



ATCO Group

Affiliate Transactions and Code of
Conduct Proceeding
Part A: Asset Transfer, Outsourcing
Arrangements, and GRA Issues

July 26, 2002

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2002-069: ATCO Group

Affiliate Transactions and Code of Conduct Proceeding

Part A: Asset Transfer, Outsourcing Arrangements, and GRA Issues

Application No. 1237673

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

ATCO GROUP AFFILIATE TRANSACTIONS AND CODE OF CONDUCT PROCEEDING PART A: ASSET TRANSFER, OUTSOURCING ARRANGEMENTS, AND GRA ISSUES

**Decision 2002-069
Application No. 1237673
(Previously 2000233 & 2000234)
File No. 1110-1 & 5678-1**

1 INTRODUCTION

By letter dated July 21, 2000, ATCO Electric Ltd. (AE), ATCO Gas and Pipelines Ltd.¹, and Northwestern Utilities Limited (NUL) filed two applications (collectively the Application) for the Board's consideration.

The first application was a joint application (2000234) from AE and AGPL (ATCO or the Applicants) with respect to their relationships and transactions with other regulated and non-regulated affiliates within the ATCO group of companies (ATCO Group). The Applicants sought approval of the ATCO Group's Affiliate Relationship Code of Conduct (Code of Conduct) that set out the standards and conditions for interaction between each of the Applicants and their non-regulated affiliated companies in the ATCO Group. The approval sought related to transactions and relationships as of the period commencing January 1, 2001.

The second application (2000233) was made by AE with respect to affiliate transactions for the 2001/2002-test period; specifically AE requested approval of the inclusion of revenues and costs arising from those transactions in its revenue requirement. The prudence and level of those costs and revenues would be examined in this proceeding and any costs and revenues approved would be included in the final revenue requirement arising from AE's Distribution Tariff (DT)² and Transmission Facility Owner (TFO)³ proceedings. Subsequent to the second application, AE also requested approval of the costs arising from affiliate transactions in the revenue requirement

¹ In the Application, ATCO Gas and Pipelines Ltd. (formerly Canadian Western Natural Gas Company Limited) and NUL were still separate entities, however on January 1, 2001, NUL was amalgamated into ATCO Gas and Pipelines Ltd. (AGPL). AGPL holds the assets for both of the former utilities. On an ongoing basis, two divisions of AGPL (ATCO Gas and ATCO Pipelines) will continue the operations of the distribution system and the transmission system respectively. It has been confirmed that these changes had taken place, and that this structure would continue at the present time with the operating and accounting functions being segregated into ATCO Gas North (AGN) and ATCO Gas South (AGS), and ATCO Pipelines North (APN) and ATCO Pipelines South (APS), in accordance with Decision U99102, dated November 1, 1999.

² AE Application #2000136 relating to AE's DT was subsequently settled between AE and other stakeholders. The settlement was filed with the Board and approved by Decision 2001-14 dated February 27, 2001. The settlement incorporated a 'placeholder' amount for the revenue requirement impact of certain affiliate revenues and expenses that are to be approved and adjusted, if required, pursuant to this Decision.

³ AE Application #2000132 relating to AE's TFO Tariff was subsequently settled between AE and certain stakeholders. The settlement was filed with the Board and approved by Decision 2000-65 dated October 31, 2000. The settlement incorporated a 'placeholder' amount for the revenue requirement impact of certain affiliate revenues and expenses that are to be approved and adjusted, if required, pursuant to this Decision.

requested in its Regulated Rate Option (RRO)⁴ Tariff - Part B Non-Energy Cost Components application.

Notice of Hearing for the proceeding (the Affiliate Proceeding) was initially issued directly to contacts on the interested parties lists for AE and AGPL on August 29, 2000, and published in the Calgary, Edmonton, Lethbridge, and Red Deer daily newspapers. The hearing was originally scheduled for commencement on January 8, 2001. Intervening matters led to a delay of the hearing.

By letters dated November 8 and November 21, 2000, the Board advised that the hearing was rescheduled to commence on January 30, 2001 in Calgary. The rescheduling was precipitated in part by a review and variance application⁵ and other procedural matters related to the Application. By subsequent letter dated January 18, 2001, the Board advised parties that the hearing was deferred again. The Board, ATCO, and stakeholders had a very busy regulatory workload at this particular time. The Board advised parties of the timing difficulties and asked for parties' views on the matter. ATCO recommended that the Affiliate Proceeding hearing be deferred so that other more time sensitive matters could be addressed. The Board agreed to defer the hearing due to an extremely busy regulatory calendar, including several concurrent ATCO applications, most notably the hearings relating to AE, the AGN Sale of the Viking Producing Properties, and the implementation of electrical restructuring. The Board advised parties that it agreed with delaying the Affiliate hearing until later in the year. The Board notified parties by letter dated July 19, 2001 that the hearing was rescheduled for September 4, 2001 in Calgary.

Parties were also notified of a Pre-hearing Meeting by letters dated July 19 and August 3, 2001. The Pre-hearing Meeting was held in Calgary on August 10, 2001 for the purpose of addressing several matters including: the scope of the proceeding; the treatment of Carbon Storage, including the Carbon Transfer application dated July 18, 2001 (Carbon Transfer Application); the implications of the intended sale of retail operations by ATCO; the transfer of the record from related proceedings; and other procedural matters. At the Pre-hearing Meeting, ATCO also proposed to remove matters related to Isolated Generation from the Affiliate Proceeding. Following the Pre-hearing Meeting, the Board by letter dated August 14, 2001 provided clarification of the foregoing matters.

The public hearing was convened in Calgary on September 4, 2001 before Board members Mr. B. T. McManus, Q.C. (Chair), Mr. A. J. Berg, P. Eng., and Acting Board member Mr. M. J. Bruni, Q.C. The hearing was adjourned *sine die* on September 27, 2001 with argument and oral reply to follow. Registered interveners and the Applicants were required to file written argument on October 29, 2001. The hearing was reconvened in Calgary on November 16, 2001 at which time the Board heard an oral summary of the written argument and heard oral reply from interveners and the Applicants.

⁴ AE Application #2000138 relating to AE's RRO Tariff was subsequently settled between AE and certain stakeholders. The settlement was filed with the Board and approved by Decision [2000-88](#) dated December 22, 2000. The settlement incorporated a 'placeholder' amount for the revenue requirement impact of certain affiliate revenues and expenses that are to be approved and adjusted, if required, pursuant to this Decision.

⁵ The Board issued procedural decisions in letters dated November 8, 2000, November 10, 2000, December 11, 2000, and December 14, 2000. The Board addressed the Review and Variance application by Calgary, dated December 5, 2000, in its letter dated September 4, 2001.

Parallel to the Affiliate Proceeding, the Board had another Code of Conduct proceeding in progress for EPCOR Transmission Inc. Further, the Board had received indications that other utilities and parties needed to address the affiliate transaction issue for their individual companies. Accordingly, during final argument on November 16, 2001, the Board asked for comments from interested parties on the relative advantages of conducting a generic hearing to finalize a Code of Conduct rather than setting codes on a company-by-company basis. By letter dated November 20, 2001 the Board also requested comments from other stakeholders who were not in attendance at the proceeding. After reviewing the responses to its November 20 letter, the Board by letter dated December 18, 2001 advised parties that it would not proceed with a generic hearing, but would proceed to establish a Code of Conduct for the ATCO Group and where appropriate, reflect those findings in subsequent decisions.

Accordingly, the Board considers that the record for this proceeding closed on December 18, 2001.

Those who appeared at the hearing and the abbreviations used in this report are listed in the following table.

Table 1. Those Who Appeared at the Hearing

Principals and Representatives (Abbreviations used in Report)	Witnesses
Aboriginal Communities J. Graves	
Alberta Association of Municipal Districts and Counties (AAMDC) L. Burgess, Q.C.	
Alberta Federation of REAs Ltd. (REA) K. L. Sisson	
Alberta Irrigation Projects Association (AIPA) J. H. Unryn	
Alberta Urban Municipalities Association and Municipal Intervenor (MI) J. A. Bryan R. L. Bruggeman D. J. Corrigan	
ATCO Group (ATCO, AE, AGPL or the Company) L. E. Smith L. G. Keough	B. Bale J. Beckett R. Cerkiewicz O. Edmondson J. F. Engler S. Kiefer C. Twa D. A. Wilson J. Browne D. Burkett M. Chwalowski T. Dilley G. Galluzzi Dr. K. Gordon M. C. A. Herman L. Johnson A. Martin

**Principals and Representatives
(Abbreviations used in Report)**
Witnesses

Canadian Association of Petroleum Producers (CAPP) J. T. Horte	
Canadian Forest Products Limited T. Vander Veen	
City of Edmonton M. Sherk W. Follett	
Consumers Coalition of Alberta (CCA) J. A. Wachowich	
ENMAX Energy Corporation, ENMAX Power Corporation (ENMAX) L. A. Cusano D. Wood	
Enron Canada Corp. (Enron) H. Huber	
EPCOR Energy Services (Alberta) Inc. (EESAI) J. Liteplo G. Newcombe	
Federation of Alberta Gas Co-ops Ltd and Gas Alberta Ltd. (FGA) T. D. Marriott	
Independent Power Producers Society of Alberta and Senior Petroleum Producers Association (IPPSA/SPPA) L. Manning	
Industrial Power Consumers and Co-generators Association of Alberta A. G. MacWilliam D. Crowther	D. Macnamara
Public Institutional Consumers of Alberta (PICA) N. J. McKenzie R. T. Liddle	
The City of Calgary (Calgary) R. B. Brander P. L. Quinton-Campbell R. Marx	H. W. Johnson L. E. Kennedy J. Stephens H. J. Vander Veen
EUB Staff L. Lacasse, Board Counsel B. McNulty, Board Counsel D. Gray L. Kelly W. Vienneau D. Weir	

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1.1 Procedural and Other General Matters

The Applicants requested Board consideration of a range of affiliate related issues, including the following:

- the jurisdiction of the Board;
- an appropriate form of affiliate code of conduct for the ATCO Group of companies;

- ATCO affiliate transactions and shared costs included in the General Rate Application (GRA) revenue requirements of AE, AGS and APS;
- an asset transfer and outsourcing arrangement with ATCO I-Tek (I-Tek); and
- an outsourcing arrangement with ATCO Singlepoint (Singlepoint).

In addition, the Board reviewed and/or amended the scope of the proceeding by transferring several items to (and from) this proceeding from (and to) other proceedings due to scheduling changes (e.g. the AGS 2001/2002 GRA that was originally expected to follow this proceeding rather than precede it) and subsequent events (e.g. the ATCO Gas South Carbon Transfer application, and the issuance of Decision [2000-82](#) related to the CWNG 1999 GRA). Previously, in correspondence dated April 2, 2001, ATCO requested that certain affiliate, pension and post employment transactions arising in the context of the AGS GRA be deferred and heard as part of the Affiliate Proceeding and the Pension⁶ proceeding scheduled to be heard in the Fall of 2001. By letter dated May 17, 2001, the Board, in the absence of objections from interested parties, accepted ATCO's proposal for deferral of the affiliate, pension and post employment benefit transactions. Accordingly, the quantum and propriety of forecast revenues from services to affiliates, forecast expenditures relating to services provided by affiliates, and forecast expenditures relating to pension and post-employment benefits were not addressed by the Board in Decisions [2001-96](#) or [2001-97](#) related to the AGS and APS GRAs. The forecast amounts were treated as "placeholders" in the revenue requirement for the 2001/2002 test years and are to be adjusted by ATCO through a refiling, after the Board Decisions are issued on the Affiliate and Pension⁷ proceedings. Capital costs associated with affiliate transactions were reviewed in the GRA, and were addressed in Decisions [2001-96](#) and [2001-97](#). Those transactions related to expenditures on the new Customer Information System (CIS), and expenditures on improvements at Carbon.

The Board, as previously noted, approved the AE DT and TFO settlements that included placeholder amounts for affiliate transactions in the revenue requirement for the 2001/2002 test years, and the AE RRO settlement that included placeholder amounts for the 2001 test year. The placeholders will be adjusted by ATCO through a refiling, as required, pursuant to this Decision.

The Affiliate Proceeding also incorporated certain aspects of the AE Isolated Generation application for a time. On February 23, 2001 AE submitted a Negotiated Settlement to the Board. The Negotiated Settlement dealt with all aspects of Isolated Generation excepting the issues related to affiliate transactions and an adjustment to depreciation. The Board approved the Negotiated Settlement in Decision [2001-42](#), dated May 24, 2001. Subsequently, AE advised the Board at the Pre-Hearing Meeting that it had terminated its contract with ATCO Power meaning that its Isolated Generation O&M costs were no longer an affiliate matter. AE filed another application, following which the Isolated Generation O&M costs were approved by the Board in Decision [2002-015](#) dated January 29, 2002.

Finally, the Board in its August 14, 2001 letter pursuant to the Pre-hearing Meeting held on August 10, 2001, confirmed the items that would be transferred to and from this proceeding. The Affiliate Proceeding would include items from the AGS 2001/2002 GRA (Exhibit 39, Table 1, AGS GRA), and would transfer ATCO Midstream Ltd. (Midstream) items to the Carbon

⁶ Application 2000328 relating to the treatment of AE, AGPL, and NUL pension and post-employment benefits was settled between ATCO and stakeholders. The Board approved the negotiated settlement by Decision [2001-105](#) dated December 31, 2001.

⁷ Ibid

Transfer proceeding (the Midstream items were identified as items 4.13, 4.14 and 4.15 from Appendix 1 to the Board’s letter dated August 9, 2001).

To clarify the proceedings directly impacted by this Decision, as well as the companies and test years involved, and the specific items transferred to and from this proceeding please refer to the table below:

Table 2. Other proceedings and Decisions affected by this Decision

Items transferred to this Proceeding, Subsequent to the Application:				
Entity	Proceeding	Decision / Correspondence	Items Transferred	Years Affected
AE DT	Settlement	2001-14	Placeholders/ Certain transactions with non-regulated affiliates	2001/2002
AE TFO	Settlement	2000-65	Placeholders/ Certain transactions with non-regulated affiliates	2001/2002
AE RRO	Settlement	2000-88	Placeholders/ Certain transactions with non-regulated affiliates	2001
AGS	GRA	2001-96 , Board letter May 17, 2001	Placeholders/ Certain transactions with non-regulated affiliates (including Midstream)	2001/2002
APS	GRA	2001-97 , Board letter May 17, 2001	Placeholders/ Certain transactions with non-regulated affiliates	2001/2002
Items Transferred from Proceeding Subsequent to Application:				
AGS	GRA, and Carbon Transfer	2001-96 , Board letter August 14, 2001	Placeholders/ Certain transactions with ATCO Midstream	2001/2002

* AE – Isolated Generation amounts were transferred to the Affiliate Proceeding by way of a negotiated settlement, and then subsequently removed when AE terminated its contract with ATCO Power. The Board in Decision [2002-015](#) subsequently approved the AE Isolated Generation O&M, which was the item removed from the Affiliate Proceeding.

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The Board, in the interest of efficiency, incorporated the record from several related proceedings thereby creating the “rolling record”. The Board provided clarification regarding the rolling record in its August 14, 2001 letter. The Board clarified, among other things, how it expected parties to use the rolling record. In summary, the Board advised that with respect to “... any evidence from other proceedings on which a party wishes to rely in the current proceeding (whether or not it forms part of the rolling record), the Board expects that parties will provide sufficient notice of their intent to rely on it.”⁸

⁸ EUB letter from Mr. David Gray dated August 14, 2001.

1.2 Scope of this Part A Decision

Given the diversity and nature of the issues to be dealt with, the Board has decided that it is appropriate to divide its rulings in respect of the Application into two parts:

- Part A (this Decision), dealing with the asset transfer, outsourcing arrangements, and certain other GRA issues and amounts to be included in the revenue requirements of AE, AGS and APS; and
- Part B, dealing with the Code of Conduct and related issues, to be released in due course as a separate decision.

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2 GRA ISSUES AND REVENUE REQUIREMENT AMOUNTS

As previously outlined in Table 2, the GRA issues to be resolved by the Board and the amounts to be included in the revenue requirements for certain proceedings have been amended since the Application was originally filed on July 21, 2000. The proceedings were:

- AE DT 2001/2002 Settlement,
- AE RRO 2001 Settlement,
- AE TFO 2001/2002 Settlement,
- AGS 2001/2002 GRA and
- APS 2001/2002 GRA

The revenue requirement in each of the aforementioned Settlements and GRAs included a ‘placeholder’ amount for items that were to be considered in the Application. Certain of the placeholder amounts, or portions thereof, have been clarified, revised and/or transferred to another proceeding since the Application was filed.

The Board requested that parties clarify and comment upon the GRA revenue requirement amounts requiring the Board’s approval in this Decision. Based on submissions and information provided during the proceeding, the Board notes that parties generally accepted that AE, AGS and APS GRA amounts (individually an AE, AGS or APS GRA Amount, or collectively the GRA Amounts) as submitted⁹ were appropriately before the Board in this Affiliate Proceeding. The Board’s review of the GRA Amounts for each of the Applicants will begin with a quantification of those amounts.

2.1 The Applicants

The ATCO Group has undergone restructuring and reorganization prior, and subsequent, to the filing of the Application. The summary that follows, primarily based on information provided in the Application,¹⁰ is provided for clarification. The summary does not represent the complete, legal organization structure of the ATCO Group; rather it includes most divisions and legal entities referred to in the Application, and excludes others. Appendix 1 of this Decision includes

⁹ The AE GRA Amounts were provided in the response to BR-ATCO.48, the AGS GRA Amounts were provided in Exhibit 42, and the APS GRA Amounts were provided in Exhibit 83.

¹⁰ ATCO Group Application, Volume 1, Attachment 1-A

2 organizational charts filed by ATCO in the proceeding. The first is the ATCO Group – Operational Chart and the second chart is the ATCO Ltd. Organizational Chart.

At the time of the proceeding, the following entities were wholly owned by CU Inc:

- AE,
- AGS and APS,
- AGN,
- APN, and
- Alberta Power (2000) Ltd.¹¹.

CU Inc. was a wholly owned subsidiary of Canadian Utilities Limited (CUL). Other wholly owned subsidiaries of CUL included:

- I-Tek,
- Singlepoint,
- Midstream,
- ATCO Frontec (Frontec),
- ATCO Power, and
- ATCO Travel.

CU Inc. and CUL owned other subsidiaries, however, those subsidiaries did not receive much attention from ATCO in the Application or by parties during the proceeding.

