

ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

ATCO GAS AND PIPELINES LTD. DISPOSITION OF CALGARY STORES BLOCK AND DISTRIBUTION OF NET PROCEEDS – PART 1

**Decision 2001-78
Application No. 1243019
File No. 6405-17-1**

1. BACKGROUND

By letter dated August 28, 2001, ATCO Gas – South (AGS or the Company), a division of ATCO Gas and Pipelines Ltd., filed an application (the Application) with the Alberta Energy and Utilities Board (Board) for approval of the sale of the AGS properties located in the City of Calgary, known as the Calgary Stores Block (Stores Block) and further described as:

North Parcels: Plan A1, Block 63, Lots 1-20
South Parcels: Plan A1, Block 63, Lots 21-40, and the buildings located thereon.

The Company submitted that the assets comprising the Stores Block were no longer used and useful in the provision of utility service and requested the Board's approval of the following:

1. The sale transaction (the Sale) to Calgary Co-Operative Association Limited (Co-Op), summarized on Attachment 1, pursuant to Section 25.1 of the *Gas Utilities Act* (GU Act), and
2. Disposition of the proceeds of sale as outlined in Attachment 1. The Company submitted that the land proceeds net of the remaining net book value of the assets sold and disposition costs should be recognized as 'Profit from Sale of Plant' by AGS, and accrue to the benefit of shareholders.

Further, the Company requested the Board's approval of the Sale prior to October 31, 2001 so that parties to the Land Sale Agreement could waive or satisfy certain conditions precedent by that date.

The Board by letter dated September 14, 2001 provided notice (Notice) that a proceeding would be held to consider the Application. The Board noted that the Application was substantially similar to AGS's earlier application #2000366 that was withdrawn (Withdrawn Application). Further, the Board noted from the record of the proceeding from the Withdrawn Application, that parties did not generally object to the proposed sales of the Stores Block, but rather to the allocation of the proceeds from the disposition.

The Withdrawn Application was filed with the Board by letter dated December 21, 2000. A written proceeding was conducted that consisted of an interrogatory process, followed by argument and reply. The Board received reply submissions on or around March 13, 2001. By letter dated May 16, 2001 AGS advised the Board that due to the passage of time the sale of

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the Stores Block would not be completed. The Company subsequently withdrew that application.

The parties that participated in the written proceeding with respect to the Withdrawn Application included City of Calgary (Calgary), Consumers Coalition of Alberta, Federation of Alberta Gas Co-ops Ltd. and Gas Alberta Inc. (FGA), and Municipal Interveners (MI).

Parties were advised in the Notice that the Board would use a two-step process with respect to the Application. The Board noted that initially it would consider whether or not the sale of the Stores Block should be approved. After considering any filed interventions, the Board would then determine whether a further process, possibly a written proceeding was required with respect to the proposed sale itself, and would notify parties with respect to the details of any such further process. Secondly, if the Board decided to approve the sale, the Board would conduct a further proceeding to deal with the allocation of the proceeds from the disposition, and any other relevant issues related to the sale of the Stores Block.

Members of the Board assigned to consider the Application were B. T. McManus Q.C., Presiding Member, Tom McGee, Member, and G. J. Miller, Member.

2. DETAILS OF THE APPLICATION

The Company submitted that in 1999 it undertook a review of its operations at the Calgary Service Centre Complex, which included the Stores Block. The review had identified several issues with respect to the continued use of the Stores Block in the provision of utility service. Those issues were related to physical deficiencies of the Calgary Stores building, and to the location of the facilities. The major deficiencies of the Calgary Stores building related to its physical layout, age and condition. Whereas the location was problematic due to its proximity to a high-density residential community, retail commercial developments, and the downtown core.

Alternatives to address those issues were identified and reviewed. The Company considered renovations to the existing buildings, as well as relocation to a leased facility. The Company decided to relocate to new facilities, and advised that it has entered into a lease arrangement for the relocation of the stores function. That decision was expected to lower costs to customers by at least \$625,000 on a net present value basis, when compared to the alternative of remaining at the current site and renovating existing facilities. The Company submitted that the decision to relocate would best meet the needs of both customers and the Company.

The Company also submitted that the decision to relocate to the new leased facility resulted in assets included in rate base that would no longer be required for the provision of utility service. Therefore, the Company has executed a conditional purchase and sale agreement with Co-Op. AGS suggested that the Stores Block would provide no on-going benefit or service to customers, and that the Sale would result in no harm to customers. Rather, the Company submitted that the Sale mitigated any stranded cost issues.

AGS requested that the Sale be approved and that the treatment of the proceeds of sale be consistent with the removal of an asset from the provision of regulatory service. AGS submitted that the proceeds of sale should first be used to retire the remaining net book value of the assets and to cover the costs of disposition, with the balance to accrue to shareholders as a gain on sale.

3. POSITIONS OF THE INTERVENERS

The Board received interventions from Calgary, FGA, MI, and Public Institutional Consumers of Alberta (PICA). In the Notice, the Board requested parties to state the nature of, and reasons for, their objection. In their letters of intervention, parties did not specifically object to the proposed sale, although certain parties stated their objection to the allocation of the proceeds from disposition.

4. BOARD FINDINGS

The Board is being asked to approve the Sale in advance of the consideration of the remainder of the Application. In reviewing the Application, the Board notes that it is substantially similar to the Withdrawn Application, as previously mentioned.

As both the Company and parties are aware, the Board employs the no-harm test when evaluating applications to dispose of rate base assets pursuant to Section 25.1 of the GU Act. The Board considers the potential impact on both rates and the level of service to customers. The Board also assesses the prudence of the sale transaction, taking into account the purchaser (i.e. relationship to vendor), and tender or sale process followed. As well, the Board considers whether the availability of future regulatory processes might be able to address any potential adverse impacts that could arise from a transaction.

In applying the no-harm test to the Application, it is the Board's view that the test has been satisfied. Based on a review of the Application, the Board is persuaded that customers will not be harmed by the Sale, with a prudent lease arrangement to replace the sold facility. The Board accepts the Company's submission that there will not be a negative impact on customer rates, at least during the five-year initial term of the lease; in fact there appears to be cost savings to customers. The Board is also convinced that there should be no impact on the level of service to customers as a result of the Sale. Finally, the Board notes that customers have not specifically objected to the Sale based on the information that was before them.

In approving the Sale, the Board is not making a finding with respect to the specific impact on future operating costs, including the particular lease arrangement being entered into by the Company. Furthermore, the Board notes that the costs associated with the relocation, and the terms and conditions of the lease, including rent and operating costs, are matters that can be reviewed by the Board and interested parties in a future General Rate Application.

5. ORDER

Having regard to the Application, the record developed with respect to the Withdrawn Application, and the Board's own knowledge herein, the Board hereby approves the Sale pursuant to Section 25.1 of the GU Act. Consequently, the Board will advise the Company and interested parties of the process it intends to follow with respect to the disposition of the proceeds from the Sale.

Dated at Calgary, Alberta on October 24, 2001.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by Mr. McManus>

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

<original signed by Mr. McGee>

T. McGee
Member

<original signed by Mr. Miller>

G. J. Miller
Member