Alberta Energy and Utilities Board

DECISION 2001-104

ATCO GAS – NORTH
A DIVISION OF ATCO GAS AND PIPELINES LTD.

REVIEW AND VARIANCE OF DECISIONS 2001-46 AND 2001-65

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

ATCO GAS - NORTH
A DIVISION OF ATCO GAS AND PIPELINES LTD.
APPLICATION FOR REVIEW AND VARIANCE OF DECISIONS 2001-46 AND 2001-65

Decision 2001-104
Application No. 1244045
File No. 6405-14-1

1 INTRODUCTION

By letter dated September 14, 2001, ATCO Gas – North (AGN), a division of ATCO Gas and Pipelines Ltd. (AGPL), submitted an application to the Alberta Energy and Utilities Board (Board) requesting that Decisions 2001-46 and 2001-65 (Decisions) be reviewed and varied (R&V Application).

In Decision 2001-46 dated May 29, 2001, the Board, among other things, denied AGN's application for the sale of certain petroleum and natural gas rights and production and gathering assets in the Viking Kinsella Field (Viking Assets; Viking Application) to Burlington Resources Canada Energy Ltd. (Burlington). Subsequently, in Decision 2001-65 dated, July 31, 2001, the Board set out its reasons for denying the Viking Application and established a no-harm threshold in the amount of $460,339,000 for the Viking Assets. The no-harm threshold was the amount that the Board determined was necessary for AGN's customers to receive in order to hold them harmless if the sale was to be approved. The Board held that the proceeds that would be available for distribution to customers under the terms of the Viking Application would be insufficient to meet the no-harm threshold determined by the Board.

2 THE R&V APPLICATION

On September 11, 2001 AGN and Burlington entered into a Purchase and Sale Amending Agreement (the Amending Agreement) for the Viking Assets. AGN submitted that the Amending Agreement constituted a material change of circumstances and that its terms would fully satisfy the no-harm requirement established by the Board in Decision 2001-65. On this basis, AGN requested that the Board review the Decisions and vary them so as to approve the proposed sale to Burlington, as reflected in the Amending Agreement. More specifically, AGN requested that the Board increase the amount of proceeds available for allocation to its customers and to the shareholder of AGPL as shown in the following table. For comparative purposes the table also shows the amount of proceeds available as filed in the original Viking Application.

	Viking Application ($000)	R&V Application ($000)
Proceeds of sale	490,000	550,000
Estimated interest on purchase price at prime		34,000
January 1 to December 31, 2001 production adjustment		(40,000)
Total Proceeds	490,000	544,000
Cost of disposition	(5,414)	(4,624)
Proceeds associated with seismic	(1,500)	(1,500)
Proceeds for petroleum rights	(7,670)	(7,670)
Net proceeds available for allocation	475,416	530,206

AGN also submitted in the R&V Application that the Board made and relied on a number of factual errors in Decision 2001-65, which affected the determination of the amount of the no-harm threshold. Consequently, AGN stated that the no-harm threshold in respect of the Viking Assets should be reduced to $331,998,000 by the following factors:

	$000
Company owned production:	
• 2001 Production value as per Decision 2001-65	(95,490)
• Value of remaining 2001 production	3,528
Items previously excluded from the no-harm calculation by the Board:	
• Status Quo capital expenditures	(15,569)
• Administrative costs	(6,671)
• Above ground property taxes	(2,749)
• Incremental transmission investment	(11,390)
Net reductions	(128,341)
Viking assets no-harm threshold as per Decision 2001-65	460,339
Adjusted Viking Assets no-harm threshold	**331,998**

The Board received a letter, dated September 24, 2001 from the North Core Customer group (NCC) in response to the R&V Application. Given all the circumstances set out in the R&V Application, the NCC indicated that it would not oppose the preliminary question of whether the Board should review the Decisions. However, the NCC reserved its right to present evidence and argument that the Decisions should not be varied as a result of the Board's review.

By letter dated October 1, 2001, the Board requested submissions from parties registered on its distribution list for the Viking Application respecting the preliminary question as to whether the Board should proceed to review the Decisions. The Board received no responses to this request.

Pursuant to Section 46(4) of the *Alberta Energy and Utilities Board Rules of Practice*, the Board was satisfied that there were sufficient grounds to conduct a review of the Decisions. The Board established the following process in continuing to deal with the R&V Application:

Information Requests (IRs) to AGN	October 16, 2001
IR Responses	October 23, 2001
Intervenor Evidence	October 30, 2001
Rebuttal Evidence (if any)	November 6, 2001
Hearing	November 14, 2001

On November 9, 2001, AGN and the NCC advised the Board that they were close to reaching an agreement regarding the sale of the Viking Assets. Both parties requested that the hearing be rescheduled to begin on November 15, 2001, allowing the parties additional time to reach an agreement.