The majority of the common shares of CUL (approximately 67.9%) were held by ATCO Ltd.

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2.2 General Concerns

The Board notes that parties had some general concerns with respect to the GRA Amounts that the Board will now address

2.2.1 Positions of Parties

ATCO

ATCO suggested that the scope of the Board’s review should reflect ATCO’s view as to the “legitimate bounds to the Board’s jurisdiction”. ATCO advocated a scope of review that took into consideration the ongoing restructuring of the electric and gas industries in Alberta and the Code of Conduct Regulation for affiliate relationships in the retail sector of the electrical industry. ATCO also suggested that the Board’s review would define whether the Board would administer its mandate consistent with the “overall legislative scheme of deregulation in Alberta” or in ATCO’s words, whether the Board would “revert to a command and control” model.

ATCO considered that the Board’s review should be restricted to the 2001 and 2002 test years, and should not affect the revenue requirement for either AGN or APN. ATCO submitted that the

¹¹ Subsequent to the filing of the Application the legacy generation assets previously owned by AE were transferred to Alberta Power (2000) Ltd. The transfer was conditionally approved by Decision [2000-77](#) and received final approval by Decision [2001-72](#).

AGN and APN negotiated settlements were in effect to the end of 2002 and were not subject to this proceeding.

ATCO submitted that the Board should not review capital expenditure amounts for the development of the ATCO CIS. ATCO argued that those expenditures were already approved in a previous AE proceeding, and were to be addressed in the AGS GRA.

ATCO also submitted that it was not seeking approval of transactions with regulated affiliates as those were reviewed in other proceedings.

Calgary

Calgary submitted that the scope of this proceeding should take the “broadest possible form”. Calgary suggested that the Board and interveners should be able to adequately test all components of the Applicants’ revenue requirement. Calgary was concerned that various components of the Applicants’ revenue requirements were compartmentalized, both within each utility and between the utilities and their affiliated companies. The result was that neither the Board nor the interveners had a proper appreciation of certain costs/revenues, their interrelationship, or of the overall cost/revenue picture. Calgary was particularly concerned with I-Tek and Singlepoint costs included in the revenue requirements of the Applicants.

Calgary was concerned that the capital impact of the new CIS system was not included in the Application. Calgary noted that the Applicants did not request approval of those expenditures or their inclusion in rate base. However, Calgary disagreed with ATCO’s position that because the Board accepted the forecast inclusion of CIS expenditures in rate base in a previous decision, those expenditures should be disregarded in this proceeding. Calgary argued that the total CIS and customer accounting costs, including the amortization of the capital cost were too high and must be reduced.

Calgary agreed that the Board’s review of the AE, AGS, and APS GRA Amounts for 2001 and 2002 was appropriate, however, Calgary also considered that a review of certain 1999 and 2000 items was necessary. Calgary referred to the withdrawn CWNG 1999 GRA (approved by Decision [2000-82](#)) with respect to certain depreciation amounts, and the I-Tek and Singlepoint costs.

FIRM/Core

FIRM submitted that this Decision should be made on an interim basis while the Board addressed the affiliate applications already filed, or to be filed, by other Alberta utilities.

FIRM agreed with ATCO’s position that the Board’s findings in this Decision should not impact the AGN settlement in effect January 1, 1998 to December 31, 2002.

FIRM also referenced Decision [2000-82](#) wherein the Board addressed the withdrawal of the CWNG 1999 GRA, however, FIRM did not elaborate on its reasons for the reference to that Decision.

2.2.2 Board Findings

The Board notes that ATCO has only requested approval in this proceeding of certain of the shared costs and affiliate transactions included in the 2001 and 2002 revenue requirements of

AE, AGS, and APS. The Board will be reviewing the GRA Amounts proposed in the Application.

The Board acknowledges that it has broad powers with respect to the determination of the revenue requirement and setting of utility rates and appreciates Calgary's concern regarding the compartmentalizing of certain affiliate costs and revenues. The Board will address those issues throughout this Decision and also in the subsequent Part B Code of Conduct decision.

The Board also notes that ATCO and FIRM addressed another aspect of the scope of the proceeding, specifically the extent to which the findings from this Decision should be imposed on the other regulated utilities in the ATCO Group.

The Board notes ATCO's submission that transactions with other regulated utilities should not be reviewed as part of the Application. The Board accepts ATCO's position with respect to the AE GRA Amounts, as parties clearly understood that those items were not included in the placeholder amounts. However, the Board will be more cautious with respect to the AGS and APS GRA Amounts to ensure that transactions with other regulated utilities are addressed in either the GRAs or in this Decision. The Board will not exclude those amounts from this Decision unless it is clear they were considered in GRA decisions [2001-96](#) and [2001-97](#).

The Board was not requested by any party to review the shared costs or affiliate transactions addressed in the AGN settlement. However, the Board will make those determinations as required to fulfill its responsibilities to ATCO's stakeholders as discussed below.

Notwithstanding the above, the Board may make determinations in this Decision that necessarily impact AGN due to its affiliation with other utilities in the ATCO Group, and the common costs and transactions amongst companies in the ATCO Group. However, the Board does not intend to unilaterally adjust the 2001/2002 rates approved for AGN or APN pursuant to those settlements.

The Board notes FIRM/Core's specific reference to Decision 2000-82. The Board concluded in that Decision that, among other things, the Board would not be reviewing the impact of affiliate transactions on CWNG's 1999 or 2000 revenue requirement. The Board stated in that Decision that it would be reviewing the impact of 2001 and 2002 affiliate transactions, and could also be reviewing the impact of asset transfers. The Board considers that those findings continue to be appropriate.

The Board notes Calgary's argument that this Decision should address the capital expenditures related to the CIS project. However, the Board agrees with ATCO that approval for forecast expenditures of \$25.6 million toward the CIS project was given to AE in Decision U97065. Similarly, the Board approved the 2001/2002 CIS expenditures by AGS in Decision 2001-96, finding that the CIS project had been ongoing for many years, and that there was no basis for a reduction in the AGS expenditure forecast¹².

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¹² Decision 2001-96, page 33

2.3 Retroactive/Retrospective Rate Setting

2.3.1 Positions of Parties

ATCO

ATCO considered the Application to be forward-looking, an attempt to establish a framework for governing the ATCO Group's regulated utilities approach to affiliate transactions on a go-forward basis, rather than an opportunity for the Board to determine whether ATCO's past conduct was consistent with what are now understood to be the applicable standards for affiliate relationships.

ATCO submitted that it would be inappropriate to adjust any aspect of the revenue requirement prior to 2001. ATCO argued that the only matters before the Board related to the test years 2001 and 2002. ATCO also argued specifically that if the Board were to adjust the transfer price of the I-Tek assets, ATCO would consider this adjustment to be retroactive. Further, in this event, ATCO stated that the 'deal was off'¹³.

ATCO suggested that the Board's practice, with respect to any finding of imprudence, should be to apply the remedy on a go forward basis, rather than retroactively adjusting the particular years involved.

Calgary

Calgary submitted that there was a distinction between retroactive/retrospective rate making and the issue of a prudence review that could only be conducted on an "after the fact" basis. Calgary did not consider prudence reviews or compliance reviews to be the same as retroactive rate making. Calgary also submitted that in reviewing violations of the Code of Conduct, the only course available to the Board was to address the issue after the fact, and that any adjustment or fine should be imposed after the fact. Calgary suggested that ATCO agreed with that approach.¹⁴

Calgary recommended a retroactive adjustment to the value of the assets transferred to I-Tek. Calgary considered that since ATCO should have sought the Board's approval of the asset transfer in the first instance, it was not inappropriate to make retroactive adjustments to remedy any harm that has been caused to customers.

IPPSA/SPPA

IPPSA/SPPA submitted that adjustments to the GRA Amounts would not constitute retroactive ratemaking. IPPSA/SPPA noted that there had been some necessary delay regarding the GRA items that were transferred from other proceedings, however, IPPSA/SPPA argued that there would be no issue of retroactivity if the Board adjusted those amounts.

IPPSA/SPPA also argued that it was appropriate to conduct a review of the I-Tek and Singlepoint transactions, including the formation of I-Tek and Singlepoint, as those transactions have never received the Board's approval.

¹³ Transcript page 2025

¹⁴ Calgary referred to Transcript pages 171, 1218, 1219, 1234, and 1236 suggesting ATCO's concurrence.

EESAI

EESAI submitted that retroactive/retrospective ratemaking was inappropriate, and that adjustments to rates should be made on a prospective basis only.

FIRM/Core

FIRM/Core noted there has been some necessary delay regarding the GRA amounts that were transferred from other proceedings. FIRM/Core submitted that while there has been some delay, the Board's review would not constitute retroactive/retrospective rate making. FIRM/Core also submitted that it was appropriate to review the I-Tek and Singlepoint transfers and the ongoing costs as they had not previously been before the Board.

2.3.2 Board Findings

The Board notes that parties generally addressed one or more of the following issues where retroactive/retrospective ratemaking was concerned:

- The appropriateness of making adjustments to the 1999 asset transfers and the amortization of the loss associated with the asset transfer.
- The appropriateness of the 1999/2000 costs of I-Tek and Singlepoint.
- The appropriateness of the 2001/2002 costs of I-Tek and Singlepoint.
- The appropriateness of prudence/compliance reviews, and how to make adjustments or impose penalties.

ATCO and EESAI submitted that adjustments to rates should only be made on a prospective basis, whereas customers generally submitted that prudence reviews and compliance reviews could only be done after the fact and were not the same as retroactive rate making. Parties did not disagree with the Board's review of 2001/2002 revenue requirement items, and other than adjustments related to I-Tek and Singlepoint, parties did not suggest there should be a review of years prior to 2001.

The Board agrees that there should be no dispute regarding the review of the GRA Amounts transferred from other proceedings. It would appear clear the GRA Amounts should be addressed for 2001 and 2002 without any suggestion of retroactivity.

The Board considers that the appropriateness of making adjustments to the I-Tek asset transfer and the 1999/2000 costs of I-Tek and Singlepoint initially depends on whether the Board finds that those transactions were outside the ordinary course of business. The Board will make that determination in Section 4 of this Decision.

If the Board were to agree with ATCO's position that no approval of the I-Tek transactions was required, then the Board would also agree that adjustments to years prior to 2001 would constitute retroactive ratemaking. However, the Board generally agrees with customers that any adjustments to 1999 and/or 2000 pursuant to an unauthorized asset transfer would not be retroactive rate making.

The Board does not accept ATCO's view that adjustments or penalties arising from prudence reviews and compliance reviews should only be made on a prospective basis. The Board agrees with customers that these types of situations are not the same as retroactive rate making. By its

very nature, a prudence review is backward looking, but must be based on knowledge available, or which should have been available, at the time in question.

The Board considers that customers are not really protected if the harm done in a previous period due to imprudence or non-compliance is not mitigated.

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.

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2.4 AE GRA Amounts

The AE GRA Amounts transferred to this Affiliate Proceeding are composed of the following¹⁵:

Table 3. AE GRA Amounts (Prior to Adjustments)

All amounts in \$ Thousands	2001 DT	2001 RRO	2001 TFO	2002 DT	2002 RRO*	2002 TFO
Revenues:						
ATCO Ltd. - Payroll	4		2	4		2
CU – Land Lease	17		13	17		13
ATCO Power:						
- Payroll	4		1	4		1
- Use of Systems	36		28	36		28
- O&M Stations			216			229
- Labour for Construction			85			87
ATCO I-Tek:						
- Accounts Payable	16		7	16		7
- Payroll	27		10	27		10
ATCO Singlepoint:						
- Financial etc.	17		13			
- Manage WCB	4		1	4		1
Norven:						
- Accounting Services	6		4	6		4
3730697 Canada Ltd.:						
- Labour for Construction			60			
- Maintenance			5			5
Total Affiliate Revenues	131	0	445	114	0	387
Expenses:						
ATCO Ltd./CUL/CU Inc.:						
- Building Rent	887		642	897		650
- Corporate Aircraft	432		233	432		232
- Signature Rights	341		268	341		268
- Administrative Services	1743		1370	1796		1411
Genics Inc.:						
- Pole Treatment Materials			140			143

¹⁵ Source - AE Application Volume 1 (Tabs 2-4) and the response to BR-ATCO.48.

All amounts in \$ Thousands	2001 DT	2001 RRO	2001 TFO	2002 DT	2002 RRO*	2002 TFO
ATCO Power:						
- Land Rental	1		1	1		1
ATCO I-Tek:						
- Computer Services	4989		2265	5319		2581
ATCO Singlepoint:						
- Billing & Cust. Services	9844	3516		9118	3501	
Frontec:						
- Facilities & Prop. Mgmt.	26		171	26		174
ATCO Travel:						
- Travel Arrangements	30		24	30		24
Total Affiliate Expenses	18293	3516	5114	17960	3501	5484
Net Expenses	18162	3516	4669	17846	3501	5097
Return per BR-ATCO.48	113		62	342		188
Total	18275	3516	4731	18188	3501	5285
Placeholder Amount	18300	3800	4800	18100		5300
Capital Amounts:						
ATCO Ltd./CUL/CU Inc.:						
- Building Rent	449		325	456		330
- Corporate Aircraft	108		58	108		58
ATCO I-Tek:						
- Computer Services	1199		578	1307		640
Total Affiliate Capital	1756		961	1871		1028
Amortization of I-Tek Loss						
- Amount provided in Application (clarified in response to CAL- ATCO.77), but not included in placeholder						
- Amortization	357		222	357		222
- Revenue Requirement Impact (not provided)						

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* There was no RRO Settlement for 2002 non-energy costs, however AE included GRA Amounts for 2002 in the Application and submissions during the proceeding.

2.4.1 Positions of the Parties

ATCO

ATCO noted that the AE DT and TFO Negotiated Settlements provided for the withdrawal of certain specific amounts from those Negotiated Settlements to be dealt with in the context of the Application. ATCO provided a reconciliation of the placeholder amounts from the Negotiated Settlement to the amounts included in the AE component of the Application in the response to BR-ATCO.48. With respect to the AE transactions ATCO noted that the response to MI-ATCO.3 (Ex. 93) reconciled the AE GRA Amounts to the placeholder amounts from the Negotiated Settlements.

ATCO suggested that the derivation of many of the specific amounts was not subject to significant discussion during the course of these proceedings. Based on that, AE argued that a detailed discussion of the individual subject matters was not warranted. AE considered that each of the major items would be dealt with specifically. Therefore, ATCO suggested that the specific costs associated with the various transactions can and should be approved, as filed.

ATCO submitted that corporate signature rights were the exception as they were withdrawn from the Application during the hearing. The impact of eliminating corporate signature rights was a reduction of \$268,000 to the TFO Tariff and a reduction of \$341,000 to the Distribution Tariff (see BT-ATCO. 48 Schedule A, line 3 and Schedule B, line 3 respectively).

With respect to services provided by AE to non-regulated ATCO Group entities, ATCO argued that it was not necessary to repeat the approach adopted by the ATCO Group. That being, ATCO submitted those services were provided on an “as available basis” and that AE did not offer those services in the marketplace. Those services were provided to unregulated affiliates at a fully burdened cost, as described in Schedule 3-A, page 14, Tab 3, Volume 1 of the ATCO Electric General Affiliate Application and as discussed more fully by Mr. Bale (12T1300-2).

Services provided by non-regulated ATCO Group affiliates to AE were discussed separately, with the main services being from I-Tek and Singlepoint. ATCO submitted that no further discussion was required with respect to these transactions. ATCO argued that the outstanding AE revenue requirement items should be approved as requested.

ATCO submitted that the contract with ATCO Power for Isolated Generation was terminated, but did not indicate if the termination affected any of the GRA Amounts.

Calgary

Calgary provided the list of affiliate transactions that was discussed at the time of the TFO settlement. Calgary’s list agreed to the Application with the exception of Corporate Signature Rights, Corporate Aircraft (Capital portion), and the Return amount. Calgary noted that ATCO withdrew the amount for Corporate Signature Rights. Calgary’s list also had a different amount for Corporate Aircraft costs capitalized, and had no amount for Return.

Calgary also recommended adjustments to various items included in the AE GRA Amounts.

IPPSA/SPPA

IPPSA/SPPA considered the appropriate costs to be included in AE’s DT and TFO functions were contingent on Board’s consideration of I-Tek and Singlepoint costs. If the Board were persuaded that it should make further inquiry into the customer charges arising from the I-Tek and Singlepoint transactions then more information would be needed.

IPPSA/SPPA suggested that if the Board directed further compliance filings regarding the costs underpinning affiliate charges to the regulated entities, then placeholders would have to be established now and finalized later on. Whether the placeholders could reasonably be set based on ATCO's benchmarking evidence, or whether they should be set at a lesser amount and fully supported by a (FMV) determination at a later stage was open to debate.

IPPSA/SPPA argued that ATCO’s attempt to justify the level of costs involved through benchmarking as opposed to FMV/tendering comparisons was suspect. IPPSA/SPPA suggested that the Board should carefully consider the basis for setting the appropriate revenue requirement for those transactions.

FIRM/Core

FIRM/Core noted that ATCO had reconciled the placeholder amounts to the GRA Amounts for 2001 as follows (per Exhibit 93):

Table 4. GRA 2001 Placeholder Amounts (Exhibit 93) vs. GRA

Placeholder amounts:	
DTA Settlement	\$18.3 million
RRO Settlement	\$3.8 million
TFO Settlement	\$4.8 million
Total Placeholder Amounts	\$26.9 million
GRA Amounts: (Prior to Adjustments)	
Corporate Services from ATCO/CU/CU Inc.	\$6.9 million
Services from Non-Regulated Affiliates	\$23.0 million
Revenues from Non-Regulated Affiliates	(\$0.6) million
Amounts Capitalized	(\$2.4) million
Total GRA Amounts-	\$26.9 million

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FIRM/Core recommended adjustments to specific items included in the AE GRA Amounts.

2.4.2 Board Findings

The Board notes that parties generally agreed that the GRA Amounts for AE’s DT, RRO and TFO for consideration by the Board were outlined in the response to BR-ATCO.48. The Board also notes that placeholder amounts for the 2001/2002 DT and TFO, and the 2001 RRO were agreed to.

The Board also notes that ATCO did not identify any revisions to the GRA Amounts as a result of the termination of the contract with ATCO Power for Isolated Generation. The Board directs AE, in its Compliance Filing, to confirm whether any revisions should have been identified, and to provide any necessary revisions.

The Board notes that parties recommended adjustments to various items included in the AE GRA Amounts. The Board will address specific items in subsequent sections of this Decision.

