



ATCO Gas and Pipelines Ltd.

Calgary Stores Block

Disposition of Customer Proceeds

August 27, 2002

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2002-080: ATCO Gas and Pipelines Ltd.
Calgary Stores Block, Disposition of Customer Proceeds
Application No. 1275517

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**MEMORANDUM OF DECISION
ATCO GAS AND PIPELINES LTD.
CALGARY STORES BLOCK
DISPOSITION OF CUSTOMER PROCEEDS**

**Decision 2002-080
Application No. 1275517
File No. 6405-17-3**

1 INTRODUCTION

The Board received a letter from ATCO Gas, a division of ATCO Gas and Pipelines Ltd. (ATCO), dated July 23, 2002 (the Application) that proposed a process to deal with the customer portion of the proceeds from ATCO's sale of a rate base facility referred to as the Calgary Stores Block (Stores Block) to Calgary Co-Operative Association Limited (Co-Op) as directed by Decision [2002-037](#). Decision 2002-037 ordered that the customer portion of the sale proceeds from the Stores Block in the amount of \$4,070,310 (the "Customer Proceeds") was to be allocated to customers of ATCO Gas South and ATCO Pipelines South in a method to be approved by the Board. This Memorandum of Decision approves a process for dealing with the Customer Proceeds.

2 TIMELINE AND POSITIONS OF PARTIES

ATCO Gas letter of July 23

In a letter dated July 23, 2002, ATCO Gas requested the Board to suspend the operation of the Board's Order contained within Decision 2002-037, which directed ATCO to pay the Customer Proceeds to customers. ATCO stated that it made this request as a result of the July 12, 2002 Court of Appeal decision to grant ATCO leave to appeal Board Decision 2002-037. ATCO suggested that the request for suspension would be conditional upon the Customer Proceeds being placed into an interest bearing trust account administered by its solicitors, Bennett Jones LLP. ATCO indicated that if its appeal fails, the Customer Proceeds with interest would be distributed to customers. ATCO stated that if the appeal was successful, the Customer Proceeds, with interest, would be distributed as directed by the Court of Appeal.

EUB letter of July 31

By letter of July 31, 2002, the Board indicated that ATCO's suggested procedure might be accepted, subject to comments from interested parties to be filed by August 7, 2002. ATCO was requested to investigate the feasibility of investing the funds in a longer-term investment vehicle with higher interest such as a six-month GIC.

Municipal Interveners (MI) letter of August 1

By letter of August 1, 2002, MI indicated that customers would likely be disadvantaged with respect to the rate and timing suggested by the ATCO proposal. MI recommended that the funds remain with ATCO at a notional rate of 8% with interest commencing December 11, 2001, which was the closing date of the sale of the Stores Block. MI recommended the 8% rate as

being the collective cost of capital for customers determined by the Board in the Viking Disposition Proceeding¹, Decision [2001-065](#).

Calgary letter of August 6

In a letter to the Board of August 6, 2002, Calgary commented that the granting of leave to appeal, does not, in and of itself, act as a stay of the Board's decision. Accordingly, the Customer Proceeds should be distributed to customers and there was no need to consider ATCO's proposal to pay the funds into a solicitor's trust account. Calgary further stated that if the funds are not provided to customers pending a Court of Appeal process, putting the funds in a solicitor's trust account is not appropriate; instead the funds should be administered in a deferral account with interest calculated at the ATCO weighted average cost of capital (WACC) as determined in Decision [2001-96](#).

Federation of Alberta Gas Co-ops and Gas Alberta (FGA) letters of August 8 and 14

FGA stated in correspondence of August 8 and August 14, 2002, that if the Customer Proceeds are held in a deferral account as described by Calgary, they should be split into separate ATCO Gas and ATCO Pipelines accounts to facilitate handling in the forthcoming General Rate Application processes for ATCO Gas South and ATCO Pipelines South. FGA clarified that they did not propose that the funds should be immediately refunded to customers and were satisfied with holding the funds in a deferral account. They further stated that because the amount to be refunded is small, rate shock was not a consideration should the funds have to be repaid following a decision of the Court of Appeal. FGA indicated that the carrying cost rates proposed by either Calgary (WACC) or MI (8% deemed) were satisfactory.

ATCO Gas letter of August 14

By letter of August 14, 2002 ATCO responded to the FGA letter of August 8 and the MI letter of August 1. ATCO stated that the MI and FGA submissions did not address the issue of rate stability. Additionally, ATCO Gas indicated that they would comply with a Board direction to immediately refund the funds, provided it is assured that ATCO would be able to recover any entitled amounts arising from a Court decision.

3 BOARD PROCESS ARISING FROM DECISION 2002-037

In Decision 2002-037, the Board Ordered ²:

The \$4,070,310 portion of the Sale proceeds allocated to customers shall be credited to the customers by a method to be approved by the Board. AGS customer shall receive \$3,045,813 and APS customers shall receive \$1,024,497. (the Order).

The Application proposed a methodology that would hold the final disposition of the Customer Proceeds in abeyance until a point in time subsequent to a final Court of Appeal decision respecting ATCO's Leave to Appeal of Decision 2002-037. The Board does not agree that the granting of Leave to Appeal a decision is, in and of itself, sufficient reason to delay implementation of the Order.