By letter dated November 13, 2001, the Board advised interested parties that the start of the Hearing would be delayed until November 15, 2001. AGN and the NCC informed the Board that they would be filing opening statements reflecting a joint recommendation regarding disposition of the R&V Application (Joint Recommendation).

After receiving the Joint Recommendation on November 14, 2001, the Board advised interested parties that, in light of the very limited time available for the Board to review the materials received from AGN and the NCC, it considered it necessary to cancel the hearing scheduled for November 15, 2001.

On November 15, 2001, the Board advised interested parties that it was encouraged by the fact that AGN and the NCC had reached a compromise regarding the sale of the Viking Assets. The Board was aware of the significance of timing with respect to the proposed sale, and developed the following process in an attempt to ensure that the timelines could be met if the sale was approved, while also providing adequate time for a review of the Joint Recommendation to ensure that it was in the public interest and that the process leading up to it was fair and open.

Board Information Requests to AGN and NCC regarding the Joint Recommendation	November 20, 2001
Responses to Information Requests	November 23, 2001
Submissions from parties regarding the Joint Recommendation	November 23, 2001

The Board also informed the parties that it was reserving November 27, 2001 as a date on which an oral hearing could be held if the Board considered it necessary.

The Board received submissions from Enron Direct Canada Corp. (Enron) and Burlington, respectively, supporting the Joint Recommendation of AGN and NCC. As a result of media coverage, the Board also received several objections to the proposed sale of the Viking Assets from members of the public.

Having considered the submissions and Information Request responses from AGN and the NCC, the submissions of Enron and Burlington and the nature of the objections from members of the public, the Board determined that, in light of the Joint Recommendation, it would proceed to consider the R&V Application without a hearing. The Board so advised parties by letter dated November 23, 2001.

By letter dated December 10, 2001, the NCC provided the Board with verification that all members of the NCC had ratified the settlement arrangements as stated in the Opening Statements of the NCC and AGN.

3 POSITION OF AGN

AGN noted that in Decision 2001-65, the Board applied a "no-harm" test as a threshold, observing that "the Board must be satisfied that, with or without mitigation, the impacts of the proposed disposition will leave customers at least no worse off."[1] Moreover, the Board refined its no harm test to include two steps:

- The Board first considered whether disposition of the Viking Assets by AGN would affect the service levels currently available to customers.
- Second, the Board considered whether disposition of the Viking Assets would create a risk of financial harm to customers through an increase in their cost of gas supply.[2]

AGN noted that the Board considered that the Viking Assets were no longer required in order to provide regulated service to customers and that the proposed sale transactions would not impact safety or reliability of service.[3]

AGN argued that the proceeds available to be allocated were more than sufficient to keep customers harmless from the loss of any benefits of company-owned production (COP).

AGN argued that customers had consumed COP over the course of 2001 and should not be entitled to the same benefit a second time as a result of an exaggerated no-harm calculation. It also argued that the deferred 2001 enhanced production should be valued as the last production from the reserves and discounted to January 2002. However AGN accepted that a middle ground might be to prorate the remaining production over the balance of the productive life of the Viking field. While AGN had reservations about this approach, given that the levels identified by McDaniel[4] represented optimal production levels, the approach would yield a value for the remaining production (7,141 terajoules) of $8,776,000.

With respect to the interest in the amount of $34 million that was attributed to regulatory delay, AGN was willing to consider that a sharing might be appropriate in this instance where the delay

[1] Decision 2001-65, p.15
[2] Decision 2001-65, p.17
[3] Decision 2001-65, p.22
[4] McDaniel & Associates Consultants Ltd. were consultants to AGN

would be a year in length. Having stated this, AGN noted that the determination of the interest adjustment as per the NCC would be affected by both the final amount of interest received, as well as the final determination of no-harm by the Board. Based on AGN's determination of no-harm, the interest adjustment that could be paid to the customers would amount to $21.3 million.

Notwithstanding these submissions in the R&V Application, AGN was able to reach a compromise with the NCC. The agreement reached with the NCC became the subject of the two Opening Statements submitted to the Board on November 14, 2001, which reflect the Joint Recommendation of AGN and NCC for disposition of the R&V Application. The Opening Statements of AGN and NCC are reproduced in Appendices 2 and 3 to this Decision, respectively.

The Joint Recommendation is summarized in Section 5 of this Decision.

4 POSITION OF THE NCC

The NCC[5] noted that the Amending Agreement between AGN and Burlington resulted in a higher price and a closing date of January 3, 2002. However, the components of the renegotiated transaction and the calculation of the no-harm test were still based on a date of January 1, 2001.

