



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

2002/2003 Winter Storage Plan

October 29, 2002

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2002-092: ATCO Gas South, a Division of ATCO Gas and Pipelines Ltd.
2002/2003 Winter Storage Plan
Application No. 1272527

Published by

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Contents

1	INTRODUCTION.....	1
1.1	Hearing Procedure	1
1.2	Background.....	2
1.3	Particulars of the Application	2
1.4	Summary of Application.....	6
1.5	Confidentiality	6
	1.5.1 Board Findings.....	6
2	PARTICULARS OF THE PROCEEDING.....	7
2.1	Views of the Interested Parties	7
2.2	Views of ATCO Gas.....	11
2.3	Board Findings.....	17
3	ORDER.....	20
	APPENDIX 1 – CONFIDENTIALITY RULING AND ORDER.....	23

List of Tables

Table 1.	Carbon – Summer 2002 Monthly Injection Plan.....	3
Table 2.	Carbon – Winter 2002/2003 Monthly Maximum Daily Withdrawals Rates... 	4
Table 3.	Carbon - Winter 2002/2003 Initial Monthly Withdrawal Plan (Example)	4

1 INTRODUCTION

By letter dated June 19, 2002, ATCO Gas South (AGS), a division of ATCO Gas and Pipelines Ltd.,¹ filed an application with the Alberta Energy and Utilities Board (the Board or EUB) for approval of its natural gas storage plan for the 2002/2003 winter season at the Carbon natural gas storage facility (the Application).

In the Application AGS stated that the storage plan for 2002 summer injection and the 2002/2003 plan for winter withdrawals was similar to the plan used in the 2001/2002 storage year, which had been agreed to by customers and approved by the Board in Decision 2001-81,² dated October 31, 2001.

AGS also requested comments or concerns from the Board with respect to the summer 2002 injection plan.

1.1 Hearing Procedure

On July 4, 2002 the EUB issued a Notice of Written Proceeding, which was also published in the Calgary Herald and Calgary Sun on or about July 10, 2002, and requested interested parties to register by July 18, 2002. The notice outlined the following schedule:

Information Requests to AGS	July 18, 2002
Comments on summer injection plan, if any	July 18, 2002
Information Responses from AGS	August 1, 2002
Intervenor Evidence, if necessary	August 15, 2002
Information Requests on Intervenor Evidence	August 22, 2002
Information Responses from Intervenor	September 5, 2002
Written Argument	September 19, 2002
Written Reply Argument	September 26, 2002

¹ ATCO Gas and Pipelines Ltd. Comprises two divisions, ATCO Gas and ATCO Pipelines. Each division is subdivided into North and South, i.e. ATCO Gas North, ATCO Gas South, ATCO Pipelines North and ATCO Pipelines South.

² ATCO Gas and Pipelines Ltd. (ATCO Gas South), Application 1246274 for Approval of the 2001/2002 Winter Storage Agreement

The following registered as interested parties in the proceeding:

Alberta Irrigation Projects Association (AIPA)
Alberta Urban Municipalities Association (AUMA)
BP Canada Energy Company (BP)
City of Calgary (Calgary)
EnCana Corporation (EnCana)
Public Institutional Consumers of Alberta (PICA)

In response to the Board's request for comments on AGS's 2002 summer injection plan, only Calgary submitted its views in its letter of July 18, 2002. Calgary stated that since the summer injection plan was about half complete it did not wish to comment, but submitted that it would be appropriate to review AGS's decision with respect to its plan at the appropriate reconciliation proceeding.

On July 31, 2002 the Board issued a letter also noting that, since the summer injection plan had already been implemented it was not appropriate to review the matter separately. Instead, the Board expected AGS to justify the appropriateness of its strategy in implementing the summer injection plan within the context of this proceeding.

1.2 Background

By letter dated February 15, 2002 AGS advised the Board that it would utilize 16.7 petajoules (PJ) of storage within its gas portfolio for the 2002/2003 storage year at the company-owned Carbon Storage Facility (the Facility). On March 22, 2002, AGS filed a storage study and a preliminary storage plan, for information, with the EUB and indicated that it intended to initiate discussions with interested parties in an effort to reach a negotiated settlement. In the Application AGS indicated that it was unable to negotiate an agreement and was therefore requesting EUB approval of its plan.

1.3 Particulars of the Application

For the 2002/2003 storage year, AGS planned to implement "Storage Management Strategy 4" as described in the RiskAdvisory report dated March 4, 2002, which was included among the material filed with the EUB on March 22, 2002. RiskAdvisory had been engaged by AGS to review several alternatives that could be employed to manage and optimize the market price exposure of the 2002/2003 storage position. In its report, RiskAdvisory noted that there were two aspects to the management of market risks inherent in a storage position. The first aspect centred on the management of the seasonal price hedge associated with the storage position and the second aspect of the storage risk position centred on the optimization of the withdrawal profile to maximize the value of storage.

In regard to the first aspect, AGS made note of Decision 2001-75,³ dated October 30, 2001, wherein the Board observed that AGS owned the Facility and as a result could provide gas price hedging. AGS also noted that in the same Decision the Board had directed AGS to treat company

³ Methodology for Managing Gas Supply Portfolios and Determining Gas Cost Recovery Rates (Methodology) Proceeding and Gas Rate Unbundling (Unbundling) Proceeding; Part A: GCRR Methodology and Gas Rate Unbundling

storage facility costs and benefits related to gas price stabilization or hedging in accordance with the NCC COP Rider⁴ proposal. AGS stated that it had interpreted the Decision to mean that natural gas purchased and injected in the summer should be priced at AECO Index prices and that additional hedging in the manner of fixed price summer purchases and fixed price winter sales should not be undertaken. AGS submitted that these additional hedging activities should not be undertaken without customer agreement and Board approval.

In regard to the second aspect in the RiskAdvisory report, AGS noted that the Board had directed in Decision 2001-110,⁵ dated December 12, 2001, that AGS should investigate methodologies that would assist it in making decisions when managing the withdrawals from the Facility. In that regard AGS stated that it planned on actively managing the storage withdrawals in conjunction with fixed price forward market transactions as noted in “Strategy 4” in the RiskAdvisory report. To assist in the execution of the preferred strategy to manage withdrawals, AGS planned to use the VanderSchee optionality model⁶ as applied by AGS during the 2001/2002 storage season (the Model). The Model uses the daily price forecast to compare with the cost of gas in storage to indicate whether or not there is a price advantage to delay withdrawals, purchase the needed gas on the given day and commit to a transaction that would fix the sale price in the future. (See the sections on *Fixed Price Purchase and Sales Transactions* and *AECO Daily Index Purchase and Sales Transactions* later in this Decision report).

Summer 2002

AGS submitted that for the summer 2002 injection season, AGS was injecting at a flat 100% seasonal load factor similar to summer 2001.

AGS noted that a measurement error had resulted in a correction to the AGS inventory balance of about 2 PJ. AGS stated that it was utilizing the quantity from the measurement correction as the opening balance for the 2002 injection season and was valuing this gas at zero dollars.

AGS stated that it planned on purchasing an incremental 14.7 PJ of AECO Index priced gas and planned on injecting gas into the Facility at a constant daily rate of about 68.5 terrajoules/day (TJ/day) throughout the summer season. The following Table 1⁷ shows monthly injection quantities, as planned, at the Facility for summer 2002.