Subsections 26(4) and (5) of the *Alberta Energy and Utilities Board Act*³ (the Act) provide:

¹ Decision [2001-65](#)

² Decision 2002-037, page 26

26(4) An order or direction of the Board takes effect at the time prescribed by the order or direction, and the operation of the order or direction is not suspended by the commencement or conduct of any appeal to the Court of Appeal or of any further appeal.

26(5) Notwithstanding subsection (4), where the Board thinks fit, the Board may, with respect to an order or direction of the Board, the ERCB or the PUB that is being appealed, suspend the operation of the order or direction until

- (a) the decision of the Court hearing the appeal is rendered or the time of appeal to the Supreme Court of Canada has expired, or
- (b) the appeal has been abandoned.

In the Board's view, it is critical that all parties have a high degree of certainty that orders, directions and decisions of the Board will be implemented in a timely manner by all impacted parties and that the advent of actual or potential appeal proceedings will not alter that expectation except in exceptional circumstances where the Board may choose to exercise the discretion provided for in Subsection 26(5) of the Act. In the Board's view the circumstances of the present Application do not establish a sufficient basis to deviate from the norm established in Subsection 26(4) of the Act. The Board is not persuaded that it should exercise its discretion under Subsection 26(5) of the Act to delay implementation of the Order. Accordingly, the Board is prepared to direct a methodology by which customers will be credited with the Customer Proceeds.

In light of the submissions received, the Board is not convinced that an immediate payout of the funds to customers is appropriate given the size of the amount payable and the pending related GRA proceedings. Rather, the Board is of the view that a mechanism that could facilitate reconciliation of the refund balances within a GRA process is the most expedient. In this regard, the Board notes FGA's position⁴:

The Federation and Gas Alberta concur with the City of Calgary that the funds should be held in deferral accounts pending the Court's resolution of the matter. This will allow the division among customers to be resolved in the pending general rate applications of ATCO Gas and ATCO Pipeline, respectively.

The Board concurs with FGA that it is appropriate to address the allocation of funds within a GRA process. The Board further notes that this review would most efficiently occur by incorporating the allocation of Customer Proceeds, plus appropriate interest, among ATCO Gas and ATCO Pipeline customers in the corresponding Phase I and Phase II 2003 GRA processes.

Accordingly, the Board directs ATCO to incorporate the respective refund amounts of \$3,045,813 and \$1,024,497, plus interest, in their 2003 ATCO Gas South and ATCO Pipelines South General Rate Application processes.

³ RSA 2000 c. A-17

⁴ FGA letter of August 8, 2002

4 PROVISION FOR CARRYING COSTS

Parties agreed that it would be appropriate to calculate carrying costs on the Customer Proceeds until such time as customers are credited therewith. Submissions on the rate varied between the ATCO WACC established in Decision 2001-096, a deemed customer rate of 8%, and a short-term interest bearing trust account. The MI noted that ATCO has had the use of the funds since the closing of the sale on December 11, 2001.

The Board concurs that it is appropriate that the Customer Proceeds should bear interest. The Board also concurs with the MI position that the date when ATCO received the proceeds is the relevant interest commencement date. The Board is of the view that it is appropriate to utilize a medium-term, higher interest investment vehicle, rather than a short-term investment as proposed by ATCO. This methodology will provide customers with a reasonable return that is generally aligned with an alternative that the customers would be able to obtain themselves. The Board directs ATCO to make arrangements for such an investment that will have minimal risk and maximize the interest return over a six to twelve month time period. This investment should occur as soon as practical, but not later than September 16, 2002.

The Board directs ATCO Gas to utilize its average short-term interest rates for the purpose of calculating interest for the period commencing December 12, 2001 through the time when the funds are invested in a longer-term investment vehicle. This amount of interest shall be added with the principal amount of \$4,070,310 to then be utilized as the opening balance for the investment.

5 ADMINISTRATION OF THE FUNDS

The Board notes that parties offered differing positions respecting how the funds should be administered. ATCO Gas suggested that the funds be paid into a segregated, interest bearing trust account administered by its solicitors, Bennett Jones LLP. Other parties suggested that if the funds are not paid out immediately, that they should be administered in a deferral account associated with an ATCO WACC or deemed carrying cost rate for customers.

In the present circumstances, given the relatively small amount of Customer Proceeds, the proximity of the upcoming general rate application proceedings and the desirability of a relatively simple and inexpensive method for accounting for and administering the funds consistent with the Board's direction for ATCO to utilize a medium-term investment vehicle, the Board is of the view that administration of the funds by ATCO's solicitors is appropriate. Accordingly, the Board accepts ATCO's proposal to utilize their solicitors to administer the funds and directs that the Customer Proceeds, plus accrued interest in an amount to be calculated as prescribed herein, shall be invested in a medium-term investment vehicle to be held by ATCO's solicitors, Bennett Jones LLP, in a segregated trust account in accordance with the terms of this Decision.

ATCO is ordered to confirm to the Board and interested parties:

- (a) the date funds are invested in the solicitor's trust account;
- (b) the amount of funds invested together with the calculation of the accrued interest on the Customer Proceeds since December 12, 2001; and

- (c) the type of investment vehicle(s) utilized, and the associated term(s) and interest rate(s).

Dated in Calgary, Alberta on August 27, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

Gordon Miller
Presiding Member

(original signed by)

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

(original signed by)

J. Ian Douglas, FCA
Board Member