The NCC considered the adjustments made to the no-harm test as proposed by AGN and agreed that some changes to the no-harm test would reduce the value from $460,339,000 as calculated by the Board in Decision 2001-65. The changes the NCC considered were appropriate to the various components of the no-harm test are set out below:

[5] The Members of the NCC are listed in Appendix 1

	$000
Company-owned production:	
• Estimated no-harm value received through 2001 production	0
• Value of remaining 2001 production	0
Items previously excluded from the no-harm calculation by the Board:	
• Status Quo capital expenditures	(15,354)
• Administrative costs	0
• Above ground property taxes	(2,443)
• Incremental transmission investment	(13,960)
• Surplus transportation costs	23,855
Net reduction to no-harm threshold	**(7,902)**
Viking Assets no-harm threshold as per Decision 2001-65	460,339
Adjusted Viking Assets No-harm Threshold	**452,437**
Subsequent Adjustments for No-harm Value Received	
• Estimated value received from 2001 COP	(63,825)
• Estimated customer share of interest on purchase price	24,641
Estimated Proceeds to Customers	**413,253**

Notwithstanding these submissions in response to the R&V Application, the NCC was able to reach a compromise with AGN. As noted in the previous Section , the agreement reached with AGN became the subject of the two Opening Statements submitted to the Board on November 14, 2001.

By letter dated December 10, 2001, the NCC provided to the Board verification that the representatives from the following member groups of the NCC ratified the settlement arrangements reflected in the Opening Statements of the NCC and AGN.

- Canadian Forest Products Limited
- Consumers Coalition of Alberta
- Federation of Alberta Gas Co-ops Ltd. and Gas Alberta Inc.
- Municipal Intervenors
- Public Institutional Consumers of Alberta
- Treaty 8 Aboriginals
- University of Alberta
- City of Edmonton

5 JOINT RECOMMENDATION AND COLLATERAL COMMITMENTS

The Opening Statements submitted to the Board by AGN and the NCC on November 14, 2001, were described as being the complete documentation of the compromise of the R&V Application agreed to between the two parties.

In its Opening Statement, the NCC noted there were three elements or steps that would be ultimately dealt with by the Board and require Board approval in relation to the sale of the Viking Assets. The first would be the approval of the sale, as provided for in the Amending Agreement, since the proceeds were sufficient to meet the quantum of the no-harm test as found by the Board in Decision 2001-65. The second would be the approval of the allocation of the proceeds between the customers and the shareholders. The third would be approval of the disbursement of the proceeds amongst the customers on the basis of a specific methodology. The NCC submitted that it was not a requirement to deal with the third step in this proceeding.

Both parties submitted letters on November 15, 2001, confirming that the two Opening Statements together constituted the entirety of the Joint Recommendation. The NCC also stated that "consultants for each of the members of the North Core Customer group" approved the Joint Recommendation.

The Opening Statements also set out certain Collateral Commitments between AGN and the NCC. While both AGN and the NCC noted that the Collateral Commitments of each party formed part of the basis for the overall Joint Recommendation, they agreed that the Joint Recommendation was all the Board needed to approve in relation to the R&V Application. Those items characterized as Collateral Commitments did not need to be dealt with in this proceeding, but might be the subject of future proceedings.

The Joint Recommendation urged the Board to approve the sale to Burlington having regard to the following principal factors:

1) customers would receive $385 million net of income tax, which amount was to be considered in conjunction with the value of the company-owned production delivered to customers during 2001;

2) AGN would receive its net book value of the Viking Assets on an after tax basis; and,

3) AGN would recommend that approximately $11.6 million of deferred income tax be refunded to customers.

AGN and the NCC also both took the position that, should the Board not approve the sale on the basis of the terms of the two Opening Statements, then both AGN and the NCC would revert to the positions expressed in their evidence and submissions relating to the R&V Application.

6 POSITIONS OF OTHER PARTIES

Burlington

Burlington supported the Joint Recommendation of AGN and the NCC. Burlington urged the Board to accept the NCC position and approve the sale of the Viking Assets immediately, even if the Board considered that further time was required to deal with the decision on the allocation of proceeds.

Enron

Enron supported the Joint Recommendation of AGN and the NCC. Enron recommended that any proceeds allocated to customers as a result of the sale of the Viking Assets should be returned on the basis of a credit rider on distribution tariffs. Enron submitted that this methodology was required to reassure all customers that they will not be at risk of losing their rightful share of the proceeds if they choose to purchase their gas directly from a gas marketer.

Members of the Public

A number of members of the public, Ms. Margaret Burns, Mr. Walter Erhardt, Mr. Larry Hladilo, Mrs. Doreen Lailey, Mr. Michael Marlowe and Ms. Mavis Thorsell submitted written or e-mailed objections to the sale of the Viking Assets. Most individuals noted that the effect of any proceeds allocated to customers from a sale would be of a short-term nature. They were concerned with the long-term negative impacts of the sale of the Viking Assets, particularly that, if the sale were to proceed, future costs of natural gas to be borne by customers would increase in excess of the costs that would otherwise be incurred in respect of production from the Viking Assets. Some members of the public also objected to the sale to Burlington on the basis that natural resources should not be divested to foreign ownership and control.

