

Notice

**NOTICE OF COMMISSION INITIATED PROCEEDING
APPLICATION NO. 1566373
PROCEEDING ID. NO. 20**

**REVIEW OF RATE RELATED IMPLICATIONS OF UTILITY ASSET DISPOSITIONS
FOLLOWING THE SUPREME COURT'S CALGARY STORES BLOCK DECISION
(The UTILITY ASSET DISPOSITION RATE REVIEW PROCEEDING)**

Take Notice that pursuant to Section 8(2) of the *Alberta Utilities Commission Act*, S.A. 2007, c.A-37.2, (the Act) the Alberta Utilities Commission (AUC or the Commission) is initiating this Utility Asset Disposition Rate Review Proceeding to consider the potential rate related implications for Alberta utilities of the Supreme Court of Canada's Calgary Stores Block Decision¹ (the Stores Block Decision). The Commission considers that a single proceeding with broad stakeholder participation from all Commission regulated utilities and their stakeholders to be in the best interest of regulatory efficiency, procedural fairness and regulatory certainty.

Background

The Stores Block Decision arose on an appeal of Decision 2002-037² which was issued by the Alberta Energy and Utilities Board (EUB) on March 21, 2002. The matter involved the disposition by ATCO Gas of its Calgary Stores Block facility and adjacent property in downtown Calgary. The EUB determined in a prior decision³ to permit the sale, concluding that customers would not be harmed by the disposition of the assets. Decision 2002-037 addressed the disposition of the sale proceeds by allocating the proceeds between the shareholders of ATCO Gas and ratepayers.

On appeal, the Alberta Court of Appeal⁴ ruled in favor of ATCO Gas allocating the gross proceeds to the shareholders of the utility less accumulated depreciation which was to be credited to ratepayers. The matter was further appealed and cross-appealed to the Supreme Court. The Supreme Court denied the appeal and allowed the cross-appeal with the result that the utility shareholders were entitled to receive all proceeds resulting from the sale.

Reasons for the Utility Asset Disposition Rate Review Proceeding

The Stores Block Decision may have various implications with respect to regulation of Alberta utilities. In particular, the guidance provided by the courts may require re-consideration of certain aspects of traditional regulatory approaches to the acquisition and disposition of utility assets and to the setting of just and reasonable rates. Parties have argued various interpretations

¹ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140

² Decision 2002-037 – *ATCO Gas And Pipelines Ltd., Disposition of Calgary Stores Block and Distribution of Net Proceeds – Part 2*, dated March 21, 2002

³ Decision 2001-78 – *ATCO Gas And Pipelines Ltd., Disposition of Calgary Stores Block and Distribution of Net Proceeds – Part 1*, dated October 24, 2001

⁴ *ATCO Gas & Pipelines Ltd. v. Alberta (Energy & Utilities Board)*, [2004], 24 Alta. L.R. (4th) 205, 2004 ABCA 3

of the Stores Block Decision in several recent proceedings before the EUB⁵ and in various ongoing proceedings before the Commission. The Commission would like to develop a comprehensive understanding of these potential implications through this Proceeding and then to apply that understanding in a consistent manner in future decisions.

This single proceeding approach has the advantage of allowing broad stakeholder participation on focused issues thereby avoiding the disadvantages associated with a piecemeal consideration of these issues through a series of specific applications. These disadvantages include:

- time and cost inefficiencies resulting from multiple and perhaps overlapping proceedings, and any reviews and appeals therefrom;
- the potential for inconsistent treatment of similar applications;
- uncertainty with respect to any aspect of the Commission's approach to rate related matters is disruptive to all stakeholders; and
- the potential that certain stakeholders will be unable to effectively participate on material issues if they are considered in a variety of specific applications.

Accordingly, the Commission considers the commencement of this Proceeding to be timely, in the interest of regulatory efficiency, consistency, procedural fairness, and that it will serve to reduce regulatory uncertainty.

