that facility in the manner described herein to the account of AGS Core customers paying towards the Carbon facility in their rates.[10]

Views of Interested Parties

Calgary

In reply argument Calgary stated:

> The other thing we keep hearing about, sir, is Decision 2001-75 and how it told them to get out of the storage business or how at least disposing of Carbons is in accordance with that. I would strongly encourage you not to subscribe to the view.
>
> During the methodology hearing at Volume 3, pages 165 to 174, when I started to cross-examine the ATCO panel about Carbon, Mr. Smith objected saying Carbon should be dealt with in this hearing. After considerable discussion, you asked me to stay away from Carbon and keep it generic if I could. So my submission to you, sir, is that Carbon has to stand or fall on what goes on in the current proceeding. Decision 2001-75 can't be used to boot strap the case.[11]

CCA

In reply argument the CCA stated:

> Secondly, in respect to Decision 2001-75, AGS neglects to maintain that existing storage, especially Carbon, was provided unique treatment.
>
> We point out that ATCO continually argues about what 2001-75 prohibits them from doing but not what it might allow an LDC to do. The CCA submits it clearly allows for special consideration of Carbon. Further, the ATCO Gas proposal is that Carbon can be easily removed from rate base, almost with no strings attached or no loose ends. The CCA respectfully disagrees. We submit removal is very complex, more so given the unique nature of the Carbon facilities.[12]

[10] Decision 2001-75, pages 55 – 56.
[11] Transcript vol. 12, pages1318-1319
[12] Transcript vol. 12, pages1368-1370

Views of ATCO Gas

In argument AGS stated:

> In Decision 2001-75, the Board recognized the need to support the development of the gas retail market and attempted to remove various perceived impediments to that development.[13]
>
> Second, it directed gas utilities to provide their gas supply from the daily and monthly spot markets. In fact, gas utilities were prohibited from entering into third party storage contracts. Accordingly, the Board has decided that storage for gas utilities in Alberta is not required for gas price management purposes and gas utilities are prohibited from reflecting the financial benefits (or costs) in the gas costs charged to customers. Indeed, from the Board's perspective, the inter-seasonal physical hedging benefits (and costs) offered by storage *per se* appear no longer desirable since it represents an impediment to retail competition.[14]
>
> In Decision 2001-75, the Board ruled that gas price hedging mechanisms, including physical storage, are not appropriate in the provision of regulated gas service. It considered these mechanisms unnecessary in that the *Natural Gas Price Protection Act* would provide adequate price protection to consumers taking regulated gas supply. In dealing with existing storage arrangements, the Board permitted ATCO Gas storage contracts to continue until their expiry on March 31, 2002 and directed that gas storage costs and benefits associated with company-owned storage be treated as a rate rider on base distribution rates until such time as the Carbon facility is removed from regulated service.[15] Due to the rate rider treatment of company-owned storage, Carbon cannot be characterized at present as providing a "physical hedge or peaking supply".[16]
>
> ATCO Gas has been clear that Carbon storage is not required for operational purposes. Therefore, the sole purpose served by holding Carbon storage today is to retain a physical hedge for the purpose of managing gas costs. However, the Board has been clear in Decision 2001-75 that hedging is not approved for utility use.[17]

Board Findings

The Board believes it is clear from the passages repeated here from Decision 2001-75 that the intent of Decision 2001-75 was that impediments facing existing or potential retail gas marketers were to be removed so as to not bias the cost of gas in favor of the regulated supplier, e.g., ATCO Gas, in order to enhance the development of a competitive retail (commodity) market for natural gas. Where storage was being used as a physical hedge, the Board determined that the economic impact of storage should be removed as a price signal by recovering it through a rider to the base rates, so that there would be no economic effect of storage on regulated commodity supply costs included with the gas cost recovery rate (GCRR).

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[13] Page 2 of 107
[14] Ibid.
[15] Decision 2001-75 Section 4.2.2.
[16] Pages 15 and 16 of 107
[17] Page 55 of 107

The Board believes it is clear that AGPL was expected to continue to provide AGS's customers with the benefits of a physical hedge so long as it continued to own Carbon. This would essentially mean buying and injecting the gas in the summer, when prices are usually the lowest, and withdrawing in the winter, when prices tend to be the highest. Although the Board stated that it did not believe it was necessary for the gas utility to provide financial hedges of the commodity price to customers, there will always be an inherent price component to a physical hedge. In some respects it is artificial to separate the physical and financial aspects of storing gas. Nonetheless, the Board believes that Decision 2001-75 recognized that Carbon has value in providing a physical hedge, that it would in most years provide a corresponding financial benefit to such a hedge, that Carbon could be retained in the utility as a 'legacy asset' and that retail market development could benefit by removing the impact of this physical and related financial hedge from the competitive commodity market.

1.4.2 Decision 2001-110, dated December 12, 2001

In this Decision the Board made the following statements:

> Storage has provided managers of gas supplies with a physical hedge and a peaking supply for many years, and the Board expects this principle of gas portfolio management to continue as long as utilities own storage. The Board also notes that there are a range of load factors and storage services available to managers of gas supplies. In particular, the Board in Decision 2001-75, provided for the continued use of Carbon as a physical hedge and a peaking supply for as long as it is a used and useful rate base asset.[18]
>
> The Board also expects AGS to be more diligent in the future in achieving cost savings for customers and to investigate methodologies, such as the one presented by [Calgary's witness] Mr. VanderSchee, that will assist it in making decisions when managing the withdrawals from Carbon for the customers benefit.[19]

Views of ATCO Gas

During the hearing in response to a question regarding the statement "In particular, the Board in Decision 2001-75 provided for the continued use of Carbon as a physical hedge and a peaking supply for as long as it is a used and useful rate base asset," AGS answered:

> We may be missing something, but when we go back and look at decision 75, we don't see that reference in that decision and, as I described, I think this statement is in complete conflict with the principle that we offer monthly gas pricing. And if you go to the statement in decision 75 that said we should set up a rider, a storage rider for Carbon, then it's not there to provide a physical hedge or a peaking supply because it's not in the -- it's not in the safety net. It's simply a way to capture benefits.[20]

[18] Decision 2001-110, page 27
[19] Ibid, page 30
[20] Transcript vol. 7, page 666

Board Findings

The Board believes it is clear from the passages repeated here from Decision 2001-110 that AGS should operate Carbon in a manner so as to provide benefits to AGS's customers, such as using lower cost stored gas to offset the cost of higher priced spot market gas.

The Board considered that AGS could have benefited from the assistance of a decision enhancing tool as described in evidence presented by Calgary[21], which would have provided guidance to withdraw or buy gas on a daily ex-ante basis. The Board understood the model (or method) to use daily prices, inventory levels, remaining days to withdraw, withdrawal rates and future prices as inputs to calculate a positive or negative result that would be used to decide to buy or withdraw gas from storage. The Board expected that gas could be sold to customers as part of AGS's total gas supply when withdrawn. This method of using Carbon would not be characterized by commodity trading or the use of financial hedging.

In the absence of a decision tool similar to the aforementioned, the Board considered AGS's customers would have benefited if AGS had used the deliverability it had at its disposal to withdraw gas when gas prices were spiking.

1.5 Public Hearing

The Board held a public hearing with respect to the Application in Calgary, Alberta for nine days, commencing on March 11, 2002, before Mr. B. T. McManus, Q.C., Presiding Member; Mr. M .J. Bruni, Q.C., Acting Member; and Ms. C. Dahl Rees, Acting Member. Oral argument was subsequently heard on April 18, 2002. During the course of the hearing when confidential issues were being addressed, the Board required that the hearing room be closed to the general public and that only those individuals who had signed the mandatory Undertakings for Confidentiality could be present. Those who appeared at the hearing and abbreviations used are set out in Appendix 1.

2 DETAILS OF THE APPLICATION

ATCO Gas requested the Board to:

(a) approve the withdrawal of Carbon from regulated service and rates; and
(b) establish a process by which the fair market value (FMV) of Carbon could be determined so that it could be transferred to Midstream.

It proposed that a withdrawal be addressed in three steps:

- First, included as a part of the Application and as a consequence of approval of withdrawal from regulation, ATCO Gas sought approval of a process for determining the FMV of Carbon.
- Second, subsequent to receiving the applied for approvals, ATCO Gas would then implement the process to determine the FMV of Carbon.
- Third, in an ensuing application, ATCO Gas would request approval of an allocation between it and customers of the proceeds paid by Midstream.

[21] Decision 2001-110, page 20

ATCO Gas submitted that Carbon was no longer required for utility service. It stated that various parties have questioned its operation of Carbon and have appeared to assert that Carbon should be subject to competitive forces, either through unbundling or through direct competition for the right to provide storage needs related to the Deferred Gas Account. It further stated that it has only included the original costs of the assets required to operate the storage business in determining its rates. It further submitted that the only matter to be before the Board regarding the disposition of Carbon would be an assessment of potential harm done to customers as a result of its removal from regulation and to accordingly determine the amount of compensation due to customers. ATCO Gas added that base gas was intrinsic to the operations of Carbon. In this respect, it stated that since no costs related to the value of base gas have been recovered from customers, there was no basis to conclude that customers would have any entitlement to the base gas.

Attached to AGS's application letter of July 18, 2001 were studies prepared by RiskAdvisory and The Ziff Energy Group, both of which had been filed by ATCO Gas in previous applications. The RiskAdvisory report, dated January 14, 2000, dealt with a "Discussion of Issues Surrounding Physical Storage Positions". The Ziff Energy Group report, dated February 2000, provided comments on gas supply alternatives, a storage recommendation for the period April 2000 to March 2001, and a recommended appropriate level of storage for AGS to use in its gas supply portfolio over the following five years. Included with its September 28, 2001 letter was a report of the same date prepared by Michael J. Harris, Ph.D., of Econ One Research, Inc., entitled "Re: A Competitive Evaluation of the Alberta Storage Market".

3 ISSUES

Pursuant to responses received during the interrogatory process, the Board determined that it, along with the interested parties that had registered to participate in the Carbon proceeding, would benefit from the preparation of an issues list to provide for a more focused and efficient hearing process. In the absence of an actual transaction and a FMV determination for its review, the Board was concerned that it did not have sufficient information to render a decision on the ability of AGPL to remove Carbon from regulated service. In a preliminary issues list e-mailed to interested parties on November 5, 2001, the Board questioned: (1) if approval for an actual asset transfer was not being sought, should a public hearing proceed, and (2) if the hearing was only to determine a FMV process and appropriate criteria to be used in applying the no-harm test in a future hearing, what level of historical, operational and financial detail was required to be provided in this hearing to the Board and interested parties. After considering comments received from interested parties the Board decided to continue with the hearing.

In a letter dated November 9, 2001 the Board emailed a final, non-exhaustive issues list to interested parties, in which it set out particular issues that would be considered during the Carbon hearing. The purpose of the hearing was for the determination of the following matters:

1. Are the Storage Facilities used or required to be used?
2. Can the Storage Facilities and the related Producing Properties be removed from regulated service?
3. What assets make up the Storage Facilities and the Producing Properties?

4. If the Storage Facilities and the Producing Properties can be removed from regulated service, what should the process be to determine their FMV?
5. If the Storage Facilities and the Producing Properties can be removed from regulated service and a sale would satisfy the “No Harm Test”, is a closed process transfer to an affiliate appropriate?
6. What are the appropriate “No Harm Test” criteria to assess a potential future application to approve the sale and transfer of the Storage Facilities and the Producing Properties?
7. Finalization of outstanding matters brought forward from the GRA and Affiliate proceedings.

The Board’s issues list of November 9, 2002 provided additional guidance regarding each of these matters, and is attached hereto as Appendix 3.

3.1 Used or Required to be Used

Views of Interested Parties

Calgary

The gist of Calgary’s position could be observed in the following statement from its argument:

> As noted in Calgary’s evidence, and many times in cross-examination, Calgary’s position has been, as long as assets are used to provide safe and reliable services at lowest reasonable costs, they should be retained by the utility because they are used and useful. This is an economic decision, and as pointed out by Mr. Johnson there are a number of assets included in rate base that the ownership of which is related to an economic decision, since most of the services can either be provided through leases or from third parties. [22]

Calgary also stated that:

> …regulatory theory and practice supports the proposition that where a rate base asset has been built up at ratepayer risk and that asset can be used in a way to reduce costs, then the asset should be retained by the utility. [23]

Calgary submitted that its economic analysis provided in its evidence, and particularly Attachment 1[24] to the Written Evidence of the City of Calgary, and the Energy Objective (“EO”) report “Gas Storage and the Carbon Storage Facility - A Determination of Operational and Economic Value to the Customer,”[25] shows that the retention of Carbon is in the ratepayer’s best interest and therefore the facilities are used and useful.

[22] Argument of Calgary, pages 12 and 13 of 43

[23] Transcript vol. 12 pages 1317, 1319-1324

[24] “Benefits and Value to Ratepayers” using analyses developed by Calgary for revenue requirement for the Carbon facility for the years 1999–2002 based upon consistent databases; revenue requirement for the year 2002 based upon the AGS response to CAL-AG.10(c); and a calculated a value for a number of benefits or values that ratepayers should expect to receive based upon historical Carbon operating parameters and the findings of the Board in Decision 2001-110.

[25] Exhibits 89 and 90B

Calgary's evidence also included a report of Sproule Associates Limited ("Sproule") titled "Methodology for the Determination of Value for Carbon Storage and Production Assets (as of January 1, 2002)" that dealt with the reservoir assessment and preliminary FMV and "No Harm" assessment of Carbon. Calgary submitted that the reservoir assessment concluded that Carbon is a viable storage operation and that the continued utilization of Carbon as a storage operation is producing a positive benefit for ratepayers.

Calgary argued that Carbon is required to be used in order to provide the maximum benefit to ratepayers. It believed that there are no alternative arrangements that could be utilized that would support removing Carbon from regulated service. Calgary used a "rent or buy" comparison, noting that the rental of an asset does not give the same flexibility and opportunities as owning the asset. Calgary also submitted that there were limitations to the storage arrangements used by ATCO Gas in the 2001/2002 winter period that were not present when CWNG operated Carbon, nor were such limitations applicable when CWNG used Carbon to provide maximum operating flexibility, peak day requirements and gas price savings.

In its argument Calgary submitted that ATCO Gas developed and presented "myths" with respect to Carbon. Calgary agreed that the Alberta gas market could provide gas supply for ATCO Gas and that Carbon was not strictly required for operational purposes. However, Calgary submitted that the use of Carbon involves an economic decision regarding a utility rate base asset to determine if the cost/benefit associated with the change in operations weighs in favor of the non-utilization of Carbon as a utility asset. Calgary noted other advantages of storage, including:

- the ability to change nominations and deliveries on a minute to minute basis, or within a ten or fifteen minute time frame;
- benefits related to the cost of gas and the hedging capabilities, thereby reducing price volatility and capturing seasonal and daily differentials; and
- the avoidance of liquidity premiums.

CG

The CG submitted that in effect, there are two distinct parts to the Board's determination of whether a particular asset is no longer "used or required to be used" for utility service. The first test is to determine whether there are acceptable physical alternatives and, if that test is met, the second test is whether removal from service will financially harm customers. If the answer is positive (i.e. harm will occur) then the assets cannot be removed from utility service without adequate compensation to customers.

The CG noted that witnesses for both ATCO Gas and interveners agreed that alternative arrangements for storage are available. However, it stated that there is uncertainty whether such alternatives would provide ATCO Gas with the same flexibility and, accordingly, the same opportunity to maximize future value to customers through the optimal use of Carbon. Retention of Carbon as a rate base asset provides opportunity to maximize flexibility.[26]

The CG concluded that although the Carbon storage facilities are currently being used and provide benefit to customers, there is a question as to their ongoing benefit and unanswered questions remain about the optimization of the use of those facilities.

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[26] Transcript vol. 12, pages 1327-1328

The CG submitted that AGS operated through the 2001/2002 winter season without Carbon, and that it is generally acknowledged that Carbon was not required for operational purposes (i.e. reliability of service) in that winter season. However, the CG also submitted that is not to suggest that it has not in the past or could not in the future provide financial benefits to AGS customers. The CG concluded that although Carbon is currently being used, ostensibly for the benefit of customers, it is not “required to be used” in the physical sense of providing operational storage. Nevertheless, the CG suggests Carbon will continue to be “used” until such time as the Board approves a sale and concurrently determines the required “no-harm” compensation calculated based on the loss of future benefits which would have flowed to customers from continued operation of Carbon in whatever manner is most beneficial. The CG was of the view that this question cannot be addressed in any comprehensive way based on the evidence adduced. The CG stated that the Board cannot overlook the fact that AGS has expressed its unwillingness to continue management of Carbon. However, the CG was of the opinion that these facilities can be disposed of if and when a purchaser becomes available who is prepared to pay an amount at least equal to the required “no-harm” compensation.

The CG argued that neither the initial application nor the subsequent evidence of September 28, 2001 appeared to contemplate an approval by the Board pursuant to the Gas Utilities Act, R.S.A. 2000, cG-5 (GU Act). Therefore the CG submitted that the Board need do nothing more than determine whether the facilities are required by AGS for utility operational purposes and, if not, to indicate that an application for sale pursuant to the GU Act would be considered favorably subject to customers receiving the required “no-harm” compensation.

The CG argued that it is a given that Carbon has value as a storage facility – the challenge is, however, to determine how best to determine this component of its value. The CG submitted that all of the alternatives identified for Carbon are reasonable to consider. These alternatives should not be considered solely in the context of whether Carbon should remain in utility service. Rather, these alternatives should be evaluated in terms of the future value to customers and the resulting harm to customers in the event the facilities were transferred or sold and no longer available to customers. The CG concluded that it should be obvious that if the proceeds available to customers are not equal to this future alternative use that produces the optimum value for customers, then the storage facility should remain in "use" as a utility asset.

The CG asserted that the provision of regulated utility service not only should be secure and reliable, but it should be done at a reasonable cost. If an asset was in utility service and if continuing use of that asset in changed circumstances still contributed to the provision of service at the lowest reasonable cost, then that asset could reasonably remain under utility regulation, particularly if there was no demonstrated alternative way of obtaining that service for customers at a similar reasonable cost.

CCA

The CCA submitted that Carbon, while being very unique, was and would continue to remain used and useful and should continue to remain as a rate based asset, from which ATCO Gas’ customers should continue to receive benefits. The CCA did not consider that the availability of a competitive alternative was sufficient to allow an asset to be removed from rate base, particularly over the objections of customers. It noted that alternatives can exist for all utility rate base assets and that a standard regulatory practice was to require a utility to analyze several

competing alternatives for a utility rate base addition. The option that was often deemed appropriate for additions to rate base was based on the requirement of a lowest cost to customers from among all similar offerings. The CCA submitted that an example was the salt cavern storage facilities owned by AGPL. This facility was included in rate base even though it was generally acknowledged it could be replaced with more expensive transmission lines.[27]

The CCA was concerned that ATCO Gas had structured its operations to make it appear that Carbon was no longer used for operational services, noting that ATCO Gas, or then CWNG:

- removed the operational employees associated with Carbon storage facility from the utility to a non-regulated affiliate;
- removed the benefit of operational use of storage from utility services and gave the benefit of this operational use to a non-regulated affiliate; and
- removed the seasonal use of Carbon from customers and replaced it with third-party contracts.

The CCA was further concerned that the sale to Midstream without some type of reversion feature would place customers in a very risky position if the retail natural gas market did not develop. It stated that Carbon should be considered a legacy asset, and submitted that it was unlikely that Carbon could in the future ever be replaced with facilities of a similar scope or scale of benefits. It further submitted that these benefits included:

- base gas at low cost because of its vintage nature;
- no royalty payments on the base gas;
- the geographic location of the Carbon storage facilities being uniquely located close to Calgary, the major load center of the AGS system;
- Carbon's being dually connected to the NGTL and ATCO Pipelines transmission systems; and
- company-owned or third-party physical hedges not having the same counter party credit risk as financial hedges.[28]

The CCA argued that a use of storage beyond operational concerns was for hedging purposes, which refers to a risk management tool that minimizes the risk of exposure to gas price fluctuations. It also argued that, as ATCO Gas had not determined the risk preferences of customers, and as its residential customers were risk adverse and desired low and stable gas prices, ATCO Gas should be prevented from moving Carbon from rate base.