2.5 AGS GRA Amounts

The AGS GRA Amounts transferred to this Affiliate Proceeding are composed of the following¹⁶:

¹⁶ Source is Exhibit 42, Table 1 and AGS GRA, Tab 15

Table 5. AGS GRA Amounts (Prior to Adjustments)

(All amounts in \$ Thousands)

	2001	2002
Revenues: (Receipts from non-regulated affiliates only)		
ATCO Structures – Office Services	1	1
CU Power – Office Services	6	6
Ashcor Technologies – Rent	5	5
ATCO Corporate:		
- Office Services	20	21
- Rent	59	57
- Administration Services	6	6
ATCO I-Tek:		
- Office Services	238	250
- Rent	210	200
ATCO Singlepoint:		
- Office Services	284	291
- Rent	63	60
- Records Management	11	11
Frontec:		
- Office Services	50	51
- Rent	150	180
Total Revenues from non-regulated affiliates	1103	1139
Expenses – O&M: (Payments to non-regulated affiliates only)		
ATCO Ltd./CUL/CU Inc.:		
- Building Rent	1291	1306
- Corporate Aircraft	380	380
- Signature Rights	375	375
- Administrative Services	2203	2266
ATCO I-Tek:		
- Computer Services	5744	5814
ATCO Singlepoint:		
- Billing & Cust. Services	17625	18096
Frontec:		
- Facilities & Prop. Mgmt.	495	516
Total Payments to Non-regulated Affiliates: O&M Expenses	28113	28753
Amortization of I-Tek Loss		
- Amortization	1307	1307
- Revenue Requirement Impact	2313	2313
Total Revenue Requirement Impact – per ATCO	29039	29635
Placeholder Amount- not quantified in Decision 2001-96		
* Items not considered part of the Application		
– per ATCO the following items have been addressed in the AGS/APS GRAs or have been transferred to the Carbon proceeding		
Revenues:		
APS – various services	1410	1140
ATCO Midstream:		
- Office Services	11	11
- Gas Storage	12300	13920

	2001	2002
Expenses:		
APS – various services	23618	24014
ATCO Midstream:		
- Gas Management	500	500
- Gas Storage Services	950	950
- Gas Purchases	214782	188318
Capital Amounts: (no details provided)		
ATCO Ltd./CUL/CU Inc.:		
- Building Rent	(No details)	(No details)
- Corporate Aircraft	(No details)	(No details)
ATCO I-Tek:		
- Computer Services	(No details)	(No details)
Total Affiliate Capital Return: (no details provided)	(No details)	(No details)

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2.5.1 Positions of the Parties

ATCO

ATCO noted that certain AGS GRA matters were deferred for consideration in the Affiliate Proceeding, as summarized in Exhibit 42, Table 1. ATCO submitted that it was seeking approval of those transactions, with the exception of the withdrawn corporate signature rights of \$375,000 in each of 2001 and 2002.

Transactions with Midstream were removed from the Affiliate Proceeding as they were transferred to the separate Carbon proceeding. ATCO also submitted that it was not seeking approval of transactions with other regulated affiliates (including ATCO Pipelines). ATCO argued that those transactions were reviewed as part of the appropriate GRA proceedings.

With respect to services provided by AGS to non-regulated affiliates, ATCO suggested that the majority of the services related to the provision of office services and rent. The charges for office services were established on a fully allocated cost basis as described by Ms. Wilson¹⁷. ATCO Gas submitted that its approach to those transactions was reasonable and that the costs should be approved as requested. The balance of the AGS arrangements was discussed separately. ATCO Gas submitted that those costs were reasonable and should be approved as filed.

Calgary

Calgary understood, but did not necessarily concur, that ATCO considered that transactions between AGS and APS were not part of the Affiliate Proceeding. Calgary also understood that all transactions with Midstream were not part of the Affiliate Proceeding, but were transferred to the Carbon Transfer proceeding.

Calgary suggested there were affiliate transactions related to capital that AGS has not identified. Those would include the AGS pro rata share of expenditures related to the airplane, computer services, and software development. Calgary also suggested there might be leasehold improvements related to the facilities rented by ATCO/CUL/CU Inc. Further, as discussed with

¹⁷ Transcript pages 1305-1310

respect to AE, Calgary expected that a portion of the administrative costs would have been capitalized by AGS as part of overhead during construction.

With respect to ATCO Travel, Calgary suggested that while the amounts might not be significant, they have not been identified in the filings.

FIRM/Core

FIRM/Core summarized the AGS GRA Amounts that it considered were transferred to the Affiliate proceeding, and those subsequently transferred to the Carbon proceeding. FIRM/Core recommended adjustments to various items included in the GRA Amounts.

2.5.2 Board Findings

The Board notes parties generally agreed that the AGS GRA Amounts for consideration by the Board were outlined in Exhibit 42, as amended to reflect the items transferred to the Carbon Transfer proceeding. The Board also notes that the placeholder amounts for the 2001/2002 GRA were as outlined in Exhibit 42, although those amounts were not specifically referenced in the AGS 2001/2002 GRA Decision 2001-96.

The Board notes that AGS did not identify the affiliate related capital items in the Application. The Board agrees with Calgary that this information is important. Accordingly, the Board directs ATCO, in future GRAs and reporting to the EUB (e.g. Report of Finances and Operations), to provide this information. In this case, the Board has already approved the AGS 2001/2002 revenue requirement, including capital items, with the exception of those items outlined in Exhibit 42, and those transferred to other proceedings.

The Board notes parties' concerns regarding transactions between regulated utilities, specifically that adjustments to one utility should be reflected in the revenue requirement of the other. The Board, particularly in the case of concurrent filings, agrees that when transactions occur between two regulated utilities in a test year, the cost and revenue should be the same. Similarly, the allocation of shared costs should be consistent between the two regulated utilities.

The Board notes that parties recommended adjustments to various items included in the AGS GRA Amounts. The Board will address specific items in subsequent sections of this Decision.

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2.6 APS GRA Amounts

The APS GRA Amounts transferred to this Affiliate Proceeding are composed of the following¹⁸:

Table 6. APS GRA Amounts (Prior to Adjustments)

(All Amounts In \$ Thousands)

	2001	2002
Revenues: (not applicable to APS)		
Expenses: (Payments to non-regulated affiliates only)		
ATCO Ltd./CUL/CU Inc.:		
- Building Rent	102	102
- Corporate Aircraft	100	100
- Signature Rights	375	375
- Administrative Services	357	368
ATCO I-Tek:		
- Computer Services	954	983
Frontec:		
- Facilities & Prop. Mgmt.	10	11
ATCO Travel:		
- Travel Arrangements	5	5
Total Expense Payments to non-regulated affiliates	1903	1944
Capital Amounts: (no details provided)		
ATCO Ltd./CUL/CU Inc.:	(No details provided)	(No details)
- Building Rent	(No details provided)	(No details)
- Corporate Aircraft	(No details provided)	(No details)
ATCO I-Tek:	(No details provided)	(No details)
- Computer Services	(No details provided)	(No details)
Total Affiliate Capital	(No details provided)	(No details)

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2.6.1 Positions of the Parties

ATCO

ATCO noted from Exhibit 83 that APS did not provide any services to non-regulated affiliates while the services provided to APS by non-regulated affiliates were set out in Exhibit 83. ATCO submitted that it was seeking approval of those transactions, with the exception of the withdrawn corporate signature rights of \$375,000 in each of 2001 and 2002.

ATCO suggested that the remaining items were discussed in detail under separate headings. ATCO argued that based on the evidence provided in the proceeding, the affiliate transactions should be approved as requested.

Calgary

Calgary submitted that the information with respect to APS affiliate transactions was limited. Calgary suggested that although other information indicated APS was receiving or providing services to affiliates, there was no documentation of such in the APS filing nor was there quantification of the amounts in the Affiliate filing.

¹⁸ Source is Exhibit #83 – Response to Undertaking at Transcript, page 1022, line 14

Calgary was also concerned that there were affiliate amounts included in the APS capital expenditures. Of particular concern to Calgary was the overhead component, aircraft costs, computer services and leaseholders that were contained in the AE filing. Calgary argued that due to the allocation of aircraft costs, if AE had capitalized costs, all of the regulated affiliates would have capitalized costs.

Calgary also submitted that while APS might not have significant transactions with ATCO Travel, the amounts had not been identified in the APS or affiliate filings.

Calgary also noted that there were significant costs related to transactions between AGS and APS. Calgary suggested that the amounts to be dealt with in the GRAs were ‘ever-changing’. Calgary argued that the Board should make sure that adjustments made by one utility were reflected in the revenue requirement of the other. Calgary suggested that instances where the allocations between utilities did not agree should not be tolerated (in reference to CAL-AGS.116).

FIRM/Core

FIRM/Core summarized the APS GRA Amounts that it considered were transferred to this proceeding. FIRM/Core recommended adjustments to various items included in the GRA Amounts.

2.6.2 Board Findings

The Board notes parties generally agreed that the APS GRA Amounts for consideration by the Board were outlined in Exhibit 83. The Board also notes that the placeholder amounts for the 2001/2002 GRA were as outlined in Exhibit 83, although those amounts were not specifically referenced in the AGS 2001/2002 GRA Decision 2001-97.

The Board notes that APS did not identify the affiliate related capital items in the Application. The Board agrees with Calgary that this information is important and should be provided in future GRAs and reporting to the EUB (e.g. Report of Finances and Operations). In this case, the Board has already approved the APS 2001/2002 revenue requirement, including capital items, with the exception of those items outlined in Exhibit 83, and those transferred to other proceedings. Accordingly, the Board directs ATCO, in future GRAs, and reporting to the EUB, to identify the affiliate related capital items.

The Board notes parties’ concerns regarding transactions between regulated utilities; specifically that adjustments to one utility be reflected in the revenue requirement of the other. The Board, particularly in the case of concurrent filings, agrees that when transactions occur between two regulated utilities in a test year, the cost and revenue should be the same. Similarly, the allocation of shared costs should be consistent between the two regulated utilities.

The Board notes that parties recommended adjustments to various items included in the APS GRA Amounts. The Board will address specific items in subsequent sections of this Decision.

3 INTRODUCTION TO TRANSFER PRICING SITUATIONS

Transfer pricing is an important issue in all affiliate transactions. Accordingly, this generic issue will be addressed in the Part B decision.

Notwithstanding, the Board must address a variety of specific transfer pricing situations, for the years in question, in this Decision. The Board will review an asset transfer, transactions from a utility to a non-regulated affiliate, transactions from a non-regulated affiliate to a utility, shared services between utilities, and corporate cost allocations (e.g. head office and corporate aircraft expenses). The Board, by necessity, must make determinations in this Decision that will ultimately be reflected in the ATCO Code of Conduct.

To assist the reader a summary of the various transfer pricing situations has been prepared as follows:

- **Asset Transfer Transactions**

The Board will consider asset transfers similarly to other asset sales. The Board will initially determine whether the sale/transfer is in the ordinary course of business. If the sale/transfer is outside the ordinary course of business, the Board will apply the no-harm test to determine whether the sale/transfer should be allowed to proceed. Whether or not the sale/transfer is outside the ordinary course of business, the Board will determine the appropriate transfer price methodology with respect to the sale/transfer of utility assets. ATCO suggested that FMV be used, whereas customer groups generally preferred that the higher of FMV and NBV be used.

The I-Tek asset transfer is addressed in [Section 4.1](#).

- **Transactions for services from a Utility to a Non-regulated Affiliate**

The Board will consider a variety of transactions. The ongoing transactions (i.e. not asset transfers) have generally been categorized as: incidental, minor, and major. This category of transactions would capture all transactions from a utility to a non-regulated affiliate other than asset transfers. The Board will review the transactions and the particular circumstances (e.g. nature, frequency and type of transaction, etc.) and then determine the appropriate transfer price methodology to adopt in the incidental and ongoing minor categories. ATCO suggested that the fully allocated cost be used in both cases, whereas customer groups generally preferred that the higher of FMV and fully allocated cost be used. In this Decision, the Board has treated the ongoing costs as either incidental or minor. The Board will elaborate on the generic issues associated with this issue in the Part B Decision. Further, major ongoing costs, such as those associated with Carbon, will be addressed in the Board's Decision on the Carbon Transfer application.

Transactions for services from a utility to a non-regulated affiliate are addressed in Section 6.6.

- **Transactions for Services from a Non-regulated Affiliate to a Utility**

The Board will consider a variety of transactions. The Board will address the appropriate test(s) that must be applied when a utility is considering whether it should out-source, in-source, or continue providing a service within the utility. The Board observed that the transactions varied greatly in size and complexity. The Board will also determine the

appropriate transfer price methodology to adopt in those situations. ATCO suggested that FMV be used, whereas customer groups generally preferred that the lower of cost and FMV be used.

Transactions for services from a non-regulated affiliate to a utility are addressed in Sections 4.2, 5.1, 6.4, and 6.5.

- **Shared Services between Utilities**

The Board will consider the appropriate transfer price methodology to adopt, and whether the Code of Conduct should be applicable to those transactions. ATCO suggested that the Code of Conduct should not be applied; rather its internal policies and procedures were sufficient. Customer groups generally favoured the application of the Code of Conduct and expressed some support for the use of Cost Allocation manuals.

Shared services between utilities are addressed in Sections 6.1 and 6.7.

- **Corporate Cost Allocations**

The Board will consider the allocation of corporate costs, including: head office costs, corporate aircraft expenses, and rent. The Board will consider the appropriateness of ATCO's allocation methodologies.

Corporate cost allocations are addressed in Sections 6.2, 6.3, and 6.8.

4 ATCO I-TEK

4.1 I-Tek Asset Transfer Process

4.1.1 Consideration Of Whether In The Ordinary Course Of Business

In this section of the Decision, the Board will address whether or not the I-Tek Asset Transfer was in the ordinary course of business. The Board will further consider what, if any, remedies should be considered, if the Board finds that the asset transfer was not in the ordinary course of business.

4.1.1.1 Positions of the Parties

ATCO

(ii) **Transfer of Assets to I-Tek**

The ATCO Group regulated utilities stated that they have always been cognizant of the fact that the decision to transfer the computer assets formerly held by the regulated entities to I-Tek would come under enhanced scrutiny from the Board. Notwithstanding, the ATCO group stated that it was never contemplated that an approval pursuant to paragraph 101(2)(d) of the *Public Utilities Board Act RSA 2000*¹⁹ (PUBA) (or paragraph 26(1)(2)(d) of the *Gas Utilities Act [GUA]*) would be required. ATCO noted the evidence of Mr. Twa - "It would never have occurred to me that it would be outside the normal course of business." (13T1411)

¹⁹ Previously s 91.1(2)(d) PUBA

While the ATCO Group regulated utilities maintained that this decision was in the normal course of business, particularly given the value of these assets when compared to the overall rate base of the respective regulated companies, it stated that it was likely not productive to debate this matter extensively given the current situation. It noted the views expressed on behalf of Calgary, that a further process regarding the I-Tek assets was not going to provide any more information than the Board already had and, therefore, the Board should just deal with it (18T1951). On this technical point, the ATCO Group regulated utilities maintained their position that Board approval was not required for this transaction. However, ATCO stated that if the Board arrived at a different view on this matter based on the evidence, then the Applicant's would request that the Board grant an exemption to the requirements of paragraph 101.1(2)(d) (or paragraph 26(1)(2)(d) of the GUA) pursuant to subsection 101(4) of the PUBA (or subsection 26(4) of the GUA).

In argument, ATCO reiterated its position that this transaction was in the normal course of business.

Calgary

Calgary submitted that the disposal by AGPL of virtually all of its computer equipment to I-Tek was not a transaction in the ordinary course of business. It argued that while the annual sale of a number of computers would be expected, the complete disposal cannot be considered as in the normal course. It noted Calgary witness Mr. Johnson²⁰, when CWNG and NUL moved from leasing automobiles and other moveable equipment to purchasing, this was a decision that was reviewed by the Board. While the penalties for failure to obtain Board approval under section 26 of the GUA are significant, such a finding would allow the Board to determine that the assets should have been sold effective January 1, 1999, to I-Tek at net book value and to have that finding apply from that date onward²¹.

In reply argument, Calgary stated that it found ATCO's position to be odd. It noted that the topic of the requirements for Board approval was the subject of the Board's second information request in this proceeding. It stated that the fact that ATCO had never thought about this requirement did not excuse ATCO from the requirements of the statutes.

Calgary argued that any retroactive approval of this transfer should include a condition that all proceeds equate to net book value of the assets. Calgary noted that under the proposed ATCO treatment, customers would pay for all costs now paid by the utilities for the assets. Further, Calgary argued that it was possible that customers could be double billed for these assets. It noted that the machines were still in use, had not been moved, and were not obsolete.

FIRM/Core

FIRM/Core noted that the sale of computer equipment to I-Tek effective January 1, 1999, resulted in a loss of approximately \$25 million in the books of the Applicants. It stated that the loss arose as a result of the net book value of assets exceeding the transfer price to I-Tek. FIRM/Core noted that the Applicants proposed to amortize the loss over five years and include the amortization as a component of revenue requirement. As a result of the transfer/sale of assets, I-Tek will serve as the provider of computer equipment services to the ATCO utilities, which services are purported to be provided at market rates.

²⁰ Transcript, Volume 17, page 1824

²¹ Transcript, Volume 18, page 1950-1951

FIRM/Core noted that Mr. Johnson for Calgary presented evidence that the transfer of the entirety of computer assets to I-Tek was outside the ordinary course of business.

In this regard it is hard imagine that the sale of all of the computer equipment required to bill customers is a sale or disposition in the ordinary course of business. In BR-ATCO-2, the Applicants argue that the hypothetical sale of its fleet of vehicles to a party so that they could enter into lease arrangements for their entire fleet as an alternative would be considered a disposition in the ordinary course of business. I disagree, while the sale of a vehicle or several vehicles based on maintenance and age criteria may be in the ordinary course of business, the sale of the entire fleet is not in the ordinary course of business of a gas or electric utility. [Exhibit 301 Page 7]

FIRM/Core noted that the Applicants argued that the transfer to I-Tek was not outside the ordinary course of business. The utilities had the choice of retaining the existing computer assets until the end of their useful life; but this choice would have resulted in additional administrative requirements.

FIRM/Core submitted that the evidence filed in these proceedings indicates the sale was outside the ordinary course of business. It noted that the computer assets were being sold from the rate base of regulated entities to an unregulated entity, and as a result the regulated entities would no longer be in the business of providing their own computer equipment services. FIRM/Core stated that the sale of such major assets is infrequent and the original cost of about \$30 million and loss on sale of about \$25 million are material amounts. These reasons suggest the sale is outside the normal course of business despite the Applicant's position that the transfer is merely an accounting entry. It stated that therefore the normal rules of depreciation accounting do not apply since there are no remaining assets belonging to this category in regulated service. However, it argued that Section 26 of the GU Act would apply.