7 VIEWS OF THE BOARD

The Board agrees with the NCC that there are three steps to be dealt with in considering the R&V Application. Based on the evidence before it, the Board will firstly consider the matter of assessing the no-harm threshold in light of the proceeds made available in the Amending Agreement. Secondly, the Board will consider the allocation of proceeds between customers and shareholders. The matter of disbursement of the proceeds amongst customers will not be considered until there is a specific application before the Board.

The Board has considered the objections raised by members of the public. Regarding the issue of foreign ownership and control of natural resources, the Board notes that its governing legislation does not contemplate determinations regarding sales of resources and assets to foreign buyers. Industry Canada, a department of the federal government, has been charged with the authority to make such determinations.

The Board also notes the public's concerns regarding the long-term negative impacts that may arise if the sale were to be approved. The Board notes that in Decision 2001-65 it determined that the production assets were no longer required for utility service. However the sale was not

approved at that time as the available proceeds were not sufficient to save customers harmless. In this R&V Application, the Board is charged with the responsibility to determine whether or not the terms of the Amending Agreement are sufficient to keep customers harmless. This issue is relatively narrow and does not require the Board to revisit the broader issues considered and determined in Decision 2001-65. In the Board's view, it must proceed with its consideration of this R&V Application having regard to the Joint Recommendation of AGN and the NCC, recognizing that the NCC represents the vast majority of AGN's affected customers.

Both AGN and the NCC were careful not to characterize the Joint Recommendation as a "negotiated settlement" of the R&V Application. The Board accepts the Joint Recommendation in the nature of a joint submission by AGN and NCC for disposition of the R&V Application. In other words, it is a Joint Recommendation that the Board should vary the Decisions in the terms agreed to by AGN and the NCC.

Notwithstanding the care taken by AGN and NCC not to characterize the Joint Recommendation as a "negotiated settlement" of the R&V Application, the Board does consider the Recommendation to be similar to a settlement of disputed issues before the Board. Accordingly, the Board considers that similar principles should apply to its consideration of whether the Joint Recommendation is in the public interest. In that respect, the Board considers helpful the principle established in Decision 2000-85 that it would not ordinarily interfere with a settlement unless it is "patently contrary to the public interest." The Board's consideration of the public interest in this context must however, take into account the no-harm test. The Board will consider the Joint Recommendation in this light.

The process that was followed by the parties to reach a settlement is also of concern to the Board when reviewing a settlement. The Board must be satisfied that the process was fair and the customers were well represented. The Board takes note that the representation of customers as shown in Appendix 1 is extensive and appears to provide representation for the majority of AGN's customers. Based on responses to Information Requests from AGN and NCC, the Board is satisfied that all the members of the NCC had the opportunity to review and comment on the Joint Recommendation. The Board also acknowledges that the members of NCC unanimously ratified the Joint Recommendation reflected in the Opening Statements of AGN and the NCC.

To evaluate the public interest the Board must first consider the no-harm threshold. In Decision 2001-65 the Board determined that the no-harm threshold for the Viking Asset disposition was $460,339,000. In the context of the R&V Application, AGN submitted that there were certain cost items that were not adequately taken into account when the Board determined the no-harm threshold. These included capital expenditures to maintain the existing infrastructure, administrative costs, above ground property taxes and the addition of transmission facilities. AGN also stated that the customers would have received value for the actual COP in 2001 to account for which an adjustment to the no-harm threshold was necessary.

The Board understands that the NCC represents the majority of the customer interests affected by the proposed sale of the Viking Assets. The Board notes that the NCC submitted in evidence and in response to information requests that it could accept that a change in the no-harm threshold would result from some of the items identified by AGN, but that the NCC made its own

determination that the no-harm threshold should be altered to $452,437,000. The Board also notes that, when dealing with COP for 2001, the NCC submitted that the production of 15,567 terajoules (an estimate made up of actual and forecast amounts to year end) would have a value of $63,825,000.

From its own review of the evidence, the Board is satisfied that certain adjustments to the no-harm threshold established as of January 1, 2001 were justified such that it would have likely been reduced from the level of $460 million determined in Decision 2001-65 by an amount having an order of magnitude of $10 million. The resulting no-harm threshold would have been approximately the same as that submitted by the NCC (i.e. approximately $450 million).

The Board, being satisfied that a revised no-harm threshold could be set, will now examine the availability of funds to meet the no-harm threshold. In its response to AG-NCC.1, the NCC agreed with the amount of $530,206,000 as the proceeds available for allocation. In its review of the evidence, the Board also determined that approximately $530 million was available for allocation after deducting the costs of disposition, seismic, and petroleum rights from the sale proceeds. The Board also considered that the sales proceeds of $550 million should be adjusted by increase of approximately $34 million to account for interest since January 2001 and reduced by $40 million in accordance with the Amending Agreement for COP during 2001 (see the table in Section 2 of this Decision).