Table 1. Carbon – Summer 2002 Monthly Injection Plan

(TJ)									
	Opening	April	May	June	July	Aug	Sept	Oct	Total
Plan	2,045	2,055	2,124	2,055	2,124	2,123	2,055	2,120	16,700

⁴ Customer Representatives of the North Core Committee (NCC) originally submitted a proposal for a company-owned production rate rider (COP Rider) during the Viking proceeding, which resulted in Decision 2001-46, dated May 29, 2001 and Decision 2001-65, dated July 31, 2001.

⁵ Methodology and Unbundling Proceeding; Part B-1: Deferred Gas Account Reconciliation for ATCO Gas

⁶ Described in Exhibit 81; Methodology Proceeding

⁷ Application, Schedule A, Table 5

Winter 2002/2003

For the winter 2002/2003 withdrawal season, AGS submitted that rather than having the storage withdrawal capability dependent on inventory, it had set a fixed withdrawal pattern. AGS stated that this provided maximum daily flexibility to utilize the Model, consistent with the characteristics of the storage reservoir. Table 2⁸ that follows shows the maximum daily withdrawal rates that AGS had selected for its use each month. For example AGS explained, that on each day in November 2002, AGS could withdraw from 0 to 100 TJ, while on each day in January, AGS could withdraw from 0 to 265 TJ. AGS submitted that these withdrawal rates were fully available without any requirement for inventory management.

Table 2. Carbon – Winter 2002/2003 Monthly Maximum Daily Withdrawals Rates

(TJ/day)

Nov	Dec	Jan	Feb	Mar
100	160	265	160	100

AGS submitted that in order to implement a flexible withdrawal strategy at the Facility in conjunction with fixed price forward market transactions (storage optionality) and in order to develop workable procedures that could be administered in a reasonable manner, AGS required firm, date specific withdrawal commitments so that it could make commitments to counter parties for fixed price purchases and sales.

For the winter 2002/2003 withdrawal season, AGS stated that it would establish an “initial” planned withdrawal strategy at the commencement of the winter season based on the highest forward market prices. AGS also stated that in developing the forecast Deferred Company-Owned Storage Account (DCOSA) for the April 2002 Company-Owned Storage Rate Rider (COSRR), the forward market prices as of March 21, 2002 were used. AGS submitted that these prices resulted in the monthly withdrawal plan shown in Table 3.⁹

Table 3. Carbon - Winter 2002/2003 Initial Monthly Withdrawal Plan (Example)

(TJ)

	Nov	Dec	Jan	Feb	Mar	Total
Plan	3,000	4,960	8,215	525	0	16,700

AGS stated that on any given day early in the withdrawal period, AGS would have the option of withdrawing gas at the maximum rate shown in Table 2 or reducing the withdrawal to zero. Each day a decision would be made whether to withdraw or not by comparing the daily spot price with the discounted forward market prices for the balance of the winter season and by taking into consideration the number of days of storage left at maximum withdrawal rates.

AGS noted, for example, that if the number of days of storage left at maximum withdrawal rates was less than the number of days where the discounted forward price was greater than the current day price, AGS would reduce the daily withdrawal to zero and defer it to a later date during the winter. Conversely, if the number of days of storage left at maximum withdrawal rates was greater than the number of days where the discounted forward price was greater than the current

⁸ Application, Schedule A, Table 6

⁹ Application, Schedule A, Table 7

day price, AGS would withdraw storage as close as possible to the maximum rates shown in Table 2, thereby decreasing future winter withdrawals.

AGS also submitted that to ensure the storage quantity was withdrawn by the end of the winter season, a planned maximum daily withdrawal rate would be established (as noted above) for each month. AGS stated that if the actual withdrawals made early in the winter season were lower than the planned withdrawals, there would be less or no optionality left by the latter part of the winter season because withdrawals must be at maximum rates in order to meet the storage obligation. However, if the option to defer withdrawals were not exercised early in the winter, there would be optionality remaining throughout the period. AGS stated that the initial planned withdrawal rates (example shown in Table 3) would be adjusted throughout the winter season, as established by the forward market transactions noted below.

Fixed Price Purchase and Sales Transactions

In addition to revising the future withdrawal rates on a daily basis (relative to the planned withdrawal rates), AGS stated that it would attempt to purchase or sell fixed priced gas in the forward market. When AGS deferred withdrawal to a later date during the winter, AGS would also sell fixed price gas for future delivery over the same deferral period. When AGS accelerated withdrawal, AGS would also purchase fixed price gas for future receipt for the same period in which withdrawals would be reduced as a result of the earlier acceleration.

AECO Daily Index Purchase and Sales Transactions

AGS submitted that it would account for the change in storage withdrawal in its daily gas portfolio planning. When a withdrawal was reduced in the current day (relative to the planned quantity), AGS would purchase incremental AECO daily indexed price gas for that day to meet its gas service needs. When a withdrawal was at maximum in the current day, AGS would reduce its overall gas supply requirements for that day.

AGS stated that it would also adjust its AECO daily index procurement requirements to meet the daily fixed price purchase or sales obligations that were created in previous days.

As part of the Application, AGS also filed Schedule B which described the “Risks and Mitigation Strategies” that AGS proposed to use. AGS stated that it would implement the strategies but ultimately Sales customers would actually bear the risks.

AGS identified the following risks related to optionality;

- Individual Gas Sales – risk of payment failures
- Individual Gas Purchases – risk of delivery failures (a performance risk)
- Combined Gas Sales (payment failure risk) and Gas Purchases (delivery failure risk)
- Fixed Price Gas Purchases or Sales – risk of diminished price advantage involving small and non-standard quantities
- Gas Purchases or Sales – risk of movement in prices during time taken to finalize transactions

1.4 Summary of Application

AGS requested approval to implement a storage plan based on the Model for the 2002/2003 storage season in order to provide a physical hedge for AGS customers through the use of the Facility. This storage plan called for injecting gas into storage, purchased at the monthly index price between April 2002 and October 2002 (inclusive), at a constant rate of about 68.5 TJ/day. When added to the existing inventory of 2.045 PJ, inventory at the start of the winter withdrawal season would total 16.7 PJ. For withdrawals between November 2002 and March 2003 (inclusive), AGS proposed to use the Model, which is a management tool used to determine whether or not to withdraw gas on any given day up to predetermined monthly daily limits (see Table 2). An initial plan, determined by the Model, utilizing a price forecast in late October 2002, would be modified as new daily price forecasts became available. The difference between the cost of injected gas and the discounted daily forward market prices for the balance of the winter would be calculated on a daily basis. This differential would result in a daily decision either to withdraw gas or to delay withdrawal and purchase gas at the index price on the market. By the end of March 2003 the total inventory would be reduced to zero. AGS referred to this as an “index plan.”

1.5 Confidentiality

By letter dated July 30, 2002, AGS requested confidentiality under Rule 12(3) of the *Alberta Energy and Utilities Board Rules of Practice* (Alberta Regulation 101/2001 to the *Alberta Energy and Utilities Board Act* (Rules of Practice)). AGS had objected to the filing of certain information requested pursuant to an information request CAL-AGS.13(b)(i), filed by Calgary. AGS took the position that some of the requested information was commercial in nature and its disclosure could reasonably be expected to result in undue financial loss.

By letter dated July 31, 2002 the Board invited comments from interested parties on AGS’s request for confidentiality. Calgary was the only interested party to comment in a letter dated August 6, 2002. Calgary believed that it would require access to the information if confidentiality was granted but maintained that the information should not be considered confidential and therefore suggested that the request for confidentiality should be denied.

1.5.1 Board Findings

On August 29, 2002 the Board issued a Ruling and Order granting Confidentiality in respect of the Confidential Information for the purposes of the Application. A copy of the Board’s Ruling and Order is attached as Appendix 1 to this Decision.