The CCA considered that utilization of the intra-Alberta gas market for peaking would significantly increase gas price volatility as opposed to the use of storage for peaking purposes. The CCA noted that historically, if the Carbon storage facility failed in providing peaking to customers, the intra-Alberta market was available for this purpose. The CCA considered that Carbon provided ongoing benefits to customers and could be used to shield customers from volatile gas prices and changes in the market place.

[27] Transcript vol. 12, pages 1335-1336
[28] Ibid, page 1337

Encana and Unocal

Encana and Unocal believed that Carbon, in the current environment, was no longer used or required to be used to provide utility service to ATCO Gas' customers. They stated that events of the 2001/2002 winter period indicate that it was not required for operational purposes relating to the operation of the ATCO Gas system and that in the future, should ATCO Gas have any need for storage, these needs could be satisfied by ATCO Gas contracting for storage with third-party storage operators.[29]

Views of ATCO Gas

In its submission ATCO Gas provided evidence in an attempt to prove that Carbon was no longer "used or required to be used". ATCO Gas submitted that the gas and storage markets in Alberta were sufficiently mature, deep and liquid to handle all requirements the utility might have, including peak demand hours and "just take it" flexibility. For the 2001/2002 storage year ATCO Gas stated that the market had provided all its requirements by contract without the need to call on Carbon directly.

In reply argument ATCO Gas stated that the past benefit the customers had enjoyed was the utility use of storage, which focused on safe and reliable distribution service. On the other hand, the future benefit to a different operator would be a very different non-utility function, one significantly riskier and only perhaps more rewarding than a utility operation. In reply, ATCO Gas' view was that for ratepayers, the benefit in removing a utility operation or undertaking like Carbon from regulation was to reduce rates and to eliminate the risk associated with the ownership and operation of storage, while ensuring the continuation of safe and reliable service.

ATCO Gas argued that integral to the determination of whether Carbon should be withdrawn from utility service was the need to determine whether Carbon continued to be used and useful, and that, in ATCO Gas' submission, centered around the continued need for its use as part of the basic monopoly service. It added that throughout its history, it has consistently maintained that the purpose of including the Carbon storage facility as part of its regulated distribution system was to provide operational flexibility, both in meeting physical peak day requirements and in addressing day to day fluctuations in load. However with the dramatic evolution of the natural gas market, the operational necessity for Carbon diminished over time. ATCO Gas stated that at present and for the past number of years the development of both a highly competitive storage market and a sophisticated gas market have removed the need for Carbon storage altogether. ATCO Gas noted that it had advised in 1999 that the gas market had already evolved to the point where Carbon was no longer required to provide operational flexibility.

ATCO Gas submitted that the Board in Decision 2001-75 decided that storage for gas utilities in Alberta was not required for gas price management purposes, that gas utilities were prohibited from reflecting the financial benefits or costs in the gas costs charged to customers, and that inter-seasonal physical hedging benefits and costs offered by storage per se appeared no longer desirable since they represented an impediment to retail competition. ATCO Gas argued that in the storage year April 1, 2001 to March 31, 2002 it demonstrated that Carbon was no longer required for monopoly utility service, noting that it did not utilize storage at Carbon and customers did not see any adverse consequences from an operational perspective or from a

[29] Ibid, pages 1345-1346

financial perspective. In that year ATCO Gas noted that conditions included fluctuating temperatures, peak use requirements and gas prices which were higher in the summer period than in the winter period. ATCO Gas further submitted that if its recommendation not to use contract storage in the 2001/2002 year had been followed by the Board and interveners, customers would have saved millions of dollars while still receiving safe, reliable utility service.

ATCO Gas submitted that the availability of storage in the competitive market eliminated the need for Carbon. It contended that whatever level of storage service which interveners and the Board thought necessary could be provided on the open market through competitive bids, at a cost less than the cost of owning and operating Carbon. It questioned why competition should be proxied through continued regulation of Carbon when competition clearly existed.

ATCO Gas noted that certain interveners appeared to be defining “used and useful” to mean that as long as an asset can provide residual financial benefits to customers, it was “used and useful” in the provision of safe, reliable utility service. It contended that this type of argument was flawed and that it represented a move from cost based regulation to opportunity cost based regulation of Carbon, which interveners have acknowledged not to be required for the provision of safe and reliable gas distribution service. ATCO Gas referred to the corollary, and asked that for years for which there were net costs attached to the storage business, not benefits, would the Board determine that Carbon was not “used and useful” and therefore ought not to be included in rate base?

ATCO Gas stated that Calgary’s position that the use of Carbon had always been based on economics was irrelevant and misleading. It argued that Calgary transformed a truism into a tautology - if Carbon was in rate base and it had value it must remain in rate base, being Calgary's justification for requiring utilities to operate utility assets no longer required for monopoly utility service in a range of different business ventures.

ATCO Gas stated in argument that it had demonstrated that the operational flexibility provided by Carbon in the past was no longer required and that it could provide safe, reliable monopoly utility distribution and supply service, without owning and operating storage at Carbon.
ATCO Gas concluded that it thus demonstrated that Carbon was no longer used and useful in the provision of monopoly utility service.

Board Findings

As previously noted in its correspondence of November 9, 2001, the Board was concerned with the lack of clarity in the Application, particularly because of the hypothetical nature of ATCO Gas’ requests. The Board notes that interveners shared this concern. Calgary, in its correspondence to the Board, dated November 7, 2001, expressed its concern not only about the lack of clarity in the Application, but also about the uncertain relief being sought by ATCO Gas and a lack of evidence from ATCO Gas to support an application to withdraw Carbon from utility service. The Board agrees with the CG that the Application does not appear to contemplate an approval by the Board to sell or otherwise dispose of utility property outside the ordinary course of business pursuant to the GU Act. The Board further agrees with the CG that in the circumstances, and in terms of setting the parameters of a process for ATCO Gas to move forward, the Board at this stage should consider and determine, if possible, whether the facilities are used or required to be used by AGS for utility purposes. Further, the Board considers it

necessary to address the requirement in any sale or disposition process that the customers receive "no-harm" compensation.

Subsection 37(1) of the GU Act, states:

> 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 …

Similar wording exists in Subsection 90(1) of the *Public Utilities Board Act, R.S.A. 2000, cP-45* (PUB Act). In Decision E76110, dated September 14, 1976, the Board in dealing with its review of the rate base for Northwestern Utilities Limited, stated "The determination of what property of the owner is 'used or required to be used in his service to the public within Alberta' … and which will be carried in the rate base is a question of fact to be decided by the Board in each case based on the evidence and circumstances pertaining to each case."[30] The Board went on to state "Depending on the facts in a particular case, property that is not immediately and/or fully used may none the less be property that is 'used or required to be used in service to the public within Alberta' and therefore properly form part of the rate base."[31]

The phrase "used or required to be used to provide service to the public within Alberta" as found within section 82(1) [now sec. 90(1) RSA 2000, c. P-45] of the PUB Act has been considered by the Alberta Court of Appeal.[32] The Court of Appeal stated:

> The phrase "used or required to be used" is well known in the field of utility regulation.
>
> Much of the argument before us was directed to a consideration of whether that expression is conjunctive or disjunctive. More significantly, it was directed to the proposition that if an asset is in fact "used" then any need that it be "required" disappears.
>
> The case-law, and common sense, dictate that there may be assets included in a rate base which are not in actual use such as stand-by equipment, and the phrase is often used disjunctively to recognize that situation. On the other hand, mere use is not sufficient to burden consumers with the cost. Clearly the consumer need not bear all the costs of an asset which is used if, for example, it reflects an imprudent expenditure. Assets unnecessarily used are not, simply by use, put into the rate base. Without putting too fine a point on interpretation we conclude that even if an object is used it must also be required. If it is not in actual use, it must none the less be required. The expression may be construed both disjunctively and conjunctively. We are supported in that view by American case-law as well as by a consideration of the object of utility rate regulation.
>
> There are many decisions in the United States dealing with this terminology and a similar expression "used and useful". The phrase "used and useful" has come to

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[30] Decision E76110, page 23-24.

[31] Ibid page 24-25.

[32] *Alberta Power Ltd. v. Alberta Public Utilities Board* 66 D.L.R. (4th) 286 (leave to appeal to the Supreme Court of Canada refused).

> import a measure of flexibility in determining when assets may be brought into the rate base. "Used and useful" may be viewed as both conjunctive and disjunctive …
>
> Once the interpretation is determined, whether a particular item is to be brought within the rate basis is essentially a question for the judgment of the board which does not involve a question of jurisdiction or law …[33]

The case before the Court of Appeal dealt with the propriety of assets being allowed into rate base, thereby supporting utility earnings. In addition, at times it can be a regulator's duty to determine if a utility property is no longer necessary or useful in the performance of the utility's duties to the public and whether it therefore should be removed from the earning base. In the case of Carbon, the Board must consider the relevance of the "used or required to be used" test as it relates to the evolution of the gas market in Alberta and whether or not the current and forecast liquidity of this market, including the competitiveness of the related gas storage market, displaces the ongoing need for Carbon. In this regard the Board notes the view of the Alberta Court of Appeal that an asset, which is not being used at a point in time, can still be required to be used and therefore properly included in the rate base.

In considering the "used or required to be used" test and comparing it with the "used and useful" test, the Board finds it helpful that the Alberta Court of Appeal appears to make little distinction between them. There is broad North American jurisprudence on the "used and useful" test, which both the Board and interveners have considered over the years. This test is frequently imposed by a regulatory authority, pursuant to its governing legislation, in determining whether or not a property will render service to or for the public in terms of present and expected demand and at a reasonable cost, and whether such property therefore should be included in rate base. The term "used and useful" does not only refer to needed capacity, but also reflect that the property in question is economically desirable. As indicated above, "used and useful" is a flexible concept, which allows regulators to consider all the facts of a matter before them before making a determination in the particular circumstances.

In summary, the Board believes that both the "used or required to be used" test and the "used and useful" test provide the Board with a high degree of flexibility in determining whether assets should appropriately be in rate base, and the Board believes the jurisprudence overall supports such flexibility as a necessary element to allow regulatory bodies to balance the interests of utility investors and customers.

In applying the "used or required to be used" and "used and useful" tests specifically to Carbon in terms of its past and present use, the Board notes that in Decision 2001-110, it was stated:

> Storage has provided managers of gas supplies with a physical hedge and a peaking supply for many years, and the Board expects this principle of gas portfolio management to continue as long as utilities own storage. The Board also notes that there are a range of load factors and storage services available to managers of gas supplies. In particular, the Board in Decision 2001-75, provided for the continued use of Carbon as a physical hedge and a peaking supply for as long as it is a used and useful rate base asset.[34]

[33] Ibid, 303.
[34] Decision 2001-110, page 27

The Board also notes the references in the evidence that storage generally provided a benefit in 6 out of 10 years in the historical period from 1990/1991 to 1999/2000.[35]

The Board considers that the continued use of Carbon by ATCO Gas could be useful, especially while the retail market is under development. The Board notes that only one Intervener group at the hearing believed that the asset could be sold ("…if and when a purchaser becomes available who is prepared to pay an amount at least equal to the required 'no-harm' compensation")[36], on the basis of AGS not having used it for the storage year 2001/2002.

Although ATCO Gas obtained short-term storage agreements for the 2001/2002 winter period, which ATCO Gas submitted provided for storage capacity at an approximate rate of $0.17/GJ, the Board is concerned about the lack of information with which to assess and compare such future contract storage costs with the operating costs associated with Carbon.

Further, the Board shares the more general concern of the CCA that the manner in which ATCO Gas has structured its operations may make it appear that Carbon is no longer used for operational services and no longer needed. Notwithstanding how ATCO Gas operated Carbon during the 2001/2002 winter period, and the acknowledgement by the CG that ATCO Gas did not appear to need Carbon in the 2001/2002 winter period, the Board believes it has received insufficient evidence overall to allow it to confidently determine that the asset would not be used or required to be used in future. This is so given the Board's current understanding of historic and present technical and operational aspects of available storage facilities, including storage capacity, capacity to deliver, physical operations, interconnections with other pipeline systems, exchange and swap capabilities, peaking flexibility, and operating and maintenance costs as they affect the provision of service in the Calgary region. Comparison of information provided by ATCO Gas on degree-days and withdrawals[37], as discussed in Section 1.2 of this Decision, reveals a close correlation, indicating that Carbon has been operated in winter seasons to serve the AGS market and suggesting that Carbon is required to meet the temperature sensitive demands of the Calgary environs. The Board considers that it is clear from the foregoing historical observations that Carbon has been operated in the winter season to service the AGS market and especially in a fashion that correlates to the temperature increases and decreases and, at times, others have utilized a portion of the deliverability that AGS had reserved for its own use.

Overall, the Board considers that at present there is insufficient economic and financial evidence with which to determine that a withdrawal of Carbon from regulated service would in all events not harm AGS's customers. The Board considers that there is evidence to indicate that Carbon continues to be a used and useful regulated asset, notwithstanding there are alternatives to its use available. The status quo operation of Carbon on a prudent basis would appear to remain appropriate at the present time.

This is not to say that the Board would dismiss a future application by ATCO Gas to dispose of Carbon. The Board believes there is some uncertainty as to the degree of usefulness of Carbon. Therefore, the Board would be willing to consider a sale of the assets if certain conditions can be

35 Exhibit 3, Appendix A, Ziff Energy Group, ATCO Gas (South) Storage Study, page 19.
36 CG Argument, page 7
37 Cal-AG.18 and Cal-AG.19

met, the foremost of which is keeping the customers harmless by establishing a no-harm value. The Board would apply the no-harm principle to any future application by ATCO Gas to dispose of Carbon and would require ATCO Gas to demonstrate that the no-harm test would be met in accordance with the conditions discussed later in this Decision.

3.2 Removal of Assets from Regulated Service

Views of Interested Parties

Calgary

Calgary stated in argument that it was not advocating the disposition of Carbon. It was Calgary's opinion that if Carbon was removed from regulatory oversight the core market customer was exposed to a storage market that may not be truly competitive. Calgary stated that ownership and leasing did not provide the same advantages; that a lessee is limited to contractual arrangements, which would generally preclude intra-day changes of nominations and not allow AGS to circumvent the NGTL four-hour rule.[38] Calgary's view was that the Carbon cannot be replicated by a better alternative that is not owned by AGS.

CG

The CG noted in argument that AGS had submitted the following in its evidence of September 28, 2001:

> "That application [of July 18, 2001] requested two things: that the Board [1] approve the withdrawal of the Carbon storage facility from regulated service and rates; and that the Board [2] establish a process by which the FMV of the Carbon storage facility could be determined so that the facility could be transferred to ATCO Midstream."[39]

The CG maintained that the initial application had not requested the Board to approve the removal of these facilities from regulated service; however, the CG assumed that the more recent reference fully described AGS's position.

AGS's request for the removal of Carbon from regulated service caused concern for the CG since approval would, by definition, eliminate the regulatory oversight exercised by the Board regarding rate base assets and the ability of interveners to question the prudence of management. The CG's view was also that it begged the question as to the legal meaning and effect of withdrawing assets from regulated service. For example, the Application differed from the Viking transfer proceeding in that it was not an application to sell, lease, mortgage or otherwise dispose of or encumber its property outside the ordinary course of business, pursuant to Section 26(2)(d) of the GU Act.

The CG pointed out that the aforementioned section of the GU Act is virtually identical in terms to Section 101(2)(d) of the PUB Act. In Decision 2000-41,[40] the Board held that, in approving such a sale, it must be satisfied that the proposed transaction will either not harm customers or,

[38] 1996 Winter GCRR October 23, 1996 transcript page 60.
[39] Evidence, Exhibit #15, page 1
[40] TransAlta Utilities Corporation, Sale of Distribution Business (July 5, 2000).

on balance, leave them at least no worse off than before the transaction in terms of financial impact and reliability of service.

CCA

The CCA stated its first preference was for AGS to keep Carbon; however keeping the facilities would require a number of operational changes to ensure that the greatest economic value was derived for customers. The CCA was also concerned that an outright sale of the property would expose customers to change in the marketplace in the future. Blow down or the production of gas, which AGS considered to be base gas, may be in the best interests of customers if the net present value of the blown down natural gas was greater than the value of the third party sales. The CCA argued it could not distinguish between these two alternatives, because no third party bids had been received or were known.

Views of ATCO Gas

ATCO Gas suggested that the Board ought not to get lost in the details surrounding Carbon, but rather should elevate its gaze, look at the market as a whole and recognize that there is a vibrant, competitive storage market functioning in the province and that it does not require regulation. ATCO Gas stated that there was tremendous liquidity in this market, providing an array of new services which constantly adapt to continued market change and market requirements, citing the after hours' market as a good example. According to ATCO Gas, the Board should recognize the fact that in the future, should marketers or retailers require storage service, it can be obtained freely at competitive rates, and competitive rates means fair and reasonable rates. ATCO Gas stated that through regulation the Board was able to proxy that process.

Under the circumstances, ATCO Gas believed it was obvious that Carbon was not required to be used to provide safe and reliable utility service at fair and reasonable rates.

Board Findings

The Board agrees with the CG that the Board does not have before it an application to sell, lease, mortgage or otherwise dispose of or encumber its property outside the ordinary course of business, in accordance with section 26(2)(d) of the GU Act. The Application by AGPL is for a process to determine a value for a transfer to Midstream. The Board would expect that if ATCO Gas in future decides to enter into a transaction to dispose of Carbon in a way that meets the no-harm requirements of the Board, the next step would be an application for Board approval pursuant to section 26(2)(d) of the GU Act.

3.3 Properties Included in the Carbon Storage and Production Facilities

Issue 2 of the Board’s Issues List raised the question as to what assets, permits, rights and obligations should be considered in the context of a disposition of the storage facility and the producing properties. In addition, section 3.1 of the Board’s Issues List raised the issue of the potential for incursions and interactions between the storage reservoir and the producing properties. Various parties dealt with these issues in the hearing. For purposes of this Decision the Board will address these items in a summary fashion.

Board Findings

Under consideration here is the matter of acreage protection for the storage reservoir and the appropriate packaging of buffer lands with the storage reservoir lands to maximize value of the

storage reservoir on a sale. It is a given that a prudent operator of a storage reservoir would retain under its ownership or control a buffer land position around the storage field in order to guard against the risk of geological uncertainty. ATCO Gas indicated as much in BR-AG.14 and the Board agrees.

In addition to the risk of geological uncertainty, the Board notes that the issue of migration or drainage of the storage reservoir by ATCO Gas non-Carbon Unit wells to the south and east of the Unit was raised on the non-confidential record by the City of Calgary through the expert reports of Sproule, and was also addressed to a lesser degree by ATCO Gas' expert McDaniel on the non-confidential record.

The Board considers that if ATCO Gas intended to reduce the value of the storage reservoir on a sale, one method it might use would be to package the storage reservoir lands with inadequate buffer protection and sell any producing properties which might have drainage potential separately to a different purchaser than the storage reservoir purchaser. The Board does not believe this is in any way the intention of ATCO Gas. Its intention would appear to be quite the contrary given ATCO Gas' statement of position in BR-AG.14.

The Board believes that for present purposes the issue of packaging may be appropriately dealt with in general terms. The Board would expect to see a fully defensible land packaging proposal from ATCO Gas on any future application to sell or otherwise dispose of Carbon. This proposal would involve transfer of ownership or control of potential migration or drainage lands or wells to the purchaser of the storage reservoir.

3.4 Process to Determine the Value of Carbon

Transfer pricing is generally an issue in transactions involving a public utility and its unregulated affiliates. In Decision 2002-069 issued in respect of the Affiliate Proceeding, the Board found that FMV is the appropriate standard for asset transfers between a utility and a non-regulated affiliate, provided customers are not harmed and the sale is the prudent course of action. The parties in this proceeding appear to have adopted the FMV standard for the sale of Carbon without question. Consequently the focus in this hearing was on the appropriate process to determine FMV.