Section 26 of the GU Act requires a designated owner of a gas utility to obtain Board approval before disposing its property outside the ordinary course of its business. FIRM/Core argued that therefore the Applicants required Board approval for disposition of the computer assets to ATCO I-Tek.

FIRM/Core noted that in Decision 2000-41 respecting the sale of Distribution assets by TransAlta Utilities, the Board held that it must be satisfied that the proposed transaction will either not harm customers or on balance, leave them at least no worse off than before the transaction in terms of financial impact and reliability of service.

FIRM/Core noted that Board staff, during cross examination of Mr. Kennedy, witness for Calgary, tested the application of the no harm principle to the computer sale transaction:

Q. The first way would be assuming that they just remained on ATCO Gas, in the ATCO Gas South rate base and they were depreciated in the normal course of their lives, customers could have paid for it that way. The second way is assuming the assets are transferred to I-Tek at net book value and assuming that the depreciation is properly reflected in the rates that are charged by I-Tek, that's the other way that customers could pay the full value of those assets, is that what you were saying?

A. My concern was the customer was going to end up paying twice in any other scenario other than the one you just laid out. So to answer your question directly, yes, it's either leaving the assets in the ATCO rate base and letting the depreciation expense flow

through over the number of years it should or moving them to I-Tek in net book value and ensuring the charge back is as appropriate, reflecting the net book value cost.

Q. So if it happens either one of those two ways, there is no harm to customers?

A. Then they are whole, yes. [T1914; L3-25]

FIRM/Core also noted that on page 8 of his evidence Mr. Johnson states:

Although, requested many times to provide business cases and cost benefit analysis the Applicants have not provided same. They have instead “submitted” that the arrangement with I-Tek resulted in lower costs for customers. No quantitative comprehensive analysis was provided. The failure to provide such an analysis is almost *de facto* evidence that the transaction does not result in lower cost.

FIRM/Core submitted that the Applicants made a choice to transfer the assets to I-Tek prior to the expiry of the useful life of the asset. It argued that the loss on sale did not arise as a result of any technological obsolescence but was the result of the Applicant’s desire to reorganize corporately. If the sale were to meet the no harm test, that sale should not result in higher costs to customers. It submitted that the sale and amortization of loss, if approved as proposed, would result in harm for the following reasons:

- First, customers will be required to pay the market price of computer services provided by I-Tek, which presumably reflects the replacement cost of equipment rather than the original costs payable under rate base treatment. Given the proposed significant write down of the assets at customer cost, customers are better off with continued rate base treatment.
- Second, the valuation of equipment used for the transfer is likely less than the value that would be realized by customers if the assets continued in regulated service. A third party purchaser might have placed a higher value on the equipment recognizing the value of a secure market for services using a going concern to provide service.
- Further, as pointed out by Mr. Kennedy the transfer value does not include certain important components of value:

During the cross-examination of the ATCO witnesses in this proceeding, it has become apparent that the terminal loss caused by the transfer of the assets to ATCO I-Tek is not entirely caused by the differences in depreciation parameters between those approved by this Board as a result of the 1998 CWNG General Rate Application, and those used in the valuation of the assets transferred. When utilities invest in information technology and network assets such as those transferred to I-Tek, there exists a cost of installation. In particular, the installation costs of network wiring and infrastructure is significant. Additionally, utilities normally capitalize the internal cost for testing of the network and operating systems prior to their roll out to the general utility personnel. Further, the costs of training utility staff on the networks and systems are also often capitalized. None of these costs were included in the valuation of the assets transferred to I-Tek. However, the benefit of these costs clearly now rests with ATCO-I-Tek, as they have been given a system that is installed, tested, and for

which the utility personnel are trained, at no additional cost. However, these costs existed in the plant accounts of regulated utilities, and were retired at the time of the transfer. At the time of the retirement, these assets were clearly not completely depreciated, were retired without the benefit of any salvage proceeds, and are, therefore, a significant contributor to the loss being amortized by the regulated utilities. [Exhibit 332; PP2-3]

FIRM/Core submitted that there are different ways of ensuring the no harm principle is not violated. One alternative would be to include in revenue requirement, a deemed cost for I-Tek computer equipment service as if the assets continued in regulated service. That would require exclusion of amortization amounts and any associated carrying costs from the utilities' revenue requirements. The Applicants would be allowed recovery of the net book value of computer assets and associated carrying costs (not exceeding regulated cost of capital), over the remaining useful life of the existing computer assets. Any tax benefits associated with CCA applicable to computer equipment would be reflected in the charges for computer equipment service as if they were in regulated service.

The second alternative would be to allow the Applicants to recover the cost of I-Tek services for computer equipment based on the consideration actually paid by I-Tek for the assets for the period corresponding to the remaining life of the assets. The proposed amortization of loss will be accepted. The cost of capital will be based on regulated cost of capital and the existing CCA pools will be used to benefit customers, or if a terminal loss is realized, the benefit thereof will be passed through to customers. It is noted that all CCA benefits associated with computer equipment should accrue to customers who have paid the associated capital costs.

Under both alternatives, FIRM/Core submitted that the existing depreciation parameters be used for the purpose of calculating the remaining life of computer equipment until it is reviewed at the next GRA.

FIRM/Core submitted that the sale to I-Tek might be approved subject to the conditions required to preserve the no harm principle outlined above.

In reply argument, FIRM/Core disagreed with ATCO that depreciating the computer equipment on the utility books over the remaining lives would result in higher cost to customers. It stated that retaining the assets on the utility books would result in customers paying the cost of the equipment over the useful life. The proposed transfer of the equipment before the end of its useful life to an affiliate of a price lower than book value required customers to pay market price to that affiliate for the use of the written down computer equipment. That would result in customers paying more than original cost. FIRM/Core also stated that the transfer price was likely understated relative to what an arm's-length purchaser would have paid for the equipment on an ongoing concern basis.

FIRM/Core submitted that the important question was whether customers were better or worse off as a result of the transfer. It stated that because there was no transfer or sale, there was no need for decommissioning etc., and that these costs were therefore not relevant.

4.1.1.2 Board Findings

The Board notes that the relevant section of the acts, 101(2)(d) of the PUBA or paragraph 26(2)(d) of the GUA. Section 101(2) of the PUBA states:

101(2) No owner of a public utility designated under subsection (1) shall

- (a) ...
- (b) ...
- (c) ...
- (d) without the approval of the Board,
 - (i) sell, lease, mortgage or otherwise dispose of or encumber its property, franchises, privileges or rights, or any part of them, or
 - (ii) merge or consolidate its property, franchises, privileges or rights, or any part of them,

and a sale, lease, mortgage, disposition, encumbrance, merger or consolidation made in contravention of this clause is void, but nothing in this clause shall be construed to prevent in any way the sale, lease, mortgage, disposition, encumbrance, merger or consolidation of any of the property of an owner of a public utility designated under subsection (1) in the ordinary course of the owner's business.

The Board is of the view that the sale of all computer assets by the ATCO Group regulated companies to an unregulated affiliate, I-Tek, is clearly outside of the normal course of business contemplated in 101(2)(d) of the PUBA or paragraph 26(2)(d) of the GUA. Given ATCO's experience in regulatory matters, the Board is perplexed by ATCO's statement that they never considered that Board approval was required.

The Board notes ATCO's arguments that these transactions were "lease or buy" decisions, and of a sort that occur every day. However, to the knowledge of the Board, ATCO has never unilaterally disposed of an entire class of assets used in utility service. Furthermore, this is the first such transaction involving an unregulated affiliate company. Furthermore, the disposition results in a requested loss of \$25 million, a very large amount.

On the basis that this transaction is outside of the normal course of business, it requires the approval of the Board for it not be considered void in law. The Board is of the view that in this case such an approval would be required to be retroactive, to accommodate the actions that ATCO has already taken. However, the Board will continue to use its regular criteria, a no-harm test, to determine whether or not to allow the sale, and whether or not there was any necessary redress for potential harm to customers.

The first criteria in assessing the no-harm test is to determine whether the assets are required for the continued safe and reliable operation of the utility. In this particular instance, parties have noted, the result of this transaction leaves the assets in place and in use in substantially the same manner as previously. It would appear therefore, the first criteria of the no-harm test has been satisfied as the safe and reliable operations of the ATCO Group utilities are not impacted by the transaction.

The second criteria in assessing the no-harm test are to determine whether customers suffer harm, financial or otherwise, from the completion of this transaction. The criteria established in previous decisions is presented in Decision 2000-41:

As a result, rather than simply asking whether customers will be adversely impacted by some aspect of the transactions, the Board concludes that it should weigh the potential positive and negative impacts of the transactions to determine whether the balance favors customers or at least leaves them no worse off, having regard to all of the circumstances of the case. If so, then the Board considers that the transactions should be approved.²²

The Board is of the view that the question of customer harm with regards to this second criterion is tied to the question of whether the appropriate price was paid for the computer assets and that FMV is charged for I-Tek services. The Board determined, in Section 4.2, that the service rates charged by I-Tek must be reduced to provide comfort that customers will not be harmed by this particular affiliate arrangement. The Board finds that it is equally important to ensure that the transfer of assets from the regulated to non-regulated affiliates occurs at a value that is fair.

The Board notes the evidence of ATCO in Information Response BR.ATCO-32, that with consideration given for the early amortization of the regulated computer assets, ATCO was able to demonstrate some benefit to customers from the new relationship. The Board expressed, in Section 4.2, its misgivings with the detail, format, and rigor of this analysis. However, the Board is of the view that if a value can be determined that approximates FMV for the transfer of these assets, that in combination with the determination made in Section 4.2 concerning the rates charged by I-Tek to the regulated affiliates, will in all likelihood guard consumers against any financial harm from this transaction.

Consequently, the Board would provide retroactive approval for the sale of computer assets from the ATCO Group regulated utilities to I-Tek, effective January 1, 1999, subject to ATCO amending its Application to match the Board's findings with respect to FMV for this transfer and its findings with respect to service charges of I-Tek. If ATCO does not amend its Application in this fashion by the date of the Compliance Filing, the Board considers that the transfer of assets from the ATCO regulated utilities to I-Tek would be void pursuant to the PUBA. In that instance, the Board directs ATCO, in its Compliance Filing, to address all consequential effects of voiding the I-Tek transfer, including the effects on the ongoing provision of services to customers.

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4.1.2 Determination of Asset Transfer Value

4.1.2.1 Positions of the Parties

ATCO

ATCO stated that with respect to the pricing of the computer assets sold to I-Tek, it must be understood that no party, whether affiliated or unaffiliated, would pay greater than the current market value for the subject assets. It argued that, therefore, a suggestion that the transfer should have taken place at net book value was not realistic, because if this were the mandated price, the transaction simply would not have taken place.

²² Decision 2000-41, page 8

ATCO stated that the consequence of this series of events was that the ATCO Group regulated utility customers would have been significantly worse off. One of two scenarios would have necessarily occurred. One is that the assets would have been retained by the utilities (even though they would have de minimus residual value for these companies) and depreciated over their remaining lives, with the depreciation expense being collected by the utilities until the assets were fully paid out. In this scenario, the ratepayers would pick up the total costs of these assets. The second scenario is that these assets could have been sold on the market for whatever they would have fetched. ATCO argued that the evidence of Mr. Johnson, for CCI, confirmed that the ATCO Group would have gotten significantly less proceeds in the market if this process had been followed. In this regard, there has been a suggestion that the price paid by I-Tek for these assets reflected only the cost of the equipment and nothing else; as such, the transaction was somehow undervalued.

ATCO argued that this line of investigation represented a misunderstanding of the manner in which the pricing assessment conducted by CCI was undertaken. It stated that had the ATCO Group sold the assets in the open market, they would have gotten significantly less proceeds because of decommissioning, refurbishing, and re-commissioning costs, which would have to be incurred to package the equipment and put it on the loading dock (9T868). It noted the evidence of Mr. Johnson, that his numbers were the values once equipment has been de-installed and banded (i.e. certified for re-installment) and was sitting in a warehouse (6T584, 589, 596). ATCO stated that the basis upon which Mr. Johnson conducted his evaluation included those costs in his numbers. Therefore, significant additional value above what could have been obtained in the market from a third party was already incorporated into the FMV utilized by Mr. Johnson.

ATCO also argued that Mr. Johnson's report was a confirmation of the asset transfer process, which was undertaken by the ATCO Group prior to the proposed transfer. ATCO stated that the information on pricing was derived by independent third parties. At the time Mr. Johnson was conducting his review he was unaware that another valuation had already been conducted. He subsequently learned that this was the case and noted that his conclusions were similar to those reached by the parties to the previous assessment. Mr. Johnson stated that CCI's peers in the business did the original valuation (6T597-8).

ATCO noted that the ATCO Group had redoubled its efforts to ensure that there was no question the price obtained from I-Tek was reasonable and appropriate. It stated that the ATCO Group could have relied solely upon the compilation of quotes solicited previously. However, ATCO stated it was felt that it would be of assistance to the Board and parties if a person who actually trades in computer equipment in the market were to also provide his views on the appropriateness of the transaction pricing. It stated that this was precisely what Mr. Johnson of CCI had done, as he had fully corroborated both the initial evaluation and the final sales price.

ATCO argued that the independent reports it had solicited were to be contrasted with the bold assertion made by Calgary that the transfer should have occurred at net book value. It indicated that, if this were the price mandated, the transaction simply would not have taken place. It stated that no sensible party would pay a value for used assets greater than their FMV. ATCO argued that it was unreasonable to suggest that just because the buyer was an affiliate, it should have been forced to make this unwise business decision. ATCO also argued that, even if the transaction had occurred on this hypothetical basis, the logical consequence is that this additional cost would have to be recovered in the rates charged by I-Tek to the ATCO Group regulated

utilities. It stated that ATCO would then be before the Board arguing that the market price for the services had to reflect the costs of providing such services. Otherwise, one is left with the inevitable conclusion that I-Tek would have had to “eat” the loss associated with the book value of the subject assets. ATCO argued that this was not sensible and would lead to an impractical series of conclusions. In summary, the ATCO Group submitted that the transfer pricing was reasonable and appropriate and that the evidence filed by Calgary must be ignored.

ATCO stated, in reply, that the ATCO Group utilities maximized the benefits for customers and minimized their cost by adopting the approach they did. ATCO argued that if the Board deemed the transactions should have been at some other price above market value, then the Board must void the computer asset sale transaction. The assets must be rolled back into the utilities and allowed full depreciation of the costs of those assets to be added to customer rates. ATCO stated it was not acceptable that it be required to make an unwise and unsupportable business decision simply because it involved an affiliate of a regulated utility.

In reply argument, ATCO added that changing the depreciation rates, as suggested by Calgary, would achieve nothing. It stated that the fact was that while the assets were not de-installed, the price paid included an amount to cover these costs, which would have been deducted from the price obtained from a third party. ATCO argued that adopting the changing depreciation rates suggested by Calgary would imply that customers would have paid more depreciation dollars earlier.

Calgary

Calgary presented the evidence of Mr. Kennedy²³ in order to discuss the appropriateness of the price of the assets transferred to I-Tek. Calgary argued that through their evidence and the cross-examination of ATCO witnesses, it was apparent that the determination of the appropriate value used in the transfer of assets from the regulated operating companies to I-Tek, was flawed for the following reasons:

- ATCO has failed to include all of the appropriate capitalized assets in the determination of the market value.
- ATCO has unilaterally changed the depreciation parameters of the regulated assets without any prior notification and approval of the Board.

Calgary noted that the regulated operating companies each transferred or retired all of the assets from the plant accounts containing the computer hardware and information systems software²⁴. It stated that prior to the transfer, the original costs of the appropriate asset accounts of the regulated operating companies included capitalized expenditures for many non-physical assets. These costs would have included the installation and testing of the computer systems and software, the training and implementation costs associated with the Information Systems, as well as other expenditures that the companies would have deemed necessary in order to have the systems operating effectively within the company²⁵. Calgary noted that the operating companies deemed all of these capital expenditures prudent at the time the systems were being capitalized into rate base. Calgary argued, however, that none of these types of costs were included in the

²³ Exhibits 326 and 328

²⁴ ATCO Rebuttal Evidence, page 12, line 5

²⁵ Transcript, page 967-968

valuations made by the independent experts provided in this Application.²⁶ Calgary stated that ATCO witness Mr. Johnson confirmed the exclusion of the soft, or going-concern, type of assets under cross-examination by the Board.²⁷

Calgary noted the statement of its witness, Mr. Kennedy²⁸, that a significant portion of the loss amortized in the regulated operating companies was caused directly by the exclusion of the non-physical assets from the determination of the FMV. It was the testimony of Mr. Kennedy²⁹ that the assets associated with the on-going concern (training, installation, testing, etc.) of the business activities transferred, should form part of the cost of the assets transferred to I-Tek. Calgary argued that in circumstances where the equipment was purchased by an un-related third party, removed, re-sold, and then re-installed in a completely different location to be used by completely different users, the accounting transactions as carried out by the ATCO operating companies would be appropriate. However, it argued that in the case of I-Tek, all of the assets in specific accounts were transferred to an affiliate, which did not physically move the assets, de-install, nor change the physical use of the assets in any way. Calgary noted that additionally, the assets continually had the same users in the same location as they were before the transfer.³⁰ In these circumstances, Calgary argued that its evidence was clear– the only appropriate manner in which all of the costs can be included in the determination of a transfer price (fair to the regulated customers), is for the transfer price to be deemed for regulatory purposes to be equal to the greater of net book value of the asset accounts and FMV at the time of the transaction.

Calgary stated that the evidence in this proceeding had clearly shown that ATCO, in its determination of FMV, has not used the depreciation parameters previously approved by the Board. Calgary stated that ATCO had not disputed this fact. Calgary noted the evidence of Mr. Kennedy that indicated that the Board approved depreciation parameters ought to have been used in the determination of the fair value at which to transfer the assets to I-Tek. In the response to the undertaking of Mr. Kennedy to the Board,³¹ Calgary argued that it was clearly evident that the CWNG witnesses that testified in the CWNG 1999 GRA proceeding should have been aware that the assets comprising the entirety of certain asset accounts were being transferred to an affiliate company. Additionally, Calgary argued that given the timing of the events, the CWNG witnesses should have been aware that the depreciation parameters that they were endorsing would result in a significant loss in the asset accounts occurring from the transfer of the assets. Calgary stated that the ATCO witnesses chose to ignore that information in their defense of the depreciation parameters that were proposed to the Board.