The Board notes that the material filed by AGS under the rule of confidentiality was not used by either AGS or Calgary; therefore it will not be necessary for the Board to refer to the Confidential Information in this Decision.

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 potential for unwarranted claims of confidentiality, and maintains that confidentiality of information will be the exception, not the rule, in its proceedings. 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.

Given that neither party privy to the Confidential Information made use of it during the proceeding, the Board is led to conclusion that the Confidential Information, after due consideration by the parties, was either considered not relevant or was immaterial to their respective positions. This result re-emphasizes the concern of the Board that its confidential processes not be used except where there is both a valid and strong reason both to maintain confidential treatment of information and a valid and strong need to receive access to such information.

2 PARTICULARS OF THE PROCEEDING

2.1 Views of the Interested Parties

The following are the views of interested parties with the exception of the AIPA, BP and EnCana who did not file evidence or argument.

AUMA

The AUMA noted in argument that negotiations with customers were attempted during March and April 2002, but that they broke off in April and AGS subsequently filed a storage plan for the Board's approval on June 19, 2002. The AUMA stated that it understood the proposal to be quite similar to the storage plan employed for 2001/2002 except for greater quantities and an "initial plan" wherein maximum withdrawals would be tied to the months with the highest forward prices.¹⁰

The AUMA stated that based on actual and forecast forward prices for gas as of July 24, 2002, an estimated \$29.9 million of value could have been locked in for the 2002/2003 storage year, although \$10.2 million of that amount reflects the 2 PJ of zero cost opening inventory. The AUMA argued that although this represented considerable value for customers, it appeared that AGS considered that this option did not meet the Board's direction¹¹ since AGS did not view this to be a hedging strategy and, accordingly, would not consider this strategy without the support of its customers. The AUMA noted that, as such, the ability to pursue this option ended when negotiations broke off. The AUMA agreed with Calgary¹² that sufficient time was required for a collaborative process to develop an appropriate storage plan with input from customers.

The AUMA stated that, given the relatively minor changes from the 2001/2002 storage plan and the fact that AGS was already six months into its storage year, it did not oppose the storage plan proposed by AGS. The AUMA argued that the "initial plan" appeared to have sufficient flexibility to adjust to changing forward price forecasts and when combined with the Model, the plan should provide a reasonable opportunity to manage the withdrawals for the benefit of customers.

¹⁰ PICA-AGS.2

¹¹ AUMA-AGS.4; PICA-AGS.3

¹² Calgary Evidence, p. 11

Calgary

Calgary argued that in filing the Application for approval of a storage plan for the 2002/2003 winter season, AGS was asking the Board to pre-approve its management decisions, storage plan and method of operation in the absence of forecasts or analysis, and before the outcome of AGS's decisions were known. It was the submission of Calgary that the Board should deny the AGS Application and leave AGS to implement the storage plan that has resulted from its past management decisions. In Calgary's view, AGS would then be accountable for the prudence of its decisions and management in the normal course of events.

Calgary also noted that AGS had asked the Board for "feedback" if concerns with the summer 2002 injection plan arose. Calgary referred to its July 18, 2002 letter to the Board wherein Calgary had commented that a request for "feedback" on a plan that was half implemented at the time of the request appeared to be nothing more than an attempt to shield AGS from subsequent regulatory review. Calgary argued that in its July 31, 2002 letter, the Board agreed that it was not appropriate for the Board to "approve or disapprove the [summer injection] plan at this time" and went on to note that it expected AGS to justify the appropriateness of the summer strategy in the present proceeding. Calgary argued that in spite of the Board's letter, AGS filed no further justification for the summer injection plan. It was Calgary's submission that with respect to the summer injection plan, the Board should also leave AGS to complete its implementation of the plan and be accountable for its decisions in the normal course of events.

Calgary argued that AGS had embarked on its plan to transfer the Facility to ATCO Midstream without any recognition of customer entitlement to the full benefits of the Facility until a transfer was approved and without any planning to deal with the contingencies of regulatory delay or denial of the transfer application. Calgary submitted that 2002/2003 was the third storage year in a row that customers had been asked by AGS to participate in an "11th hour" negotiation with respect to storage use, and that Calgary had declined to enter into a process that would be expected, at best, to produce sub-optimal results.

Calgary noted that in its response to BR-CAL.1 Calgary agreed that prospective applications and approvals are desirable. However, it was Calgary's submission that the Application cannot be considered to be truly prospective as filed, and would not have been truly prospective even if filed several months earlier. Calgary argued that waiting until shortly before the start of the storage year to begin addressing storage issues, when combined with an Application which does not forecast benefits and costs, and which would relieve AGS of the risk of past and future decisions, did not, in Calgary's view, fall within the ambit of prospective ratemaking. In BR-CAL.1 Calgary stated:

...Calgary does not believe that the principle of "prospectivity" should be used to allow a utility to escape the consequences of its management decisions. As a result, Calgary continues to recommend that the Board allow ATCO to live with its decision making process and deal with the results of these decisions in a prudence review at the end of the storage year...

Calgary submitted in evidence that the regulatory process had not typically extended to the regulator engaging in day-to-day management and "pre-approval" of operating and implementation plans.

Calgary noted that in its response to BR-CAL.2 it had submitted that when considering the Application the Board should assess whether or not AGS's planned use of the Facility for 2002/2003 was based on appropriate economic and cost/benefit analysis with allowance for input from customers. Calgary argued that with or without a process allowing for customer input, the factors that should be considered in assessing the Application include:

- Is the amount of storage allocated to customers appropriate and based on sound forecasts and economics?
- Do the withdrawal rates meet daily and total demands?
- Are the proposals based on use of price signals to support use of storage for customers versus revenue generation?
- Were combinations of alternative storage uses considered and assessed?
- Does the proposed plan provide flexibility to deal with unexpected changes in demand or market conditions?

Calgary argued that the Application could not claim to be supported by any documented studies or analyses that examined the factors outlined above and demonstrated that the proposed storage plan had the potential to maximize the benefits to rate payers.¹³ Calgary also argued that the underlying justification for the proposed plan appeared to be either "historical practice" (for example, the 16.7 PJ of storage capacity allocated to customers) or prior customer agreement (as with the use of the Model, CAL-AGS.4(a)). It was Calgary's submission that neither prior practice, nor a reference to an agreement reached and approved by the Board in the different circumstances of 2001/2002¹⁴ could be used to excuse a failure to carry out proper, or any, analysis for 2002/2003.

In reply argument it was Calgary's view that AGS acted throughout 2001 and into 2002 on the assumption that the Carbon Transfer Application would be approved effective April 1, 2002 even though it was apparent by the fall of 2001 that the regulatory process would not be completed in time. Calgary argued that AGS made no contingency plans for either regulatory delays or a denial of its application resulting in the 11th hour consultation with customers for 2002/2003. This, in Calgary's view, was not appropriate management, and the Board should not relieve AGS of the consequences of its decisions by approval of the current Application.

Calgary noted that the AGS argument made much of the timing of Decisions 2001-75 and 2001-110, as well as its understanding of those Decisions.¹⁵ With respect to the timing of the Decisions, Calgary submitted that the real issue, as noted above, was the prudent management of the Facility. Calgary argued that by the time Decision 2001-75 was released on October 30, 2001, it should have been readily apparent to AGS that it was unlikely to receive a decision on the Carbon Transfer Application by the start of the 2002/2003 storage year. Calgary believed that it was obvious that AGS had no contingency plans in place.