The Board also notes that the net book value of the Viking Assets is approximately $39.7 million. Because the $39.7 million belongs to shareholders, this amount would be deducted from $530 million leaving about $490 million available for distribution to customers to satisfy an adjusted no-harm threshold of approximately $450 million.

The Board notes the following in the NCC's Opening Statement with respect to the Joint Recommendation:

> …customers will receive $385 million net of income tax as its share of proceeds from the transaction. This amount, when added to the estimated actual value to be received by customers from the actual production occurring from the Viking field during 2001 will satisfy the no harm test as of January 1, 2001…

Based on the NCC's calculations, the Board understands the NCC position to mean that $63.8 million, representing customer value received from COP in 2001 can be added to $385 million to satisfy an adjusted (see Section 4) no-harm threshold.

The Board also notes the following in AGN's Opening Statement with respect to the Joint Recommendation and considers it consistent with the position of the NCC:

> …customers will receive $385 million net of income tax to be distributed during the month of January[2002]. This amount reflects an agreed to no-harm compensation related to the sale of the Viking production properties plus the value of actual production consumed by customers for 2001.

The Board wishes to again note that the matter of distributing the proceeds among customer groups will be dealt with in a subsequent proceeding, after the Board has received an application from the NCC on this matter. The Board anticipates that the North Core Committee, established pursuant to a negotiated settlement between AGN and its customers (the North Core Agreement), will first deal with this issue under the terms of the North Core Agreement.

The Board also notes AGN's submission that the customers' portion of the proceeds should be reduced by the amounts spent to date by the interveners in relation to AGN's application for leave to appeal Decisions 2001-46 and 2001-65 to the Alberta Court of Appeal.

The Board has reviewed the record respecting COP consumed by customers in 2001 and is satisfied that the value of $63.8 million as determined by the NCC is of the same order of magnitude as that determined by the Board. Accordingly, the Board considers it reasonable, in assessing whether customers will be saved harmless in light of the Joint Recommendation, to add this amount to the $385 million in proceeds that will be distributed to customers, for a total of approximately $449 million. The Board considers this figure to approximate the notionally adjusted no-harm threshold of $450 million determined earlier in this Decision.

The Board considers the approximate equality of these amounts to be a reasonable indication that customers will be saved harmless if the Viking Assets are sold pursuant to the Amending Agreement. However, the Board also considers it helpful to consider the other material aspects of the Joint Recommendation and some of the Collateral Commitments, which give the Board greater comfort that the Joint Recommendation is reasonable and that, overall, customers are being protected from harm as a result of the sale.

In the Joint Recommendation, AGN and the NCC also include a recommended refund of deferred income tax related to the Viking Assets in the amount of approximately $11.6 million. In the Board's view, this amount, which will be refunded to customers earlier than was contemplated, has an immediate present value which can be taken into account when considering whether or not the adjusted no-harm threshold is satisfied.

As previously noted, the Opening Statements of AGN and the NCC also included "Collateral Commitments." As submitted by the parties, for purposes of this Decision, the Board has not considered the Collateral Commitments to form part of the Joint Recommendation. To the extent that the commitments have been considered by the Board, they have been considered to be truly collateral to the Joint Recommendation. Nonetheless, when taken together with the Joint Recommendation, the Collateral Commitments constitute a balancing of the interests of customers and shareholders.

For example, AGN committed to refund previously recovered negative salvage which, when adjusted to a revenue requirement basis, would equal approximately $9 million. There is a present value of these funds being refunded now rather than retained by AGN as Decision 2000-65 allowed and, like deferred income taxes, provide a monetary contribution towards meeting the no-harm threshold.

In addition, the Board considers the following Collateral Commitments to be significant:

1. AGN will abandon its application for leave to appeal Decisions 2001-46 and 2001-65, and

2. the NCC will withdraw its prudence applications relating to the summer 2000 and winter 2000/2001 gas cost recovery rate periods.

The Board is unable to quantify these commitments, but notes that the costs associated with the Court of Appeal proceedings could potentially be significant.

The Board also notes that both AGN and the NCC undertook to complete their Collateral Commitments provided the Board approved the sale of the Viking Assets on the terms and conditions as set forth in the Joint Recommendation.

In summary, the Board concludes that the no-harm threshold should notionally be adjusted to approximately $450 million and that the Amending Agreement provides sufficient funds to satisfy the no-harm threshold. The Board also accepts that the Joint Recommendation to allocate $385 million to customers taken together with the value of COP in 2001, the deferred income tax refund and the negative salvage refund provide sufficient funds to customers to meet the adjusted no-harm threshold. For these reasons, the Board considers the Joint Recommendation to be in the public interest and concludes that the Decisions should be accordingly varied.