Calgary noted the statement of the ATCO witnesses during cross-examination,³² that the equipment transferred to I-Tek is generally being used for the same purposes and in many cases used by the same people in the same location as it was prior to the transfer. Calgary noted the evidence of Mr. Kennedy originally provided in the AGS GRA,³³ and argued that there exists no reasonable explanation that the average service life of computer equipment would decrease by two years given a change in ownership. Calgary stated ATCO is now claiming the physical life

²⁶ Exhibit 02 – Application, Volume 2, Tab 8-2-C, Appendices A through G

²⁷ Transcript, page 594, lines 8-26

²⁸ Exhibit 331, page 2, line 28–page 3, line 16

²⁹ Exhibit 331

³⁰ Transcript Volume, page 963–965

³¹ Transcript Volume, page 1953

³² Transcript Volume, page 962-965

³³ Incorporated in this proceeding as Exhibit 328

estimates that it defended in 1999 (during the 1998 CWNG GRA) have changed simply because of a change in ownership. Calgary argued that this position is not reasonable and should be dismissed by the Board.

Calgary noted that during cross-examination of Calgary witness Mr. Kennedy, by counsel for ATCO, Mr. Kennedy indicated that the intent of depreciation was not to provide a determination of FMV.³⁴ During additional examination of Mr. Kennedy by Board Staff,³⁵ Mr. Kennedy clarified this position indicating that in original cost rate regulation, the net book value would not necessarily be equal to the FMV of plant, but was rather the only fair treatment for use in the determination of the transfer price in the circumstances of a regulated utility transferring an asset to an unregulated affiliate. Calgary stated that it was not Mr. Kennedy's evidence that the net book value should be used as a determination of FMV. Rather Mr. Kennedy's position was that the net book value ought to be used for the determination of the transfer price of transferring an asset from a regulated utility to an Affiliate. Calgary stated that its position was clearly evident in the Calgary response to AG-Cal.10.

Calgary stated that the transfer price of the assets from the regulated operating companies should be deemed (for regulatory purposes) to be the net book value of the accounts that were transferred to I-Tek. It stated that this remedy solved both of the flaws of the ATCO determined FMV. Through the use of the net book value of computer assets accounts, the issue of inclusion of the going-concern type assets is resolved. All of the costs that the ATCO regulated companies deemed as prudent expenditures for the purchase, installation, testing, and on-going operation of the assets would be included in the determine of the transfer price. As the same people are using the assets, for the same business use, in generally the same location, all of these costs should be included in the determination of the sale price for regulatory purposes.

Calgary argued that, in addition, the position put forward by Mr. Kennedy,³⁶ to use the net book value of the accounts as the deemed sale price, remedies the issue of ATCO not using Board approved depreciation parameters in the determination of the sale price. It argued that clearly, the CWNG witnesses were aware of the transaction to sell the information system assets to I-Tek at the time they appeared to defend the CWNG depreciation parameters in February 1999. Instead they chose to defend the average service estimate that had been determined through extensive analysis and review of physical asset life history. It stated that nowhere in this proceeding has any ATCO witness defended or substantiated the four-year average service life that was used by ATCO in their determination of FMV. Absent any such substantiation, Calgary argued the Board is left only to rely on the review and approval of the CWNG depreciation parameters from the 1999 General Rate Application and adopt the recommendation put forward by Calgary.

FIRM/Core

The position of FIRM/Core with respect to asset transfer value constituted a portion of its argument with respect to the no-harm test used for determining if an asset may be sold by a utility.

Since FIRM/Core's argument was provided in full in Section 4.1.1.1 of this Decision, it will not be repeated here.

³⁴ Transcript, Volume 17, page 1819, lines 9-15

³⁵ Transcript, Volume 18, page 1911, line 13 – page 1912, line 14

³⁶ Exhibits 327-328

4.1.2.2 Board Findings

The Board notes the positions of ATCO, that its methodology for the determination of FMV of the transfer of computer and other assets is a conservative estimate due to the fact that it did not take into account any costs associated with dismantling and refurbishing those assets for further sale. The Board notes that ATCO's witness stated that the FMV determination did not include the value to a purchaser of not having to install the equipment itself. Further, the witness indicated that this type of negotiation would be normal in an arm's length transaction. The Board also notes the positions of Calgary and FIRM/Core, that these assets continue to be in use and that they should be valued as a going concern. The Board is of the view there is a certain degree of merit in both of these positions that must be considered in determining the reasonable value for this transaction.

The evidence of ATCO is that it valued the assets in question such that these assets would be completely ready for resale to a third party. The costs that were not considered in this approach included the costs of dismantling, moving, refurbishing, and installing the assets. Clearly such costs would be incurred if ATCO were to engage a third party to provide all new computer assets and services, while selling all of its existing assets for salvage. However, in the circumstances that exist, another party - an affiliate in this instance - has assumed ownership of the assets in place.

Had this been an arm's-length transaction, the Board would expect that the party purchasing the assets would give some consideration to the value of these assets as a going concern. As raised by the intervenors, this value might include the costs of installation and debugging of the computer systems and network, telephone systems, and other similar costs. Furthermore, and also as raised by intervenors, there is value in the training and experience of the workforce assumed by the new entity, I-Tek. The Board is also of the view that an arm's-length third party entering such an arrangement, whereby it would be the sole source provider of computer services to the ATCO Group regulated utilities, might be willing to pay an additional amount in recognition of the goodwill associated with future revenues.

These factors lead the Board to conclude that it is likely that an arm's-length third party, entering into a similar transaction with the ATCO Group regulated utilities, would have paid more than the value provided in evidence by ATCO. However, recognizing that computers and other electronic devices depreciate more rapidly than can be characterized by straight line depreciation, the Board does not expect that such a party would have paid full net book value to acquire these assets. In fact, such a party would likely have to "mark to market" the value of these assets on its own books. However, the Board is of the opinion that an arm's-length third party would have recognized and paid for the value of this operation as a going concern.

Although this issue was raised by intervenors, no conclusive evidence as to this value was tendered on the record. In the opinion of the Board, it is reasonable to expect that a premium of between 5 and 25 percent would have been paid as a premium above the salvage value of equipment in order to acquire the IT assets as a going concern, and where I-Tek would be able to operate on the basis of being the sole source service provider to the ATCO Group of companies.

As the Board is satisfied that the salvage value of the equipment is reasonable, the Board is only adjusting the purchase price to reflect that I-Tek was transferred as a going concern, and the sole source service provider. The Board directs ATCO, in its Compliance Filing, to add 10% or

\$649,000 (see table below) to the deemed purchase price of assets transferred from the ATCO Group regulated utilities to I-Tek. This revises the deemed purchase price from \$6.487 million to \$7.135 million. The Board is of the view that this is a conservative estimate of the value associated with the nature of the transfer and the ongoing use of the I-Tek assets.

Further, the Board directs ATCO, in its Compliance Filing, to identify and correct any inaccuracies in the information presented in the table below on the adjustment to the I-Tek Transfer price.

Table 7. Adjustment to I-Tek Asset Transfer (Per Board)

	(\$ Thousands)		
	Per ATCO	Per Board	Adjustment (Board – ATCO)
AE:			
- NBV	11,802	11,802	
- Proceeds	4,174	4,591.4	417.4
- Loss on Transfer	7,628	7,210.6	
AGS:			
- NBV	8,579	8,579	
- Proceeds	2,041	2,245.1	204.1
- Loss on Transfer	6,538	6,333.9	
APS:			
- NBV	1,106	1,106	
- Proceeds	272	299.2	27.2
- Loss on Transfer	834	806.8	
TOTAL NBV	21,487	21,487	0
Total Proceeds	6,487	7,135	649
Total Loss on Transfer	15,000	14,351	(649)

Note: Source information for this Table was obtained from, or estimated based on information in the Application. ATCO should identify and correct any inaccuracies as part of the Compliance Filing.

The Board notes the position of ATCO that, should the Board determine the value of the asset transfer was too low, that the Board should find that the transaction is void and account for all asset costs via utility depreciation expense. The Board has previously addressed the consequences, in Section 4.1.1.2, if ATCO does not amend its Application by the time of the Compliance Filing to match the Board's findings with regards to FMV for the transfer of assets to I-Tek, namely that these transactions would be void in that instance.

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4.1.3 Treatment of Loss on Sale/Transfer

In this section, the Board will address the treatment of the loss resulting from the sale/transfer and the difference between the net book value and the transfer value.

4.1.3.1 Positions of the Parties

ATCO

ATCO noted that the amortization of the remaining net book value of the I-Tek assets with respect to CWNG was specifically raised by Calgary. Specifically, much was made of the fact that CWNG did not take the potential sale of computer assets into consideration in its 1998 GRA. ATCO noted that Mr. Kennedy, for Calgary, appears to suggest that this is a basis for not allowing recovery of the remaining net book value of the assets.

ATCO noted that no equivalent argument is advanced regarding NUL, although the assets are very similar and the two utilities have typically used similar depreciation rates for computer equipment. Both utilities went through an extended time period in which they were not able to adjust their depreciation rates (17T1813-4). ATCO argued that while CWNG could possibly have made an update to its depreciation parameters at the time of its 1998 GRA hearing (early 1999), the transfer of the computer assets was still not certain at that time and the update would be contrary to the principle of prospective ratemaking.

ATCO argued that the important consideration for the Board is that even if CWNG had updated its depreciation parameters for computer equipment, the impact of this charge for one year on the net book value of the assets transferred would have been minimal. Furthermore, it argued that the end result would have been that customers would only have paid earlier for what they are rightfully being asked for now.

ATCO argued that the remaining net book value of the computer assets is a legitimate cost to be recovered from customers. It stated that this is a cost that the customers would have been responsible for had the utilities continued to own the subject assets. It argued that the evidence provided by Calgary in this regard does not demonstrate that the I-Tek transaction was inappropriate or that the transaction price was too low.

Calgary

Calgary noted that the three regulated operating ATCO Utilities have each included in their tolls a significant provision to amortize, over 1999 to 2004, the loss resulting from the difference between the net book value of the assets and the transfer value. ATCO has indicated that the following amounts of the losses are being amortized by the regulated operating utilities:

Table 8. ATCO Proposed I-Tek losses by Utility (per Calgary)

	(\$ Millions)
ATCO Gas	\$13.8 ³⁷
ATCO Pipelines	\$3.2 ³⁸
ATCO Electric	\$5.6 ^{*39}
TOTAL	\$22.6
* Net of Generation Assets	

[\(Click here to return to the Table of Contents\)](#)

³⁷ BR-ATCO.33

³⁸ BR-ATCO.33

³⁹ ATCO Electric Application, Schedule 4.2-2

Calgary stated ⁴⁰ that the determination of these losses is flawed. Calgary argued that the Board should deem, for regulatory purposes, the transfer value to be equal to the net book value as at December 31, 1998. As such, the Board should deem the sales proceeds as follows:

- ATCO Gas \$18.2 Million
 - ATCO Pipelines \$4.3 Million
 - ATCO Electric \$8.5 Million*
- * Net of Generation Assets

Calgary's witness, Mr. Kennedy⁴¹, noted that this treatment would provide consistency with the requirement of many regulatory authorities that utilities must value the assets transferred to Affiliates at not less than net book value, would eliminate the losses absorbed by the regulated rate payers, and provide for some recognition of value for the installation, testing, and training costs of the assets acquired by I-Tek.

4.1.3.2 Board Findings

The Board considers that, provided there are adjustments to the prices payable to I-Tek for services rendered (as determined in Section 4.2.2) and the amount payable by I-Tek for the acquisition of assets (as determined in Section 4.1.2), customers are not likely to be harmed by the affiliate relationship between the ATCO Group regulated utilities and I-Tek. On that basis, the Board has stated that it would grant approval for the I-Tek transfer.

The ATCO Group regulated utilities have incurred previously approved costs for the development of their computer and other systems. The net book value of these assets is greater than what the Board expects would be payable by an arm's-length third party. The Board finds that it is reasonable to recover the difference between these amounts from customers, and the Board finds that ATCO has proposed a reasonable period of time over which to amortize this loss. The Board approves the period of recovery proposed by ATCO.

However, the Board directs the ATCO Group regulated utilities, in their Compliance Filing, to reduce the amount of the loss amortized for the 2001 and 2002 test years in keeping with the Board's finding to deem a higher value for the asset transfer. The Board has included the adjusted amortization amounts in the following tables based on information obtained from the Application.

⁴⁰ Exhibits 327 and 328

⁴¹ Exhibit 331

However, the Board directs ATCO, in its Compliance Filing, to identify and correct any inaccuracies in the following four tables.

Table 9. AE Amortization of Loss on I-Tek Transfer (Per Board)

	1999	2000	2001	2002	2003
	(\$ Thousands)				
Per ATCO					
Opening Balance	7,628	4,180	1,584	579	0
DT	1,551	1,168	357	357	0
TFO	966	727	222	222	0
RRO	0	0	0	0	0
GENERATION	931	701	426	0	0
Ending Balance	4,180	1,584	579	0	0
Per Board					
Opening Balance	7,210.6	3,762.6	1,166.6	181.56	0
DT	1551	1168	357	111.95	0
TFO	966	727	222	69.61	0
RRO	0	0	0	0	0
GENERATION	931	701	406.04	0	0
Ending Balance	3762.6	1166.6	181.56	0	0
Difference – Ending Balance	-417	-417	-397	0	0

[\(Click here to return to the Table of Contents\)](#)

Table 10. AGS Amortization of Loss on I-Tek Transfer (Per Board)

	1999	2000	2001	2002	2003
	(\$ Thousands)				
Per ATCO					
Opening Balance	6,538	5,231	3,924	2,617	1,310
AGS	1,307	1,307	1,307	1,307	1,310
Ending Balance	5,231	3,924	2,617	1,310	0
Per Board					
Opening Balance	6,333.9	5,026.9	3,719.9	2,479.9	1,239.9
AGS	1,307	1,307	1,240	1,240	1,239.9
Ending Balance	5,026.9	3,719.9	2,479.9	1,239.9	0
Difference – Ending Balance	-204.10	-204.10	-137.10	-70.10	0

[\(Click here to return to the Table of Contents\)](#)

Table 11. APS Amortization of Loss on I-Tek Transfer (Per Board)

	1999	2000	2001	2002	2003
	(\$ Thousands)				
Per ATCO					
Opening Balance	834	667	500	333	166
APS	167	167	167	167	166
Ending Balance	667	500	333	166	0
Per Board					
Opening Balance	806.8	639.8	472.8	315.2	157.6
APS	167	167	157.6	157.6	157.6
Ending Balance	639.8	472.8	315.2	157.6	0
Difference – Ending Balance	-27.2	-27.2	-17.8	-8.4	0

[\(Click here to return to the Table of Contents\)](#)

Table 12. Summary of Amortization of Loss on I-Tek Transfer (Per Board)

	1999	2000	2001 (\$ Thousands)	2002	2003
Per ATCO					
Opening Balance	15,000	10,078	6,008	3,529	1,476
Total Utilities	4,922	4,070	2,479	2,053	1,476
Ending Balance	10,078	6,008	3,529	1,476	0
Per Board					
Opening Balance	14,351.30	9,429.30	5,359.30	2,976.66	1,397.50
Total Utilities	4,922.00	4,070.00	2,382.64	1,579.16	1,397.50
Ending Balance	9,429.30	5,359.30	2,976.66	1,397.50	0.00
Difference – Ending Balance	-648.70	-648.70	-552.34	-78.50	0

[\(Click here to return to the Table of Contents\)](#)

4.2 ATCO I-Tek Pricing & Master Services Agreements

4.2.1 Positions of the Parties

ATCO

I-Tek was established in 1999 as an affiliated, non-regulated entity to undertake all computer equipment ownership, servicing, and renewal for the regulated ATCO Group companies.

ATCO provided the following description of its regulated computer operations in the Application:

Prior to 1999, the CU Group ran its computer processing facilities on a cost recovery basis. This arrangement can be summarized as follows:

- Certain computing facilities were consolidated in CUL operating as CUL Information Systems (CUIS), for the CUL Group of Companies;
- Operating and capital costs were incurred at the CUL level and then passed down to operating subsidiaries, including the Applicants, on a shared basis; and
- Each of the Applicants' revenue requirements relating to computer charges was comprised of operating costs, depreciation, income taxes, and return on rate base.

ATCO argued that this arrangement had served the Applicants and their customers very well, but with changes in technology and the marketplace, CUIS was finding it increasingly difficult to keep pace with the industry and serve the Applicants' computer processing needs. ATCO argued that one of CUIS's main problem areas was the ability to attract and retain the top-level staff required to move forward in the 21st century. In 1998, the ATCO Group undertook an analysis of its computer processing charges; it determined that the ATCO Group would be better off selling all of their computing assets and outsourcing the computing services to the successful bidder.

In May 1998, ATCO stated that CUL announced that it was negotiating an outsourcing arrangement with EDS Canada (EDS). By September 1998, ATCO stated that it became apparent that EDS was unwilling to provide the quality of service and undertake an appropriate sharing of the technological risks at a price, which would be attractive to the Applicants' customers. Further, due diligence indicated that overall costs with EDS would increase beyond that which would be incurred if the computing services were to be retained; as a result, the alliance was terminated.

During the negotiation process with EDS, ATCO stated that it became apparent that through a restructuring of the roles and relationships within CUL, the Applicants could achieve all the benefits of outsourcing without any additional costs. Through a formal commercialization of CUIS, the delivery of Information Technology (IT) services within the ATCO Group of companies could be improved.

In April 1999, ATCO stated that formal contracts with CUL (doing business as I-Tek) were signed by each of the Applicants. ATCO stated that these contracts clearly delineate the service levels, volumes, and price for the IT services which each of the Applicants require. These contracts permit the Applicants to better control IT costs into the future.

Effective January 1, 1999, ATCO stated that each of the Applicants' computer assets were sold to ATCO I-Tek at FMV and the fees charged back to each of the Applicants were based on FMV.⁴²

ATCO argued that it could establish the reasonableness of the charges being paid by the regulated utilities to I-Tek. ATCO stated that the following two-pronged test must be satisfied by the ATCO Group regulated utilities. First, there must be a demonstration that the cost of these services is either the same as or less than what it would cost to perform these services internally. Second, the ATCO Group must demonstrate that they are paying FMV for the services delivered by I-Tek (8T748). Once these tests have been met, ATCO stated that the applicable costs should be approved for inclusion in the Applicant's respective revenue requirements.