Calgary understood, based on recent decisions, such as Decision 2001-75 and Decision 2001-110, that it was the desire of the Board that AGS effectively manage the Facility for the benefit

¹³ CAL-AGS.2(a); CAL-AGS.3(a); BR-AGS.3; PICA-AGS.3(b)

¹⁴ AG-CAL.4(i)

¹⁵ AGS Argument, p. 2, line 11 – p.5, line 24

of customers. In Calgary's view, effective management meant considering and evaluating alternatives, examining decision making methodologies, and selecting or recommending a preferred alternative – all of which was encompassed in the process discussed in Calgary's Evidence. However, it appeared to Calgary that the AGS argument reflected an attempt to extract very specific approvals or directions from the various Board decisions with respect to the use or operation of the Facility,¹⁶ and that AGS would not seriously examine or propose any approach or alternative that had not been previously approved by the Board. It was Calgary's view that such an approach was not "management." Calgary argued that AGS has made many decisions and applications related to the Facility over the years without prior Board direction, and had not been reticent about taking significant steps in other aspects of AGS operations (e.g. major capital projects, changes in depreciation treatment) without prior direction. Calgary also argued that absence of specific direction from the Board should not excuse a utility from developing, analyzing and suggesting alternatives.

In Calgary's view, the statements made in AGS's argument, at page 7 lines 3-9, regarding the activities undertaken in response to Decision 2001-110 significantly overstated AGS actions. Calgary stated that the RiskAdvisory report, presented to interveners barely three weeks before the start of the storage year, identified strategies, and nothing else. Calgary argued there were no recommendations and no analysis by AGS and that, in response to information request PICA-AGS.3(b), AGS had stated that it was up to the interveners to identify and request quantitative analysis. Doing nothing more than presenting interested parties with a list of strategies and asking them to request analysis and make a decision was, in Calgary's view, an abrogation of utility management responsibility for which the utility should be accountable.

Calgary noted that both the list of "strategic issues" and related discussion in AGS argument constituted new evidence in the context of the current proceeding and should be disregarded. However, Calgary submitted the Board should receive this evidence as an admission against AGS's interests, and an indictment of the AGS actions leading up to the Application. It was Calgary's position that this new evidence clearly showed that AGS was aware of the types of issues that needed to be addressed with respect to the use of storage. The issues identified by AGS would all have to be addressed in a process as described in Calgary's evidence. Calgary argued that the objectionable element of the current Application was that, even though AGS obviously understood the issues around storage, AGS made no contingency plans for dealing with these issues for 2002/2003 should its Carbon Transfer Application be delayed or denied, and failed to deal with these issues in its 11th hour negotiations with interveners and the Application. For these reasons it was Calgary's position that the Application should be denied.

PICA

PICA recommended the Board not approve the 2002/2003 Storage plan implemented on the AGS system. It was PICA's position that it was only practicable for prior approval of a storage plan to be given in advance of the injection season.

¹⁶ Ibid, p. 4, line 26 – 27: "... the Board has clearly approved..."
p. 5, line 3 – 4, "... the Board has directed AGS ..."
p. 5, line 16 – 18, "... the Board should provide some guidance..."
p. 6, line 2 – 4, "... this storage plan is consistent with the directions of the Board ..."

PICA submitted that by not seeking approval in advance of the storage season, AGS had left itself no choice but to proceed with the plan it considers most prudent, given the circumstances at the time it committed to the plan. PICA argued that by failing to take action sooner, AGS necessarily must accept the risk once implementation of the plan was complete and parties could challenge the prudence of that plan. PICA submitted that when considering the overall prudence of a plan, consideration must also be given to the execution of that plan and such consideration could only be reasonably finalized once execution of the plan was complete.

PICA stated that it continued to support the broad objectives of settlement processes and was prepared to participate in a collaborative manner with AGS and other interested parties in considering the possibility of a prior agreement on a plan for the 2003/2004 storage season.

2.2 Views of ATCO Gas

AGS submitted that Calgary was not correct in its characterization or assessment of the Application. AGS believed that the Application reflected a reasonable approach to the use of storage in the current environment, was consistent with previous Board directions and, therefore, should be approved.

AGS noted that with the elimination of the operational requirement for the Facility, it had considered the use of the Facility as a physical hedge for customers. AGS explained that a physical hedge involved purchasing gas and storing it with the hope that prices would be higher in the future when the gas would either be sold or used to displace other purchases. AGS submitted that, if winter prices rose relative to the summer injection price, the value derived from using storage would increase and the impact of the higher prices would be cushioned. Conversely, if winter prices fell relative to the cost of the storage inventory, costs would be higher than they otherwise would have been.

AGS stated that it has attempted to comply with the Board directions in Decisions 2001-75, 2001-110 and 2002-072 in planning for the 2002/2003 storage year. AGS noted that its original intent was not to have any storage at the Facility for the 2002/2003 storage year. However, during late 2001 and early 2002, AGS's review of Decisions 2001-75 and 2001-110, led it to conclude that there was considerable regulatory risk associated with not using the Facility storage as a physical hedge.¹⁷ Accordingly, AGS had reclaimed 16.7 PJ of storage for utility use even though this capacity was already committed to ATCO Midstream through the Gas Storage Services Agreement, dated February 20, 1998, and the Uncontracted Capacity Agreement dated March 16, 1998, both as amended from time to time, which reflected use of utility inventory at the Facility. In February 2002, AGS had notified the Board of its intention to retain this level (16.7 PJ) of storage inventory for the 2002/2003 storage year and that it would commence negotiations with active interveners on the use of this quantity.¹⁸ These negotiations proved unsuccessful, resulting in the Application.

AGS took exception to the inference in Calgary's letter of July 18, 2002 that AGS was slow in its approach to planning storage for 2002/2003.¹⁹ AGS considered that Decision 2001-75

¹⁷ Carbon Storage Transfer Proceeding, Tr. p. 667, lines 4 - 23

¹⁸ Letter from AGS to EUB dated February 15, 2002, p. 2

¹⁹ BR-CAL.1 where Calgary refers to "the need for ATCO to request an '11th hour' consultation and negotiation process."

provided support for its position that storage was not needed in utility service and it was not until Decision 2001-110, dated December 13, 2001, that AGS became aware of the significant financial exposure associated with the regulatory risk relating to the Facility. AGS argued that this was a change in circumstance that required a careful internal review of both decisions and an assessment of the feasibility of clawing back an inventory quantity that had already been contracted to ATCO Midstream. AGS indicated that when it had determined to unilaterally alter its contract with ATCO Midstream, the Board and parties were notified on February 15, 2002. AGS also referred to the study commissioned by RiskAdvisory²⁰ the results of which were presented at the first negotiation meeting on March 6, 2002. AGS submitted that Calgary had broken off negotiations in a letter dated April 10, 2002. AGS pointed out that it was left without an understanding of how customers wanted storage to be used. AGS stated that a further internal review was required to establish a plan and to assess the attendant risk exposure to shareholders. AGS indicated that, upon completion of this process, AGS filed the Application with the Board on June 19, 2002, and submitted that this timeline was reasonable and reflective of the uncertainty and friction surrounding the use of the Facility. AGS argued that allegations regarding inappropriate timing should be dismissed.

In argument AGS provided its understanding as follows:²¹

The Board stated that Decision 2001-75 was clear in its intention that AGS was expected to continue to provide customers with a physical hedge so long as it continued to own Carbon. In Decision 2001-110 the Board clarified that this would essentially mean buying and injecting gas in the summer, when the prices are usually the lowest, and withdrawing in the winter, when prices tend to be the highest.²² As a result of these Decisions, AGS submits the Board has clearly approved the use of Carbon as an inter-seasonal physical hedge.

