ATCO Gas North

Westlock and Lloydminster Sales
Disposition of Customer Proceeds

September 17, 2002

Alberta Energy and Utilities Board

ALBERTA ENERGY AND UTILITIES BOARD
Decision 2002-083: ATCO Gas North
Westlock and Lloydminster Sales, Disposition of Customer Proceeds
Application No. 1277150

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ALBERTA ENERGY AND UTILITIES BOARD
Calgary Alberta

MEMORANDUM OF DECISION
ATCO GAS NORTH
WESTLOCK AND LLOYDMINSTER SALES DISPOSITION OF CUSTOMER PROCEEDS PURSUANT TO DECISIONS 2001-46, 2001-65 AND 2002-1

Decision 2002-083
Application No. 1277150
File No. 6405-18-1

1 INTRODUCTION

The Board received a letter dated August 23, 2002 from ATCO Gas North (AGN), an operating division of ATCO Gas and Pipelines Ltd. AGN proposed a method of dealing with the amounts to be paid to customers as a result of Board Decision 2001-46, dated May 29, 2001, approving the sale of both the Westlock and Lloydminster producing properties, and Decision 2001-65, dated July 31, 2001, which set forth the reasons for approving the above noted sales.

In Decision 2001-65, the Board directed AGN to refile information (Compliance Filing) for the Westlock and Lloydminster producing properties that would:

1. reconcile the Net Book Values used by AGN in the Applications and those presented by customer representatives of the North Core Committee (NCC) based on information provided by AGN in response to information requests;
2. restate the rate base values showing the retained negative salvage; and
3. provide a final statement of proceeds from the approved sales to be used by the North Core Committee in its negotiations regarding distribution of the customers' share of the proceeds.

By letter dated August 30, 2001 AGN submitted its Compliance Filing with respect to both properties. Subsequent to its review of the Compliance Filing and comments from interveners, the Board issued Decision 2002-1, dated January 3, 2002. In Decision 2002-1 the Board confirmed the amounts to be allocated between customers and shareholders, and rejected AGN's reduction of the proceeds to customers for income tax purposes. The Board also ordered AGN to combine the customer portion of the Westlock and Lloydminster sales of $6,363,000 (Customer Proceeds) with the amount to be distributed from the sale of the Viking properties as approved by the Board in Decision 2001-104, dated December 11, 2001.

On January 17, 2002, AGN filed a Review and Variance Application with respect to Decision 2002-1 (the "R&V Application"). In the covering letter to the R&V Application, AGN requested that the Board rescind the Order in Decision 2002-1 to combine the amounts to be distributed to customers from the Westlock and Lloydminster dispositions with the amounts from the sale of the Viking properties, until such time as the Board had considered the R&V Application. AGN considered that it would not be appropriate to pay amounts to customers today, with the potential of a charge to customers being required in the future as a result of this R&V Application.

By letter dated February 8, 2002 the NCC responded to the Board's letter of January 24, 2002 requesting comments regarding AGN's R&V Application. The NCC determined that it would oppose the R&V Application and set forth argument accordingly.

On July 29, 2002, the Board dismissed the R&V Application (the "R&V Decision").

2 POSITIONS OF THE PARTIES

AGN

In its letter of August 23, 2002, AGN confirmed that it was pursuing its application for leave to appeal Decision 2002-1 (Westlock and Lloydminster Appeal). AGN has also applied for leave to appeal the R&V Decision. Further, it has applied for an adjournment of the Westlock and Lloydminster Appeal and the appeal of the R&V Decision until such time as the Court of Appeal renders its decision with respect to AGN's appeal of Board decision 2002-80 dated August 27, 2002, known as the Calgary Stores Block – Disposition of Customer Proceeds (Stores Block appeal.) AGN considered that the underlying issues being addressed in the Westlock and Lloydminster appeal and the Stores Block appeal are the same or similar.