ATCO stated that, at the Board of Directors level, it was felt that the company did not have a sufficient level of accountability for this very specialized function. This drove them to look at an outsourcing option (10T981; 13T1396-7). It stated that it was also important to understand that the ATCO Group was not "flying solo" with respect to its investigation of outsourcing possibilities. The ATCO Group made use of Compass Analysis Canada (Compass) to assist it in evaluating potential outsourcing alternatives (8T787; 10T1041). Following an evaluation of various potential outsourcing candidates, the field was narrowed to EDS and IBM. Both provided detailed presentations on their outsourcing approach to the ATCO Group. EDS was then selected as the preferred outsource provider; some twelve weeks of due diligence were undertaken with EDS, in an attempt to finalize the outsourcing arrangement. The transaction could not be closed, as the terms and conditions of the available outsourcing arrangement were considered to be too rigid. The ATCO Group's regulated utilities were not provided with sufficient flexibility as these companies moved forward in the context of the forthcoming deregulated environment.

ATCO stated that it was only following the "education" received as part of this exploration of an alternative service provider, that it was decided to establish I-Tek and consolidate the information technology function in a separate corporate entity within the ATCO Group. The ATCO regulated utilities did not seek to open discussions with other potential outsourcers following the breakdown of the EDS negotiations because their independent advisors, Compass, indicated that the terms and conditions being offered by EDS were typical of what the utilities could expect in the marketplace (10T1041).

⁴² ATCO Group, General Affiliate Application, Volume 1, pages 24-25

ATCO stated that the decision to outsource the information technology function was made in order to obtain the benefits of outsourcing and was not in any way related to or dependent upon the sale of the existing computer assets to I-Tek. From the outset, the ATCO Group sought to structure the I-Tek arrangements in a commercially sensible manner, and establish a relationship equivalent to what one would find in a third party, outsourced arrangement versus an internal insourcing transaction. The outsourcing of the IT function was seen as having many benefits, including:

- allowing management to focus on their principal business;
- establishing a separate IT governance process to optimize the use of information technology in the overall ATCO Group;
- gaining access to a specialized group that would meet the requirements of the ATCO companies at competitive prices; and,
- having access to personnel that were not likely to find the regulated environment attractive (10T983-5).

In addition, the structure adopted would provide appropriate price signals to the users to improve cost control. In short, by structuring the I-Tek commercial arrangements as the ATCO Group has done, it stated it was able to obtain the benefits of outsourcing, while still keeping the flexibility required in order to respond to the significant changes occurring in the regulatory world. The ability to control costs and shift risk to the unregulated affiliate, through contract provisions, were also noted as key reasons for outsourcing (13T1321-2; 1346).

Mr. Burkett from Compass stated that it appeared I-Tek was operating as an “outsourced entity”, based on the information available to him. Mr. Burkett characterized the relationship as being very similar to a traditional third party contract (6T543-4). ATCO argued that the views of this independent consultant confirmed the approach taken by the ATCO Group was sound, and resulted in appropriate arrangements for the provision of IT services. Mr. Burkett also reiterated his view that I-Tek provided a better outsourcing alternative than the non-ATCO outsourcers that were examined (6T549). Mr. Burkett also emphasized that the reasons for outsourcing relating to retaining and attracting quality staff and consolidating operations, so as to gain improvements and achieve economies of scale gains, were all applicable to the ATCO outsourcing decision (6T548).

Mr. Burkett indicated that in his experience, there is a major improvement in performance of an IT organization when it acts like an outsourcer; he would strongly recommend that this approach be adopted. He confirmed that, based on the information and documents he was given, I-Tek had achieved this goal (6T562).

Once the commercial arrangements between the regulated ATCO utilities and I-Tek had been structured, ATCO stated it was then necessary to determine an appropriate charge for the services, which would be provided to the regulated utilities by I-Tek. ATCO again stated that it did not “fly solo” in arriving at this determination. Compass was retained to do a pricing review based upon their extensive knowledge and experience in this area, and the significant database available to them. Compass undertook this analysis by breaking the contracted services down into numerous detailed components, then arriving at comparable sample group for each of those specific components. Compass then determined whether the proposed ATCO Group costs were comparable to the costs other people incur to run a similar volume of computing for each of

these particular functions (6T521-4; 527).

ATCO stated that the model employed by Compass enabled it to ensure comparable entities were being examined, and appropriate cost comparisons were occurring (6T529). Compass examined the price that I-Tek was charging to the utilities per “cpu minute” or per “gigabyte” and concluded that it was in the range of FMV (6T532). ATCO argued that the logical and detailed approach adopted by Compass could be contrasted with the evidence filed by Mr. Stephens on behalf of Calgary. It stated that Mr. Stephens’s data was collected under a variety of different circumstances, without any controls, and from different sources. As indicated by Mr. Burkett, this was extremely problematic, as you cannot control the process (6T551). ATCO noted that Compass used a detailed, consistent, and professional approach to arrive at its conclusions instead of a haphazard random comparison of data garnered from a number of sources. Based on the information provided, it argued that it was clear the only credible evidence before the Board was that presented by Compass.

In addition to being able to conclude that the price being charged for the services provided by I-Tek represented FMV based on the Compass report, ATCO stated that the Board should take considerable comfort from the fact that a common I-Tek rate schedule is used for all users in the ATCO Group, whether regulated or unregulated (6T556).

Consistent with the two-pronged test, before finalizing its decision to outsource the information technology function to I-Tek, the ATCO Group regulated utilities first examined whether or not such a transaction would be in the best economic interests of their customers. ATCO Group submitted that this analysis provided a clear indication that the initial outsourcing decision was to the economic benefit of customers. However, the choice to move this function to I-Tek was not based solely on this favourable cost/benefit analysis. As mentioned above, there were several strong economic and commercial reasons for consolidating the IT function in a group that would operate as an “outsourcer” with respect to the ATCO Group regulated utilities. In addition, it argued that the commercial arrangements entered into with I-Tek allow for pricing reviews in order to ensure that the contract pricing stays at FMV (10T965).

ATCO stated that, while the Municipal Intervenors were cautioned against trying to compare the former costs incurred by CUIS versus those currently being incurred by I-Tek (due to the significant changes in the services which are being provided), the ATCO Group fully expected that this inappropriate comparison would be attempted in argument based on the information requested by this Intervenor. It indicated that it would be “terribly misleading” to make such a comparison. It stated that although the “outsourcing” was done for very good reasons, the lack of comparability to the past must be understood. The ATCO Group regulated utilities no longer own the equipment, the function has now been consolidated across various companies, there has been significant movement of personnel and changes in space requirements, and, most importantly, the services now being provided by I-Tek, in the current regulatory environment, are simply not comparable to those formerly provide by CUIS (10T1011-5). As well, I-Tek's contractual obligation to “refresh” the computer requirements of the regulated utilities at its expense is something that removes risk from the utilities and places it on I-Tek.

ATCO noted the evidence of Mr. Twa, that the ATCO Group were very religious in setting up pricing mechanisms and affiliate relationships to ensure that they had to be market based. The regulated utilities knew they would have to be able to substantiate that these prices were market based. They simply were not going to be allowed to carry on business otherwise (13T1395). The

ATCO Group regulated utilities were of the view that they had satisfied both prongs of the proposed test for examining affiliate transactions. It argued that the decision to outsource to I-Tek and the costs associated therewith, were reasonable, appropriate, and should be approved by the Board. BR-ATCO.32, as supplemented, includes a detailed analysis of costs that could be directly shed as a result of the agreement entered into with I-Tek (as well as ATCO Singlepoint). This included an examination of both direct and indirect costs, but did not include administrative function costs that could have been added. As such, ATCO argued that this analysis was conservative, as the costs associated with this additional component would have increased the status quo costs when compared to the outsourcing costs (10T943-4).

Once this initial economic hurdle had been overcome, the ATCO Group stated that it properly relied upon the independent expert study presented by Compass to demonstrate that the prices being paid for the I-Tek services are in the range of FMV. It indicated that Compass is providing annual assistance to ensure that pricing remains at FMV as the contract progresses. Finally, the ATCO Group reiterated its view that the present arrangements cannot be compared directly to the previous CUIS costs, as now the equipment is being leased versus owned; the outsourcer is now at risk for technological changes, instead of the customer. In addition, because of the rapid obsolescence experienced in the computer field, the actual equipment being used is substantially different than that formerly in place under the previous arrangements (10T964-5).

For all of these reasons, ATCO submitted that the decision to outsource the information technology function to I-Tek was a reasonable and prudent one. It was also submitted that the costs currently being incurred are less than those when the function was performed in house. As well, the rates being charged by I-Tek are reflective of FMV and, as such, are just and reasonable. Based on the above, ATCO submitted these costs should be approved for all of the ATCO Group utilities, as filed.

In argument summary, ATCO noted that only certain specific matters relating to I-Tek were before the Board for consideration. It noted that the costs associated with building the CIS system were either dealt with in past proceedings or were currently before the Board in other cases.

ATCO noted that the arrangement between I-Tek and the regulated utilities meant the ATCO Group utilities are paying the competitive market price for the services rendered. Other benefits, including the transfer of risk to I-Tek and away from utilities, permitting management to focus on their principal business, establishing separate IT governance, gaining access to a specialized IT group, attracting personnel, and implementing cost signals and controls, were all byproducts of this approach. It also noted that the commercial arrangements provided the flexibility to respond to anticipated changes in the regulatory environment while still benefiting from economies of scale.

In reply argument, ATCO reiterated that the agreements with I-Tek were reflective of terms and conditions typically found in arm's-length third party transactions. ATCO stated that Calgary had not undertaken any methodology to determine the FMV of I-Tek services. ATCO argued that I-Tek services were benchmarked against only the top performance for each subcomponent of service. It also argued that any reductions in the market price for the services would be captured via the benchmarking updates for the benefit of customers.

Calgary

Calgary noted that ATCO had defined⁴³ FMV as “The price that is or would be expected to be reached in an open and unrestricted market between informed and prudent parties acting at arm's length.” ATCO then stated, “besides use of independent appraisal and a tendering process, reasonable and prudent means may also include benchmarking to comparative indices, use of results from other similar negotiations or offers”.⁴⁴ Calgary argued that the arrangements with I-Tek are a prime example of how ATCO's proposed “reasonable and prudent means” approach to FMV can increase the regulatory burden rather than simplifying it. It noted that numerous expert witnesses were retained, in some cases years after the event, to attempt to establish the FMV of the transaction.

Calgary stated that it had provided evidence and argued⁴⁵ “that the use of a non-tender process, together with ‘insourcing’ to affiliates has also increased the costs of IS as well as the owning and operating costs of the CIS, both old and new.” Calgary submitted that there is less room for discussion where there is the use of unbiased tendering.

Calgary noted that in justifying the I-Tek rates, ATCO used a benchmark analysis from Compass Analysis⁴⁶ to determine the FMV of I-Tek services. Calgary did not undertake the same methodology to determine the FMV of I-Tek services. In the future, Calgary stated it would find a collaborative benchmark process between the utilities, Intervenor, and Board more acceptable than the laborious processes that this Application and the AE, AGS, and APS GRAs have involved.

Generally, Calgary disagreed that the Compass⁴⁷ reports for 1999 and 2000 supported the position that the I-Tek rates were at FMV. It noted that although no similar Compass report was provided for the 2001 rates, the I-Tek Agreement provides projected rates for five years including the 2001 and 2002 rates upon which the GRA requests were based.

Calgary's major points with regard to the Compass database and methodology were:

- Selection of all IS services from a single supplier such as I-Tek, should lead to an overall discount on these services. ATCO witness, Mr. Burkett, testified⁴⁸ that the Compass database was limited in that “relatively few study the full range (of services) at one time.
- The sample of 5 or 6⁴⁹ used from the database of 600 for each specific area (mainframe, distributed, labour) is small and the range in each specific area is high⁵⁰ – 30 percent in mainframe services, 50 percent in distributed services, and 20 percent in labour services.
- In Mr. Stephens's opinion, Gartner Group would have a database which was more representative of North American IS services.

In regards to mainframe processing services, Calgary agreed that providing the MVS, TSO, DASD, and TAPE rates show a further approximately 5 percent price-performance improvement

⁴³ Affiliate Code of Conduct, page 2 of 12

⁴⁴ CG-ATCO.11

⁴⁵ AGS 2001/2002 GRA, Final Argument, page 28 of 47

⁴⁶ Application Attachment 8.2-B

⁴⁷ ATCO 2000 GAA, Attachment 8.2-B

⁴⁸ Transcript 6, page 523, line 17 to page 524, line 3

⁴⁹ Transcript 6, page 526, lines 3-6

⁵⁰ Transcript 6, page 527, line 20 to page 529, line 1

in each of the years 2001 – 2003.

Calgary disagreed, in regard to distributed services, with the I-Tek service rates in the Compass report and the I-Tek Agreement. The Calgary update to Table 5 in the Compass 2000 report shows a change in the ATCO blended cost over the comparison group of more than 10 percent. This table also shows that if ATCO saved \$50,000 to \$100,000 in printers⁵¹, the savings did not accrue to the utilities but instead went to I-Tek. The blended PC/Laptop with printer price is the same before and after the amended I-Tek agreement in November 2000. Calgary's issues with distributed service extend to the following:

- PC and laptop hardware costs should be flat, as supported by Mr. Burkett.⁵²
- PC and laptop network connect (server) cost should decline, as supported by ATCO witness Mr. Burkett.⁵³
- PC and laptop support should decline between 2001 and 2003, by 5 to 10 percent per year, as shown in the I-Tek Agreement and supported by ATCO witness Mr. Burkett.⁵⁴

Calgary also noted Mr. Stephens's opinion that most agreements would provide an overall 3 – 5 percent price-performance improvement each year in distributed services

In regards to project services, Calgary disagreed. Calgary submitted that the labour rates used were at about commercial rates, but did not involve⁵⁵ a volume discount for annually committed work. ATCO's witness Mr. Burkett testified⁵⁶ that the discounted rate should be the total sum of the person's salary; benefits; PC technology, office, training, and test environment; and a fair return. From the hearing, Calgary understands that the fully burdened salaried person cost (salary plus benefits plus vacation/sick time plus PC technology, office, training) is 150% of salary in AE⁵⁷ and 130% of salary in AG⁵⁸. In Mr. Stephens's opinion, the I-Tek project services labour rates are 250% – 350% of salaries, and arms-length negotiations should lead to rates in the range of 200% – 250% of salaries and provide a minimum 20 percent discount.

In reference to wide area network services, the Compass 1999 and 2000 reports⁵⁹ indicated, "we cannot comment on the appropriateness of the Telecom costs. We encourage I-Tek to separate the network costs into two components in the future to facilitate comparison." As such, Calgary argued they could not agree with these rates.

Voice services represent approximately \$5 million per year for AE and AG. Calgary agreed the rates for voice sets, voice lines, and voice-mail were reasonable. Calgary would recommend information be provided in future GRA hearings on the long distance pass-through expenses including any studies in this area.

In terms of business application support services, Calgary stated it had not seen information on

⁵¹ Transcript 10, page 990, lines 2-7

⁵² Transcript 6, pages 534 -535

⁵³ Transcript 6, page 535

⁵⁴ Transcript 6, page 536 and pages 567-568

⁵⁵ Transcript 10, page 965, lines 19-25

⁵⁶ Transcript 6, page 538, line 21 to page 539, line 6

⁵⁷ Transcript 13, page 1303, lines 7-9

⁵⁸ Transcript 13, page 1309, lines 20-24

⁵⁹ ATCO 2000 GAA, Attachment 8.2-B, pages 18 and 53

the \$1.7 million distributed application charges and would recommend information on these services be provided in future GRA hearings. Until such information is provided Calgary argued it could not agree with the charges. However, Calgary stated they agreed with the training costs.

Calgary argued that for either the customer accounting budget or the IT budget as a whole, ATCO had failed to prove that the costs were FMV. Calgary argued that, on that basis, the Board should not allow the contracts for I-Tek. Calgary submitted that the Board should apply the concept of asymmetrical pricing, the Board should use the FMV or fully allocated costs, whichever were less.

Calgary submitted that the customer accounting cost should be in the range of \$42 to \$50 per customer per year. It noted that there had been a 21 percent jump for ATCO Gas and ATCO Pipelines between 1998 and 1999. Calgary submitted that the Board should reduce the charges by this increase, plus another 10 percent decrease that ATCO could have obtained via third party outsourcing, for a total decrease of approximately 30 percent.

In reply argument, Calgary stated that I-Tek was essentially the same as CU Services. It argued that I-Tek was not truly an outsourcing company. Calgary stated that ATCO's own witnesses provided no evidence that I-Tek provided additional economies of scale to CU Services.

Calgary continued that determination of FMV use by I-Tek was flawed because the distributed services costs are too high and the project services costs are too high as well. It stated that the Compass numbers did not cover the overall costs. Calgary also stated that with respect to the economic or cost benefit analysis, it was clear from the progression of evidence that the ATCO evidence was not prepared at the time the decisions were made. Calgary argued the ATCO evidence did not provide any support for the decision to use I-Tek and Singlepoint.

Calgary noted the evidence of its witness Mr. Stephens, that true outsourcing should result in a cost reduction, not a 20 percent cost increase. It argued that the costs of the CIS system must be included in the total cost. It stated that its evidence, based on information from comparable Canadian utilities, demonstrated that the costs for the customer information system were too high. Calgary also noted the evidence of Mr. Galuzzi that in his experience custom-developed CIS applications were launched lacking in functionality 99 percent of the time.

FIRM/Core

FIRM/Core argued that ATCO's proposed benchmarking process was subject to considerable subjectivity, prone to bias, and required ongoing regulatory oversight. FIRM/Core argued that Mr. Stephens's broad approach was preferable to the narrow unit cost approach offered by ATCO. FIRM/Core argued that the ATCO approach ignored the fact that service levels have not been established for AE or ATCO Gas. FIRM/Core argued that without service levels, it would be impossible to objectively examine the total customer accounting costs for the ATCO companies.

FIRM/Core noted that Mr. Stephens had concluded that AE's customer accounting costs were more than 200 percent greater than industry benchmarks, and that the cost of the CIS ownership was 200 to 300 percent of that of other Canadian utilities. It argued given that AGS had not adequately responded to information requests from Calgary, AGS should be required to provide a compliance refiling that reflects the Board's findings with respect to ATCO Electric and customers should be provided an opportunity to review and comment on a compliance filing.