AGS expressed concern that it was uncertain what was meant in Decision 2002-072, dated July 30, 2002, wherein the Board stated, “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”²³ AGS argued that if a relationship between temperature and the withdrawals of AGS’s utility inventory from the Facility was to be made, the Board should provide some guidance on how it expected this would occur.

AGS argued that in the absence of a negotiated settlement, AGS had looked to the storage plan for the 2001/2002 storage year, which was the most recent negotiated settlement for storage and approved by the Board, as a model for 2002/2003. AGS selected a 100% load factor flat injection profile in combination with index purchases for the summer injection season. AGS argued that this strategy reflected the fact that AGS’s injection flexibility was limited due to the design of the

²⁰ CAL-AGS.2(c).

²¹ AGS Argument p. 4

²² Decision 2001-110, Section 5.1.3, pp. 16-17; Section 5.2.3, p. 27

²³ Decision 2002-072 p. 22

Facility.²⁴ AGS also argued that it reflected AGS's interpretation of the Board's directions in Decision 2001-75 that gas should be injected at daily or monthly index prices.²⁵

AGS explained that injection flexibility was further constrained by operating and maintenance and capital programs that were best performed in the summer period.

AGS also stated that in the past, the available injection capacity for the AGS portfolio was dependent on the performance of the Facility. As a result, the AGS portfolio had historically set planned monthly injection amounts but had actually injected on an "as available basis." These injections tended to be higher earlier in the injection season with little flexibility.

In summer 2002, AGS had selected firm 100% load factor storage injections in order to accommodate potential fixed price purchases, if selected by customers and approved by the Board, and also to isolate any impact of the Facility storage operations on the gas portfolio.

AGS argued that, by using a flat injection profile and purchasing gas for injection at index prices, the Facility inventory available for withdrawal in 2002/2003 would be priced as closely as possible to the average summer price of gas. AGS indicated that this would allow for the use of the Facility as an inter-seasonal hedge as contemplated by the Board in Decision 2001-75.

AGS noted that it had considered various methodologies to manage withdrawals in response to the Board's directions in Decision 2001-110. In addition to the strategies presented by RiskAdvisory,²⁶ AGS had reviewed potential withdrawal strategies presented by the interveners during the Carbon Transfer Hearing. AGS noted that there did not appear to be an identifiable set of withdrawal parameters that could be applied prospectively to maximize the benefit to ratepayers.²⁷ Accordingly, AGS proposed to use the Model, which had been provided by Calgary, and which had been updated for the current storage year.²⁸

AGS submitted that a model designed to explicitly capture the optionality value of storage has never been applied at the Facility before. AGS pointed out that historically, the Facility had been managed during the early winter season in order to maintain sufficient inventory to ensure 300 TJ/d deliverability was available for operational use until mid-January. AGS stated that future withdrawal deliverability was therefore uncertain and was established solely by the level of inventory remaining at any point in time during the winter. AGS submitted that the Model required known future withdrawal deliverability in order that forward commitments could be met.²⁹ In implementing the Model, AGS had to alter the inventory-dependent deliverability associated with the past use of the Facility to a date-certain deliverability in order to follow the recommended action.³⁰

AGS argued that the worst possible outcome resulting from the use of the Model was that no additional value would be extracted from storage optionality beyond the difference between the

²⁴ BR-AG.3

²⁵ Application, Schedule A, p. 2; BR-AGS.2

²⁶ "AGS Storage Management Issues for the Period April 2002 – March 2003," RiskAdvisory, March 4, 2002

²⁷ BR-AGS.6

²⁸ BR-AGS.5; PICA-AGS.2

²⁹ BR-AGS.5; BR-AGS.6

³⁰ Ibid

value of displaced purchases resulting from the initial withdrawal plan established on October 31, 2002 and the cost of gas injected during Summer 2002.

AGS stated that its selection of 16.7 PJ of inventory and the proposal to use the Model to guide withdrawals was based solely on the inventory quantity actually used at the Facility in the past and reflected the most recent directive from customers and the Board regarding a programme to manage withdrawals.

It was also AGS's position that the directive to retain storage must be accompanied by a further strategic directive on how it should be used in the current Alberta gas market environment. AGS argued that given the lack of customer consensus for the 2002/2003 storage year, and the apparent reluctance of active interested parties to commit to any particular course of action, the Application reflected AGS's understanding of how the strategic direction provided for in the 2001/2002 storage year can be implemented in 2002/2003. AGS submitted that procedural fairness dictates that the Board must approve the winter 2002/2003 plan prospectively.

AGS noted that in the Board's letter of July 31, 2002, the Board had advised that it expected "AGS to justify the appropriateness of its strategy in implementing the summer injection plan in the context of the present proceeding." AGS argued that it had justified the appropriateness of the summer 2002 plan and that the Board should confirm this.

AGS argued that it was inappropriate to describe any plan for the use of the Facility as an "operating plan." AGS further argued that the sole purpose of using the Facility at this time was to attempt to capture potential financial benefits of the Facility's business, no longer required for safe, reliable service to utility customers, and to pass that benefit on to customers through the rate rider mechanism.

AGS submitted that the plan for which it sought approval was at the strategic level and that the Application outlined the quantity of storage selected, the injection gas procurement method and the injection and withdrawal strategies for the 2002/2003 storage year.

AGS argued that the proposed storage plan was a reasonable storage approach in order to comply with the directions of the Board and the previous wishes of customers. AGS noted that in the Affiliate Transactions Decision, the Board had indicated that in cases of uncertainty, the Board preferred prospective approvals to retrospective reviews. ATCO noted that the Board had stated:

If a utility is concerned about the prudence of a particular course of conduct, its recourse is to get confirmation from the Board and/or customers prospectively for matters it considers questionable. While the Board does not want to 'micro-manage' the utility's affairs, the interests of both the utility and customers can be better preserved through prospective approvals, rather than by retrospective reviews.³¹

AGS argued that the Application did not call for the Board's approval of the actual amount to be withdrawn each day, nor did it call for the Board's approval for the number and magnitude of fixed price purchase and sale transactions that AGS would enter into. AGS argued that the Application requested that the Board approve the strategy that AGS would employ in making

³¹ Decision 2002-069, Section 2.3.2, p. 14

those day-to-day determinations and that pre-approval of a plan would guide the utility in capitalizing on changing market conditions.

AGS argued that the Board could pre-approve a storage plan that still offered flexibility to changing market conditions and which left the utility responsible for the prudent implementation of that strategy. AGS stated that it would not undertake speculative market excursions without explicit direction from the Board and without an understanding that if AGS carried out the tasks so directed it would not be held accountable for the financial consequences.

AGS submitted that the Application did not offend regulatory policy, but that it was consistent with the Board's recent direction in the Affiliate Decision.

AGS argued that creating a plan to capture the financial benefits of storage was far from the simple process that Calgary would have the Board believe. AGS argued that it had been directed by the Board, in Decision 2002-072, to continue the status quo operation of the Facility and, in Decision 2001-75, to operate the Facility for the benefit of customers as long as it remained in regulated service. AGS believed there was no guarantee that a benefit would materialize from the use of storage and as a result, AGS submitted that it bore considerable risk of disallowance should the hedged position (i.e. storage) be found to be imprudent because, in hindsight, the eventual strategy was not optimal or because the position resulted in a loss.