Views of Interested Parties

Calgary

Calgary's evidence was that the market value for Carbon could not be determined in a closed sale procedure as proposed by AGPL. The procedure proposed by AGPL precluded the opportunity that "special purchasers" might perceive more value to the field than might be calculated by an analyst. Further, Calgary was concerned that there are few, if any, consultants with the necessary expertise to determine an appropriate value.

Calgary believed that should the Carbon assets be removed from utility service the only way to ensure that the customer's interest was protected was through a tendering process; that this would ensure that all value perceived in the market place was realized and that value to the customer was optimized. Calgary stated that parties should also be able to bid on the cushion gas and associated company owned production as a separate package with another package including producing properties in the non-Mannville zones.

With respect to AGPL's concern about providing sensitive information to competing storage operators in an open bid process, Calgary did not believe it desirable to preclude any potential bidders. Calgary stated that an asset sale involving confidential information could have the confidentiality issues addressed through confidentiality agreements.[41]

CG

It was the CG's view that the only appropriate FMV determination process would be one where that value was discovered through a fair bid and tender process, both for storage and production properties. Furthermore, the evaluation should not be limited to an either/or proposition in the sense of Carbon as a going concern or blowdown of the storage cushion gas. The CG argued it was possible that the highest value might be some hybrid situation involving partial blowdown to a level of cushion gas that provides a more economical operation of storage, given today's values of cushion gas, as compared to the cost of additional wells and compression to create the same capability for the storage operation. Similarly, full blowdown, if gas prices are high, may create the highest value.

CCA

The CCA was opposed to the method and process proposed by the applicant to remove Carbon from regulated service. The CCA argued that in Alberta there have been many transactions of utility rate base assets in recent years[42] and many of them were conducted from a utility to an arms length unaffiliated entity. In these transactions the market at large had, in some way, set the price. It was the CCA's view that these forms of price or value discovery are methods that are preferable to customers rather than a non-arms-length transaction to an affiliate.

The CCA also submitted that it might be appropriate to use separate tests for the storage facilities and for cushion gas as well as for the producing properties.

EnCana and Unocal

EnCana and Unocal submitted that a closed sale to Midstream was not an appropriate procedure for the disposition of Carbon and the producing properties. They argued that any disposition should contain the following elements:

1. an effective date for the disposition, established in advance;
2. a binding bid or tender process;
3. a tender process open to all; and
4. a floor price for the assets, to be established in advance.

EnCana and Unocal were of the view that a disposition of Carbon by way of a tendering process open to all parties, including Midstream and existing storage owners, was the only way to ensure that a disposition occurred at FMV. They argued that disposition at FMV ensured that both the new owner's entry into the Alberta storage market had not been subsidized in any way and that any future proceedings respecting the allocation of the sale proceeds between shareholders and customers would deal with a real number established by the marketplace.

[41] AGS-Cal.54
[42] See examples CCA Argument page 26

Views of ATCO Gas

ATCO Gas noted that considerable attention was paid in this hearing to its proposal to conduct the valuation of the assets to be transferred by means of consultant evaluation rather than through a public tendering process.[43] In ATCO Gas' view, the common objective of both approaches was to ensure that FMV was received for the storage assets as well as for the producing properties. The issue, therefore, was whether FMV could be obtained through consultant evaluation.

ATCO Gas argued that FMV could be established by an evaluation based on the average of three independent consultant assessments, since such a valuation methodology is capable of determining the price the property "should bring" or its FMV.

ATCO Gas further submitted that it had not been ordered to use a tendering process in transacting with affiliates. AGS argued that while the CG pointed to the summary portion of Decision 2000-9 in its evidence as authority for the proposition that a tendering process was required to establish the value of affiliate transactions[44], this issue was addressed in cross-examination while Mr. Engler noted that the body of Decision 2000-9 does not provide a clear direction that tendering must be used.[45] Specifically, at page 154, the Board stated:

> "CWNG must be able to substantiate the FMV of all current and future transactions, with appropriate evidence and documentation. This **may** be done through a fair bid or tendering process to both third-party providers and affiliates."(*Emphasis added by AGS)*

AGS argued that while at a superficial level there appeared to be some attraction to a tendering process in order to draw out that irrational buyer, the nature of the tendering process belied that conclusion. Further, it was equally likely that parties in the storage market will not see value in acquiring Carbon and the process would yield a lower value than consultant evaluations. ATCO Gas suggested that parties in the storage market would seek to capture value for themselves through acquiring Carbon and the process would yield tenders reflecting a lower value than consultant evaluations.

ATCO Gas also noted that while it could prohibit the disclosure of confidential information by participants through execution of a confidentiality agreement, this would be of no practical use because competitors would likely be the potential purchasers, and the information would be of greatest interest to them. ATCO Gas noted these same parties had acknowledged on the record the proprietary and sensitive nature of such information.[46] A tendering process would reduce, therefore, the value of Carbon because the eventual buyer would know that competitors had participated in the process and were fully aware of the characteristics and capabilities of the facility. Consequently it would be destructive of Carbon's competitive position in the marketplace.

AGS argued that a tendering process would not produce full value related to the full range of optionality alternatives available to a commercial operator. AGS believed it went without saying that the storage operator would want to maintain significant returns if it was going to pay for this

[43] Exhibit 3, Disposition of Carbon Storage Facilities Page 4, Exhibit 15, Additional Evidence page 2.
[44] Exhibit 87 page 14
[45] Transcript vol. 7, pages 690-691.
[46] Exhibit 11, ATCO-CGSS.2; Exhibit 11, ATCO-AEC/UNOCAL.2; Transcript vol. 9 pages 1064-1066.

highly risky endeavor. The result would be a significant discount factor being used in any calculation of the present value of the future benefit stream.

ATCO Gas submitted that there were only two evaluations that were appropriate: (i) the storage facility as a going concern (which included cushion gas) and (ii) the producing properties alone. AGS contended that valuation of cushion gas as company-owned production should not even be considered.

Board Findings

The Board notes that processes by which the appropriate value of transactions could be determined were addressed during the Affiliate Proceeding. The Board notes that parties generally favoured either FMV or Net Book Value (NBV). Parties also disagreed regarding the best method for determining FMV. The Board found in Decision 2002-069 that the transfer of assets from ATCO Electric Ltd. and AGPL to ATCO I-Tek Ltd. (I-Tek) should be made at FMV. The Board's determination of the FMV of the I-Tek transfer of assets in Decision 2002-069 incorporated the evidence of consultants. The Board notes that the I-Tek transfer of assets was an actual transaction, whereas the Carbon transfer proceeding deals with a proposed transaction.

The Board notes that all of the interveners were unanimous in their submissions that the preferred method by which to establish a FMV is to offer the assets for sale by tender. To proceed as AGS has requested, relying on consultants, would not necessarily provide numbers that would determine FMV. As Mr. DeWolf stated under cross-examination with respect to the numbers arrived at by the consultant, "At best, they're a proxy."[47]

The Board considers that the position of the interveners that consultants cannot establish a true FMV is persuasive in this instance. A succinct viewpoint was presented by Mr. Liddle's comment that "… a lot of the evaluation of storage is going to be on what Mr. Simard, I think, characterized as gut feel, a subjective evaluation."[48] The Board considers that Carbon is unique. It has attributes that are not duplicated exactly by any other storage facility, such as its size, location relative to markets and pipelines, withdrawal and injection profiles, and reservoir characteristics. Since the value of an asset such as Carbon will depend on the bidder's view of a variety of future circumstances and conditions that will be unique to each prospective bidder, it is not reasonable to expect that a consultant could provide an accurate evaluation from all bidders' viewpoints. Using three consultants and averaging their evaluations suggests an expectation that there will be one evaluation that is the highest. It is difficult to prejudge whether a prospective bidder would arrive at a similar value on which to base its bid. Averaging by its nature produces a lower value than the highest possible amount and therefore may not provide a satisfactory result.

It is clear from the direction in Decision 2000-9, dated March 2, 2000, that the Board was of the view that any sale of property to an affiliate was to be done at least at FMV. The Board stated, "In selling a service or property to an affiliate, the Company must also demonstrate that the service or property is provided at no less than FMV. Only when FMV is not reasonably available in the market should CWNG (now AGPL) be allowed to exchange the service or property at the cost-based price of that service or property."[49] The Board generally considers the tender process

[47] Transcript vol. 4, page 408
[48] Transcript vol. 7, page 803
[49] Decision 2000-9 page 157

to be superior to the use of consultants. The Board believes that the marketplace is more likely to arrive at the FMV of the Carbon assets and thus in this instance it is more reasonable to determine the FMV of Carbon by the tender process.

The Board notes that transfer pricing and the various methods whereby FMV can be determined (including tendering, benchmarking, and the use of consultants) were explored further during the Affiliate Proceeding. The Board's forthcoming Code of Conduct decision is expected to address the Board's preference with respect to transfer pricing and the methods for determining FMV.

3.5 Use of a Closed Process Transfer of Carbon to Midstream

In this section the Board will review the merits of a closed process to value Carbon, which would exclude the opportunity for third parties to present proposals and would permit the transfer of the Carbon assets directly to an affiliate.

Views of Interested Parties

Calgary

Calgary argued that the simple average of estimated values prepared by consultants would not ensure that a transfer to Midstream was at FMV. Calgary contended that if Midstream accepted the transfer, we would know that the estimated value was at or below Midstream's assessment of FMV and; if Midstream exercised its right to reject the consultants assessed value[50], we would know that the estimated value was higher than Midstream's assessment of FMV.

Calgary noted that, in support of its methodology, AGS maintained that a tender process would somehow reduce the value of Carbon because it would reduce its competitive advantage because information pertaining to reservoir performance, inventory versus withdrawal curves and inventory levels would give competitors an advantage.[51] Calgary argued it was important for the Board to understand that the information listed was to a large extent available through the Board's reservoir and production data and available to the public as was noted by Calgary's witness[52].

As noted in the previous section of this Decision, it was the position of the City of Calgary that only through the tendering process could a FMV could be realized.

CG

The CG noted that a simple average of evaluations of Carbon assets through the retention of three consultants, each of whom would perform an evaluation, would be used as the FMV for transfer to Midstream. The CG argued that while there were certainly many consultants available with expertise and substantial experience that could value the physical infrastructure assets at Carbon, including the value of the blowdown of base gas, it was not clear to the CG that a similar level of expertise and experience existed within the consultant community to determine how to value the future utilization of Carbon as a storage operation. The CG believed that a forecast of the value of future utilization formed the basis of the determination of the FMV of Carbon as an ongoing storage operation. The CG acknowledged that consultants using well-

[50] Transcript vol. 5, pages 510-511
[51] Transcript vol. 7, pages 692-693
[52] Transcript vol. 8, page 926

established standards did evaluations of producing properties repeatedly and many actual transactions occurred in the marketplace to use as benchmarks. The CG argued that there was no similar established methodology for storage evaluations.

Conceptually, and for a variety of practical reasons, the CG submitted that it would not be in the public interest for the Board to approve the disposition of Carbon to an affiliate of AGS without an appropriate public tendering process.

CCA

As noted elsewhere in this Decision, the CCA stated they were opposed to the method and process proposed by AGPL to remove Carbon from regulated service. The CCA stated in argument that it would be comforted if there were some better element of valuation such as the market at large.

EnCana and Unocal

Also as noted elsewhere, EnCana and Unocal strongly favoured a public tender to the method proposed by AGPL.

EnCana and Unocal also noted a witness for AGPL had testified that, if the Board ordered a tendering process, AGPL would still likely proceed with the sale[53] and that Midstream would still likely participate.[54]

Views of ATCO Gas

AGS noted in argument that prior Board decisions had considered that tendering was not mandatory. For example, in Decision E95110, the Public Utilities Board stated:

> "The Board has not previously required that CWNG dispose of assets by public tender, and the Board does not at this time consider that the public tender process will necessarily ensure sales at or above FMV of the property."[55]

Accordingly, ATCO Gas submitted that the valuation process it had chosen complied with the spirit and intent of the Board's directions in that it would produce a FMV for Carbon and the producing properties.[56]

ATCO Gas argued that it had presented considerable evidence to establish that there was no uncertainty or inadequacy in valuing Carbon by way of consultant evaluation and that there were consultants capable of conducting the valuation. As noted in the Attachment to the Ziff Energy Study,[57] there were a large number of storage operations in North America; the attachments to CAL-AG.50 demonstrated that there have been significant expansions of and trading in the ownership of partnership and joint venture interests in storage. All of which was to show that with all of these ownership positions, all of these expansions, all the investment, it appeared that the consultant expertise to do the valuations clearly did exist in the marketplace. AGS argued

53 Transcript vol. 6, page 580
54 Transcript vol. 6, page 581
55 Decision E95110 page 9. Note-AGS had originally referenced E84090 and E84009 in error
56 Transcript vol. 7 pages 690-691
57 Exhibit 11, Tab B-4, Ziff Evidence, pages 7-8, Appendix A and B

therefore, that storage was hardly a business in which there was no other way to value the asset.[58] Moreover, a consultant evaluation would be required even if a tendering process were initiated. This was the case with the sale of the Viking assets.[59]

AGS further argued that it was in the best interests of both customers and the utility that Carbon sells for the highest possible price. AGS stated that considerable evidence had been presented establishing that tendering was not the way to achieve that result in this case.[60] AGS noted that competitor storage facilities and their owners individually are the logical bidders in a tendering process for Carbon. AGS expressed concern that confidential and commercially sensitive information would therefore be disclosed to these parties through their participation in the process. AGS argued that under the requirement to provide all prospective bidders with the sensitive information, the value of Carbon would be diminished because every bidder would know that existing storage owners would also have the information.

Board Findings

The Board acknowledges ATCO Gas' concern with respect to the sensitivity of certain information that would be disclosed in a tendering process. However, the Board also notes that the witnesses for Calgary were able to assemble and analyze the Carbon field and producing properties with apparent reasonable accuracy using public information available through the Board. The Board is not persuaded that the ATCO Gas concerns expressed about confidentiality are sufficient reason to avoid a public tender process. The Board expects that ATCO Gas would use confidentiality agreements on commercial terms with prospective buyers to allow them access to data as is typically done in the industry.

Further, the Board directed in Decision 2000-9 and in Decision 2002-069, that asset transfers between a utility and non-regulated affiliates must be at FMV, which the Board in this instance, considers can best be achieved through public tender. The Board finds that it would not be appropriate to permit a transfer to Midstream through a closed process.

Consequently, a condition that must be met by ATCO Gas, if it desires to sell, is that Carbon must be sold by public tender. The Board recognizes that there are different tender processes that can be used in transactions and considers that it will be necessary to receive recommendations from ATCO Gas prior to any sale as to appropriate tender design. Therefore the Board directs ATCO Gas to submit recommendations on tender design for approval before proceeding with a sale process. The Board expects the tender process would adhere to certain general characteristics. The Board believes that the process must be reasonably transparent. The tenders should be submitted in the form of a closed bid by a preset deadline, to be opened in the presence of interested parties and a representative of the Board. The final bids should be binding and submitted subsequent to the bidder substantially completing its due diligence. The highest, least conditioned bids would be given preference, and all bids could be rejected by ATCO Gas. The Board believes at present that the preferred bid value would at minimum be equivalent to the blow down value of the cushion gas.

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[58] Affiliate Exhibit 131: CAL-ATCO.120(a); Transcript vol. 7 pages 799-804; Affiliate: CROSS-AG.4; Affiliate Exhibit 22: CAL-AG.50; Affiliate: CAL-ATCO.85

[59] Exhibit 106, ATCO Gas Rebuttal Evidence page 14

[60] Exhibit 106, ATCO Gas Rebuttal Evidence pages 14-15; Transcript vol. 6 page 578-581, Transcript vol. 7, pages 691, 693, 731, 732

The Board acknowledges that the ATCO Group has stated that it would like to remain in the storage business. Therefore, the Board also agrees with the interveners that Midstream would be an eligible bidder, but should be afforded no special treatment.

Following selection of the preferred final bid, ATCO Gas would make application for the sale of Carbon in a public proceeding. This proceeding would address the no-harm value. If the bid did not meet the no-harm value, the Board would not approve the disposition. If the bid exceeded the no-harm value, the proceeding would also address the allocation of proceeds between the shareholders and customers.

The Board expects that it will hear submissions as to the appropriate sharing of proceeds based on arguments brought forward in a number of recent proceedings. In addition, the Board would be prepared to entertain submissions to the general effect that it should use its broad powers to condition its decision to strike a balance of fairness between utility shareholders and utility customers.

3.6 No-Harm Test

In this section the Board will focus on the method used to address and mitigate the prospect of possible harm to customers in the event that the approval to dispose of regulated assets is requested, in this case Carbon.

Views of Interested Parties

Calgary

Calgary took the general position in its evidence that the issue was not safe and reliable service, rather it was safe and reliable service at the lowest reasonable cost. Calgary submitted that without Carbon it would be impossible for AGS to provide safe and reliable service at the lowest reasonable cost.

Calgary argued that one advantage of retaining Carbon versus alternatives was the operational flexibility, including control of required daily volumes when needed at a cost certain. Calgary claimed that this reduced the retail core market customer risk related to price volatility especially in a high priced market. Calgary was of the view that replicating the operational flexibility of Carbon was difficult at best except under a 100% spot gas purchase strategy which Energy Objective’s evidence showed was less beneficial in the long run to customers than paying for the use of the Carbon facility.

A second advantage, argued Calgary, were the benefits resulting from the ability to change withdrawals at any time during the day so as to avoid having to either purchase more gas or to sell more gas if the weather fluctuates. This flexibility was not easily replicated through third party arrangements although the market could be relied upon at some cost.

A third operational advantage related to the contract with ATCO Pipelines South (APS). Calgary argued that the use of Carbon should allow AGS to contract for less capacity on APS and thus reduce its costs.

Calgary was of the view that the information it had put together indicated that with the appropriate revenue credits, the storage for AGS could be provided at little or no cost and in some years at a negative cost.

Calgary argued that to the extent that there was in fact surplus capacity at Carbon, third party operational arrangements could be entered into by ATCO Gas and if those operational arrangements were priced at market based rates (subject to open season bids) then the customers of ATCO Gas would be assured that they were receiving fair value for the surplus capacity. Calgary stated that leasing of surplus capacity to one party without the benefit of market input exposed the customer and the shareholder of ATCO Gas to the potential loss of income that a market based approach might provide. Calgary noted that under the existing arrangements the shareholder was not exposed to any potential loss, because any loss of revenue was borne by the customers, while Midstream, which the shareholder also owns, got the benefit of the storage at rates which had not been set in the marketplace.

Calgary argued that for at least as long as AGS provided the merchant function to its customers, the Carbon storage facility as a legacy utility rate base asset should be used for the benefit of rate payers regardless of the degree of competitiveness exhibited by the storage market. On the other hand, the determination of benefit arising from the discontinuation of the storage operation would have to exceed the long term benefit of storage and some future value of blowing down the cushion gas (one would assume that the present value of the blow down scenario would be the driving force behind discontinuing storage).

Calgary stated that should the Board decide that the storage and/or production assets are to be removed from regulatory service, the customers must be sheltered from all harm that would result from such action. This harm included the total FMV adjusted for asset related costs and AGS'S administration and overhead costs as outlined in the Sproule report[61]. Calgary believed that all value related to this asset rested with the customer.

Calgary argued that the production of indigenous supplies was of value to customers as this production displaced the gas purchases at market prices and that the value of the storage operation as a going concern also rested with the customer. When cushion gas is produced, the entire value of that asset flows to the customer via the DGA. This position was confirmed by the Board in Decision 2001-110 which stated:

> [I]f the alternative selected involved the production of base gas, the Board agrees with Calgary that the volumes produced would be part of the gas supply, treated as COP, and would be dealt with in the DGA process.[62]

Calgary noted that the liability for all costs associated with the Carbon reservoir including royalty costs on production, the cost of protective acreage to prevent third party drainage of cushion gas as well as all other asset related and operating costs were the responsibility of the ratepayer. Further, AGS had always recognized these costs as costs to be borne by the ratepayer.