FIRM/Core noted that services from unregulated affiliates to regulated utilities in the ATCO Group were close to \$50 million per year. It argued that customers deserve a definitive test of expenses of this magnitude. FIRM/Core argued this could only be achieved through a competitive tendering or bidding process. It stated that this did not imply that every service should be put out to tender every year, but a tendering process should be conducted initially and periodically thereafter.

FIRM/Core argued that the obvious conclusion was that if utilities have failed to market their CIS to outside users there was no justification to operate the CIS through an unregulated affiliate. This argument was with respect to the evidence of Mr. Galluzzi and ATCO's statement that it reserved the right to revisit the CIS royalty issue, as the royalties may be too high. It stated that the unregulated affiliate avoids cost disclosure and prevents the Board from determining if customers would be better off if the service were provided on the regulated cost of service basis.

ENMAX

ENMAX stated that both the Singlepoint and I-Tek MSAs with AE and ATCO Gas contain provisions that required AE and ATCO Gas to conduct an annual price review.

ENMAX noted that during the AE Regulated Rate Option hearing, ATCO testified that it had initiated the annual price review of Singlepoint charges under section 7.4 of the Singlepoint MSA in late summer, 2000, but that this review had not yet been completed.⁶⁰ The evidence before the Board in this hearing is that this price review has still not been completed.⁶¹

4.2.2 Board Findings

The Board has examined the I-Tek MSA in light of criteria related to the acquisition of goods and services from an unregulated affiliate by a utility, developed to be generally aligned with the views of various parties:

- Does the decision to acquire goods or services from the affiliate affect the utility's ability to operate safely and reliably?
- Is the affiliate the least cost alternative that meets the requirements of the utility?
- Was the purchase of goods or services by the utility at the lesser of FMV, or the cost it would take for the utility to provide similar goods or services itself?

The Board is of the view that it is the responsibility of the Applicants to demonstrate that the Board's criteria have been met, and that the Applicants risk disallowance if the Board is of the view that such demonstration has not been made convincingly. ATCO allowed that it was at risk of disallowance in the event that the Board did not find that ATCO's affiliate transactions were appropriate.

With respect to the prudence of the business decision to transfer the operations of CUIS to I-Tek, the Board must determine if this decision was reasonable in light of the circumstances at the time. The Board is of the view that there may be factors other than price that should be considered for this decision.

⁶⁰ AE 2001 RROT Transcript, pages 1009-1010. ENMAX also questioned ATCO regarding this price review in ENMAX-ATCO-11 in that proceeding.

⁶¹ Affiliate Transcript, pages 1049-1050.

The Board notes that ATCO argued that it could establish the reasonableness of the charges being paid by the regulated utilities to I-Tek by reference to a two-pronged test. First, there must be a demonstration that the cost of these services is either the same as or less than what it would cost to perform these services internally. Second, the ATCO Group must demonstrate that they are paying FMV for the services delivered by I-Tek (8T748).

The Board notes that ATCO argued that in establishing a separate IT company, it could improve its corporate governance over that function, improve the operations and efficiency of that function, and avoid certain difficulties that it had in operating its IT department within the regulated utilities.

The Board accepts that, prima facie, and without considering the effect of this decision on costs, there is evidence to support the view that the business decision to establish a separate IT company will not have a negative effect on the utilities' ability to operate reliably. However, the Board notes that the risk that this decision should eventually be found to be unwise will continue to rest with ATCO. Should this approach prove to be more expensive or less effective than ATCO has represented, such outcomes may be subject to further review, on a going forward basis.

The Board will now discuss its views with regards to the claim by ATCO that this restructuring is transferring risk from the utilities to I-Tek. The Board notes that the ATCO regulated utilities and I-Tek are not at arms length. Therefore it would not be surprising that I-Tek's owners would try to avoid I-Tek assuming substantial investment risk for any purchases it makes on behalf of the ATCO utilities. Further, it would not be surprising, if adverse outcomes occurred, that the owners would attempt, in some manner, to recover adverse outcomes through some form of revised pricing. It should be clear that the Board does not condone non-market based activity by the I-Tek owners which would unduly affect the risk assumption of I-Tek and effect a transfer of risk back to the regulated utilities.

With regards to the claim by ATCO that this restructuring is transferring risk from the utilities to I-Tek, the Board does not accept that there is necessarily a substantial amount of risk being transferred. In a true arms-length transaction, negotiations between the parties would, by their very nature, be more balanced. The Board also considers that the operational risk for I-Tek is not unlike the utility. Further, customers now face the risk of varying market prices. All in all, the Board is not convinced that customers are made better off in terms of future price risks for CIS operations.

The Board notes ATCO stated that it must demonstrate that the cost of these services is either the same as or less than what it would cost to perform these services internally. The Board is not at all satisfied that ATCO has provided reasonable evidence as to the expected cost impact of the establishment of I-Tek. ATCO has relied upon evidence which blends the cost impact of Singlepoint and I-Tek.

The Board notes that most of the functions of I-Tek were previously carried out by CUIS. On this basis, the Board would expect that information should be available to directly compare the pre and post transfer operations. The Board also notes that the analysis that was provided in BR.ATCO-32 is an analysis of one year's operation only.

The Board is of the view that an acceptable business analysis must be in keeping with the life of the assets in operation. In this instance, the Board considers that an acceptable business analysis would require an analysis of at least five years forecast operations. Further, the Board would expect the utility to provide evidence to compare operations before and after such a major reorganization. Not only has ATCO not done this voluntarily, but also it has maintained that such comparisons are not possible in this case.

The Board notes the testimony of Mr. Beckett for ATCO:⁶²

20 So it's almost impossible to do that
21 analysis that was being requested without addressing
22 the volume changes, the fact that there have been very
23 significant volume changes.

24 Now, to be frank with you, the absolute
25 worst time to propose this kind of outsourcing
26 arrangement is when your costs are increasing
1218

1 significantly because of volume changes, because it's
2 very difficult to demonstrate to anybody that customers
3 are receiving a benefit.

4 The converse is, though, the very best
5 time to do this kind of outsourcing is when things are
6 changing very significantly and utility management is
7 having difficulty in dealing with the rapid pace of
8 change in these particular areas.

9 So that was the issue that we were
10 facing and that's why we did the cost benefit analysis
11 based just on the most current data that we had because
12 that reflected something much closer to the reality
13 that was going to occur during the course of those
14 contracts compared to the situation in IT and customer
15 relationship management back in previous years.

The Board does not accept that it is the case that an analysis could not be undertaken for a series of years, taking such things as service volumes and operational changes into account, and the Board must draw an adverse inference from the fact that ATCO did not provide requested information that would be elementary and essential to any internal business analysis of the I-Tek reorganization.

The Board notes the evidence of ATCO, that with respect to its examination of the third party suppliers, “due diligence indicated that overall costs with EDS would increase beyond that which would be incurred if the computing services were to be retained and as a result, the alliance was terminated”. It was also noted that, “...the terms and conditions being offered by EDS were typical of what utilities could expect in the marketplace.”

As the evidence provided by ATCO with respect to pricing for the I-Tek MSAs were limited to an itemized review of unit prices, and because those unit prices were determined to be “in the market”, the Board is concerned that the agreement with I-Tek appears to be in the range of the dollar value of agreements previously rejected by ATCO with third party suppliers.

⁶² Transcript 1217

The Board notes that ATCO has provided evidence that costs of IT services have not increased vis-à-vis this transfer decision for the year 1999 only. However, the Board does not have further evidence that demonstrates how the costs have been affected by the formation of I-Tek and Singlepoint since ATCO implemented these changes at the same time as the new CIS system. The timing of these changes has resulted in ATCO stating that it cannot provide the requested financial comparisons. It is clear, however, that as a result of all of the changes the costs have increased. Also, this situation does highlight the weaknesses of market benchmarking compared with tendering. The Board does not have evidence with respect to market rates that would be charged by third parties under the same circumstances faced by I-Tek.

The Board notes the evidence of Calgary that it was reasonable to expect that a discount would be provided to a customer that chose to sole source its activities with one IT service company for an extended contract period. The Board notes that the I-Tek MSAs have an initial term of 5 years, and are renewable each 3 years thereafter. The Board is of the view that this provides for a very secure contract for the supplier, I-Tek. The Board is of the view that a tendering, or otherwise competitive process could lead to costs significantly different from the sum of the individual unit prices.

The Board considers there are various options available to arrive at approved pricing as follows:

1. The Board could initiate additional information requests to ATCO, thereby re-opening the hearing with the corresponding delays in finalizing these matters.
2. The Board could accept the ATCO submitted pricing.
3. The Board could accept the intervenor evidence calling for an overall 30% discount in customer accounting costs.
4. The Board could use its own judgment to determine the appropriate adjustments necessary.

The Board will now review the various options to determine the appropriate course of action for determining the final prices payable to I-Tek.

With respect to the first option of directing ATCO to respond to additional information requests, the Board did request ATCO to provide additional information through the IR process and through examination. However, ATCO was not able to provide the requested information to the satisfaction of the Board. The Board considers that it is likely that the same result would occur again. As discussed earlier in this section, the Board does not accept that ATCO could not have undertaken an analysis for a series of years, taking such things as service volumes and operational changes into account, and the Board must draw an adverse inference from the fact that ATCO did not provide requested information that would be elementary and essential to any internal business analysis of the I-Tek reorganization. The Board also considers the passage of time since the proceeding would have a detrimental effect on the quality of the information in question. In addition, there would be additional resources consumed by all parties and additional hearing costs that customers would bear for an unlikely improvement in the evidence available to the Board. Accordingly, the Board does not consider the option of asking additional information requests to be a viable option.

With respect to the option of simply accepting ATCO's pricing, the Board considers that there is adequate evidence to indicate that these prices are not sufficiently representative of market prices

and should be reduced. Accordingly, the Board does not consider this option to be a viable option.

With respect to the option of simply accepting the intervenors' recommended discount to the ATCO pricing, the Board considers that there is insufficient evidence to justify a reduction of that magnitude. Accordingly, the Board does not consider this option to be a viable option.

As a consequence of the three alternative options not being viable to determining the approved I-Tek pricing, the Board is left to the remaining available option of using its own judgment to determine the appropriate reduction to the ATCO submitted I-Tek pricing schedule to arrive at just and reasonable rates.

The Board does not have direct evidence as to the discounts that should arise from a third party service provider giving package prices versus individual prices, nor the discounts that would arise on the basis of the very secure contract that I-Tek has with the ATCO regulated utilities. However, the Board does have evidence from the Deloitte consulting report concerning the expected markup for billing service companies arising from marketing and sales costs, as well as an indication as to the expected reduction that would arise from package pricing versus item pricing, if I-Tek services were being procured from a third party.

The Board would expect discounts from ATCO I-Tek prices in the following range from an efficient third party service provider:

Table 13. Board Approved Discount - I-Tek FMV Pricing

Reason for Discount	Discount %
Discount due to reduced sales cost	2.5% - 7.5%
Discount due to package pricing vs. item pricing	0 - 5%
Total	2.5% - 12.5%
Board Approved Discount to I-Tek Prices	7.5%

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The Board is of the view that it is appropriate to reduce the rates payable to I-Tek by the mid-point value of this range. Accordingly, the Board directs ATCO, in its Compliance Filing, to reduce rates payable directly to I-Tek from the ATCO regulated utilities by the amount of 7.5% for all items. The Board has included the adjusted I-Tek charges on the following table, based on information obtained from the Application, however the Board directs ATCO, in the Compliance Filing, to identify and correct any inaccuracies.

Table 14. Adjusted I-Tek Charges (Per Board)

	2001 Per ATCO	2001 Per Board (\$ Thousands)	2002 Per ATCO	2002 Per Board
O&M				
AE:				
DT	4,989	4,614.8	5,319	4,920.1
TFO	2,265	2,095.1	2,581	2,387.4
RRO	0	0	0	0
AGS	5,744	5,313.2	5,814	5,377.9
APS	954	882.4	983	909.3
Total O&M	13,952	12,905.6	14,697	13,594.7
Difference Per Board		-1,046.40		-1,102.30
Capital				
AE:				
DT	1,199	1,109.1	1,307	1,209.0
TFO	578	534.6	640	592
Total Capital	1,777	1,643.7	1,947	1,801.0
Difference per Board		-133.30		-146.00
Total I-Tek Charges	15,729	14,549.3	16,644	15,395.7
Difference per Board		-1,179.70		-1,248.30

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With respect to the future operation of the I-Tek MSA, the Board has continued misgivings with respect to the operation of the pricing mechanisms within the agreement. The Board directs ATCO, prior to any future material engagements of consultants to undertake a price review applicable to I-Tek and the regulated Utilities, to file terms of reference applicable to the engagements. Following participation of the parties, the Board will make a preliminary determination as to the reasonableness of those terms of reference to assist in providing a complete and useful record for future applications.

5 ATCO SINGLEPOINT

5.1 ATCO Singlepoint Pricing & Master Services Agreements

In 1999, ATCO changed the manner in which customer care functions were performed by transferring these services to an affiliated company, Singlepoint. The functions assigned to Singlepoint included maintaining customer information, preparing and disseminating customer bills, processing customer payments, invoking collection procedures for accounts in arrears, responding to customer billing and service inquiries, and maintaining internal controls for each of these functions.

5.1.1 Positions of the Parties

ATCO

ATCO stated that the impetus for transferring these functions to Singlepoint came from the deregulation of the electric industry, and the steps taken by AE to prepare for deregulation. It stated that AE concluded that a centralized call centre operation should replace the field-based

approach that had been in place. It stated that this was due to the complexities of industry deregulation. It also stated that customers had come to expect more convenient hours of service.

At the same time, a new CIS was developed to support AE's billing requirements for the Regulated Rate Option and the load settlement requirements included in the *Electric Utilities Act* Regulations. AGPL and NUL were also in the process of reviewing how to incorporate the ongoing changes in the utility industries into the development of a CIS. It was determined that the consolidation of these services would be beneficial to the ATCO regulated utilities and its customers.

The ATCO regulated utilities continue to own the ATCO CIS software. ATCO stated that the software would be required by ATCO utilities as deregulation continued. ATCO stated that it was not possible to tender the operation of the software outside of the ATCO Group for two reasons:

- tendering the operation of the software would have impaired or eliminated the intellectual value inherent in the software; and
- it was determined that customer care service providers invest significant capital into integrating the operation of the software into their own internal operations.

ATCO stated that the outsourcing of these services to Singlepoint would provide a number of benefits to the utilities and the customers:

- development of a common business approach in customer service policies and procedures to maintaining customer satisfaction;
- centralization of these functions to obtain economies of scale and scope which would result in long-term savings to utility customers;
- enhanced levels of service, offered consistently through the ATCO utilities; and
- more opportunities for the utilities to focus on their core business.

To demonstrate that Singlepoint could deliver “like-for-like” services at competitive price, Singlepoint and AE contracted with Hagler Bailly and Deloitte Consulting to evaluate the Singlepoint agreement against the market value of the services provided. Singlepoint had also entered into an agreement with the ATCO regulated utilities to permit the use of the ATCO-CIS to provide services to third parties. Pursuant to this agreement, Singlepoint would pay a one time per customer royalty fee at the time a new Singlepoint client was converted onto the system. To evaluate the proper level of this royalty, ATCO commissioned two independent third-party studies.

ATCO stated that it must be very clear that the capital costs associated with the development of the customer information system by the regulated utilities is not at issue in these proceedings. It stated that this matter had been dealt with either in previous proceedings or is currently before the Board in other GRA proceedings. Therefore, it is not properly considered in the affiliate transaction hearing. ATCO stated that it was critically important in understanding the current level of CIS costs, that the new database is totally different from the old one. The new system employs a relational database versus the old hierarchical data base (14T1516). It stated that the old system was simply not able to respond to the new requirements mandated by deregulation, and that the new system consumes significantly more processing time. ATCO argued that while

certain parties may attempt such invalid comparisons, the Board must keep these underlying facts in mind when examining this issue.

ATCO stated that, as with I-Tek, the regulated utilities retained independent expert advice to determine whether or not the commercial arrangements entered into by the utilities with Singlepoint were commercially sensible, and whether the pricing for the services thereunder was within the range of FMV (8T787). Dr. Chwalowski of the PA Consulting Group was retained in order to provide assistance in arriving at these commercial arrangements and also to conduct a detailed benchmarking study to ensure that the pricing was pegged at FMV. ATCO stated that in addition to his initial report (Ex. 1, Vol. 3, Attachment 8.3-A), Dr. Chwalowski provided extensive Rebuttal Evidence (Ex. 53) wherein he critically analyzed the evidence presented by Mr. Stephens on behalf of Calgary. ATCO stated that he also identified the fundamental flaws and shortcomings in the approach used, which renders Mr. Stephens's report of little value. The ATCO Group argued that its Rebuttal Evidence (Ex. 53) also provided information on the formation of Singlepoint and the decision to outsource the customer information service function to Singlepoint (pages 8-11). ATCO stated that its evidence clearly demonstrated that the ATCO Group went to great pains to ensure the two-pronged test was clearly satisfied with respect to this transaction.

ATCO argued that the response to Information Request BR-ATCO.32, as supplemented, provided a detailed assessment of the economic advantages to contracting with Singlepoint versus performing the function internally (9T907-16; 10T943-4). It stated that in addition to the easily identifiable economic benefits associated with this decision, one must also factor into the consideration of whether this decision was in the best interest of customers, considering items similar to those discussed in the context of the I-Tek transaction. It stated that specifically, future risks associated with the costs associated with responsibility for personnel changes have been shifted to Singlepoint. These costs would have to be incurred to provide the contracted level of services. It argued that given the legislative direction that will reduce utility involvement in customer direct billing, etc., these were clearly prudent actions. In addition, ATCO argued, the ability to negotiate different agreements with employees, as well as the achievement of economies of scope and scale, would not have been achievable within the utilities (11T1133; 13T1321).

ATCO stated that the report prepared by Dr. Chwalowski and his detailed Rebuttal Evidence clearly demonstrated that his approach was reasonable and appropriate for arriving at a benchmarked value for the service levels and services provided to the ATCO Group regulated utilities by Singlepoint. It stated that Dr. Chwalowski and his company have significant expertise and experience in the benchmarking area and understood the parameters that must be respected in order to do a proper benchmarking study. Dr. Chwalowski emphasized the requirement to ensure comparability with respect to functionality, service levels and the services provided when conducting a proper benchmarking study (14T1462-6). ATCO argued that, while Dr. Chwalowski's study properly respected these requirements, the evidence presented by Mr. Stephens on behalf of Calgary did not even attempt to do so. It noted that Dr. Chwalowski indicated it was critical to ensure that the proper linkages between the prices/costs, service level, and services provided are made (14T1492). It stated that Dr. Chwalowski's study achieves this goal, which is totally ignored in Mr. Stephens's report.