The Commission will provide additional direction to parties involved in ongoing applications before the Commission to the extent they involve matters to be reviewed in this Proceeding. Application specific directions will defer further consideration of such matters until a decision is rendered in this Proceeding.

Proceeding Objectives

The Commission has three principal objectives in initiating this Proceeding. The Commission intends to:

- provide interested parties an opportunity to advance and defend their interpretation of the Stores Block Decision;
- provide interested parties an opportunity to identify and explore the potential implications of the Stores Block Decision to utility regulation in Alberta; and
- develop a consistent, principled approach to applying the guidance provided by the Stores Block Decision, while providing sufficient flexibility to address the specifics of each proceeding.

Process

Any party wishing to participate in this Proceeding should register its intention to participate in accordance with the instructions set out below.

Registered parties are invited to make written submissions in accordance with the schedule provided herein. Submissions should address each of the issues identified in the Issues List attached as **Appendix A** to this Notice. In addition, submissions may address other matters relevant to the Proceeding. For clarity, parties are not expected to address the standard of review aspect of the Stores Block Decision.

⁵ See for example Decision 2007-005 – *ATCO Gas South, Carbon Facilities, Part 1 Module-Jurisdiction (2005/2006 Carbon Storage Plan)* dated February 5, 2007 and Decision 2007-101 – *ATCO Gas, Disposition of Land in the Harvest Hills Area*, dated December 11, 2007

The Commission recognizes that submissions may consist of legal opinion, academic and regulatory expert evidence and legal argument. The Commission encourages the filing of all such relevant material.

Parties making submissions will be entitled to file reply submissions addressing matters raised in the submissions of other parties.

Following receipt of initial submissions the Commission will evaluate the extent to which the issues enumerated in the Issues List are likely to be thoroughly canvassed through the existing process. To the extent that the Commission considers that it would benefit from additional evidence, it may issue Information Requests, appoint an independent expert, call an oral hearing or take other procedural steps. Notification regarding further scheduling or process will only be provided to registered parties.

Outcome of Proceeding

At the conclusion of the Proceeding, the Commission will issue a decision reflecting its conclusions with respect to the interpretation and application of the guidance provided by the courts and the resulting implications for future proceedings.

The Commission expects the interpretations and principles established by this Proceeding to be applied in relevant future applications, subject always to the ability of parties to argue that they should not be applied in the particular circumstances of a specific application.

Participation / Cost Recovery

The Commission considers the matters to be reviewed in this Proceeding may have significant, long-lasting implications for utility shareholders, investors and ratepayers. Consequently, all utilities (including all gas, pipeline, electric, regulated retail gas and electric services providers, and water utilities) under the Commission's jurisdiction shall be considered as parties to this Proceeding whether or not they register and actively participate in the Proceeding. Interested interveners are also encouraged to participate. Given the potential for broad interest in these Proceedings in other jurisdictions, interested parties from outside of Alberta are also welcome to participate.

Parties may participate individually but are encouraged to work in conjunction with parties with similar interests or positions.

It is in the interest of all parties to achieve a comprehensive, cogent and timely review of the matters for consideration in this Proceeding. To this end, all parties are encouraged to strive for clarity of position through focused evidence and argument and to collaborate to the fullest extent possible in order to achieve time and regulatory efficiencies.

Parties who participate shall not be entitled to submit cost claims to the Commission and no funding will be awarded by the Commission to participants. **Each party shall be responsible for its own costs.** The Commission considers this Proceeding to deal with generic issues which concern all stakeholders and that utility ratepayers should not be required to underwrite the costs of the participants through regulated rates.

Schedule and Process

The Commission has established the following process to deal with this Proceeding:

Process Step	Deadline Date & Time
Registration and Statement of Intent to Participate	April 24, 2008 at 4:00 pm
Submissions	June 23, 2008 at 4:00 pm
Reply Submissions	August 25, 2008 at 4:00 pm

All submissions are to be made through the Proceeding Submission system and are due by the deadline time on the date indicated. Late submissions will normally not be admissible.