Therefore, the Board approves the R&V Application in accordance with the Joint Recommendation. Accordingly, the Board approves the sale of the Viking Assets to Burlington and directs AGN to submit a compliance filing showing the final disbursements wherein the customers are to receive $385 million (unreduced by any other amount including income tax) plus approximately $11.6 million in deferred income tax for an aggregate of $396.6 million. The Board considers the compliance filing to be the most practical means of dealing with the matter of negative net salvage and, accordingly, expects the filing to include the commitment related to the refund of negative net salvage.

In relation to the third step associated with the Viking sale, the disbursements of proceeds amongst customers, the Board noted in Decision 2001-65 that the North Core Agreement provides for Re-openers, which may be triggered by the disposition of assets or by amounts to be distributed to customers. The Board believes it is appropriate for the parties to the North Core Agreement to negotiate the mechanism for distribution to customers of the amounts allocated to them in accordance with this Decision. Any settlement for the disbursement of the proceeds to be allocated to the customers would then be submitted by application to the Board for evaluation and approval.

8 BOARD ORDER

Having regard to the evidence and submissions, particularly the Joint Recommendation, and having regard to its own knowledge and findings in this Decision, the Board hereby orders that:

1. Decisions 2001-46 and 2001-65 be varied in accordance with the terms of this Order.

2. The Application for the sale of the Viking Assets to Burlington is approved in accordance with the Amending Agreement and in accordance with the Joint Recommendation set out in section 1 of the two Opening Statements.

3. ATCO Gas North shall submit a compliance filing within 30 days after the completion of the sale that will provide final statements of proceeds from the sale and the amount to be used by the North Core Committee in its negotiations regarding the distribution of the customers' share of the proceeds.

Dated in Calgary, Alberta on December 11, 2001.

ALBERTA ENERGY AND UTILITIES BOARD

<Original signed by>

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

<Original signed by>

T. M. McGee
Member

<Original signed by>

J. I. Douglas, FCA
Acting Member

Appendix 1

Members of the North Core Customer Group

	Represented Parties
Aboriginal Communities and Saddle Lake First Nation	Treaty 8 Aboriginals
Canadian Forest Products Limited, Vanderwall Contractors (1971) Ltd., Spruceland Millworks Inc., and Zavisha Saw Mills Ltd.	
City of Edmonton	
Consumers Coalition of Alberta	The Consumers' Association of Canada (Alberta) The Alberta Council on Aging
Federation of Alberta Gas Co-ops and Gas Alberta Inc.	
Public Institutional Consumers Association	Provincial Health Authorities of Alberta Alberta School Boards Association Council of Presidents Public Colleges and Technical Institutes
University of Alberta	

Municipal Intervenors	City of Camrose City of Cold Lake Town of Drayton Valley Town of Edson Town of Fairview City of Fort Saskatchewan Town of Fox Creek Town of Gibbons Town of Grande Prairie Town of Hinton Town of Lacombe City of Lloydminster Town of Peace River Town of Ponoka City of Red Deer Town of Rocky Mountain House City of St. Albert City of Spruce Grove Town of Stony Plain Town of Vegreville Town of Vermillion Town of Westlock City of Wetaskiwin Town of Whitecourt Regional Municipality of Wood Buffalo

Appendix 2

ATCO GAS
OPENING STATEMENT
REVIEW AND VARIANCE APPLICATION

Since the filing of ATCO Gas' rebuttal evidence, ATCO Gas and the North Core Customer Group (the "NCC") realized that there was the potential to bridge the gap in their evidentiary positions in order to make a Joint Recommendation (the "Recommendation") to the Board. The consensus which has emerged relates to both the matters at issue in this proceeding as well as certain collateral matters between the parties in respect of which no Board decision is required here.

This Opening Statement sets out the terms upon which consensus was reached and requests that the Board approve the sale of the Viking properties in accordance with such terms. It also sets out various commitments of ATCO Gas in respect of the collateral issues. In the event that the sale is not approved upon the Recommendation set out below, ATCO Gas will not be bound by these collateral commitments or the Recommendation, and will maintain its application for review and variance based on the evidence filed in this proceeding to date.

1.0 Joint Recommendation

ATCO Gas and the NCC are prepared to recommend Board approval of the sale of the Viking properties pursuant to the terms of the Amending Agreement with Burlington Resources, provided the net proceeds available for disposition are also approved for disposition in the following manner:

First, customers will receive $385 million net of income tax to be distributed during the month of January. This amount reflects an agreed to no-harm compensation related to the sale of the Viking production properties plus the value of actual production consumed by customers for 2001. Production for the balance of 2001 shall be maintained at levels contemplated in the Amending Agreement with Burlington Resources.

Second, ATCO Gas will receive its net book value on an after-tax basis. Related collateral issues such as a requirement to access small amounts of additional tax pools in order to shelter the net book value from any income tax will be dealt with in a subsequent compliance filing.

In addition to the items above, the Company is prepared to recommend a refund of deferred income tax related to the Viking producing properties totaling approximately $11.6 million.