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[61] Sproule Associates Limited, Methodology for the Determination of Value for Carbon Storage and Production Assets, Discussion Section A.2, page 6

[62] Decision-2001-110, Methodology for Managing Gas Supply Portfolios and Determining Gas cost Recovery Rates Proceeding and Gas Rate Unbundling Proceeding, Part B-1: Deferred Gas Account Reconciliation for ATCO Gas, page 18

When there was the potential for the Alberta government to charge royalty on indigenous gas reserves used for cushion gas, AGS naturally expected to transfer this cost to ratepayers. The only reason it was not charged to customers was because the cost was not incurred.

Calgary submitted that the scenario most likely to produce the lowest no-harm value appears to be one that would contemplate the blow down of the storage reservoir such that the base gas is produced as COP (based on Calgary's evidence the net present value would be approximately $90 million)[63]. Other scenarios, which would contemplate a delayed blow down preceded by a period of continued use as storage, could produce benefits that would result in a no-harm value that exceeds the aforementioned minimum value (based on Calgary's evidence the net present value would have a range of $106 - $191 million, depending on how long the blow down was delayed)[64].

CG

The CG noted as indicated in Decision 2001-46, the Board in Decision 2000-41,[65] "recognized that it should conduct a balancing of both the potential positive and negative impacts of the transaction *to determine whether it is in the overall public interest."* Specifically, the Board stated:

> "As a result, rather than simply asking whether customers will be adversely impacted by some aspect of the transaction, the Board concludes that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance favours customers or at least leaves them no worse off, having regard to all of the circumstances of the case. If so, then the Board considers that the transactions should be approved."[66]

The CG also noted that the Board went on to state that some form of mitigation might be necessary to ensure that customers were left at least no worse off.[67] The CG argued that this was to be distinguished from any subsequent process employed for the sharing of proceeds between customers and shareholders of the utility.

The CG noted that AGS took the position that removal of Carbon storage from regulated service would not result in harm to customers, because there were no identifiable long-term benefits and supported its position by reference to the 2001/2002 winter season where Carbon storage was not required for "operational purposes". The CG argued that the AGS position constituted a very narrow definition of "harm" and did not reflect the loss of value to customers in evolving market circumstances.

The CG argued that the Carbon storage assets to be transferred could only be valued for the purpose of the "no-harm" test based on a calculation of the loss to customers of future benefits. The CG stated that this was essentially the same in conceptual terms as the process for

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63 Sproule, Methodology for the Determination of Value for Carbon Storage and Production Assets (As of January 1, 2002), page 13
64 Ibid
65 TransAlta Utilities Corporation, Sale of Distribution Business (July 5, 2000).
66 Decision 2000-41, page 8
67 2001-46, page 12

determining harm in the Viking disposition proceeding. The CG stated that the calculation requires consideration of the maximum future value of Carbon assuming it continued to be owned as a utility rate base asset, having regard to its best utilization reflecting the changed and evolving market circumstances. The CG considered that future utilization could involve one or more of the following aspects:

(a) A storage facility capable of a blended use of serving AGS customers and third parties (i.e. a continuation of present utilization practice).
(b) 100% utilization of the facility in an aggressively managed fashion to capture full optionality values and therefore create maximum savings to customers or revenue credits to the cost of service if the same use was provided.
(c) On a contract basis with third parties.
(d) A source of COP or portfolio gas through the sale or use by customers of all recoverable cushion gas reserves including the remaining value of the storage infrastructure when production of cushion gas was completed.
(e) Some hybrid mode of operation wherein a combination of the above uses creates the highest value.

The CG argued that AGS had the initial burden of both identifying and evaluating the maximum "no-harm" amounts and interveners, such as the CG, would file their interpretations of these "no-harm" tests. The CG's view was that ultimately the transfer to an affiliate or a sale to a third party must produce sufficient proceeds to prevent harm to customers as determined by the Board.

The CG submitted that the most important and appropriate direction that the Board could give with respect to the "no-harm" test was that it must take into account the future highest value use of Carbon in exactly the same manner as the Board did in Decision 2001-46 and Decision 2001-65.

CCA

The CCA submitted that a calculation of a no-harm test must be done at a specific point in time against a specific sale, offer or proposal. For example the CCA noted that discount rates vary with the general interest rate levels, and natural gas prices vary significantly at varying points in time. The CCA argued that the appropriate time frame of the no-harm standard was as of the date of the sale or transfer closing, and that the calculation of no-harm must include the full value of all aspects of Carbon, including, but not limited to, seasonal and operational storage, parking, swaps, peaking, exchange service, transportation costs minimization, purchasing, load and factor improvement, blow down of cushion gas, and third party contracts.

The CCA considered that there was greater operational flexibility with Carbon than without. The removal of Carbon from rate base, by the very nature of Carbon, will reduce the availability to ATCO Gas of sources of natural gas.

Views of ATCO Gas

ATCO Gas noted that the Chairman set out the issues that the Board would address in this phase of the hearing process at the outset of the hearing. AGS stated it did not include the determination of the "no-harm" value, which would be addressed in the second phase should the Board approve the removal of Carbon from regulation. While AGS believed it was inappropriate

to delve into the details of the no-harm calculation in this phase of the proceeding, it noted that customer rates would decrease as a result of removing Carbon from regulation.

It was the view of AGS that as a matter of principle, the Board had applied the no-harm test in other applications in a way that compared ongoing costs to ongoing benefits to determine a net benefit/cost.

ATCO Gas submitted that the methodology used in the Carbon matter should be the same, with no-harm determined by comparing annual costs to annual benefits on a go forward basis. It was AGS's opinion that the costs and benefits should reflect continued utility service, not competitive storage options.

AGS argued that the suggestion that Carbon storage was "financially sensible" was only supportable if ATCO Gas accepted that it would have to undertake a program to capture as much value from intra-seasonal optionality as possible.[68] ATCO Gas reiterated its position that these types of activities represented a radical change of use for Carbon storage, were not appropriate for utility service, and had in fact, been prohibited most recently in Decision 2001-75. ATCO Gas argued that it was not and should not be required to "beat the market". ATCO Gas submitted that its position was captured succinctly by Mr. Engler as follows:

> "I think we've been pretty clear in our filed evidence that, from our perspective, there is no harm to customers as a result of removing Carbon from utility service. In essence, if you just think of the Viking example, as a result of selling Viking, rates went up; as a result of removing Carbon from utility service, rates will go down."[69]

and:

> "There's nothing magic about Carbon. I guess what I'm saying is, if the Board wants us to have storage, then let's go to the marketplace and let's buy some storage. Let's not assume that Carbon is the storage facility that we have to be in, because it's not."[70]

ATCO Gas also submitted that the valuation of cushion gas (or "base gas") would be considered as part of the overall evaluation of the storage business undertaken by the three consultants.[71] AGS stated that, under that process each of the consultants would be afforded access to ATCO Gas' confidential reservoir data, costs and other information relevant to the valuation. Each consultant would generate its own assumptions regarding the capabilities and costs of the storage field and producing properties under a blowdown scenario.[72]

ATCO Gas did not believe that the blowdown of cushion gas was appropriate. ATCO Gas considered that the cushion gas at Carbon was intrinsic to the storage business at Carbon. As such, the value of the cushion gas could be separated from the value of the storage business. ATCO Gas argued that to direct the Carbon blowdown was tantamount to directing the destruction of the Carbon storage business.

[68] Transcript vol. 8 page 849
[69] Transcript vol. 6 page 603
[70] Transcript vol. 7 page 682
[71] Decision 2001-75 Section 6.4.2 page 95.
[72] Transcript vol. 5 pages 505, 506, 507

Board Findings

When dealing with the sale of regulated assets the Board has established the no-harm standard, which was discussed at length in Decision 2001-65, dated July 31, 2001.[73] The practice of the Board to establish a no-harm value, which must be exceeded by the proceeds to be distributed to customers, is to ensure that customers will be no worse off than they would have been if the asset(s) was retained.

A utility is faced with making choices between alternatives in its normal course of doing business. There are a number of examples where alternatives exist and are evaluated on an ongoing basis to determine the economic choice that will be of benefit to customers, such as leasing or owning a fleet of vehicles, heavy equipment, office space, and communication towers. In such cases where an asset is not yet owned, a company will make a buy or lease decision based on the economics. For a gas utility, even the investment in new pipes is subject to economics where it will not always invest 100% of the capital, but will require a contribution by third parties to meet an economic criterion of not harming existing customers. In a case where the asset is already owned, an economic evaluation is made of alternatives to assist in choosing the alternative that will not harm the customers. In this case, Carbon provides a service that has been and could continue to be beneficial to customers. ATCO Gas has proposed that owning the asset is no longer necessary as other alternatives now exist that can replace Carbon. Accepting that alternatives exist, it would be reasonable to measure the value the customers must receive in order to dispose of the asset in favor of using an alternative. In essence, the no-harm evaluation which the Board uses is the economic test to establish a threshold value for the minimum net proceeds of a sale which should be available for distribution to the customers. The amount of proceeds must meet or exceed the no-harm threshold in order for the sale to be approved. If the no-harm threshold cannot be met, then it follows that maintaining ownership provides the customer with the greatest economic benefit.

When Carbon was first established as a storage facility in 1968, it was at a time when alternatives to storage did not exist, and to facilitate the need for cushion gas the production of the indigenous gas was suspended. In effect, customers forwent company-owned production (COP) from Carbon in order to accommodate the conversion of a producing field to a storage field without the need to inject base gas. It was also recognized that CWNG did not require the entire working capacity of the facility. When utilizing an existing reservoir for storage it is not always possible to perfectly match the utility's requirement with the capacity of the storage facility, especially when proximity to the market is a major consideration. Indeed, Carbon has always accommodated third party storage. Today, the Board and interveners agree that there are alternatives to Carbon. However, as indicated earlier in this Decision, the presence of alternatives does not preclude Carbon from continuing as a "used and useful" asset. The Board previously accepted Carbon as used and useful[74], and considers that it still retains used and useful characteristics. However, as stated earlier, the Board does believe there is some uncertainty as to the degree that Carbon is required to be used. Therefore, if ATCO Gas wishes to sell Carbon and as a result have it removed from regulated service, it must persuade the Board that there is no detrimental impact on its customers (no-harm) that cannot be mitigated.

[73] Sale of Certain Petroleum and Natural Gas Rights, Production and Gathering Assets, Storage Assets and Inventory, pages 8-11

[74] Decision 2000-9, page 42

The Board notes Calgary's position that the scenario that would likely produce the lowest no-harm value would contemplate the blow down of the storage reservoir such that the base gas is produced as COP. Based on the evidence of Calgary's expert, the net present value would be approximately $90 million[75]. Other scenarios, which would contemplate a delayed blow down preceded by a period of continued use as storage, could produce benefits that would result in a no-harm value that exceeded this minimum value. Calgary's expert indicated that the net present value would have a range of $106 - $191 million, depending on how long the blow down was delayed[76].

The Board notes, however, that ATCO Gas does not agree that customers should receive any value from the base gas. The Board is not prepared to accept this position of ATCO Gas at this time. In proceeding with the next phase to finalize a transaction, the Board believes that ATCO Gas must be prepared to address the position that the base gas value would be considered in the determination of the parameters for and the calculation of the no-harm value. It appears to the Board that ATCO Gas would have to address the argument that base gas could be produced (actually or by displacement), delivered to customers as COP and the benefit distributed in accordance with the COP Rider mechanism as directed in Decision 2001-75.

Normally, the Board would expect the no-harm threshold to be determined in conjunction with a request for approval of a sale that included a firm price from a willing buyer.

The Board recognizes that a no-harm value is derived using information and assumptions available at the time and the value would therefore only be applicable for a short period. This fact makes it appropriate to establish the actual no-harm value at the time a sale transaction is contemplated.

It is clear to the Board that establishing a no harm value could be a complex calculation requiring experienced judgment to set the assumptions that would underpin the calculation. ATCO Gas suggested that the services of three consultants could be used to calculate FMV, with the chosen FMV being the average of the three submissions. If all interested parties can agree, the Board is willing to consider a similar process to calculate a no-harm value. The value might also effectively be established by a negotiated settlement among interested parties.

3.7 Matters Brought Forward from the GRA and Affiliate Proceedings

GRA Issues

This section of the Decision deals with GRA-related issues in the Carbon Transfer Proceeding. In a letter dated April 2, 2001, ATCO Gas requested that all affiliate transactions arising in the context of the ATCO Gas 2001/2002 GRA be deferred and heard as part of the ATCO Affiliate Proceeding. ATCO Gas attached to that letter information identifying the affiliate transactions that ATCO Gas proposed be moved to that hearing, including the following items related to Midstream for the 2001/2002 test period.

[75] Sproule, Methodology for the Determination of Value for Carbon Storage and Production Assets (As of January 1, 2002), page 13
[76] Ibid

	Forecast 2001	($000) 2002
Revenue		
Office Services	11	11
Gas Storage	12,120	13,920
	12,131	13,931
O&M		
Gas Management	500	500
Gas Storage Services	950	950
	1,450	1,450

Subsequent to the filing of the April 2, 2001 letter, ATCO Gas filed its application on July 18, 2001 to seek approval to withdraw the Carbon Storage Facility from regulated service and rates. In light of that application, the AGS 2001/2002 GRA matters were deferred from the Affiliate Proceeding to the Carbon Transfer Proceeding.

Forecast Revenues

This section of the Decision deals with the appropriateness of the fee charged by AGS to Midstream for the uncontracted capacity at Carbon, and with issues related to the termination of the Firm Service Gas Storage Agreement between Northwestern Utilities Limited (NUL) and CWNG dated February 1, 1993 (the "NUL Agreement").

Views of Interested Parties

Calgary

Calgary noted that Decision 2000-9 found that CWNG was deemed to have received $0.32 for the non-contracted capacity sold to Midstream's predecessor, ATCO Gas Services. Calgary also noted that the value of $0.32 was originally supported by the Ziff report, and was specifically filed to address the long-term lease arrangement proposed with Midstream for the Affiliate Application. Calgary pointed out that, in the Board's letter of December 21, 2001 the Board advised AGS that Decision 2000-9 had not determined the appropriate value for storage for any year other than the 1998 test year. Calgary indicated that the Board also advised that it was for AGS to establish the prudent rate in the context of the present application, and that AGS may find it necessary to file further information.

Calgary referred to its testimony in the Affiliate Proceeding which indicated that regulated utility transactions with an unregulated affiliate should always be at the higher of cost or market. Calgary pointed out that, in Decision 2000-9, the Board strongly suggested that storage services and the addendum to Gas Service Storage Agreement between CWNG and Midstream, dated December 15, 1999 (Uncontracted Capacity Agreement) should be tendered. Calgary stated that, while Midstream has paid slightly less than cost (based upon the 1998 cost of service study) in the last few years, this does not mean that ratepayers have received market compensation. Calgary considered that, to the extent that a below market rental fee for the uncontracted capacity has allowed Midstream to achieve profits, ratepayers have not participated in these profits generated from the rate base asset. Calgary stated that the potential value (excluding operating costs) to Carbon's customers ranged from $0.62/GJ on a long-term basis (10 years) to $5.40 on a short-term basis.

Calgary stated that current long-term market based storage rates ranged from $0.42/GJ to $0.74/GJ, noting that EO had submitted that these rates exceeded the current cost of service to Carbon's customers of $0.33/GJ. Calgary considered that the methodology used and the price of $0.32 used by AGS and purportedly supported by Ziff Energy's evidence was inconsistent with proper storage valuation.

Calgary pointed out that Ziff Energy was retained to evaluate the price to be paid under a 10 year lease, not the short term Uncontracted Capacity Agreement. Calgary stated that Ziff Energy's sole reliance on historical data to determine future storage value was refuted by AGS's other experts, Mr. Simard and Mr. DeWolf. Calgary noted that these experts admitted that the historical methodology was inappropriate for short-term future storage value determination. Calgary submitted that, in the absence of a market based price determined through an open season method, a more appropriate process would involve an ex-ante approach as presented by EO in evidence. Calgary pointed out that EO's evidence indicated that Midstream could have benefited to the extent of $3.04 per GJ ($3.36 net of $0.32 paid to AGS) for the capacity for the 2001/2002 storage year. Calgary noted that this amount excludes the optionality value.

Calgary indicated that AGS could have received a portion of the value of $3.77/GJ ($4.09 net of $0.32) in an open season determination conducted for both the 2000/2001 and 2001/2002 storage seasons. Calgary submitted that, for the 2002/2003 storage year, the revenue from Midstream should be a minimum of the summer/winter differential of $0.84/GJ[77], recognizing that this amount does not reflect the benefits of operating the storage field, nor the optionality value.

Calgary submitted that the revenue requirement should be credited for the cancelled NUL Agreement, stating that no prudent party would allow termination of a long term arrangement without some form of compensation. Calgary stated that the revenue from the NUL Agreement, absent the actions of AGS, would have been a credit to the 2001/2002 revenue requirement. Calgary pointed out that the agreement had a 20-year term with a 5-year termination notice. Calgary noted that AGS had indicated that the value of the storage would be $1.36/GJ for 2001/2002 and $0.45/GJ for 2002/2003. In 2000 the revenue recorded was $4.073 million. Calgary submitted that the unilateral termination of this contract has deprived AGS customers of a significant gross revenue benefit of $12.24 million for 2001 and $4.05 million for 2002. Calgary noted that, compared to the $0.32/GJ used in the 2001/2002 AGS GRA, the net loss to AGS ratepayers was $9.36 million in 2001 and $1.17 million in 2002.

CG

In the opinion of the CG, valuations that result in extreme values (i.e. negative or in excess of $1.00/GJ) are not reasonable and would not be entered into in the real market place. The CG stated that, in the same manner as the Board had originally adjudicated a price of $0.32/GJ by reference to the actual market prices in the 1997/98 GRA proceeding, a value for years 2000/2001 and 2001/2002 should be similarly tested against the best evidence available of actual market transactions. The CG stated that evidence was placed on the record that the price paid for third party storage contracts obtained by AGS on behalf of its customers for the 2001/2002 year was $0.17/GJ. While the CG took no issue that this was a real price for real storage equivalent service, the difficulty with that price was that it reflected a value for storage with limited flexibility (e.g., without optionality) that was not in any way comparable to the values inherent in

[77] As discussed at Transcript vol. 1 page 180

the more flexible capacity made available to Midstream under the Uncontracted Capacity Agreement. The CG stated that this was particularly true for the 2001/2002 storage season when the full 43.7 PJ of capacity was made available to Midstream.

The CG stated that a better price reference would be that provided by Calgary based on the AECO C storage rate calculator. The CG noted that Mr. Walsh offered the view that $0.65/GJ was a reasonable interpretation of an average result that could be obtained from this calculator and that this result would be clearly a benchmark for actual negotiations for full-service storage in the marketplace. The CG noted that it was Mr. Walsh's opinion that this was a reasonable basis to determine the market value of storage at a point in time in advance of the actual storage season. The CG recommended that the Board fix the price within a range of $0.17 to $0.65/GJ, but with a clear and significant weighting to the upper end.

With respect to the NUL the contract, the CG noted that the agreement allowed NUL to store "up to a total of nine (9) PJ" of gas, and that the contract arrangement was terminated, by mutual agreement, effective April 1, 2001. The CG quoted AGS evidence that the pricing provisions of the NUL Agreement were based on market conditions existing in the early 1990s. The CG referred to AGS's comment that, with the recent run up in gas prices, the price falling out of the formula in the contract was not a market price, and that any third party storage holder of such a contract would be seeking similar relief. The CG noted that, based on the contract lease rate of "fifteen percent (15%) of the previous Contract Year IAURP", the storage rate would have been as high as $1.36/GJ. The CG considered this well out of the market and noted that AGS had taken the position that the $0.32/GJ charge paid by Midstream represented the appropriate compensation for the 9 PJ of storage capacity.