As a result of AGN's application for an adjournment of the Westlock and Lloydminster and R&V Decision appeals, AGN requested the Board to suspend its Order in Decision 2002-1 to refund the monies until a decision of the Court of Appeal has been rendered in respect of the Stores Block Appeal and the Westlock and Lloydminster Appeal or until the matter is otherwise concluded.

AGN noted that after the payment of income taxes associated with the Westlock and Lloydminster dispositions, proceeds of approximately $2.9 million were available for distribution. AGN contended that this amount was approximately equal to the no-harm threshold established by the Board.

AGN made the following proposal:

> ATCO will remit to customers the amount of $1,742,000 for the Westlock disposition and $1,220,000 for the Lloydminster disposition (total proceeds of $2,962,000) based on the amount established by the Board as the no-harm threshold in Decision 2001-65 (ATCO noted that the no-harm threshold is not the subject of the Leave to Appeal application now before the Courts).
>
> In the event that ATCO is ultimately required to remit the balance of the proceeds allocated to customers at a future date, it is prepared to apply interest at the short-term rates that could have been obtained.
>
> Alternatively, if the Board is of the view that the full funds should be paid to customers forthwith, ATCO requests that it be done on an interim basis and in such a way as to ensure that ATCO has the opportunity to recover, and the Board is able in law to allow it to recover, any amounts which as a result of a Court of Appeal decision ATCO was not obliged to pay to customers, together with interest, also at the short-term rates that could have been obtained in that time period.

By letter dated September 16, 2002, AGN responded to the NCC's letter of September 4, 2002. AGN argued that the 8% discount rate proposed by the NCC represented a long-term rate in excess of 15 years, and was not the appropriate rate to be used in the determination of short-term

interest on proceeds prior to distribution to customers. Further, as a result of the retirement of the net book value, payment of costs of disposition and income taxes AGN has only had the use of approximately $1,400,000.

NCC

By letter dated September 4, 2002, in response to AGN's letter of August 23, 2002, the NCC noted that AGN appeared to be prepared to pay out the amount equal to the no-harm threshold as calculated by the Board in Decision 2001-65. The NCC recommended that interest should be paid on the amount from June 1, 2001 (the closing date of the Westlock and Lloydminster sales) at 8%, which was the discount rate used by the Board in Decision 2001-65 to determine the no-harm value.

The NCC considered that where there was money owing to customers, which they had not received, customers were being "harmed" at the rate of 8%. The NCC stated that the 8% rate should apply to all amounts, including the amount withheld pending the Court of Appeal's ruling should the court agree with Decision 2002-1.

3 BOARD PROCESS ARISING FROM DECISION 2002-1

In Decision 2001-65, the Board established that the no-harm threshold for the Westlock and Lloydminster producing properties was $1,742,000 and $1,220,000 respectively. Respecting the no-harm threshold, the Board considered that at a minimum, customers must receive these amounts to be held harmless from the sale of the Westlock and Lloydminster properties. As a result of updated information contained in the Compliance filing from AGN, the Board issued Decision 2002-1, which confirmed that the amounts due to customers from the sale of the Westlock and Lloydminster producing properties were $4,488,000 and $1,875,000 respectively, totaling $6,363,000, and that the total amount due to customers should be paid out in conjunction with the proceeds from the Viking sale. The amount of $6,363,000 has not been paid to customers to date.

As stated earlier, AGN is prepared to pay the "no harm" amounts for both dispositions to customers immediately, as they are undisputed. However, AGN proposes to hold the balance of the payments of customer proceeds from the Westlock and Lloydminster dispositions in abeyance, until after the Court of Appeal's decision respecting the Westlock and Lloydminster Appeal.

The Board does not agree that an application for 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*[1] (the AEUB Act) provide:

> 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.

[1] RSA 2000, c. A-17

> 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
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> (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 AEUB Act. The circumstances of the present matter do not establish a sufficient basis to deviate from the norm established in Subsection 26(4) of the AEUB Act. Thus, the Board is not persuaded that it should exercise its discretion under Subsection 26(5) of the AEUB Act to delay implementation of the direction in Decision 2002-1 to pay customers proceeds of $4,488,000 with respect to the Westlock sales and $1,875,000 from the Lloydminster sales.