In making this Opening Statement, ATCO Gas has also reviewed and relies upon the Opening Statement of Robert Liddle and the Joint Recommendation and collateral commitments made on behalf of the NCC for the benefit of ATCO Gas. ATCO Gas emphasizes that in the event that the sale is not approved upon the terms set out in both opening statements, ATCO Gas will maintain its application for review and variance based on the evidence filed in this proceeding.

2.0 Collateral Commitments

Provided the Board approves the sale of the Viking properties on the terms and conditions set forth above, ATCO Gas is committed to the following collateral undertakings which do not require Board approval as part of these proceedings:

1. The Company will refund previously recovered negative net salvage. The amount, on a revenue requirements basis, would be approximately $9 million. This would address the Viking, Lloydminster and Westlock properties. In exchange for this refund, the NCC agree that they are responsible for any additional abandonment or removal costs related to the producing assets owned and previously abandoned by ATCO Gas or its predecessor companies.

2. Aside from the negative salvage proceeds, ATCO Gas and the NCC agree that the Board should continue to address the matters before it in the compliance filing related to Decisions 2001-46 and 2001-65 insofar as Lloydminster and the Westlock properties are concerned.

3. ATCO Gas will abandon its Court appeal of Decisions 2001-46 and 2001-65 related to the Lloydminster, Westlock and Viking properties.

4. ATCO Gas will advise the NCC of its long-term plans for disposition/production from the Beaverhill Lake and Fort Saskatchewan properties on or before July 1, 2002.

5. ATCO Gas will seek to reduce its rates effective January 1, 2002 to reflect the removal of all costs relating to the Lloydminster, Westlock, and Viking properties. ATCO Gas and the NCC recognize that the North Core PBR agreement will govern any related rate impacts subject to the subsequent approval of the Board.

6. All costs relating to this R&V Application and to the original sales applications shall be paid from ATCO's hearing cost reserve account based on the Board's guidelines subject to Board subsequent approval. Each party will bear its own costs of proceedings before the Alberta Court of Appeal. The customers' portion related to the Alberta Court of Appeal will be deducted from the proceeds payable to customers. Properly documented cost claims against the hearing cost reserve account shall be submitted to ATCO Gas and the Board within 15 days following approval of the Viking sale and paid within 30 days thereafter.

7. ATCO Gas has advised the NCC that it is not aware of any material information pertaining to the Joint Recommendation and collateral commitments which has not been disclosed to the NCC.

ATCO Gas reiterates that in the event that the Board does not approve the sale upon the terms set out in this Opening Statement and the Opening Statement of Robert Liddle, it will not be bound

by these collateral commitments nor will it be bound by the Recommendation, defaulting instead to the position already in evidence in this proceeding.

Mr. Chairman, ATCO Gas considers that the Recommendation now available in respect of the matters for determination in this proceeding represent a fair and reasonable approach to the interests of customers and shareholders. Approval of the sale of the Viking properties in accordance with the terms and conditions of the Recommendation combined with the collateral commitments not subject to approval now, which have been set forth in both Opening Statements will allow parties to bring finality to a very contentious set of issues which have been ongoing for a very long time. Expeditious approval by the Board will allow ATCO Gas to provide significant refunds to ATCO Gas North customers as soon as possible and will further the public interest.

Appendix 3

Opening Statement of Robert Liddle
[North Core Customer group]

Review and Variance Application

Mr. Chairman and panel members:

On the basis of the evidence filed, the North Core Customer group ("NCC") and ATCO Gas agreed that it should be possible to reconcile the differences in their evidence. Subsequent discussions resulted in a position which both are prepared to jointly recommend to the Board along with certain collateral commitments which are not the subject of this proceeding. The NCC respectfully requests the Board to approve the application on the basis of this Opening Statement as well as the Opening Statement of Jerome Engler which we have read and upon which we expressly rely in making the commitments and recommendations set forth in the Opening Statements. Failure to approve this Application on those terms would cause the NCC to revert to the position expressed in its evidence.

The NCC submits that there are three separate components of the Board Decision or Decisions that are ultimately necessary for Board approval of the Viking sales transaction and the subsequent allocation and distribution of proceeds.

In the first instance, the Board must determine whether to approve the sale of the Viking production and gathering properties to Burlington Resources on the basis of the terms and conditions set out in the Purchase and Sale Amending Agreement dated September 11th, 2001 between ATCO Gas and Burlington Resources.

ATCO Gas and the NCC have agreed that this amended sale should proceed. The NCC notes that the record in this proceeding, already confirms the NCC position that the sale should proceed since the proceeds from the sale are now sufficient to meet the no harm test. In particular, in response to AG-NCC.2, the NCC made the following statement:

> "Therefore, although the net proceeds of the sale are sufficient to meet the no harm test, the amount proposed to be paid in mitigation, being $331,998,000, is significantly less than the amount required to satisfy the test."

This statement made it clear that the issue of the North Core Committee was not with regard to the sufficiency of the total proceeds rather its issue was with the quantum of the no harm calculation proposed by ATCO Gas.