The CG noted that the NUL Agreement could be terminated at law by mutual consent, and submitted that no minimum storage quantity was specified and, during the term of the contract, NUL was not obliged to put any gas in storage. The CG stated that, although NUL had the ability to store up to a total of 9 PJ, lease payments were based on actual injections, which could be nil, and submitted that the issue for the Board to determine is whether it was prudent for CWNG and NUL to terminate this contract. The CG indicated that clearly, customers were not involved. The CG stated that it would be unfair to suggest that AGN (NUL) customers should be responsible for any real or perceived loss of revenue, and submitted that, if the Board determines there was lack of prudence, any required compensation to AGS customers should be borne by shareholders.

CCA

The CCA considered that the 2001/2002 storage revenue forecast was understated. Assets in rate base should be credited with all revenues associated with those assets. These revenues should include, but not be limited to, all amounts associated with seasonal and operational storage, parking, swaps, peaking, exchange service, transportation costs minimization, purchasing, load and factor improvement, blow down of cushion natural gas, and third party contracts.

Edmonton

Edmonton considered that the NUL storage contract was reasonable and prudent at the time it was entered into, given the climate of the industry in 1993, and despite not having been involved with termination of the contract, Edmonton's view was that termination was reasonable and prudent. Edmonton submitted however that, if the Board determines that the termination was not

reasonable or prudent, any increase in rates experienced by AGS ratepayers as a result of Edmonton ratepayers no longer paying storage charges should not be a cost borne by Edmonton ratepayers. Edmonton stated that its ratepayers derived no benefit from having storage available after the date of termination and were in no way involved with decisions made with respect to the contract. Accordingly, Edmonton stated that its ratepayers should not be responsible for compensating AGS customers for any increase in rates caused by a loss of third party storage contract revenue credits to the Carbon cost of service. Edmonton noted Calgary's acknowledgement that the contract was considered appropriate even though the pricing mechanism resulted in NUL obtaining storage at a price that was less than the Carbon cost of service in some years.[78] Edmonton submitted that, even though the price of the storage per the contract formula in those years may have been somewhat low relative to the Carbon cost of service, it had not been shown to be significantly out-of-market.

Edmonton considered that the issue with the NUL Agreement was whether the termination of the contract was a reasonable and prudent action. Edmonton pointed out that AGS's evidence was that there was no longer any need for third party storage in the AGN portfolio. Edmonton noted that this decision was made at the same time as the decision with respect to eliminating the use of storage in AGS, resulting in the proposal by AGS to remove Carbon from utility service and lease 100% of the capacity to Midstream.

Edmonton considered that the timing of the decision to terminate the contract was important, since the contract was terminated before the high gas prices in the winter of 2000/2001 had actually occurred. Edmonton considered therefore that the termination decision could not have been made primarily on the basis of the pricing provisions in the NUL Agreement, but rather on the fact that AGS had determined that storage was no longer required for utility service as a general principle. Edmonton stated that, as events unfolded with the very high prices in the winter 2000/2001 season, the pricing provisions in the NUL Agreement that were based on market conditions in the early 1990's created prices in the contract that did not reflect a market price. Edmonton submitted that this provided additional support for the appropriateness of the decision to terminate the contract. In Edmonton's view, this decision was reasonable given that pricing terms were significantly out of market, and accordingly termination was a reasonable and prudent course of action and one that customers would have also expected the companies to make in an arms length situation.

Edmonton submitted that continuing with the NUL Agreement would have been imprudent and would have resulted in a major transfer of revenues from AGN customers to AGS customers for no discernable public interest benefit viewed from a total ATCO Gas service area perspective. In contrast to Calgary's position, Edmonton considered that AGS acted reasonably in weighing the relative impacts to the two customer groups. The negative aspects of a substantial out of market storage price premium to the 2001/2002 costs for AGN customers, for storage not actually used, far outweighed the perceived benefits to AGS customers arising from windfall revenue that has little or no relationship to the actual cost of gas or its delivery.

Edmonton referred to Calgary's claim that AGN customers should pay $12.24 million in storage costs for the storage year 2001/2002 and $4.05 million for storage costs for the storage year 2002/2003. Edmonton noted that Calgary based its claim on what it saw as an entitlement that

[78] Transcript vol. 8 page 913

AGS customers enjoy as a result of the revenue generated by the NUL Agreement.[79] Edmonton did not accept the existence of any such entitlement. Edmonton noted that, in response to a question whether there is any provision in the NUL Agreement for a minimum physical amount of injection or withdrawal annually, Mr. Engler replied that there was no minimum specifically identified.[80] Edmonton stated that the only reference to quantities in the NUL Agreement was to NUL taking up to 9 PJ[81] and paying according to a formula based on the Contract quantity stored at Carbon. Edmonton stated that taken together, these facts tend to indicate that the physical operation and operability of the storage facility were not dependent on the NUL commitment, and that there was an expectation of a reduction in terms of the volume of storage that NUL would actually use in any specific year. Edmonton stated that the contract did not provide any certainty of AGS customers being entitled to a full (or any) revenue stream when storage was not used or was used to a lesser extent.

Edmonton stated that AGN customers did not receive any service after the termination of the NUL Agreement and it followed that it would be unreasonable for them to pay for a service they did not receive. Edmonton submitted that, if the Board should find that the parties to the contract were imprudent in their termination of the contract, any financial implications should ultimately be the responsibility of the parties to the contract. In this regard, Edmonton noted Calgary's statement that if the contract termination is found to be imprudent, it does not matter who provides the credit to the AGS revenue requirement, but that it is reasonable that management of ATCO Gas should be responsible for any compensation to AGS customers. Edmonton stated that it should be remembered that AGS customers would still receive revenue for the storage capacity that AGN did not use in the 2001/2002 and 2002/2003 storage years. Edmonton indicated that this revenue would arise through the Midstream contract at a rate that will be adjudicated by the Board.

Views of ATCO Gas

AGS stated that, in its 2001/2002 GRA application, it developed its storage revenue forecast based on the assumption that Carbon would be leased to Midstream effective April 1, 2001. AGS noted that, in addition, AGS provides office services to Midstream, and that the forecast revenue for this service was $11,000 for each of the test years. AGS submitted that interveners took no issue with this forecast and that it should be approved by the Board.

AGS indicated that it operates with Midstream under the Gas Storage Services Agreement entered into on February 20, 1998 between CWNG and ATCO Gas Services Ltd. (now Midstream) (the "Gas Storage Services Agreement"), which reflects the arrangement as it stood at the time of filing its Affiliate Application on July 21, 2000. AGS pointed out that, on January 15, 2001, the agreement was extended for a period of one year, and that apart from changes to the term, the agreement currently in effect is the same as that found in the Affiliate Application at the price approved by the Board in the CWNG 1998 Phase I GRA.

AGS indicated that, consistent with the requirement for prospectivity in ratemaking, AGS was required to determine appropriate storage prices for the 2001/2002 period on the basis of price forecasts. AGS indicated that the Ziff Report set out an appropriate price forecast for the 2001/2002 period based upon certain assumptions, one of which included the long-term lease

[79] AGS-CAL.12.
[80] Transcript vol. 6, page 614
[81] Exhibit 156, Article 2.1.

proposal. AGS considered that it was appropriate to rely on this price forecast, which was based on certain assumptions including the long-term lease proposal, as forming the basis of pricing for storage for the period in question. AGS pointed out that the price ($0.32/GJ) was "the price and arrangement stipulated by the Board in the 1998 Phase I GRA".

AGS stated that the $0.32/GJ fee was derived from both the Ziff study filed in the Affiliate Application and the Board's determination that a $0.32/GJ rate was the appropriate fee for the Uncontracted Capacity Agreement in the 1998 Phase I GRA.

AGS noted that the Board used "firm, long-term service" storage contracts to determine the value of storage services under the Uncontracted Capacity Agreement in Decision 2000-9. AGS stated that the Uncontracted Capacity Agreement had been put before the Board in the 1998 GRA proceeding and was approved, except for price and pricing methodology.

AGS considered that normally the Board and interveners would expect AGS to reflect the last approved uncontracted capacity rate in its financial information for utility purposes until the Board directs the change in a subsequent hearing. On this basis, AGS noted that the Board and interveners would expect that same rate to be reflected in its 1999 and 2000 utility financial results, and would only change once the Board considered new evidence at a subsequent hearing.

AGS indicated that Mr. Engler also explained the reasonableness test that AGS applied to the determination of the rate.[82] Mr. Engler stated that, if the pricing methodology found on Schedule B of the previous contract for the 2000/2001 storage year[83] was applied to the next two contract years, the average of the two years would have produced a number less than $0.32/GJ. Accordingly, AGS submitted that in fact, customers benefited. AGS submitted that the long-term price of $0.32/GJ, which is methodologically consistent with the long-term valuation used by the Board in Decision 2000-9, well exceeds the market price, to the clear benefit of customers. AGS considered that, while the market price for 2002/2003 may be higher, the price over the two test years is reasonable. AGS stated that the forecast had to be made at the time of the filing of the GRA, not in hindsight.

AGS stated that, despite its analysis, interveners proposed and the Board approved the contracting of third party storage (11 PJ) at various load factors at a substantially lower average cost (approximately $0.17/GJ) than the owning and operating cost of Carbon. AGS pointed out that the Uncontracted Capacity Agreement is an addendum to the Gas Storage Services Agreement.

AGS stated that for the test year 2002, the ten-year rolling average would increase due to the abnormal summer/winter differential that occurred in 2000/2001, but would be capped at a 20% increase on the $0.24/GJ, the previously calculated 10-year average. AGS indicated that this results in a value of approximately $0.29/GJ. Added to this amount would be the suggested 33% optionality value for a total storage transfer price approximately equal to $0.38/GJ for the 2002 test year.

AGS stated that EO's value of up to $5.40/GJ is completely unreasonable and based upon hindsight analysis of selected seasonal differentials rather than information that existed at the

[82] Transcript vol. 5, page 476
[83] Exhibit 11, Affiliate Application Volume 4 Tab A-2.

time of the filing. AGS stated that Ziff Energy could have demonstrated that the EO approach would have yielded values less than $0.32/GJ in a number of years, using a similar analysis. AGS stated that EO could have based the one-year storage value on the average seasonal differential forecast during February/March 2001, which would have yielded a storage valuation of negative $0.18/GJ. AGS considered that utilizing a combination of actual and forward prices on December 21, 2001 (EO's dated report), the 2001/2002 one-year seasonal differential could have yielded a value of negative $1.60/GJ. AGS stated that depending on the strategy undertaken, swings from the high positive values ($5.40/GJ) to large negative values (-$1.60/GJ) could be observed, and submitted that EO was incorrect in asserting that it has used the same methodology as that used in Ziff Energy's February, 2001 report to establish a long term price. AGS stated that the premise that anyone could have recovered $3.36/GJ for the use of Alberta storage over the past winter is impossible to reconcile with market reality. Specifically, AGS indicated that the extraordinary values of $4.09/GJ and $3.36/GJ were approximately twenty times higher than the price that was actually obtained on the open market through an open bid process. AGS pointed out that its acquisition of 11PJs of storage by means of an open bid process at a cost of $0.173/GJ was less than the owning and operating costs of Carbon.

With respect to the NUL Agreement, AGS indicated that the pricing provisions of that agreement no longer reflected current market prices for storage[84] as was the intention when the agreement was first entered into.[85] AGS noted that another storage agreement with a third party with similar pricing provisions was terminated, and indicated that the revenue forecast did not include revenue from AGN for the 2001/02 storage year as the NUL Agreement was terminated prior to this storage year.[86] AGS submitted that it was appropriate to terminate this agreement, and that in doing so AGS was balancing the interests of AGN and AGS customers. AGS submitted that Calgary's estimate of the potential loss to customers of AGS resulting from termination of the contract was incorrectly calculated. AGS calculated that the loss for 2001 should be $8.08 million instead of $9.36 million as calculated by Calgary, and indicated that the NUL Agreement would have been limited to the 2001/2002 storage year, as AGN would have had to terminate its third-party storage contracts effective April 1, 2002 pursuant to Decision 2001-75. AGS did not believe that any adjustment to revenue requirement was warranted.

Board Findings

The Board notes from Decision 2002-069 that "…the Board prefers the option of using FMV transfer pricing for major ongoing transactions…".[87] The Board considers that Carbon storage revenue is a major ongoing transaction, and believes that all parties to the Carbon Transfer Proceeding would agree.

The Board acknowledges that the forecast revenue from ATCO Midstream for 2001 and 2002 for use of the uncontracted capacity at Carbon is based on the fee of $0.32/GJ as determined by the Board in the 1998 CWNG Phase I GRA, and substantiated in the study filed by Ziff Energy in the Affiliate Proceeding. The Board notes the comments of AGS filed in evidence to support the appropriateness of the fee, including the observation that the long-term price of $0.32/GJ well exceeds the market price to the clear benefit of customers, and the expectation that the rate would change only after consideration of new evidence in a subsequent hearing.

[84] Transcript Vol. 4, Page 420
[85] Transcript Vol. 5, Page 471
[86] Transcript Vol. 4, Page 452 -453
[87] Decision 2002-069, page 85

The Board has considered the evidence of Calgary, the CG and the CCA in this proceeding in support of their submissions that, while the fee was established based on market conditions prevailing at the time of the 1998 GRA, the amount of the fee needs to be re-assessed in light of current market conditions and proper storage evaluation practices. The Board notes the wide range of values recommended by interveners with respect to the amount of the fee, and the evidence provided by AGS to challenge the validity of those recommendations. The Board notes Calgary's comment that Decision 2000-9 had not determined the appropriate value for storage for any year other than the 1998 test year, and that AGS needed to file further information to establish the prudent rate in the context of the present Application. The Board agrees with Calgary that AGS has this responsibility, and acknowledges the comments of interveners with respect to determination of the rate based on prevailing market conditions. While in agreement with the submissions of interveners that market conditions would appear to support a fee higher than that presently charged to Midstream, the Board considers that the wide range of market-based values recommended does not facilitate an accurate determination of an appropriate fee.

The Board agrees with the submission of the CG that valuations that result in negative amounts or values in excess of $1.00/GJ are extreme and unreasonable, and unlikely to be entered into in the market place. The Board also notes that, excluding such outliers, the values that could be considered as a fee for the uncontracted capacity fall within the range of $0.17/GJ paid by AGS in the market for third party storage contracts for the 2001/2002 storage year and $0.65/GJ referred to by the CG based on the AECO C storage rate calculator provided by Calgary. The Board also recognizes that AGS provided evidence in response to CAL-AG.10, that a 2002 cost of service analysis resulted in a rate of $0.33/GJ, and referred to a rate of $0.38/GJ for 2002 calculated using the formula designed by Ziff Energy in its evaluation of the long-term lease arrangement. Another alternative of interest to the Board is the long-term market based rate quoted by Calgary of $0.42/GJ to $0.74/GJ.

The Board established the storage fee in Decision 2000-9 based on third party bids for long-term storage contracts. Given the absence of such compelling evidence to support a specific valuation in this instance, the Board is of the view that establishment of a fee in the mid-range of the two market values of $0.17/GJ and $0.65/GJ would be appropriate for the 2001/2002 test years. The Board is not persuaded that the fee should be set at the higher end of the range, as proposed by the CG, but considers that a more conservative approach would be appropriate, consistent with the view taken by the Board in establishing the fee of $0.32/GJ in the 1998 GRA.

Accordingly, for the 2001/2002 test years and remainder of the period up to end of 2002/2003 storage year, the Board directs AGS to reflect the revenues from Midstream based on a fee of $0.41/GJ. The Board expects that AGS will conduct a market based evaluation to determine the amount of the fee for storage years subsequent to 2002/2003. The Board considers that a tender process for the uncontracted capacity would reveal the FMV and that it would be preferable to use a tendering process in support of an application by AGS when submitting its evidence to demonstrate the prudence of the arrangement. The Board considers there are benefits to a prospective process rather than relying on consultant evaluations after the fact. In the Board's view, if the process were to permit an affiliate to match the highest bid, it would be in keeping with the general sense of satisfying the Board's concerns with respect to affiliate transactions.

The Board holds the view that, when a utility provides a material or significant service to a non-regulated affiliate, the utility should receive FMV for the service. However, the Board considers

that the utility should monitor how the FMV compares to the cost of providing the service. Accordingly, to establish the cost of service benchmark, the Board directs AGS to determine the costs incurred in providing the uncontracted capacity service in the cost of service study to be filed in the 2001/2002 Phase II GRA. The Board expects that the costs allocated to the uncontracted storage capacity in the cost of service study will recognize usage based on the appropriate ratios of capacity and deliverability.

The Board considers that there is merit in AGS's submission that the pricing provisions of the NUL Agreement no longer reflected the current market and that, in terminating the agreement, AGS was balancing the interests of customers in the North and South. The Board also notes Edmonton's comments with respect to the prudence of the decision to terminate the contract. The Board acknowledges the concerns of interveners that customers were not involved in the decision to terminate the storage agreement with NUL, and that cancellation of the NUL Agreement has deprived customers of AGS a significant revenue benefit. The Board agrees with interveners that existence of the NUL Agreement would have resulted in the generation of revenue, available for offset against the 2001/2002 revenue requirement.

The Board acknowledges Edmonton's submission that AGN customers did not receive any service after termination of the NUL Agreement, and that it would be unreasonable for them to pay for a service they did not receive. In this regard, the Board notes that, based on AGS's submission that the storage costs were a DGA flow-through, termination of the NUL Agreement would have no impact on customers in the North. The Board is prepared to accept that the termination was the result of an informed business decision, and acknowledges the comments of AGS and Edmonton that by making that capacity available to Midstream, AGS has taken steps to mitigate the potential loss to customers in the South.

However, the Board notes Calgary's submission that, after allowing for the offsetting revenue from Midstream, there was still a loss to AGS customers of $9.36 million (2001) and $1.7 million (2002). The Board also notes that AGS calculates the loss for 2001 at $8.08 million, based on the methodology used by Calgary. The Board has examined the respective calculations and acknowledges that both calculations are based on the assumption of a requirement by NUL to pay for 9 PJ of storage gas whether or not the full contract capacity was injected. In this regard, the Board has reviewed the relevant wording of Article II of the NUL Agreement, and agrees with the CG that the agreement appears to allow NUL to store "up to a total of nine (9) PJ" of gas in each storage year. The Board considers therefore, that it is far from clear that AGS would have been entitled to the revenues from storage of a full 9 PJ of gas if the NUL Agreement had been in place during 2001 and 2002. Accordingly, the Board is not persuaded that there is any basis to conclude that the amount of any potential loss to AGS customers arising from the cancellation of the NUL Agreement would be as significant as that calculated by Calgary. The Board is satisfied therefore, that in making that capacity available to Midstream, AGS has taken action to mitigate the potential loss to customers in the South. This alleviates to some degree concerns that the Board might have with respect to the prudence of a decision to terminate an agreement in a non-arms length situation.

The Board notes AGS's submission that interveners took no issue with the revenue forecast for office services provided to Midstream. The Board accepts as reasonable the revenue forecasts of $11,000 in each test year for office services provided to Midstream.

Operating and Maintenance Expense (O&M)

This section of the decision deals with issues related to the fees paid by AGS for services provided by Midstream for gas management under the Gas Management Services Agreement between AGPL and Midstream, dated January 1, 2000 and gas storage services under the Gas Storage Services Agreement. The amounts included by AGS as expenditures in the 2001/2002 test years are $500,000 for gas management and $950,000 for gas storage services.

The Board addressed this type of transfer pricing situation in Decision 2002-069. The Board determined that, "On an ongoing basis, AGS must initially justify its decision to 'outsource' or 'insource' the service involved, especially if the service is already being performed within the utility. This is consistent with the asymmetric pricing recommended by Calgary and FIRM/Core with respect to services provided by non-regulated affiliates to the regulated utilities. After the initial test is satisfied, whether AGS is dealing with an affiliate or an arms length third party, the Board expects AGS to obtain services at FMV. The Board also expects AGS to be diligent in the ongoing management of the price and the need for the services contracted".[88]

Views of Interested Parties

Calgary

Calgary submitted that it was totally inappropriate for AGS to capitalize 20% of the fee, and submitted that no request for proposal (RFP) or independent evaluation had been conducted relative to the Gas Storage Services Agreement. Calgary noted that no evidence was provided to substantiate the appropriateness of the fee.