In reply AGS agreed with the AUMA that more lead time in the discussion of a storage plan would be helpful for parties and the Board. However, AGS did not agree that the suggested collaborative process was necessarily a productive approach to establish AGS's use of storage. AGS submitted that the contrasting views on the use of storage in utility service, as exemplified by the positions put forward by the Consumers Group and Calgary in the Carbon Storage Transfer Proceeding, presented a significant barrier to the completion of successful negotiations related to storage.

AGS noted that Calgary's argument stated that it needed more time to evaluate storage. AGS submitted that the time Calgary required was related to establishing its own position with respect to storage. AGS believed that very little time would be required to finalize a storage position, subject to the type of arrangement proposed, if interested parties agreed to consolidate their views into a single position in advance of a collaborative discussion with AGS. AGS submitted that the "year prior to the storage year in question"³² that Calgary claims to need was related to the development of interested party's position(s), with a view to timing the market, and was not related to establishing the quantity of inventory to be held in storage, the method of gas procurement for the inventory or the use of the inventory procured. AGS submitted that a storage position reflected the risk preferences of customers and AGS did not see any reasonable way for it to make this determination. AGS noted that Mr. Simard had stated, "the determination of the risk preference of the ratepayer is not an easy task" and "there will not be one common risk profile for all ratepayers."³³ AGS submitted that a protracted process, such as advanced by Calgary, should be rejected by the Board.

³² Calgary Argument, p. 4 lines 21 - 23

³³ Discussion of Issues Surrounding Physical Storage Positions, RiskAdvisory, January 14, 2000, p. 15

In the absence of positions on storage use by the interested parties, AGS submitted that it looks to the Board to provide guidance on how the Facility should be used in the future.

Based on Calgary's evidence and argument, AGS stated that it had deep reservations about the productiveness of future negotiations with interested parties with respect to the quantity of storage inventory and use of this inventory from the Facility. Nevertheless, AGS submitted that its Application was reflective of the wishes of customers during the last successful negotiation with active interested parties. Accordingly, AGS submitted that the plan should be approved.

AGS submitted that the storage inventory to be held at the Facility for utility use could range from 0 to 43.5 PJ since the value of the storage changes continually as gas market prices change. AGS believed that, during a storage negotiation period, the storage quantity decision could be different each day depending on the implementation parameters.

AGS noted that the AUMA had observed that a different locked in value could be identified in hindsight, which would have changed the outcome of the summer plan, subject to the date the value was locked in. AGS submitted that the AUMA was contrasting the strategy of locking in the summer/winter differential using fixed price summer purchases and fixed price winter sales (an arbitrage plan) with the plan submitted in this Application which was based on index-priced injections which would subsequently be used to displace index-priced purchases on withdrawal (an index plan).

AGS noted that PICA had stated in its submission that it "does not advocate the use of 'after the fact' information to challenge prudence" and that in considering the prudence of a plan "consideration must also be given to the execution of that plan."³⁴ AGS agreed with PICA that a subsequent review should only test whether or not AGS carried out the plan for which it received approval.

AGS noted that in contrast, Calgary seemed preoccupied with an optimal value from the use of storage, determined it appeared, after the fact. AGS expected that the outcome of the plan described in this Application would likely prove to be less optimal than a strategy derived with the benefit of hindsight knowledge. AGS submitted that the actual outcome of a storage plan prepared prospectively would be what it will be, subject to the execution of the plan as agreed. AGS took the position that utilities operating in the Province of Alberta must know whether the Board would support or depart from the principle of prudence being determined at the time the decisions in question must be taken.

AGS submitted that the Application reflected a prospective approach to the use of storage for 2002/2003. AGS also submitted that it should not be penalized for the failure of negotiations that were undertaken in advance of the 2002/2003 storage season. Further, AGS submitted that no evidence had been advanced by interested parties on an alternative storage position applicable to the current Alberta market in general, and the AGS system in particular, that would have a better outcome than the plan proposed by AGS. AGS submitted that no evidence had been advanced to show that this Application reflected a flawed plan. AGS submitted it should not be subjected to further sanction if the outcome of this plan in hindsight did not match the expectation represented by this Application prospectively. Nevertheless, AGS accepted that a review of its

³⁴ PICA Argument

execution of the 2002/2003 storage plan was appropriate and within the normal course of a prudence review.

AGS submitted that it had provided justification for the appropriateness of both the summer plan and the winter plan, and reiterated what approval it sought from the Board. AGS stated it was specifically asking the Board for approval of:

- the summer 2002 injection plan (gas procurement strategy and injection strategy) as outlined in Schedule A of the June 19, 2002 Application;
- the winter 2002/2003 withdrawal plan as outlined in Schedule A of the June 19, 2002 Application;
- the risk mitigation strategies outlined in Schedule B of the June 19, 2002 Application.

2.3 Board Findings

In the Application AGS requests approval of a summer 2002 injection plan, a winter 2002/2003 withdrawal plan and risk mitigation strategies. The Board considers that approval in principle is appropriate, subject to the requirement described below that AGS actively manage storage inventory in a manner that can take advantage of opportunities for greater customer savings throughout the winter storage season as they may arise. This may require AGS to exceed the suggested monthly maximum daily withdrawal rate on any given day in order to maximize the benefit to customers from using lower priced gas in storage.

The Board notes that both Calgary and PICA submitted that the Application should not be approved. They took the position that the Application was filed after the beginning of the storage year with the result that a decision could not be rendered on a prospective basis. Calgary also pointed out that AGS should have started a process to include customer input well in advance of the storage year, as much as a year in advance. The Board understands that Calgary believed that AGS's attempt to involve customers in a negotiated settlement in March 2002 was an "11th hour" effort to pre-approve management decisions and that such a process would result in sub-optimal results. The Board notes that, on that basis, Calgary declined to participate in any negotiations.

The Board notes the submission of Calgary and PICA that AGS should proceed to follow whatever plan it believed prudent and defend its decisions in a prudence review if necessary, while the AUMA, did not oppose the AGS plan but agreed with Calgary that an appropriate storage plan with input from customers would require sufficient time to collaborate.

The Board acknowledges AGS's position that in the absence of a negotiated settlement it was reasonable to follow a plan similar to that used for the 2001/2002 storage season, where customers had agreed to a plan that was ultimately approved by the Board in Decision 2001-81, dated October 31, 2001.

It is clear to the Board that the parties were unable to arrive at a negotiated settlement given the timing of events, disagreement on the details of the storage plan and lack of consensus on the perceived use and purpose of the Facility. In these circumstances the issue then becomes, is it appropriate for AGS to apply for prospective approval of a storage plan rather than subject itself to a possible retrospective prudence review?

AGS has noted the history of contentious positions relating to the proper use of the Facility that have resulted in the Board giving AGS direction over the course of several decisions making determinations on storage capacity, rates of delivery, use of decision applications, such as the Model, and the use of hedging. Given this environment, the Board is of the opinion that AGS, in choosing to apply to the Board, is not unduly supplanting the proper function of management in selecting an appropriate storage strategy for the 2002/2003 storage season. The Board is therefore prepared to make a determination as to the merits of the Application.

The Board notes that AGS has reserved a capacity of 16.7 PJ in the Facility for utility use, the same capacity as was reviewed and acknowledged in the hearing leading to Decision U98067, dated 13 April 1998. The Board considers that there is no evidence to justify a different quantity for use during the 2002/2003 storage season.