The matters that were the subject of the further discussions with ATCO Gas all relate to the quantum of the proceeds to be received by ATCO Gas and customers, that is the remedy sought by ATCO Gas in paragraphs 42 and 44 of its Review and Variance Application. (Since the total

proceeds to be received by customers are now different from the amount proposed in the evidence filed by the NCC, it is obviously necessary for the NCC to receive specific approval from all its members for this revised amount. The NCC has agreed that it will recommend approval to its constituent members and will endeavour to obtain that approval by November 16 or as soon as possible thereafter.)

1. JOINT RECOMMENDATION

The NCC and ATCO Gas are prepared to recommend Board approval of the sale of the Viking properties pursuant to the terms of the Amending Agreement with Burlington Resources, provided the net proceeds available for disposition are also approved in the following manner:

First, customers will receive $385 million net of income tax as its share of proceeds from the transaction. This amount, when added to the estimated actual value to be received by customers from the actual production occurring from the Viking field during 2001 will satisfy the no harm test as of January 1, 2001, which is the reference date used by the Board and both parties in evidence. Production from the Viking field for the balance of 2001 shall be at levels contemplated in the amended Burlington Resources Purchase and Sale Agreement.

Secondly, ATCO Gas has agreed to refund deferred income tax related to the Viking properties totaling approximately $11.6 million.

Thirdly, in order for ATCO Gas to receive its net book value as part of its share of the proceeds on an after tax basis, it is agreed at this point in time that it may be necessary for ATCO Gas to access small amounts of additional tax pools in order to shelter the net book value from any income tax. NCC will support such treatment at the time of the subsequent compliance filing.

2. COLLATERAL COMMITMENTS

Provided the Board approves the sale of the Viking properties on the terms and conditions set forth above, the NCC is committed to the following collateral undertakings which do not require Board approval as part of this proceeding:

1. The NCC will withdraw their prudency applications currently before the Board relating to the summer 2000 and winter 2000/2001 GCRR periods and any other prudency claims regarding production from the Viking, Lloydminster and Westlock properties. This agreement is without prejudice to any claims that the NCC may advance regarding prudency or otherwise, regarding the Beaverhill Lake and Fort Saskatchewan properties.
2. Customers will waive any adjustment to 2001 rates resulting from the disposition of the Westlock properties and for the Lloydminster properties. Any other adjustment arising under the terms of the existing PBR negotiated settlement will be deferred to 2002.
3. The terms of the recommendations and the collateral commitments are subject to ratification by the members of the North Core Customer Group consisting of

> Canadian Forest Products Limited, the City of Edmonton, the Consumers' Coalition of Alberta, the Federation of Alberta Gas Co-ops Ltd. and Gas Alberta Inc., the Municipal Intervenors, the Public Institutional Consumers of Alberta, Treaty 8 Aboriginals and the University of Alberta. All parties will use their best efforts to obtain ratification of this settlement of this agreement on or before November 16, 2001.

Mr. Chairman, the NCC submits that the compromise recommendation and the collateral commitments in both Opening Statements represent a fair balance of the interests of customers and ATCO Gas shareholders.

As stated previously, the NCC believes that there are three elements that would make up the Board's approval. The first approval is that of the amended sales transaction with Burlington Resources. The NCC would restate its position that its members have already given their approval of this transaction and that the Board can proceed to a decision on this aspect immediately, since the proceeds were sufficient to meet the quantum of the "no harm" test as found by the Board in Decision 2001-65, and either of the versions advanced in evidence by the NCC and ATCO Gas.

The second necessary step requiring Board approval is the allocation of proceeds between shareholders and customers. While it has always been the preference of the NCC to have coincident approval of the sales transaction and the allocation of proceeds, the NCC recognizes that it cannot yet confirm to the Board that it has received formal approval from its constituents of the principles of the new agreement on allocation of proceeds and related considerations. The NCC recognizes that time is of the essence with respect to the approval of the Burlington Resources sale, and if the Board finds it necessary to separate its approval of the sale *per se* from the allocation of proceeds approval in order to meet the timing requirements of the Burlington sale, then the NCC would agree with that procedure.

The NCC will complete the formal ratification process no later than November 30, 2001. Immediately upon receipt of ratification, the NCC will advise the Board and request a decision on the joint recommendation.

Finally, the Board must approve the actual distribution of the proceeds to customers on the basis of a specific methodology. This approval is not requested as a part of this proceeding and will be dealt with as directed by the Board in Decision 2001-65. The NCC wishes to advise the Board that other than a desire to commence the distribution of proceeds as soon as possible, the NCC has not yet had time to address this issue to reach internal agreement or with ATCO Gas on the details of that distribution. As the preferred process enunciated in Decision 2001-65, the NCC would respectfully request the Board to await the joint recommendations of the NCC and ATCO Gas which we undertake to develop as soon as possible.