Calgary submitted that evidence provided by Ziff Energy in August, 2000, highlights the practice of tender by utilities of gas management service to the market, and indicated that other utilities with storage assets went through an RFP process. Calgary indicated that Ziff Energy's evidence dealt only with the remuneration reasonableness and not the process itself. Calgary pointed out that AGS chose to continue its obligation to Midstream without the benefit of an RFP to determine if customers could pay less.

CG

The CG submitted that for the 2001/2002 Storage year (April 1, 2001 to March 31, 2002), the payment made to Midstream for storage management services under the Gas Storage Services Agreement should be reduced by 25%, which would be prorated to calendar years 2001 and 2002. The CG considered that, since Carbon storage was being utilized for utility customers prior to April 1, 2001 and after March 31, 2002, the storage management services fee for those periods is judged to be appropriate.

The CG stated that for the year 2001/2002, when AGS made a unilateral decision not to utilize storage for utility purposes, there was no storage capacity from the Carbon reservoir for Midstream to manage. The CG stated that Midstream was paid a management fee to manage storage, which it had fully contracted to itself, thereby creating a conflict situation. The CG stated that it did not seem reasonable for AGS to be paid a management fee for capacity, which was available to Midstream as a profit-making opportunity. The CG pointed out that AGS had not provided any evidence to demonstrate that the management of third-party storage acquired

[88] Decision 2002-069, page 78

for 2001/2002 required the same level of expenditure as that required for management of the Carbon storage reservoir. The CG submitted that, in the absence of such evidence, the Board should make a downward adjustment of 25% to the storage management fee.

The CG noted that Mr. DeWolf concluded that Midstream's fee of $0.005/GJ under the Gas Management Services Agreement was below the fee charged other utilities and aggregators. The CG noted that AltaGas Utilities Inc. (AUI) was a notable omission from Mr. DeWolf's study. The DeWolf study states that AUI has paid AltaGas Services a gas fee (and third party costs) since May 1999 (two separate contracts) for the management of 13 Bcf/y of gas sales service and 6.2 Bcf/d of gas transportation service. CG stated that if AUI buys 13 Bcf of GCRR Gas as Mr. DeWolf identifies, it would appear that AUI's management fees at $0.0086/GJ are somewhat higher that Midstream's, which is reasonable given the economies of scale in portfolio management. The CG noted that two elements are missing from Mr. DeWolf's study. First of all, the CG stated that there had been a lack of any actual testing of the market for provision of these services. The CG pointed out that secondly, information was missing regarding the costs of gas management when insourced, as it once was. The CG stated that this should be tested at the next GRA both by outsourcing and insourcing, which would ensure that Midstream continues to be the least-cost option for customers.

Views of ATCO Gas

AGS stated that the O & M forecast for gas management and storage services for each of the test years is $1,450,000, of which $950,000 is the O&M portion of the fee for storage services. AGS stated that a list of the related evidence filed in the 1998 CWNG GRA was provided by AGS in Exhibit 163R, and pointed out that, in that material, the response to CAL-CWNG.7 indicated the fees that were charged for the period 1996 to 1998. AGS pointed out that the fee charged in 1998 has not escalated, and submitted that the historical relationship of the fee to the costs incurred by AGS prior to the establishment of the Gas Storage Services Agreement is reasonable. AGS stated that the services performed have remained the same, and that no studies were filed by interveners refuting the level of the fee. Referring to the CG's recommendation for a 25% reduction in the storage fee, AGS stated that the fact that AGS did not use Carbon during the period in question does not mean that Carbon was not used or did not have to be operated. AGS submitted that in fact, Carbon had to be operated in order to generate the revenue credits, which defray the cost of owning and operating Carbon storage. AGS expressed the view that there was no basis to make the kind of arbitrary disallowance suggested by the CG.

AGS stated that the Gas Management Services Agreement fee ($500,000 per year) was addressed by Ziff Energy in the Gas Service Cost Assessment report filed in the Affiliate Proceeding. AGS noted that the fee was reasonable given Ziff Energy's experience in these matters, indicating that there was little discussion of this issue and that no studies were filed by interveners disputing the level of the fee. AGS noted that Calgary also agreed that the gas management fee appeared to be reasonable.

Board Findings

The Board notes AGS's submission that the fee for the Gas Management Services Agreement was addressed by Ziff Energy in a report filed in the ATCO Affiliates Proceeding and that given the experience of Ziff Energy in these matters, AGS concluded that the fee of $500,000 was reasonable. The Board also acknowledges the concern of Calgary and the CG that Ziff Energy dealt only with the reasonableness of the fee and not the process that should be in place to

establish the fee. However, in the absence of studies filed by interveners to support an adjustment to the fee, the Board will accept AGS's forecast. Nevertheless, the Board acknowledges intervener concerns with AGS's choice to continue its obligation to Midstream without the benefit of an RFP to determine if customers could pay less. Accordingly, the Board expects that, at the termination of the existing contract, AGS will establish future agreements for gas management services through use of an RFP process. Alternatively, AGS may use consultants to determine the FMV of services provided by Midstream based on the findings of Decision 2002-069. In that Decision the Board directed ATCO, "…prior to any future material engagements of consultants to undertake a price review applicable to I-Tek and the regulated Utilities, to file terms of reference applicable to the engagements. Following participation of the parties, the Board will make a preliminary determination as to the reasonableness of those terms of reference to assist in providing a complete and useful record for future applications".[89]

The Board notes AGS's submission that the fee for the gas storage services contract has not changed since 1998, the services performed have remained the same, and that the amount of the fee is reasonable. While acknowledging intervener concerns that no RFP process or independent evaluation has been conducted relative to the storage services agreement, the Board notes that no studies or other evidence have been filed to support an adjustment to the fee. The Board notes the observation of the CG that a reduction to the fee may be warranted given that the uncontracted capacity at Carbon was not used for the benefit of utility customers for a significant portion of 2001 and 2002. Specifically, the CG refers to the period between April 1, 2001 and March 31, 2002. On the other hand, the Board acknowledges AGS's observation that in fact, Carbon had to be operated during that time to generate the revenue credits, which defray the cost of owning and operating Carbon storage. However, the Board notes that the terms and conditions of Schedule A to the Gas Storage Services Agreement include the following clauses setting out the services to be provided under the agreement, by Midstream for operation of the storage facility on behalf of CWNG:

- Receive storage injection and withdrawal nominations from CWNG gas operations control centre and operate storage facility to meet these nominations
- Receive storage injection and withdrawal nominations from customers and provide confirmations to those customers that nominations are within contracted levels.

The Board also notes that Schedule A includes clauses covering provision of marketing services, and planning and administration of the storage facility on behalf of CWNG.

The Board considers therefore that, since Midstream no longer operated any part of the capacity of the storage facility on behalf of AGS during the periods referred to by the CG, none of the above services would have been provided by Midstream for AGS. Accordingly, the Board agrees with the CG's recommendation that the payment to Midstream for gas storage services should be reduced by 25%, prorated to the appropriate proportion of calendar years 2001 and 2002 to apply the reduction to only the period when there would have been no usage of Carbon for utility customers. The Board therefore directs AGS to reduce the payment for gas storage services for the 2001/2002 storage year by $237,500. The proportion of the reduction attributable to the test years will be $178,125 for 2001 (covering the months from April to December) and $59,375 for 2002 (covering the months from January to March). The Board's comments with respect to

[89] Decision 2002-069, page 53

determining the FMV for the Gas Management Services Agreement also apply here to the Gas Storage Services Agreement.

4 JURISDICTION

Views of Interested Parties

Calgary

Calgary submitted that the Board must concern itself with the regulation of gas delivery services and the provision of gas supply by AGS at just and reasonable rates. Calgary argued that the Board's jurisdiction and regulatory focus with respect to Carbon has always been and continues to be with respect to the impact of Carbon storage on the rates AGS charges in respect of gas delivery and supply services. Calgary expressed the concern that the rates for delivery services provided by AGS might increase in the event Carbon were transferred to ATCO Midstream. Calgary suggested that AGS was wrong when it suggested that the jurisdictional issue before the Board in these proceedings involves the Board's ability to require AGS to enter into an unregulated storage services business to offset ratepayer costs. Rather, the appropriate jurisdictional question to be addressed in these proceedings is "In regulating the provision of gas delivery service and gas supply service, does the Board have the jurisdiction to refuse to allow a rate base asset to be sold because it considers that asset could be useful in providing utility service by reducing rates." Calgary submitted that Carbon could be useful in providing utility services by reducing costs if AGS chose to utilize this legacy asset in that manner. The fact that AGS has chosen not to use Carbon in this manner in recent years does not detract from the position that the asset has been used and could be used again to reduce gas costs to ratepayers.

CG

The CG questioned the purpose of the present application in the absence of a real transaction to be considered under Sections 26(2)(d) of the GUA and Section 101(2)(d) of the PUB Act. The CG went on to suggest that "if the Board were to determine that the Carbon facilities are no longer required for utility service, any direction regarding removal from rate base should be conditional upon an application pursuant to Section 26 of the GU Act, a determination of resulting harm and confirmation of the allocation of proceeds as between shareholders and customers." In the CG's view, the Board should not be approving the removal of the Carbon facility from rate base as requested by AGS in the absence of a Section 26 application, rather, they submitted that the "Board need do nothing more than determine whether the facilities are required by AGS for utility operational purposes". The CG viewed this determination as a first step in a process that would require a broader no-harm analysis prior to any approval to remove the asset from rate base pursuant to a subsequent application under Section 26 of the GUA.

CCA took issue with the manner in which AGS purported to limit the jurisdiction of the Board with respect to services that may be available on a competitive basis. The CCA referred to Section 29 of the Ontario Energy Board Act as an example of one jurisdiction's approach to limit a regulatory tribunal's ability to deal with an issue before it where there is sufficient competition to protect the public interest with respect to the issue. Without a similar statutory limitation, the CCA argued that it would be improper to attempt to limit the Board's jurisdiction with respect to services that may be also provided in the competitive marketplace.

The CCA also referred to several case authorities for the proposition that the Board has clear discretion to determine what is rate base and in exercising that discretion, the Board's finding cannot be an error going to the jurisdiction of the Board. In particular, the CCA referred to the judgment of the Supreme Court of Canada in *Northwestern Utilities Ltd. v. City of Edmonton* [1929] S.C.R. 186, and the statement of Lamont, J. at page 196: "The items which should be included in rate base cannot, in my opinion, be considered a question of jurisdiction or of law." Similarly, the CCA found it significant that there were no Alberta case authorities that require an asset to be removed from rate base where competition for the subject service develops.

Views of ATCO Gas

AGS argued that Carbon is not "used or required to be used to provide service to the public within Alberta" as set out in Sections 37(1) of the Gas Utilities Act and Section 90 of the Public Utilities Board Act. In AGS's submission, the Board has discretion to determine if an asset should remain in rate base, but in exercising that discretion it must be used properly and may not ignore relevant considerations. In AGS's view it is not appropriate to include an asset in rate base only because it is owned by a regulated utility if that asset is not "used or required to be used to provide a regulated service to the public." Drawing on the Apollo[90] decision of this Board, AGS argued that it is the role of the Board to regulate a utility's monopolistic or non-competitive functions. Assets that have historically been included in rate base that no longer are required to provide monopolistic or non-competitive services at just and reasonable rates should be removed. AGS argued that Carbon is no longer "used or required to be used" to support the regulated monopoly functions of natural gas supply and natural gas distribution. Further, AGS argued, even if natural gas storage services were required in connection with such regulated monopolistic services, such natural gas storage services are readily available in the competitive market place. If Carbon is not appropriately in rate base, AGS asserted, then the Board lacks the jurisdiction to direct AGS to retain Carbon in rate base and to require AGS to offer storage services into the marketplace with the proceeds of such storage services being used to subsidize ratepayer costs. AGS submitted that any such storage services could not be appropriately considered to be "utility services" and that there was no justification for requiring the utility to offer such services, especially in consideration of receiving a regulated rate of return on rate base. In AGS's view, should the Board require AGS to offer such services, it would, in effect, be requiring AGS to carry on a non-utility, non-regulated business with assets which should be considered as non-utility assets, all for the benefit of utility ratepayers. This, AGS argued, would be beyond the Board's jurisdiction.

Board Findings

The Board has found in Section 3.1 of this Decision that, although there is some uncertainty as to the degree of usefulness of Carbon, it cannot at this time determine that there would be no harm to AGS's customers if Carbon were not in regulated service, given the evidence suggesting that Carbon continues to be required in serving the AGS market and the failure of the evidence to date to convince the Board that Carbon is not a useful asset. Consequently at present Carbon shall remain in rate base and be subject to regulation by this Board.

In respect of the entire storage capacity of Carbon, however, the Board understands that currently AGS does not require the full capacity for utility purposes. Over the last several years, AGS has

[90] Decision 2000-10: Apollo Gas Inc. Complaint Against northwestern Utilities Limited and ATCO Gas and Pipelines Ltd. operating as ATCO Gas with respect to Termination of Billing Services.

dealt with this extra capacity through an assignment to its affiliate, Midstream, in consideration for a payment that has been credited against the costs of Carbon charged to utility ratepayers. The appropriate rate to be paid by ATCO Midstream from time to time has been the subject of this and prior proceedings. Profits, if any, realized by Midstream from the operation of its storage business, have not been shared in any manner with utility ratepayers. This mechanism is intended to preserve Carbon as a rate base asset to be used in connection with utility services as and when required and as and when economically prudent to do so, and to offset the rates otherwise payable by ratepayers by the payment of fair compensation for the use by Midstream of that portion of the utility asset not required from time to time by the utility.

Subject to the provisions of Section 3.7 of this Decision, dealing with the appropriate payment by Midstream for the use of uncontracted capacity at Carbon, the Board believes that the present arrangements are a satisfactory method of dealing with the excess capacity not required from time to time by the utility. Such arrangements do not require the profits or losses generated through the operation of a storage business by Midstream to be shared with utility ratepayers, nor do they require the regulated utility to undertake a non-regulated service or to operate a non-regulated business for the benefit of ratepayers. Given this result, the Board does not believe it is necessary to address the jurisdictional issues raised by AGS.

However with respect to the Apollo decision, to which AGS addresses itself in particular, the Board notes AGS's argument that assets which have historically been included in rate base and are no longer required to provide monopolistic or non-competitive services at just and reasonable rates should be removed from regulated service. The Board would comment that it considers a more balanced expression of principle, given its current jurisprudence and its wide discretion in determining an appropriate rate base, would state that assets which have historically been included in rate base and are no longer required to provide monopolistic or non-competitive services at just and reasonable rates may be permitted by the Board to be disposed of, provided customers are not harmed as a result. The Board would refer in general to the difficulty, discussed during the hearing, in making a hard and fast rule as to the precise nature of: (i) assets that should in all events be owned by the utility to provide utility services (thus given rate base treatment), (ii) assets which should in no event be owned by the utility, and (iii) assets which could be owned by the utility or which could be leased, acquired through services agreements or otherwise. This difficulty is exacerbated by the development of market alternatives.

In conclusion, until such time as AGS brings an application to sell Carbon pursuant to an actual transaction and the Board renders a favorable decision, Carbon will remain in rate base as a regulated asset to be operated by AGS in a prudent fashion, in accordance with this Decision and in the manner contemplated by Decisions 2001-75 and 2001-110. Should AGS prefer an alternative course of action, it is free to bring a future application to dispose of Carbon in accordance with the guidance set out in this Decision or to negotiate a different arrangement with its stakeholders for approval by this Board.

The Board expects that the additional direction provided herein will provide sufficient guidance to AGS in structuring the use of Carbon while it remains in rate base while clarifying that the Board is not requiring AGS to operate a merchant storage business for the benefit of utility ratepayers.

5 SUMMARY OF MATTERS RELATED TO THE DISPOSITION OF CARBON

As noted in Section 2 of this Decision ATCO Gas requested the following:

(a) approve the withdrawal of Carbon from regulated service and rates; and
(b) establish a process by which the FMV of Carbon could be determined so that the facility could be transferred to Midstream..

It proposed that a withdrawal of Carbon be addressed in three steps:

1. Included as a part of the Application and as a consequence of approval of withdrawal from regulation, ATCO Gas sought approval of a process for determining the FMV of Carbon.
2. Subsequent to receiving the applied for approvals, ATCO Gas would then implement the process to determine the FMV of Carbon.
3. In an ensuing application, ATCO Gas would request approval of an allocation between it and customers of the proceeds paid by Midstream.

The Board has attempted to address the provisions of the Application in various sections of this Decision. As an aid to the reader the Board will hereafter set out a summary of its various determinations that respond to the noted provisions of the Application. In the event of any differences between the summary and the related language found in the main body of this Decision, the wording in the main body shall prevail.

Summary of Determinations:

- The Board considers that the continued use of Carbon by ATCO Gas could be useful, especially while the retail market is under development. (Section 3.1)
- The Board considers that there is evidence to indicate that Carbon continues to be a used and useful regulated asset, notwithstanding there are alternatives to its use available. The status quo operation of Carbon on a prudent basis would appear to be appropriate at the present time. (Section 3.1)
- The Board would expect that if ATCO Gas in future decides to enter into a transaction to dispose of Carbon in a way that meets the no-harm requirements of the Board, the next step would be an application for Board approval pursuant to section 26(2)(d) of the GU Act. (Section 3.2)
- The Board would expect to see a fully defensible land packaging proposal from ATCO Gas on any future application to sell or otherwise dispose of Carbon. This proposal would involve transfer of ownership or control of potential migration or drainage lands or wells to the purchaser of the storage reservoir. (Section 3.3)
- The Board finds it would not be appropriate to permit a transfer to Midstream through a closed process. (Section 3.5)
- Consequently, a condition that must be met by ATCO Gas, if it desires to sell, is that Carbon must be sold by public tender. (Section 3.5)
- The Board directs ATCO Gas to submit recommendations on tender design for approval before proceeding with a sale process. (Section 3.5)

- The Board agrees with the interveners that Midstream could be an eligible bidder but should be afforded no special treatment. (Section 3.5)
- The amount of proceeds must meet or exceed the no-harm threshold in order for the sale to be approved. If the no-harm threshold cannot be met then it follows that maintaining ownership provides the customer with the greatest economic benefit. (Section 3.6)
- If ATCO Gas wishes to sell Carbon and as a result have it removed from regulated service, it must persuade the Board that there is no detrimental impact on its customers (no-harm) that cannot be mitigated. (Section 3.6)
- In conclusion, until such time as AGS brings an application to sell Carbon pursuant to an actual transaction and the Board renders a favorable decision, Carbon will remain in rate base as a regulated asset to be operated by AGS in a prudent fashion, in accordance with this Decision and in the manner contemplated by Decisions 2001-75 and 2001-110. Should AGS prefer an alternative course of action, it is free to bring a future application to dispose of Carbon in accordance with the guidance set out in this Decision or to negotiate a different arrangement with its stakeholders for approval by this Board. (Section 4)

6 ORDER

THEREFORE, it is hereby ordered that:

(1) For ATCO Gas, a Division of ATCO Gas and Pipelines Ltd.:

The Carbon Storage Facilities will remain in rate base as regulated assets to be operated by ATCO Gas – South in accordance with this Decision and in the manner contemplated by Decisions 2001-75 and 2001-110 until such time as a future application may be brought before the Board to dispose of Carbon in accordance with the guidance set out in this Decision or, for approval by this Board of a negotiated settlement by ATCO Gas – South of a different arrangement with its stakeholders for the use of Carbon.

(2) For the 2001/2002 test years ATCO Gas – South will:

(a) reflect the revenues from ATCO Midstream Ltd. for uncontracted capacity based on a fee of $0.41/GJ, including for purposes of the storage rider.