Additional Information

Details regarding the Proceeding are available for viewing through the Proceeding Search link on the Home Page of the AUC Website www.auc.ab.ca or by clicking on the following link: https://www3.eub.gov.ab.ca/eub/dds/EPS_Query/ProceedingDetail.aspx?ProceedingId=20

For information about AUC procedures, contact the AUC proceeding coordinator at:

Utilities Division, Edmonton Office
Attention: Bob Clarke
Telephone: (780) 422-4107
Email: Bob.Clarke@auc.ab.ca

Participation in the Proceeding

Any party wishing to participate in this Proceeding should register to participate for Proceeding ID. 20 through the Proceeding Submission system available through the AUC Digital Data Submission (DDS) quick link on the AUC Website www.auc.ab.ca. A Business Associate Code (BA Code) and a valid DDS log-in ID with the DDS role of "Participate in a Proceeding" will be required. BA codes are available through the Petroleum Registry of Alberta by accessing the following link:

https://wpp.petroleumregistry.gov.ab.ca/pr/IFDBASSC_00_FRM_ManageBA.aspx

Any questions regarding obtaining a DDS log-in ID or the DDS system may be directed by e-mail to DDSAdmin@ercb.ca or by telephone to (403) 297-5802.

After registering, participants should file a Statement of Intent to Participate (SIP) with the Commission by the participation closing deadline of **4:00 pm, April 24, 2008**.

If you are represented by another party, please include the contact information for your representative. If you are a group, provide a contact person for the group and give details on the group members.

Pursuant to section 13 of the AUC *Rules of Practice*, all documents filed in respect of this Proceeding, including any submissions or other documents filed prior to the commencement of the Proceeding, must be placed on the public record unless otherwise ordered by the Commission, and are subject to the *Freedom of Information and Protection of Privacy Act*. All documents submitted through the Proceeding Submission system are immediately available to

the public and all other participants in the Proceeding through the Proceeding Search service on the AUC's Website. Please ensure that your submissions are free of information that you do not want to appear on a public record.

Issued at Calgary, Alberta on April 2, 2008.

ALBERTA UTILITIES COMMISSION
Douglas A. Larder, Q.C., General Counsel

APPENDIX A

UTILITY ASSET DISPOSITION RATE REVIEW PROCEEDING ISSUES LIST

- A. **Interpretation of the Stores Block Decision** - Each party is invited to provide its understanding of the following matters in light of the majority judgement in the Stores Block Decision. If a party considers the Stores Block Decision to be irrelevant or to have minimal application to any of the following issues it should clearly state the reasons for this position.
- a. The extent to which the “No Harm Test” utilized by the EUB/Commission when considering applications under Section 101(2)(d) of the *Public Utilities Act* (PUA) and Section 26(2)(d) of the *Gas Utilities Act* (GUA) has been endorsed, rejected or modified by the Court;
 - b. Responsibility with respect to the costs of disposition of a utility asset;
 - c. Entitlement to the proceeds of disposition of a utility asset;
 - d. Responsibility for losses (proceeds are less than the aggregate of book value plus expenses of disposition) arising from the disposition of a utility asset; and
 - e. Utility risk with respect to recovery of capital invested in rate base.
- B. **Limited or General Application** - Each party is invited to provide its views on the following questions:
- a. Are the findings of the majority judgement in the Stores Block Decision limited to the specific fact situation?
 - b. If not, does the Stores Block Decision stand for the principle:
 - i. of a symmetrical approach to the entitlement, responsibility and risk for gains/losses resulting from the disposition of a utility asset in Alberta without necessarily mandating a particular entitlement/responsibility/risk result?
 - ii. that utility shareholders should have the entitlement, responsibility and risk for gains/losses from the disposition of a utility asset in Alberta under the present legislation; or
 - iii. some other principle(s)?
- C. **Conditions to Disposition Approval** - Each party is invited to provide its understanding of Paragraph 77 and related paragraphs of the Stores Block Decision with respect to the ability of the Commission to attach conditions to the approval of a disposition of a utility asset under Section 101(2)(d) of the PUA and Section 26(2)(d) of the GUA. In particular, each party is invited to:
- a. Provide its understanding of the ability of the Commission to condition a disposition approval in light of the following quote:

For example, the Board could approve the sale of the assets on the condition that the utility company gives undertakings regarding the replacement of the assets and their profitability. It could also require as a condition that the utility reinvest part of the sale proceeds back into the company in order to maintain a modern operating system that achieves the optimal growth of the system.

- b. address the relationship of the “replacement” assets to the assets disposed of, in terms of asset type, location, time of replacement and profitability; and
 - c. address any restrictions on how funds would be used to “maintain a modern operating system that achieves the optimal growth of the system”.
- D. Application of Proceeds to Mitigate Harm** - Each party is invited to provide its understanding of Paragraphs 29, 77, 83, 84, 85 and related paragraphs of the Stores Block Decision with respect to the application of proceeds to mitigate identified harm. Specifically, each party should address the ability (or lack thereof) of the Commission to approve of a disposition despite a finding of harm through application of the “no harm test” and to direct the application of all or some of the proceeds of sale in a fashion which mitigates or eliminates the harm.
- E. Powers of Commission in Rate Case** - Each party is invited to provide its understanding of Paragraph 81 and related paragraphs of the Stores Block Decision and should specifically address the ability (or lack thereof) of the Commission to:
- a. deal with proceeds of sale differently in a general rate application than it can in a stand alone application brought under Section 101(2)(d) of the PUA and Section 26(2)(d) of the GUA; and
 - b. consider the financial implications from a sale in terms of setting utility rates even when the Commission has made a finding that the disposition will not harm ratepayers.
- F. Other Jurisdictions** - How have other jurisdictions interpreted and applied the Stores Block Decision?
- G. Implications of Stores Block Decision** - Each party is invited to provide its position with respect to the potential implications of the Stores Block Decision to the extent it relates to the following matters:
- a. should the rules allocating gains and losses on a sale of assets sold outside of the ordinary course of business differ from the rules which apply to assets sold in the ordinary course of business?
 - b. appropriateness of depreciation expense on capital assets which may appreciate over time as a component of a utility’s revenue requirement;
 - c. appropriateness of salvage, reclamation and removal costs on capital assets which may appreciate over time as a component of a utility’s revenue requirement;
 - d. appropriateness of traditional depreciation study methodologies in light of the findings of the Stores Block Decision with respect to entitlement/responsibility for gains and losses;
 - e. appropriateness of including a return on debt and equity on non-depreciable property in a utility’s revenue requirement;
 - f. appropriateness of a return on debt and equity on capital assets which may appreciate over time as a component of a utility’s revenue requirement;
 - g. the concept that suggests that the reinvestment of sale proceeds by a utility should be treated as equity financing and earn the appropriate return;
 - h. changes from the *status quo ante* with respect to utility risk, specifically risk of recovery of invested capital and accompanying impacts of any change to appropriate utility capital structure and return on equity. Parties should also include submissions on integration of Commission findings with the Generic Cost of Capital – Preliminary Questions Proceeding, Application No. 1561663;

- i. the jurisdiction of the Commission to require regulatory approval under Section 101(2)(d) of the PUA and Section 26(2)(d) of the GUA prior to the disposition of a utility asset which is no longer used or required to be used to provide service to the public within Alberta;
- j. the ability of the Commission to consider proceeds of disposition as “revenue” in fixing just and reasonable rates pursuant to Section 91 of the PUA and Section 40 of the GUA; and
- k. potential implications to the practices and requirements established pursuant to the gas Uniform Classification of Accounts Regulation (Alberta Regulation 546/63) and the Uniform System of Accounts (electric) attached to EUB Bulletin 2006-25 dated July 12, 2006.