The Board has considered the reasons given by AGS to follow a plan of fixed daily injection rates to fill the Facility to a total inventory of 16.7 PJ. The Board acknowledges that Calgary and PICA were opposed to the Board giving its approval based on the fact that AGS had submitted the Application in June, more than two months after the injection season had begun. However, the Board noted during the early stages of the hearing process that it would make a determination with respect to the injection plan. The Board is satisfied that AGS's justification is reasonable and therefore approves the injection plan. It should be noted however, that in the future, the Board expects AGS to submit any approvals with respect to a summer injection plan in a more timely fashion as explained below.

Also, it is noted that AGS stated the following in the Application:

The Board directed ATCO Gas 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. ATCO Gas has interpreted this Decision to mean that natural gas purchased and injected in the summer should be priced at AECO Index prices and that additional hedging in the manner of fixed price summer purchases and fixed price winter sales should not be undertaken.³⁵

The Board wishes to make it clear that AGS's interpretation is not correct. The Board expects AGS to operate the Facility for the benefit of customers, and one benefit associated with ownership of a storage facility is the ability to utilize the storage facility as a physical hedge with respect to the natural gas requirements of the utility. AGS is expected to use its best judgment in developing its storage strategies and, if hedging beyond acquisitions at the AECO Index price was expected to provide positive results for the customer then, AGS was at liberty to utilize such a technique. The Board would expect AGS to consult with its customers and seek approval of the Board with respect to any significant or systematic fixed price seasonal hedging strategy.

The Board acknowledges that AGS has determined that it should set limits of maximum daily withdrawal rates for each month of the winter (as detailed in Table 2), in contrast to past practice where AGS had reserved up to 300 TJ/day for its use. The Board is of the view that it cannot agree to fix the monthly maximum daily withdrawal rates as this would not allow AGS to take advantage of higher rates of daily delivery, should they be available, at times when a price spike

³⁵ Application, Schedule A, p. 2

occurs. The Board considers it reasonable for AGS to set in place a plan with some operating parameters, but also reasonable to expect AGS to exceed, the proposed monthly maximum daily withdrawal rates where possible, in order to maximize any price advantage of gas in storage if such an event occurred. The Board recognizes that AGS should exercise judgment and follow a course of action that can be seen to benefit the customer. In the Board's view, AGS should be able to deviate from a plan where there would be a benefit to customers.

The Board notes that the strategy AGS plans to follow includes the objective of reaching an inventory of zero by the end of the withdrawal season, March 31. The Board believes that this objective should not be set in stone, but should be flexible enough to adapt to changing circumstances. For example, if the cost of carrying over an inventory balance to the next season was forecast to be less than the savings accruing to customers of sourcing gas on the spot market and not withdrawing gas from storage in the current storage season then AGS should consider changing the zero inventory objective. Similarly, if the inventory storage carrying costs were forecast to be less than the costs of refilling storage during the injection season then AGS should consider changing the zero inventory objective. The Model should provide the ability to study such a strategy. The Board will not compel AGS to consider this change in strategy during the 2002/2003 storage season, but will expect AGS to address the matter the next time AGS makes a similar application.

The Board notes that AGS will use the Model in conjunction with daily price forecasts and the monthly withdrawal rates to arrive at a daily determination of whether to withdraw from storage or to sell at some future date. The Board acknowledges that this action is essentially an intra-seasonal hedge. Noting that the interested parties did not disagree with that strategy, the Board, in principle, accepts the AGS proposal. The Board recognizes that the actual action to be taken by AGS will depend on the price forecast, the delivery rates available and the amount of gas in storage at the time. In this regard the Board takes comfort in the fact that this process was followed in the past and appears to have the confidence of interested parties.

The Board also acknowledges the risk mitigation strategies that AGS will utilize when conducting transactions to purchase or sell gas. These practices were similar to those employed during the 2001/2002 winter withdrawal season and there has been no indication from the interested parties that the strategies were unreasonable. The Board therefore finds there is no reason to cause AGS to alter the strategies as submitted.

Although, in this instance, the Board is prepared to approve AGS's proposed winter storage plan in principle, with the exception of the monthly maximum daily withdrawal rates as noted previously, the Board is concerned both with the timing of the Application and the process used by AGS to engage stakeholders prior to filing the Application. The Board considers that in future, there is merit in conducting a collaborative process with the view of reaching a negotiated settlement in advance of the storage season. However, the Board realizes that a negotiation process could reveal a significant difference of views that would preclude reaching an agreement. In that event, the Board would accept a prospective application from AGS for Board adjudication. However, the Board would expect the submission to be made in time to allow for a full process to take place. For example, if a decision is required prior to the start of the entire storage year commencing April 1st, an application should be filed by the preceding August. Applications covering only the winter withdrawal season could be submitted at a later date, but

nevertheless in sufficient time to permit full review. The Board therefore, continues to encourage parties to seek the common ground of a negotiated settlement for all or some of the issues being considered. With respect to the 2003/2004 storage season, if AGS wishes to have a Board review, AGS is encouraged to submit its plan as soon as possible, especially if it is to include a summer injection plan. In this regard the Board considers that consultation with customers would assist the process.

3 ORDER

THEREFORE, it is ordered that:

- (1) The methodology and plan proposed by ATCO Gas South for the 2002/2003 storage season is approved in principle. Specifically, approval is given for the following:
 - (a) The storage capacity of 16.7 PJ reserved for utility use at the Facility.
 - (b) The gas procurement and injection strategy for summer 2002.
 - (c) The gas withdrawal plan for winter 2002/2003, provided however that, ATCO Gas South will actively manage storage volumes with the expectation that the monthly maximum daily withdrawal rate will be exceeded where the Model would predict an associated benefit for customers.
 - (d) The risk mitigation strategies.
- (2) In its next storage application ATCO Gas South is to submit a modified methodology that will require ATCO Gas South to actively manage the benefits and costs to customers of possibly carrying an inventory balance beyond the end of the storage year.
- (3) ATCO Gas South is encouraged to collaborate on a timely basis with customer representatives prior to submitting the next storage season application.
- (4) ATCO Gas South is to make its next storage application in sufficient time to allow a review of any issues that could not be agreed to during a collaborative process.

Dated in Calgary, Alberta on October 29, 2002

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

T. M. McGee
Presiding Member

(original signed by)

Gordon J. Miller
Member

(original signed by)

J. I. Douglas, FCA
Member

APPENDIX 1 – CONFIDENTIALITY RULING AND ORDER



"2002-08-29 EUB
Letter-Confidentiality

(consists of 12 pages)

August 29, 2002

VIA E-MAIL

To: Interested Parties

ATCO GAS SOUTH – 2002/2003 WINTER STORAGE PLAN APPLICATION NO. 1272527 (THE APPLICATION):

BOARD RULING AND ORDER IN RESPECT OF ATCO'S APPLICATION UNDER RULE 12

ATCO Application under Rule 12

On July 30, 2002, ATCO Gas South (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 in response to Calgary Information Request CAL-AGS.13(b)(i) on a confidential basis. By letter dated July 31, 2002 the Board requested parties to the proceeding to provide comments on the Confidentiality Application and to indicate if they were seeking access to any information granted confidential treatment. Parties seeking access to 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 on the Confidentiality Application and a request for access to any information receiving confidential treatment were received from Calgary on August 6, 2002. ATCO replied on August 8, 2002. Through this exchange of correspondence Calgary and ATCO agreed to a procedure whereby Calgary would execute confidentiality undertakings substantially in the form used by the Board in ATCO's Application No. 1237639 relating to the Transfer of the Carbon Storage Facilities (the **Carbon Transfer Proceeding**) on a without prejudice basis, thereby allowing ATCO to provide the requested information to Calgary pending the Board's ruling on the Confidentiality Application. Calgary reaffirmed its position objecting to the Confidentiality Application by letter dated August 13, 2002 and ATCO confirmed its intention to pursue the Confidentiality Application by letter also dated August 13, 2002.