(b) reflect the annual revenues from ATCO Midstream Ltd. for office services in the amount of $11,000.

(c) reduce the payment for gas storage services for the 2001/2002 storage year by $237,500. The proportion of the reduction attributable to the test years will be $178,125 for 2001 (covering the months from April to December) and $59,375 for 2002 (covering the months from January to March).

(d) reflect charges to ATCO Midstream Ltd. in the amount of $500,000 for gas management services.

Dated in Calgary, Alberta on July 30, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

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

<original signed by>

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

<original signed by>

C. Dahl Rees
Acting Member

APPENDIX 1 - THOSE WHO APPEARED AT THE HEARING

Abbreviations used in Report

Principals	Witnesses
ATCO Gas L. E. Smith, Q.C. L. Blumes K. Illsey Bennett Jones LLP	J. F. Engler Executive Vice President ATCO Gas and Pipelines Ltd. B. R. Hahn Vice President, Calgary Operations ATCO Gas and Pipelines Ltd. R. Trovato Manager, Pricing ATCO Gas M. J. Harris, PH.D. Senior Economist Econ One B. H. Emslie Senior Vice President McDaniel & Associates Consultants Ltd. T. J. Simard Principal Risk Advisory R. G. DeWolf Senior Vice President The Ziff Energy Group
City of Calgary (Calgary) R. B. Brander P. Quinton-Campbell R. S. Marx Burnet, Duckworth & Palmer LLP	J. L. Chipperfiled, P. Geol. Vice President, Geology Sproule Associates Limited N. T. Stewart, P.Eng. Associate Sproule Associates Limited D. R. Bates, P.Eng. Associate Sproule Associates Limited H. W. Johnson, C.A. Parnter Stephen Johnson, Chartered Accountants H. J. Vander Veen President Energy Group Inc. J. E. Gorman, P.Eng. Petroleum Consultant P. R. Walsh, P. Geol. Managing Director Energy Objective Ltd.

Principals	Witnesses
The Consumers Group (CG)[91] J. A. Bryan, Q.C. Bryan & Company T.D. Marriott Brownlee Fryett	R.T. Liddle, P.Eng. President Liddle Engineering Ltd.
The Consumers Coalition of Alberta (CCA) J.A. Wachowich Wachowich & Company	
EnCana Gas Storage (Encana), and Unocal Canada Limited (Unocal) T.M. Hughes MacLeod Dixon LLP	
BP Canada Energy Company C. Worthy	
Stoney Nakoda Nation L.D. Rae Rae & Company	
Tsuu T'ina Nation J. Graves, P.Eng. Graves Engineering Corporation	
CrossAlta Gas Storage & Services Ltd. (CrossAlta) H.K. Anderson	
The City of Edmonton (Edmonton) W. Follett	
EUB Counsel B.C. McNulty	
EUB Staff D. R. Weir, C.A. R. Armstrong, P.Eng W. Vienneau, CMA A. Beken, P. Eng., P.Geol. K. L. Bieber, BSc., Geol.	

[91] The CG comprised the following: Alberta Irrigation Projects Association, Aboriginal Communities, Alberta Association of Municipal Districts and Counties, The Federation of Alberta Gas Co-ops and Gas Alberta Inc., Municipal Intervenors, and Public Institutional Consumers of Alberta.

APPENDIX 2 – BOARD LETTER DATED DECEMBER 10, 2001

Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

December 10, 2001

Emailed to Interested Parties on the Carbon Storage Transfer Application

ATCO GAS AND PIPELINES LTD.
TRANSFER OF CARBON STORAGE FACILITIES – APPLICATION NO. 1237639
RULING ON RULE 12 CONFIDENTIALITY APPLICATION BY ATCO GAS SOUTH

ATCO Application under Rule 12

On November 27, 2001, ATCO Gas and Pipelines Ltd. (**ATCO**) filed an application (the **Confidentiality Application**) pursuant to Rule 12 of the Board's Rules of Practice. The Confidentiality Application requested the Board to grant ATCO the ability to file certain documentation on a confidential basis. The Board requested parties to the proceeding to provide comments on ATCO's application and to indicate if they were seeking access to any information granted confidential treatment. Parties seeking access to any such confidential information were required to indicate reasons why they required such information and were advised that an undertaking in a form provided for by the Board would be required by any party granted access to the information. Comments were received from The City of Calgary and the Consumer Group. Calgary, the Consumers Coalition of Alberta and the Alberta Irrigation, Projects Association have requested access to any information that the Board determined to be confidential. ATCO replied to the various comments received on December 4, 2001.

Rule 12 - Purpose and Principles

Procedural fairness dictates that an applicant has both the privilege and the obligation to make its case and that interveners be given full disclosure of relevant information in sufficient detail and in sufficient time, to enable them to understand and to challenge or to support the applicant's position. Likewise, the Board requires full disclosure of relevant information, and benefits from the informed exchange of positions in making its decisions. Disclosure of relevant information is fundamental to fair, efficient and sound hearing and decision making processes in the public interest.

A competing objective that must also be recognized and supported, is the legitimate need of the individual or corporation to protect relevant yet confidential or commercially sensitive information the disclosure of which would likely result in undue harm to such party's business or personal affairs.

Prior to the adoption of Rule 12, the Board had attempted to appropriately balance procedural fairness and individual privacy or competitive position by requiring the disclosure of all relevant information except in those limited circumstances where it can be demonstrated that disclosure would result in undue harm to the disclosing party and where the harm is not outweighed by the benefit of disclosure to the public interest.

In adopting Rule 12 of Rules of Practice, it was the intention of the Board to reinforce the existing approach of the Board while establishing a formal mechanism for parties to claim confidentiality in respect of relevant confidential or commercially sensitive information. Public disclosure in the name of procedural fairness is the general principle reinforced by Subsection 12(1), with exemptions to disclosure to be sanctioned only in the clearest of cases and limited to only those particular matters where the Rule 12 applicant has demonstrably met the criteria established by Subsection 12(4).

Board's Disposition of ATCO's Rule 12 Application

Having regard to the Purpose and Principles of Rule 12 referenced above, the Confidentiality Application and the comments of the Interveners, the Board finds that ATCO has satisfied the requirements of Rule 12(4) of the Board's Rules of Practice. The Board grants ATCO's request for confidentiality with respect to the information referred to in Schedule A (the **Confidential Information**) for the reasons set out therein. Confidentiality is granted in respect of the Confidential Information for the purposes of the Application upon the following terms and conditions:

1. ATCO shall immediately provide the Board (to the attention of Brian McNulty, Senior Counsel), five copies of the Confidential Information.
2. ATCO shall provide one copy of the Confidential Information to the legal counsel named in respect of an Intervener listed on Schedule B forthwith upon delivery to the Board and to ATCO by such counsel of an originally executed Undertaking in the form specified in Schedule C from each of the individuals and corporations listed in Schedule B in respect of such party.

Board's Disposition of Requests for Access to Confidential Information

The Board grants access to Confidential Information to the specific individuals and corporations listed in Schedule B on the following terms and conditions:

1. Parties listed in Schedule B shall execute an Undertaking in the form specified in Schedule C and provide, through counsel, an original thereof to each of the Board and ATCO.
2. Only the Board, Board Staff and those parties listed in Schedule B who have executed and delivered an Undertaking (a **Recipient**), shall be entitled to receive the Confidential Information and be present at those portions of the hearing where Confidential Information is referenced.
3. Recipients shall hold the Confidential Information in confidence and use it only for the purpose of this proceeding.
4. Recipients shall not make additional copies of the Confidential Information.
5. Unless otherwise directed by the Board, Recipients shall either deliver to the Board, or destroy, all Confidential Information together with all evidence, transcripts, notes, working papers, calculations, analysis or other written materials based on or using the Confidential Information within its possession, within 40 days of the Board rendering its decision in respect of the Application (the **Return or Destroy Date**). All electronic copies of such materials will be expunged from all electronic apparatus and data storage media on or prior to the Return or Destroy Date.

6. Each Recipient will verify compliance with these requirements by filing with the Board, on or before the Return or Destroy Date, a Statutory Declaration in the form attached in Schedule E.

Board Members and Board Staff will also be required to sign an Undertaking in the form specified in Schedule C and shall deliver same to the Board.

With respect to the issues raised by the Consumer Group, the form of Undertaking attached as Schedule C addresses the matter of liability of a Recipient. Access to the Confidential Information will not be granted unless an Undertaking has been executed and delivered to the Board and ATCO. A party listed on Schedule B has the ability to determine if access to the Confidential Information is required and has the ability to avoid potential liability by complying with the Undertaking. Should the Consumer Group elect to request access to the Confidential Information, they may do so by providing the Board and ATCO with the names of the individuals that require access, the reasons that access is required and an originally executed Undertaking in the form specified in Schedule C on or before December 13, 2001.

Procedures

Given that certain parties will have access to the Confidential Information and certain parties will not, the Board has established the procedures provided for in Schedule D to apply to this proceeding. All parties, both those gaining access to the Confidential Information and those parties that do not, are directed to strictly observe these procedures to ensure an efficient and fair proceeding.

Intervener Evidence	December 21, 2001
Information Requests to Interveners	January 4, 2002
Information Responses from Interveners	January 11, 2002
Rebuttal Evidence	January 16, 2002
Hearing	January 24, 2002

This revised schedule replaces all earlier schedules.

If you have any questions regarding this schedule of proceeding please contact the writer at (403) 297-3650 or David Weir at (780) 422-2075.

Yours truly,

(original signed by)

Brian C. McNulty
Senior Counsel

Attachments

SCHEDULE A TO APPENDIX 2

TO ALBERTA ENERGY UTILIES BOARD ORDER OF DECEMBER 10, 2001

CARBON STORAGE FACILITIES TRANSFER

CONFIDENTIALITY ORDER

The Board finds that ATCO, with respect to the Carbon Storage Facilities Transfer Application, has satisfied the requirements of Rule 12 (4) of the Board's Rules of Practice and grants ATCO's request for confidentiality of the following information as more fully described in the Confidentiality Application.

1. Information Request CAL-AG.1(c)

Brief Description
ATCO Gas (South) is requested to provide information reviewed by McDaniel & Associates in preparing its evaluation of natural gas reserves for the Carbon Glauconite Formation.

Board Ruling
The Board accepts ATCO's position that this particular information relating to the Carbon reservoir is confidential. The Board views that maintaining confidentiality will assist in protecting the remaining reserves and gas in storage against potential third party drainage, thereby maintaining the integrity of regulated and/or non-regulated utilization of the field for storage and/or production purposes.

Protection of the reservoir from drainage due to third party drilling activity enhanced through access to the reservoir data and the studies by McDaniel & Associates benefits ratepayers if the facilities stay regulated. Alternatively, the value of the facility on a transfer is enhanced if the integrity of the field has been protected by the confidential treatment of reservoir data.

2. Information Request CAL-AG.1(d)

Brief Description
ATCO is requested to provide copies of the 1998 Carbon Field Glauconite Reserve Study and its update completed in 1999.

Board Ruling
The Board accepts ATCO's position for the reasons provided with respect to Information Request CAL-AG.1(c) above.

3. Information Request CAL-AG.18(a)(ii)(B)

Brief Description
ATCO is requested to provide the daily injection capacity of the total Carbon Storage Facility in 10% increments from 0% working gas in storage through 90% working gas in storage.

Board Ruling

The Board concurs with ATCO's position that public disclosure of detailed information relating to the injection or withdrawal capacity of the Carbon Storage Facilities and of the interrelationships of field pressures and compressors could negatively impact utility customers with respect to the transfer value of the Carbon Storage Facilities. Should the Carbon Storage Facilities remain as a regulated asset, the dissemination of this information could negatively impact the value of third party storage revenue by reducing the potential storage prices that could be obtained and could adversely impact pricing for utility storage gas supplies.

4. Information Request CAL-AG.18(a)(ii)(C)

Brief Description
ATCO has been requested to provide the allocation of the daily injection capacity of the total Carbon Storage Field among ATCO, its affiliates and specified others.

Board Ruling
ATCO has suggested that it cannot provide the information specifically requested because ATCO does not maintain this information and the relevant contractual arrangements are not specifically linked to the total Carbon Field inventory. The Board accepts ATCO's position that a quantitative response to the question, as specifically asked by the City, cannot be provided, although it is concerned that ATCO's position required a Motion from the City of Calgary and a detailed process by the Board before ATCO's position on this information was clarified.

5. Information Request CAL-AG.18(a)(iii)

Brief Description
ATCO is requested to provide the daily withdrawal capacity of the Carbon Storage Facility in 10% increments from 100% working gas in storage through 10% working gas in storage.

Board Ruling
The Board accepts ATCO's position for the reasons provided with respect to Information Request CAL-AG.(a)(ii)(B) above.

6. Information Request CAL-AG.18(a)(iii)(A)

Brief Description
ATCO has been requested to provide the allocation of the withdrawal capacity of the total Carbon Storage Field among ATCO, its affiliates and specified others.

Board Ruling
The Board accepts ATCO's position for the reasons provided with respect to Information Request CAL-AG.(a)(ii)(C) above.

SCHEDULE B TO APPENDIX 2

TO AEUB ORDER OF DECEMBER 10, 2001

CARBON STORAGE FACILITIES TRANSFER

RECEIPIENTS OF CONFIDENTIAL INFORMATION

The following individuals in respect to the named parties will be granted access to the Confidential Information:

1. City of Calgary

The following individuals will receive access to IR CAL-AG.1(c), CAL-AG.1(d), CAL-AG.18(a)(ii)(B), CAL-AG.18(a)(ii)(C), CAL-AG.18(a)(iii), and CAL-AG.18(a)(iii)(A):

P. Quinton – Campbell	Burnet Duckworth & Palmer
R. B. Brander	Burnet Duckworth & Palmer
R. Marx	Burnet Duckworth & Palmer
H. J. Vander Veen	Energy Group, Inc.
H. W. Johnson	Stephen Johnson Chartered Accountants
N. Stewart	Sproule Associates Limited
K. Crowther	Sproule Associates Limited
(typists and technicians to be named by Sproule Associates Limited)	
P. Walsh	Energy Objective
J. Gorman	Energy Objective

The following individuals will receive access to IR CAL-AG.1(c) and CAL-AG.1(d):

D. Bates	Sproule Associates Limited
J. Chipperfield	Sproule Associates Limited
B. Jose	Sproule Associates Limited
(typists and technicians to be named by Sproule Associates Limited)	

In addition, each of Sproule Associates Limited and Energy Group, Inc. will be required to execute an undertaking.

2. Alberta Consumers Coalition

Mr. Ivor Dent	Alberta Council on Aging
Mr. Hans Weissenborn	Consumers' Association of Canada – Alberta
Jeff Jodoin	Professional Regulatory Services Inc.
James Wachowich	Wachowich & Company

In addition, Professional Regulatory Services Inc. will be required to execute an undertaking.

3. Alberta Irrigation Projects Association

J. Henry Unryn	Consultant, Unryn & Associates Ltd
S.C.(Stan) Klassen	Executive Director, Alberta Irrigation Projects Association

SCHEDULE C TO APPENDIX 2

TO AEUB ORDER OF DECEMBER 10, 2001

CARBON STORAGE FACILITIES TRANSFER

UNDERTAKING PURSUANT TO RULE 12(5)

FORM OF UNDERTAKING FOR AN INDIVIDUAL RECEIPENT
FORM OF UNDERTAKING FOR A CORPORATE RECEIPENT
FORM OF UNDERTAKING FOR BOARD MEMBERS AND BOARD STAFF

UNDERTAKING FOR INDIVIDUAL RECEIPENT
PURSUANT TO RULE 12(5)
OF THE RULES OF PRACTICE OF THE
ALBERTA ENERGY AND UTILITIES BOARD

TO: The Alberta Energy and Utilities Board (the **Board**)

AND TO: ATCO Gas and Pipelines Ltd. (**ATCO**)

WHEREAS ATCO has by letter dated November 27, 2001 applied to the Board under Rule 12 of the Board's Rules of Practice (**Rule 12**) for confidential treatment of certain information in connection with the proceedings pursuant to Application 1237639 – Carbon Storage Transfer (the **Proceeding**),

WHEREAS the Board by Order of December 10, 2001 (the **Order**) granted ATCO's application and extended confidential treatment to certain information outlined in Schedule A to the Order (the **Confidential Information**),

WHEREAS ________________________ (the **Recipient**) has requested the Board under Rule 12(5) for access to the Confidential Information and the Board has granted the request on the condition that it first execute and deliver this Undertaking,

NOW THEREFORE, in consideration of receiving access to the Confidential Information, the Recipient hereby agrees and undertakes as follows:

1. I have read the Order and agree to observe the terms and conditions thereof insofar as they relate to the use and protection of the Confidential Information.

2. I shall not use any of the Confidential Information and all evidence, transcripts, notes, working papers, calculations, analysis or other written materials based on or using the Confidential Information that I receive, review or prepare during the course of the Proceeding (**Related Materials**) for any purpose whatsoever except for the purpose of participating in the Proceeding.

3. I shall maintain all of the Confidential Information and Related Materials in confidence and shall not disclose the Confidential Information to any person except to the Board or to another party approved by the Board as a "Recipient", provided such disclosure is made in connection with the Proceeding and is made in accordance with the Procedural Directions set out in Schedule D to the Order or as otherwise permitted by the Board.

4. I will not copy or reproduce any Confidential Information or Related Materials except in connection with the Proceeding.

5. The obligations created by Paragraphs 1-4 above shall not preclude a Recipient from:
    a. using or disclosing the Confidential Information at a time when such Confidential Information is generally available to the public other than as a direct or indirect result of any disclosure by the Recipient which is prohibited hereunder;
    b. using or disclosing the Confidential Information to the extent that the Recipient can demonstrate that such Confidential Information was, prior to the receipt thereof from ATCO, in the possession of the Recipient and was not governed by any other secrecy obligation; and
    c. disclosing any Confidential Information to the extent such disclosure is required by law, court order or competent authority of any governmental body, provided that the Board and ATCO are provided with notice promptly upon the Recipient becoming aware that such disclosure is required.

6. I shall use all reasonable, necessary and appropriate efforts to safeguard the Confidential Information and Related Materials from disclosure or use, other than as permitted hereby.

7. Within 40 days of the Board rendering its decision in respect of the Proceeding, or earlier if directed by the Board, I will:
    a. expunge all electronic copies of the Confidential Information and Related Materials from all electronic apparatus and data storage media under my direction or control;
    b. deliver to the Board or destroy all paper copies of the Confidential Information and Related Materials in my possession or under my direction or control; and
    c. deliver to the Board and ATCO an originally executed Statutory Declaration in the form of Schedule E to the Order.

8. I agree to save harmless and to indemnify, each of the Board and ATCO, from and against all claims, actions, proceedings, demands, losses, damages, costs, and expenses (including legal fees) which may be brought against the Board or ATCO or which the Board or ATCO may suffer, sustain, pay or incur, resulting from, or arising in connection with, the unauthorized use or disclosure by me of the Confidential Information or the Related Materials.

9. I acknowledge and agree that any breach of the terms of this Undertaking will cause material and irreparable harm and damage to ATCO. I agree that ATCO shall be entitled to injunctive relief to prevent breaches of this Undertaking, and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which ATCO may be entitled, at law or in equity.

10. I acknowledge that any breach of the terms of the Order or of this Undertaking may be the subject of contempt proceedings in the Alberta Court of Queen's Bench.

11. I agree that no failure or delay by the Board or ATCO in exercising any right or privilege in respect of a breach of this Undertaking or of the Order, shall operate as a waiver thereof.

MADE at ________, Alberta, this _____ day of ____________, 2001.