The Board has reviewed the positions of AGN and the NCC and does not consider there is sufficient reason or extenuating circumstance to delay distributing the customer proceeds. The Board directs AGN forthwith to pay out to customers the amounts as determined in Decision 2001-65 and confirmed in Decision 2002-1 for the Westlock and Lloydminster producing properties totaling $6,363,000. Based on section 26(4) of the AEUB Act, the Board does not need to wait for the Court of Appeal to render its decision before directing AGN to payout the total amount.

Accordingly, the Board expects AGN to forthwith pay customers the amount of $6,363,000 together with interest, as determined in this Decision.

4 PROVISION FOR CARRYING COSTS

Parties appeared to agree that it would be appropriate to calculate interest costs on the Customer Proceeds until such time as customers are credited therewith. Submissions on an appropriate interest rate varied; AGN suggested short-term interest rates while the NCC recommended a deemed customer rate of 8%, as was used in determining the no-harm value. The NCC noted that AGN has had the use of the funds since the closing of the sales on June 1, 2001.

The Board agrees with both parties that the Customer Proceeds should accumulate interest. The Board concurs with the NCC that an appropriate date to begin calculations of the interest amount would be the date on which AGN received the proceeds from the sales. The Board notes that the sales closed on June 1, 2001.

The Board considers that given AGN's expectation that only a short period of time would elapse between receipt and distribution of the funds, as was the case in the sale of the Viking properties, the prudent step would have been to invest the funds in short-term financial investments until the funds were paid out. The Board considers that the amount of time taken to resolve this matter could not have been foreseen, and it would have been prudent for AGN to have invested the funds in short-term investments. It would not have been reasonable for AGN to have invested the

customers' proceeds in long-term investments as AGN may have been required to pay out the funds at any time after August 1, 2001, when AGN filed its Compliance Filing.

Accordingly, the Board agrees with AGN that short-term interest rates should be used in calculating the interest portion due to customers. This methodology will provide customers with a return that would reasonably have been expected given current market conditions.

The Board directs AGN to utilize average short-term interest rates that were and are available for the purpose of calculating interest for the period commencing June 1, 2001 through the time when the funds are paid out.

The Board notes AGN's position that interest should only accumulate on $1,400,000. However the Board considers that Decision 2002-1 confirmed that the amount of $6,363,000 is due to customers and that interest should accumulate on this amount.

5 ADMINISTRATION OF THE FUNDS

In order to facilitate the distribution of the Customer Proceeds at the earliest opportunity, the Board directs AGN, where possible, to use the same annual consumption record as was used to distribute the Viking proceeds. The Board notes that AGN used annual consumption for the period ending December 2001. AGN shall apply the same criteria as it did for the distribution of the Viking proceeds as was set out in Decision 2002-018, dated February 21, 2002. The criteria dealt with new customers and provided for any dispute resolution. The amount is to be credited in a lump sum to the customers of record during the October 2002 billing cycle. Any amount, positive or negative, that remains can be included with the remaining Viking amounts that are to be included in the DGA for reconciliation with a future GCRR.

6 BOARD ORDER

Based on the submissions of the parties and the Board's own knowledge herein, the Board orders as follows:

(1) ATCO Gas North is directed to carry out the Board directions in this Decision.

(2) ATCO Gas North is to distribute the Customer Proceeds of $6,363,000 in relation to the Westlock and Lloydminster sales in a lump sum to customers of record during the October 2002 billing cycle.

(3) ATCO Gas North is to confirm to the Board and interested parties within 30 days after distributing the proceeds to customers:
- the date funds are credited to the customers' account;
- the amount of funds to be paid, together with the calculation of the accrued interest (and the corresponding monthly short-term rates) on the Customer Proceeds since June 1, 2001; and
- a reconciliation of the amounts to be distributed to customers.

Dated in Calgary, Alberta on September 17, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

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

(original signed by)

T. M. McGee
Member

(original signed by)

J. I. Douglas, FCA
Member