Rule 12 - Purpose and Principles

As stated in the Board's ruling of December 10, 2001 in the Carbon Transfer Proceeding:

Procedural fairness dictates that an applicant has both the privilege and the obligation to make its case and that intervenors 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 the 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).

Also as noted by the Board at pages 7-8 of Decision 2002-072:

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.

Board's Disposition of the Confidentiality Application

Assessing the merits of the Confidentiality Application in light of the Purpose and Principles of Rule 12 referenced above, the Board's Ruling of December 10, 2001, the passage quoted from Decision 2002-072 above and the correspondence of ATCO and Calgary on this matter, 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 provided by ATCO in responding to CAL-AGS.13(b)(i) in this Proceeding, (the **Confidential Information**). It does so primarily based on the following representations stated in ATCO's letters of August 8, 2002 and August 13, 2002, respectively:

It must be remembered that AGS uses between 60% and 70% of the total Carbon storage capacity for non-utility purposes to reduce the rates to utility ratepayers. Accordingly, maintenance of AGS' competitive position through confidential treatment of AGS' response to CAL-AGS.13(b)(i) satisfies the interests of both the utility and its ratepayers

As noted in the AGS letter dated August 8, 2002, there is information on the public record as to the actual historical injections and withdrawals of the Carbon storage facility. However, information with respect to the design capacity of Carbon, which is contained in the response to CAL-AGS.13(b)(i), is not publicly available. While AGS agrees that

estimates of the capabilities of the Carbon storage facility can be inferred from the information on the public record, AGS is of the opinion that these estimates cannot determine the true capacity of the Carbon storage facility to a reasonable degree of accuracy or certainty. Accordingly, AGS maintains that confidential treatment of its response to CAL-AGS.13(b)(i) is required to protect AGS' competitive position.

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 confirm to the Board that it has received undertakings in the form provided by Calgary to the Board in correspondence dated August 13, 2002 from the following individuals and corporations (the **Recipients**) representing Calgary, that ATCO is satisfied with such undertakings and that counsel for Calgary has been provided with a copy of the Confidential Information:

Recipient	
Renée Marx	Burnet, Duckworth & Palmer LLP
Patricia Quinton-Campbell	Burnet, Duckworth & Palmer LLP
Bruce Brander ¹	Burnet, Duckworth & Palmer LLP
H.J. Vander Veen	Energy Group, Inc.
Energy Group, Inc.	
Philip Walsh	Energy Objective Ltd.
Energy Objective Ltd.	

Board’s Disposition of Requests for Access to Confidential Information

The Board grants access to Confidential Information to the Recipients on the understanding that the Recipients have executed and delivered to ATCO and to the Board an original of the undertakings attached to Calgary’s correspondence to the Board of August 13, 2002 and on the following terms and conditions:

1. Recipients shall hold the Confidential Information in confidence and use it only for the purpose of this proceeding.
2. Recipients shall not make additional copies of the Confidential Information.

¹ Mr Brander will be signing a revised form of Undertaking and providing same to ATCO and the Board.

3. 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.
4. 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 applicable form attached in **Schedule A** hereto.

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

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 C** 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.

Schedule

No change in the schedule as set out in the Board's correspondence of July 4, 2002 is required.

If you have any questions regarding this schedule of proceeding please contact the writer at (403) 297-3650.

Yours truly,

(original signed by)

Brian C. McNulty
Senior Counsel

SCHEDULE A
ALBERTA ENERGY AND UTILITIES BOARD ORDER OF AUGUST 29, 2002
2002/2003 WINTER STORAGE PLAN APPLICATION NO. 1272527

STATUTORY DECLARATION

FORM FOR AN INDIVIDUAL RECEIPT
FORM FOR A CORPORATE RECEIPT

STATUTORY DECLARATION
FOR AN INDIVIDUAL RECEIPT

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 1272527 2002/2003 WINTER STORAGE PLAN

I, _____ of the City of _____, in the Province of Alberta, 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 _____, 2002 (the **Undertaking**), a copy of which is attached to this Statutory Declaration.
2. That I have fully complied with the Undertaking and the Order of the Board dated August 29, 2002 in the Proceeding (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)
_____, 200_.)

_____)
A Notary Public for the Province of Alberta

STATUTORY DECLARATION
FOR A CORPORATE RECEIPT

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 1272527 2002/2003 WINTER STORAGE
PLAN

I, _____ of the City of _____, in the Province of
Alberta, do solemnly declare as follows:

7. 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.
8. 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 _____, 2002 (the **Undertaking**), a copy of which is attached to this Statutory Declaration.
9. 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 of the Board dated August 29, 2002 in the Proceeding (the **Order**).
10. 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.
11. 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.
12. 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.

13. 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)
_____, 200_.)

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_____)
A Notary Public for the Province of Alberta

SCHEDULE B
ALBERTA ENERGY AND UTILITIES BOARD ORDER OF AUGUST 29, 2002
2002/2003 WINTER STORAGE PLAN APPLICATION NO. 1272527

UNDERTAKING PURSUANT TO RULE 12(5)

FORM OF UNDERTAKING FOR BOARD MEMBERS AND BOARD STAFF

**UNDERTAKING FOR BOARD MEMBER OR 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 July 30, 2002 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 1272527 – 2002/2003 WINTER STORAGE PLAN (the **Proceeding**),

WHEREAS the Board by Order of August 29, 2002 (the **Order**) granted ATCO's application and extended confidential treatment to certain information outlined in 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 C 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 or the Board 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. In the event I cease to be a Board Member, Acting Board Member or employed as staff of the Board, I shall immediately, unless otherwise directed by the Board:
 - 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.
8. Subject to the provisions of Paragraph 7 above, within 40 days of the latter of (i) the Board rendering its decision (Decision) in respect of the Proceeding; (ii) the final appeal period expiring with respect to a final, unappealed decision of an appellate court following an appeal of the Decision; (iii) the Board rendering a decision on any review and variance application of the Decision; (iv) the final appeal period expiring with respect to a final, unappealed decision of an appellate court following an appeal of the Board's decision on a review and variance application of the Decision; and (v) such other date 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 _____, 2002.

Recipient's signature

Witness's signature

Recipient's printed name

Witness's printed name

SCHEDULE C
ALBERTA ENERGY AND UTILITIES BOARD ORDER OF AUGUST 29, 2002
2002/2003 WINTER STORAGE PLAN APPLICATION NO. 1272527

PROCEDURAL DIRECTIONS

The following procedural directions are indented to clarify the processes to be used during the course of the proceedings in respect of the 2002/2003 Winter Storage Plan Application, No. 1272527.

1. Definitions

- (a) “**Confidential Information**” means the information described in the Order provided by ATCO to a Recipient.
- (b) “**Order**” means the order of the Board dated August 29, 2002 with respect to ATCO’s application under Rule 12 of the Board’s Rules of Practice, to which these Proceeding Procedures are Schedule C.
- (c) “**Recipient**” means a party to the Proceeding listed in the Order, who has executed and delivered an Undertaking.
- (d) “**Proceeding**” means Application 1272527 filed by ATCO in respect of the 2002/2003 Winter Storage Plan.
- (e) “**Undertaking**” means an undertaking in the form provided for in 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 in connection with the Proceeding 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. 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.