______________________________	______________________________
Recipient's signature	Witness's signature
______________________________	______________________________
Recipient's printed name	Witness's printed name

**UNDERTAKING FOR CORPORATE RECEIPENT
PURSUANT TO RULE 12(5)
OF THE RULES OF PRACTICE OF THE
ALBERTA ENERGY AND UTILITIES BOARD**

TO: The Alberta Energy and Utilities Board (the **Board**)

AND TO: ATCO Gas and Pipelines Ltd. (**ATCO**)

WHEREAS ATCO has by letter dated November 27, 2001 applied to the Board under Rule 12 of the Board's Rules of Practice (**Rule 12**) for confidential treatment of certain information in connection with the proceedings pursuant to Application 1237639 – Carbon Storage Transfer (the **Proceeding**),

WHEREAS the Board by Order of December 10, 2001 (the **Order**) granted ATCO's application and extended confidential treatment to certain information outlined in Schedule A to the Order (the **Confidential Information**),

WHEREAS ________________________ (the **Recipient**) has requested the Board under Rule 12(5) for access to the Confidential Information and the Board has granted the request on the condition that it first execute and deliver this Undertaking,

NOW THEREFORE, in consideration of receiving access to the Confidential Information, the Recipient hereby agrees and undertakes as follows:

1. The Recipient agrees to observe the terms and conditions of the Order insofar as they relate to the use and protection of the Confidential Information.

2. Only the following officers, directors, employees, agents, contractors or advisors of the Recipient who have personally executed an Undertaking and delivered same to the Board and ATCO (the **Personne**l) shall have access to the Confidential Information:

3. The Recipient and the Personnel shall not use any of the Confidential Information and all evidence, transcripts, notes, working papers, calculations, analysis or other written materials based on or using the Confidential Information that is received, reviewed or prepared by the Personnel during the course of the Proceeding (**Related Materials**) for any purpose whatsoever except for the purpose of participating in the Proceeding.

4. The Recipient and the Personnel shall maintain all of the Confidential Information and Related Materials in confidence and shall not disclose the Confidential Information to any person except to the Board or to another party approved by the Board as a "Recipient", provided such disclosure is made in connection with the Proceeding and is made in accordance with the Procedural Directions set out in Schedule D to the Order or as otherwise permitted by the Board.

5. The Recipient and the Personnel will not copy or reproduce any Confidential Information or Related Materials except in connection with the Proceeding.

6. The obligations created by Paragraphs 1-4 above shall not preclude a Recipient from:
    a. using or disclosing the Confidential Information at a time when such Confidential Information is generally available to the public other than as a direct or indirect result of any disclosure by the Recipient or the Personnel which is prohibited hereunder;
    b. using or disclosing the Confidential Information to the extent that the Recipient can demonstrate that such Confidential Information was, prior to the receipt thereof from ATCO, in the possession of the Recipient and was not governed by any other secrecy obligation; and
    c. disclosing any Confidential Information to the extent such disclosure is required by law, court order or competent authority of any governmental body, provided that the Board and ATCO are provided with notice promptly upon the Recipient becoming aware that such disclosure is required.

7. The Recipient shall use all reasonable, necessary and appropriate efforts to safeguard the Confidential Information and Related Materials from disclosure or use, other than as permitted hereby.

8. Within 40 days of the Board rendering its decision in respect of the Proceeding, or earlier if directed by the Board, the Recipient will:
    a. expunge all electronic copies of the Confidential Information and Related Materials from all electronic apparatus and data storage media under its direction or control;
    b. deliver to the Board or destroy all paper copies of the Confidential Information and Related Materials in its possession or under its direction or control; and
    c. deliver to the Board and ATCO an originally executed Statutory Declaration in the form of Schedule E to the Order.

9. The Recipient agrees to save harmless and to indemnify, each of the Board and ATCO, from and against all claims, actions, proceedings, demands, losses, damages, costs, and expenses (including legal fees) which may be brought against the Board or ATCO or which the Board or ATCO may suffer, sustain, pay or incur, resulting from, or arising in connection with, the unauthorized use or disclosure by the Recipient or the Personnel of the Confidential Information or the Related Materials.

10. The Recipient acknowledges and agrees that any breach of the terms of this Undertaking will cause material and irreparable harm and damage to ATCO. The Recipient agrees that ATCO shall be entitled to injunctive relief to prevent breaches of this Undertaking, and to specifically enforce the terms and provisions hereof, in addition to any other remedy to which ATCO may be entitled, at law or in equity.

11. Recipient acknowledges that any breach of the terms of the Order or of this Undertaking may be the subject of contempt proceedings in the Alberta Court of Queen's Bench.

12. Recipient agrees that no failure or delay by the Board or ATCO in exercising any right or privilege in respect of a breach of this Undertaking or of the Order, shall operate as a waiver thereof.

MADE at ______________, Alberta, this _____ day of ____________, 2001.

Recipient

Per: ____________________________

UNDERTAKING FOR BOARD MEMBER AND BOARD STAFF
PURSUANT TO RULE 12(5)
OF THE RULES OF PRACTICE OF THE
ALBERTA ENERGY AND UTILITIES BOARD

TO: The Alberta Energy and Utilities Board (the **Board**)

WHEREAS ATCO has by letter dated November 27, 2001 applied to the Board under Rule 12 of the Board's Rules of Practice (**Rule 12**) for confidential treatment of certain information in connection with the proceedings pursuant to Application 1237639 – Carbon Storage Transfer (the **Proceeding**),

WHEREAS the Board by Order of December 10, 2001 (the **Order**) granted ATCO's application and extended confidential treatment to certain information outlined in Schedule A to the Order (the **Confidential Information**),

WHEREAS ________________________ (the **Recipient**) requires accesses to the Confidential Information in connection with carrying out his/her responsibilities to the Board with respect to the Proceeding.

NOW THEREFORE, in consideration of receiving access to the Confidential Information, the Recipient hereby agrees and undertakes as follows:

1. I have read the Order and agree to observe the terms and conditions thereof insofar as they relate to the use and protection of the Confidential Information.

2. I shall not use any of the Confidential Information and all evidence, transcripts, notes, working papers, calculations, analysis or other written materials based on or using the Confidential Information that I receive, review or prepare during the course of the Proceeding (**Related Materials**) for any purpose whatsoever except for the purpose of carrying out my responsibilities to the Board in respect of the Proceeding.

3. I shall maintain all of the Confidential Information and Related Materials in confidence and shall not disclose the Confidential Information to any person except to the Board or to another party approved by the Board as a "Recipient", provided such disclosure is made in connection with the Proceeding and is made in accordance with the Procedural Directions set out in Schedule D to the Order or as otherwise permitted by the Board.

4. I will not copy or reproduce any Confidential Information or Related Materials except in connection with the Proceeding.

5. The obligations created by Paragraphs 1-4 above shall not preclude a Recipient from:
   a. using or disclosing the Confidential Information at a time when such Confidential Information is generally available to the public other than as a direct or indirect result of any disclosure by the Recipient which is prohibited hereunder;
   b. using or disclosing the Confidential Information to the extent that the Recipient can demonstrate that such Confidential Information was, prior to the receipt

thereof from ATCO, in the possession of the Recipient and was not governed by any other secrecy obligation; and

c. disclosing any Confidential Information to the extent such disclosure is required by law, court order or competent authority of any governmental body, provided that the Board is provided with notice promptly upon the Recipient becoming aware that such disclosure is required.

6. I shall use all reasonable, necessary and appropriate efforts to safeguard the Confidential Information and Related Materials from disclosure or use, other than as permitted hereby.

7. Within 40 days of the Board rendering its decision in respect of the Proceeding, or earlier if directed by the Board, I will:
   a. expunge all electronic copies of the Confidential Information and Related Materials from all electronic apparatus and data storage media under my direction or control; and
   b. deliver to the Board or destroy all paper copies of the Confidential Information and Related Materials in my possession or under my direction or control.

MADE at ________, Alberta, this _____ day of ____________, 2001.

_________________________	_________________________
Recipient's signature	Witness's signature
_________________________	_________________________
Recipient's printed name	Witness's printed name

SCHEDULE D TO APPENDIX 2

TO AEUB ORDER OF DECEMBER 10, 2001
CARBON STORAGE FACILITIES TRANSFER

PROCEDURAL DIRECTIONS

The following procedural directions are indented to clarify the processes to be used during the course of the Carbon Storage Transfer proceedings.

1. Definitions

(a) "**Confidential Information**" means the information described in Schedule A to the Order provided by ATCO to a Recipient.
(b) "**Order**" means the order of the Board dated December 10, 2001 with respect to ATCO's application under Rule 12 of the Board's Rules of Practice, to which these Proceeding Procedures are Schedule D.
(c) "**Recipient**" means a party to the Proceeding listed in Schedule B to the Order, who has executed and delivered an Undertaking.
(d) "**Proceeding**" means Application 1237639 filed by ATCO in respect of the transfer of the Carbon Storage Facility.
(e) "**Undertaking**" means an undertaking in the form attached as Schedule C to the Order.

2. Written Materials

Recipients will clearly segregate, label and separately package or transmit all evidence, information requests, information responses, written argument, correspondence and other written materials to be filed with the Board or presented at the hearing into portions containing or referring to Confidential Information and portions that do not contain or refer to Confidential Information. Recipients will only provide those portions of such written materials containing Confidential Information to the Board, ATCO and to other Recipients. Failure of a party to properly follow these procedures may result in such material being placed on the public record or distributed to all interested parties in breach of such party's Undertaking.

3. Hearing

Throughout the course of the oral portion of the hearing, Recipients (including counsel, and panel witnesses) shall advise the Board and parties if they wish to raise any matter relating to the Confidential Information, including, motions, questions to witness, witness answers and oral argument. All persons other than Board members, Board staff, the court reporter, ATCO and the Recipients will be excluded from the room prior to the Confidential Information being addressed and the Proceeding will continue in camera until such time as the Confidential Information is no longer being addressed. The Board expects that parties will cooperatively arrange opening statements, questioning, argument and other submissions such that Confidential Information can be raised in an efficient manner with minimum disruption to the proceedings and inconvenience to the parties.

4. Transcripts
Daily transcripts will be separated into two documents, one containing a record of the entire proceeding for such day, the other excluding any discussion of Confidential Information. Only Recipients shall be entitled to receive a copy of that portion of the transcript containing Confidential Information.

5. Court Reporter
After completion of the daily transcript, the court reporter shall deliver to the Board all of his/her notes in written or electronic form, taken at the Proceeding containing references to Confidential Information as well as all copies of the transcript containing Confidential Information which are not distributed to Recipients.

6. Post Proceeding
Following the close of the Proceeding the Board will destroy all Confidential Information and Related Materials provided by Recipients to the Board or in the possession of the Board, except for a single copy thereof which shall form a confidential part of the record, which copy shall remain confidential.

SCHEDULE E TO APPENDIX 2

TO AEUB ORDER OF DECEMBER 10, 2001
CARBON STORAGE FACILITIES TRANSFER

STATUTORY DECLARATION

FORM FOR AN INDIVIDUAL RECEIPENT
FORM FOR A CORPORATE RECEIPENT

STATUTORY DECLARATION
FOR AN INDIVIDUAL RECEIPENT

CANADA
PROVINCE OF ALBERTA

In the Matter of the *Alberta Energy and Utilities Board Act*, S.A. 1995, Chapter A-19

And in the Matter of Rule 12 of the Alberta Energy and Utilities Board's Rules of Practice

TO WIT: And in the Matter of Application 1237639 – Carbon Storage Transfer

I, _______________________________ of the City of ________________, in the Province of ____________________, do solemnly declare as follows:

1. That capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed thereto in my Undertaking to the Board and ATCO dated _________________, 2001 (the **Undertaking**), a copy of which is attached to this Statutory Declaration.
2. That I have fully complied with the Undertaking and the Order.
3. That I have made no use whatsoever of the Confidential Information or of the Related Materials except as permitted pursuant to the Order or the Undertaking.
4. That I have not disclosed the Confidential Information in any manner except as permitted by the Order or by the Undertaking.
5. That I have expunged all electronic copies of the Confidential Information and Related Materials from all electronic apparatus and data storage media under my direction or control.
6. That I have delivered to the Board or I have destroyed all paper copies of the Confidential Information and Related Materials in my possession or under my control.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the City of Calgary,)
in the province of Alberta, this ____ day of)
____________, 2002.)
)
)
) ______________________________
)
__________________________________)
A Notary Public for the Province of Alberta

STATUTORY DECLARATION
FOR A CORPORATE RECEIPENT

CANADA
PROVINCE OF ALBERTA

In the Matter of the *Alberta Energy and Utilities Board Act*, S.A. 1995, Chapter A-19

And in the Matter of Rule 12 of the Alberta Energy and Utilities Board's Rules of Practice

TO WIT: And in the Matter of Application 1237639 – Carbon Storage Transfer

I, ________________________________ of the City of _________________, in the Province of _____________________, do solemnly declare as follows:

1. I am an officer of ____________________________ (the Recipient) and I make this Statutory Declaration to the best of my knowledge and belief, after due inquiry, and in my capacity as an officer of the Recipient and not in my personal capacity.
2. That capitalized terms used herein which are not otherwise defined herein shall have the meanings ascribed thereto in the Undertaking by the Recipient to the Board and ATCO dated __________________, 2001 (the Undertaking), a copy of which is attached to this Statutory Declaration.
3. That the Recipient and all of its officers, directors, employees, agents, contractors or advisors having access to the Confidential Information (the Personnel) have fully complied with the Undertaking and the Order.
4. That the Recipient and the Personnel have made no use whatsoever of the Confidential Information or of the Related Materials except as permitted pursuant to the Order or the Undertaking.
5. That the Recipient and the Personnel have not disclosed the Confidential Information in any manner except as permitted by the Order or by the Undertaking.
6. That the Recipient and the Personnel have expunged all electronic copies of the Confidential Information and Related Materials from all electronic apparatus and data storage media under their direction or control.
7. That the Recipient and the Personnel have delivered to the Board or have destroyed all paper copies of the Confidential Information and Related Materials in their possession or under their control.

And I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath.

DECLARED before me at the City of Calgary,)
in the province of Alberta, this ____ day of)
_____________, 2002.)
)
)
) ______________________________
)
)
)
____________________________________)
A Notary Public for the Province of Alberta

APPENDIX 3 – ISSUES LIST

ATCO GAS AND PIPELINES LTD.
TRANSFER OF CARBON STORAGE FACILITIES
Application No. 1237639

INTRODUCTION

ATCO Gas and Pipelines Ltd. (ATCO) filed an application on July 18, 2001 with respect to the Carbon storage facilities (Storage Facilities) and the Carbon producing properties (Producing Properties). ATCO filed additional evidence by correspondence dated September 28, 2001. In its application ATCO requests the Board to:

(a) "approve the withdrawal of the Carbon storage facility from regulated service and rates; and

(b) establish a process by which the fair market value of the Carbon storage facility could be determined so that the facility could be transferred to ATCO Midstream".

PURPOSE OF HEARING

Purpose of Hearing - The present hearing is to determine the following matters:

(a) Are the Storage Facilities used or required to be used?

(b) Can the Storage Facilities and the Producing Properties be removed from regulated service?

(c) What assets make up the Storage Facilities and the Producing Properties?

(d) If the Storage Facilities and the Producing Properties can be removed from regulated service, what should the process be to determine their fair market value?

(e) If the Storage Facilities and the Producing Properties can be removed from regulated service and a sale would satisfy the "No Harm Test", is a closed process transfer to an affiliate appropriate?

(f) What are the appropriate "No Harm Test" criteria to assess a potential future application to approve the sale and transfer of the Storage Facilities and the Producing Properties?

(g) Finalization of outstanding GRA and Affiliate matters.

During the course of the proceeding additional matters may arise for determination.

In the event the Board determines that the Storage Facilities and the Producing Properties may be removed from regulated service, the sale and transfer of these assets in a potential subsequent hearing shall be considered in light of the Board's direction from this hearing on the above matters. In addition, any such subsequent hearing would consider the appropriate distribution of the proceeds of disposition.

ISSUES

1. Used or Required to be Used
   1.1 Are the Storage Facilities presently used or required to be used?
   1.2 If the Storage Facilities are presently used or required to be used, how long should the facilities be expected to remain used or required to be used?
   1.3 If the Storage Facilities are presently used or required to be used, can alternative and better arrangements be utilized that would support removing the assets from regulated service?
   1.4 If the event the Storage Facilities are not presently used or required to be used, what alternatives should be considered, including: implementing operational changes to make the facilities used or required to be used, disposing of the facilities to a third party, disposing of the facilities to an affiliate, ceasing operation of the facility and blowing down the cushion gas, or some combination of the above?
   1.5 Impacts of ATCO operational changes implemented in 1998 to reduce utilization of Storage Facility as described in IRs CG-AG. 87 and 90

2. What assets, permits, rights and obligations should be considered in the context of a disposition of the Storage Facility and the Producing Properties?
   2.1 Physical assets
   2.2 Storage gas
   2.3 Cushion gas, as intrinsic to the storage operation, or as company owned production
   2.4 Producing Properties (Carbon company owned production)
   2.5 Licenses, permits, approvals
   2.6 Contracts, agreements with third parties and affiliates, subject to demonstrated confidentiality constraints and the Board's Rules of Practice
   2.7 Intangible assets, for example good will
   2.8 Royalty considerations

3. Historical context of acquisition and operation of Carbon field and Storage Facilities
   3.1 Potential for incursions and interactions between storage reservoir and the Producing Properties
   3.2 Customer/Shareholder entitlement to the benefit of various Carbon assets, including, cushion gas and the Producing Properties
   3.3 Understanding of historic and present technical and operational aspects of the Storage Facilities, including: storage capacity, deliverability capability, physical operations, interconnections with other pipeline systems, exchange and swap capabilities, peaking flexibility, and operating and maintenance costs, subject to demonstrated confidentiality constraints and the Board's Rules of Practice

4. Appropriateness of closed sale to affiliate without public tendering process

5. Fair Market Evaluation Process
   5.1 Separate test for each of (i) the Storage Facilities as a going concern. (ii) cushion gas and the Producing Properties as company owned production, and (iii) the Producing Properties alone

6. Appropriate evaluative measures
   - 6.1 Separate test for each of (i) the Storage Facilities as a going concern, (ii) cushion gas and the Producing Properties as company owned production, and (iii) the Producing Properties alone
   - 6.2 No Harm Test
     - 6.2.1 Adverse Impact to customers
       - 6.2.1.1 Understanding of advantages/disadvantages to shareholders/customers of retaining Storage Facilities versus alternatives (no storage arrangements, storage facility arrangements with ATCO Midstream or NGTL based storage arrangements), including:
         - 6.2.1.1.1 Implications for operational flexibility
         - 6.2.1.1.2 Revenue credits from third party storage arrangements
         - 6.2.1.1.3 Implications to revenue requirement and rates
         - 6.2.1.1.4 Third party operational arrangements
         - 6.2.1.1.5 Income tax consequences
       - 6.2.1.2 Competitive position of Alberta storage market
       - 6.2.1.3 Should Storage Facilities and Producing Properties remain in rate base, potential benefits/liabilities to shareholders/customers associated with Carbon field after facilities are no longer used for storage and appropriate timeframe for consideration
       - 6.2.1.4 Valuation methodologies to determine blow down value of cushion gas and of the Producing Properties
         - 6.2.1.4.1 Assumptions on production volumes, depletion rates and production timeframe
         - 6.2.1.4.2 Discount rate
         - 6.2.1.4.3 Production costs
         - 6.2.1.4.4 Price forecasts
     - 6.2.2 Impact to safe and reliable service
       - 6.2.2.1 Security of supply
       - 6.2.2.2 Emergency response, flexibility to respond in the event of a failure on the NGTL system
     - 6.2.3 Short term vs. long term considerations

7. Affiliate Issues
   - 7.1 Gas Management Services Agreements – ATCO Gas North/South and ATCO Midstream
   - 7.2 Gas Storage Services Agreement – ATCO Gas South and ATCO Midstream
   - 7.3 Uncontracted Capacity Agreement – ATCO Gas South and ATCO Midstream

8. GRA Issues
   - 8.1 2001/2002 Storage Revenue Forecast
   - 8.2 2001/2002 O&M Forecast – Gas Management and Gas Storage Services