ATCO noted that Dr. Chwalowski explained the "least square fit" mathematical method he used to ensure that a proper fit occurred and to see if a correlation between various quantities is

strong. It stated that Dr. Chwalowski's report was supportable on the basis of this rigorous analysis, whereas the report prepared by Mr. Stephens was little more than a small sample of randomly gathered data, with no controls to ensure comparability or application of consistent criteria. ATCO stated that, as specifically pointed out by Dr. Chwalowski, Mr. Stephens's report fails to examine unit costs and service levels; both are components critical to doing a proper benchmarking analysis (14T1513).

ATCO argued that based on the evidence presented, one should not be surprised that the conclusions reached by Mr. Stephens are totally unsupported and unreliable. ATCO stated that Mr. Stephens gathered random data from a variety of sources without any controls (17T1781-3). In his own words, ATCO stated that Mr. Stephens did his report at a "forest" level, while suggesting that Dr. Chwalowski was down at the "trees" or "leaves" level (17T1795). ATCO stated that this revelation was telling, as it indicated that Mr. Stephens did nothing more than a broad based assessment with no indication of comparability, unit pricing, service levels, nor services provided form the basis of a valid analysis. ATCO stated that, to put it in Mr. Stephens's terminology, he did not even examine whether or not the "forests" were comparable.

ATCO noted that Mr. Stephens candidly acknowledged that Dr. Chwalowski conducted a benchmarking study, whereas he did not do his assessment that way (17T1795). ATCO stated that, in fact, Mr. Stephens acknowledged that he has not done a benchmarking study himself and does not have the expertise to do such a study (17T1795-6). ATCO noted that, notwithstanding, Mr. Stephens acknowledged that in doing a proper benchmarking study you need to compare the service levels in the sample being used, safeguards need to be put in place to ensure that the data is collected on a consistent basis, a detailed understanding of the service levels included or excluded in the study must be present, and you need to understand the complexity of the bills being considered (17T1796-7). ATCO stated that Mr. Stephens did none of the above, and acknowledged that he did not even have the expertise to do it. He had not gotten any assistance in this regard.

ATCO noted a statement by Dr. Chwalowski that he was frustrated that Mr. Stephens was presenting information based on an extremely limited sample and only talking about costs without having any regard to service levels or unit prices. It noted that Dr. Chwalowski rejected the approach adopted by Mr. Stephens (14T1534).

ATCO noted that during the cross-examination of Mr. Stephens, he was presented with a simple schedule purporting to compare Singlepoint charges with those of Encompass (Ex. 094). It noted that Mr. Stephens readily stated that this Exhibit was not a valid comparison point for his sample, and that you needed to know the services that were being provided as part of doing a valid comparison (17T1794). ATCO agreed with this statement. ATCO stated that the problem for Mr. Stephens was that his report suffered from the same defects as he identified with this simple schedule. It also stated that his report did not provide a valid comparison to the Singlepoint charges to the ATCO Group utilities.

ATCO stated that in order to provide corroborative evidence of the reasonableness of the market prices being paid by the ATCO Group regulated utilities to Singlepoint, the ATCO Group also retained Mr. John Browne. Mr. Browne, then of Deloitte Consulting, was to provide his own independent analysis of the proposed pricing. It stated that while the approach adopted by Mr. Browne varied considerably from that used by Dr. Chwalowski, the important consideration is that it reached a similar conclusion, being that the price paid by the regulated utilities for the

various components of the services provided by ATCO Singlepoint are in the range of FMV. It noted that Mr. Browne's report relied upon inputs from a variety of sources which were then compared with the Deloitte data base to arrive at an assessment of the FMV of various components of the overall services provided.

ATCO stated that, as well, the ATCO Group utilities have relied upon Dr. Chwalowski's assessments in order to ensure that the pricing under the Singlepoint contracts remains at FMV (11T1097).

In conclusion, ATCO argued that it had “gone the extra mile” in getting not one, but two, independent expert assessments. This provided a comprehensive basis upon which the Board could conclude that the ATCO Singlepoint contract costs yield just and reasonable rates for the regulated utilities. As such, the contract costs could be approved for all of the ATCO Group regulated utilities, as filed. It argued that no credible evidence was presented which contradicted the ATCO Group position.

ATCO stated that, if the Board decided to go in the direction suggested by Mr. Kennedy, “then the deal is off.” ATCO submitted that its evidence that assessed whether the Singlepoint charges were reasonable was compelling and was not contradicted by other credible evidence. It stated that the two reports provided by ATCO should provide considerable comfort to the Board in reaching the conclusion that the Singlepoint charges were reasonable and reflects FMV.

ATCO stated that, in addition to the economic benefits described in ATCO.BR-32, the shifting of risks to Singlepoint and away from utilities, the achievement of economies of scope and scale, and the ability to negotiate different arrangements with employees would also be included. ATCO stated that this was proof positive that the transactions were in the best interests of ratepayers.

ATCO argued that the evidence of Mr. Stephens was lacking in validity, and demonstrated nothing. ATCO also noted the Calgary argument that the CIS costs were too high, and argued that these issues had either been addressed in previous proceedings or were currently before the Board in other proceedings.

ATCO also took issue with the proposal by Calgary to develop benchmarks through a collaborative process. It stated that this was not acceptable to ATCO. It stated that the onus was on the utilities to justify their costs and the manner in which that onus is met lies with the utilities and not with other parties.

Calgary

Calgary noted that ATCO had utilized benchmark analyses from Hagler Bailly⁶³ and Deloitte Consulting⁶⁴ to determine the FMV of Singlepoint services. Calgary stated that it had used a Stephens Consulting analysis⁶⁵ of similar Billing and Call Centre offerings from two comparable Canadian utilities, Enbridge Consumers Gas and BC Gas, supported by CIS offerings used at Union Gas and Centra Gas Manitoba to determine the FMV of Singlepoint services.

⁶³ Application, Attachment 8.3-A

⁶⁴ Application, Attachment 8.3-B

⁶⁵ Exhibit 301, Evidence of J. Stephens

Generally, Calgary disagreed that the reports dated March 1999 from Hagler Bailly and August 1999 from Deloitte Consulting support that the Singlepoint rates are at FMV. It noted that although a PA Consulting report has been requested for 2001 rates, the Singlepoint Agreement provided projected rates for five years including the 2001 and 2002 rates upon which the GRA requests are based.

Calgary was of the opinion that the overall methodology used by Hagler Bailly was acceptable. However, it argued the existence of the following major issues with the Hagler Bailly database and methodology:

- The conversion of U.S. prices to Canadian prices at currency exchange rates⁶⁶ is unreasonable. ATCO witness Dr. Chwalowski identified⁶⁷ the issue of labour parity pricing indicating, “Canadian manufacturing workers earn 91 percent of their U.S. counterparts. On the other hand, the overhead costs in Canada may be higher than in the U.S”. ATCO witness Mr. Galluzzi, however, reported that in a procurement process, he found that CIS software cost was identical at \$US 100,000 to \$CA 100,000⁶⁸ – not the expected \$CA 150,000. So overall, converting U.S. dollars to Canadian dollars at approximately 1.5, could introduce an error factor of more than 20 percent.
- The market price database used to establish FMV billing and call center pricing was based on an RFP process⁶⁹ associated with an East Coast (probably U.S. based) utility. The prices would likely have been different if the RFP had been based on a Western Canada requirement. The methodology requires input from a formal procurement process and for future benchmarks; the results from a relevant and recent RFP may not be available.
- Hagler Bailly did not provide the final Singlepoint pricing schedule but instead provided Singlepoint with benchmark results and recommended⁷⁰ “prices should include operating costs including NEW CIS costs, software capitalization component and profits to meet regulatory acceptance test.” So in fact, Hagler Bailly did not provide FMV pricing – Singlepoint set the pricing while not owning and amortizing the CIS software and passing through the CIS mainframe and application maintenance operating costs.

Calgary’s major issues with the Deloitte Consulting database and methodology were:

- The assessment did not include⁷¹ the costs of mainframe processing. As outlined in the Hagler Bailly report⁷², the costs of owning and operating the CIS solution are normally included in the billing service rates. As discussed later, the cost of owning and operating the ATCO-CIS solution are the major reasons Singlepoint billing service costs are too high. Because the Deloitte Consulting report included

⁶⁶ Application, Attachment 8.3-A, page 23 of 113

⁶⁷ Application, Attachment 8.3-A, page 56 of 113

⁶⁸ Transcript 7, page 655, lines 5 to 21

⁶⁹ Transcript 14, page 1460, line 19 to page 1461, line 9

⁷⁰ ATCO 2000 GAA, Attachment 8.3-A, page 60 of 113

⁷¹ Transcript 7, page 686, lines 13-20

⁷² ATCO 2000 GAA, Attachment 8.3-A, page 23 of 113

the CIS development amortization plus cost of capital but did not consider the operating costs, Calgary does not accept that the report can compare the Singlepoint billing rates to those from other vendors in order to confirm billing FMV.

- For the reasons discussed above, the conversion of U.S. prices to Canadian prices at currency exchange rates⁷³ is unreasonable.

Specifically, Calgary agreed or disagreed with the service rates as outlined in the Singlepoint Agreements⁷⁴ as follows:

- Calgary disagreed with the rates for billing services. Neither the Hagler Bailly nor Deloitte Consulting reports directly support these service rates. Hagler Bailly directed Singlepoint to consider the owning and operating costs of the new CIS solution in setting prices and Deloitte Consulting did not assess the impact of the new CIS operating costs.
 - The Calgary analysis of the impact of considering the payment processing and CIS owning and operating costs (implementation costs were not considered) on the average FMV per bill from the Hagler Bailly report shows that for ATCO Gas the Singlepoint billing rate is about \$0.20 per bill too high and for AE is about \$1.00 per bill too high.
 - Calgary has concluded the major reason these Singlepoint billing service rates are too high is that the cost to build and operate the ATCO-CIS solution is too high. These conclusions are supported in the 2000 Stephens report⁷⁵ where it stated: “Chart 5 shows AE’s CIS cost of ownership per customer per year is from 200% to 300% of other Canadian utilities”. Also, in the AGS GRA Calgary argued⁷⁶ that the AGS “CIS solution cost of ownership (CIS O&M plus amortization plus cost of capital plus taxes) is \$5 – \$9 per customer higher than the other Canadian gas utilities (27% – 64% higher than other Canadian gas utilities).
- Calgary agreed with the service rates for customer assistance centre & credit and collection services.
- Calgary agreed with the service rates for remittance and payment processing.
- Calgary agreed with the rates for time and material rates.
- Calgary did not agree the mainframe system fees should be pass-through expenses. If benchmarks are to be used to determine FMV, most vendors would include not only the CIS operating costs represented by the mainframe processing

⁷³ ATCO 2000 GAA, Attachment 8.3-B, page 5 of 59, line 27 to page 6 of 59, line 2

⁷⁴ ATCO 2000 GAA, Attachment 8.3-C for AG and 8.3-D for AE, Schedule D - Pricing

⁷⁵ Calgary Evidence, page 46 of 54

⁷⁶ Calgary Final Argument, AGS 2001/2002 GRA,

and application maintenance charges, but also the costs associated with developing and enhancing or owning the CIS application.

- Calgary agreed with the telephone answering service and system training service rates.

Calgary submitted that the customer accounting cost should be in the range of \$42 to \$50 per customer per year. It noted that there had been a 21 percent jump for ATCO Gas and ATCO Pipelines between 1998 and 1999. Calgary submitted that the Board should reduce the charges by this increase, plus another 10 percent decrease that ATCO could have obtained via a third party outsourcing, for a total decrease of approximately 30 percent.

FIRM/Core

FIRM/Core stated that the Singlepoint agreements were comprehensive in their detail and were modeled off existing industry agreements. FIRM/Core stated that its primary concern with these agreements was that at the end of their primary term, they should definitely not be extended unless there is clear evidence that they are truly providing service at rates that are “in the market.” In FIRM/Core’s view, the only uncontested proof of this status will be a demonstration that significant contracts have been achieved with arm's length third parties. FIRM/Core noted that, at the present time the only evidence of such contracts is the arrangement between Singlepoint and the City of Red Deer.

FIRM/Core stated that it was noteworthy that one of ATCO's own expert witnesses, Mr. Galuzzi, expressed doubt that ATCO Singlepoint would be able to achieve success in the arms length third party markets. [T 660 L4] FIRM/Core argued that if independent commercial contracts could not be achieved, then the question must be asked by the Board as to whether or not the establishment of these affiliated non-regulated companies is simply a mechanism to avoid regulation. It stated that either there must be proof the services offered by these companies are “in the market” through a bidding and tendering process. The Board must otherwise require production of sufficient information from these unregulated affiliates to properly test the reasonableness of the rates they are charging.

FIRM/Core argued that while the mechanisms specified in the contracts for regular pricing and service reviews are commendable, the difficulties inherent in ensuring that any benchmarking exercise is truly an “apples to apples” comparison became obvious through the testimony of ATCO's own witnesses. It stated that an example of this was the testimony of Mr. Browne where he responded that he did not know, in response to questions with respect to whether certain specific costs were or were not included in some of his study cost data bases. [T692 L14] FIRM/Core stated that it was also inherent in a benchmarking exercise that the numbers being compared from other organizations will necessarily be historical in nature. Given the rapidly changing computer technological environment that has traditionally continued to generate productivity advances, FIRM/Core argued that this provided another reason to favor a fair bid and tendering process, which would be on a prospective basis.

FIRM/Core noted that the services from nonregulated affiliates to the regulated utilities were close to \$50 million per year. FIRM/Core stated that customers deserve a definitive test of expenses of this magnitude. FIRM/Core submitted that such a test could only be achieved through a competitive tendering or bidding process. FIRM/Core stated that, although this did not

mean that every service should be put out to tender every year, a tendering process should be conducted at least initially and periodically thereafter.

ENMAX

ENMAX stated that both the Singlepoint and I-Tek MSAs with AE and ATCO Gas contain provisions that required AE and ATCO Gas to conduct an annual price review.

ENMAX noted that during the AE Regulated Rate Option hearing, ATCO testified that it had initiated the annual price review of Singlepoint charges under section 7.4 of the Singlepoint MSA in late summer, 2000, but that this review had not yet been completed.⁷⁷ The evidence before the Board in this hearing is that this price review has still not been completed.⁷⁸ ENMAX requested the Board to order AE to complete the review of Singlepoint prices, and file the price review with the Board.

5.1.2 Board Findings

The Board has examined the Singlepoint MSA in light of criteria related to the acquisition of goods and services from an unregulated affiliate by a utility, developed to be generally aligned with the views of various parties:

- Does the decision to acquire goods or services from the affiliate affect the utility's ability to operate safely and reliably?
- Is the affiliate the least cost alternative that meets the requirements of the utility?
- Was the purchase of goods or services by the utility at the lesser of FMV, or the amount it would cost for the utility to provide similar goods or services itself?

With respect to ATCO's decision to amalgamate all customer relations' services in Singlepoint, the Board does not consider that this action, on its own, has raised any questions with respect to the reliability or quality of customer care and service. The Board notes ATCO's evidence that it has increased the level of customer service in regards to hours of operation, for example. However, the Board considers that this evidence is not a complete indication of the overall change in all aspects of customer service. Therefore, the Board will concentrate on the financial aspects of this decision as it affects customers.

ATCO has provided its economic justification for the I-Tek and Singlepoint agreements in its response to BR.ATCO-32 (supplemented). As also noted in the I-Tek section of this Decision, the Board has significant reservations with respect to this analysis. The Board has found that the degree of analysis contained in this information response is not in keeping with the large dollar amount of the transactions in question.

While the Board accepts that BR.ATCO-32 is of some value in demonstrating that customers may be better off following this reorganization of ATCO utility customer relations' services, the Board does not find that this analysis of only the year 1999 is by any means exhaustive or conclusive. At a minimum, the Board would expect that a decision of this magnitude would look to more than one year of operations, would evaluate opposing alternatives via a comparison of

⁷⁷ AE 2001 RROT Transcript, pages 1009-1010. ENMAX also questioned ATCO regarding this price review in ENMAX-ATCO-11 in that proceeding.

⁷⁸ Affiliate Transcript, pages 1049-1050.

the net present value of the costs of each alternative, and look to ensure that service levels and other planning parameters are common to all evaluated alternatives.

The ATCO analysis presented in BR.ATCO-32 compares one year of utility operations with the forecast Singlepoint and I-Tek payments. The Board notes that ATCO had ample opportunity to add to this response, and was in fact requested to do so by the Board. The Board can only draw an adverse inference from this lack of further information. The Board will further consider the question of whether or not the Singlepoint affiliate relationship is in the best interests of customers following an examination of the available evidence on market pricing.

The Board notes the concerns of FIRM/Core that a demonstration that this transaction is the least cost transaction for consumers requires the discipline that arises from a full tendering process. However, the Board must weigh the certainty with respect to pricing that would arise from tendering with the practical effects that tendering could have on this aspect of utility operations. The Board does recognize that tendering for customer relations services could place Singlepoint at risk, depending on its competitiveness and other business. If Singlepoint had been subject to this risk at the time of commencement of the Singlepoint agreements, the Board expects that the structure and substance of this affiliate arrangement might have been substantially different.

However, the Board also notes that, as a point of comparison, Singlepoint pricing has been benchmarked against organizations that did face the risk of having to win contracts in tendered competition, and that may have faced the risk of developing a CIS outside of regulated service. The Board believes that this is a significant factor in the determination of the FMV that should have been payable from the ATCO regulated utilities to Singlepoint.

The Board does not believe that it is practical, at this time, to tender customer relations services for all ATCO regulated utilities. The Board notes the evidence of the witness for ATCO, Mr. Browne, that “it was recognized that the market for utility CRM services is new and evolving”.⁷⁹ The Board is concerned that it is premature to expect that a tendering process for all of the customer relations’ services of the ATCO regulated utilities would result in sufficient price and service quality competition to serve the interests of customers. Therefore, the Board will accept that a price benchmarking methodology can be used to determine FMV for the services at this time.

However, the emerging nature of the market for utility customer relations outsourcing also creates difficulties for the Board in determining what it would find to be an authoritative FMV. As has been mentioned by the Applicants, the onus of proof is on the Applicants to make the case that the pricing arrangements and other contract terms are fair, and in the interests of customers.

The Board considers there are various options available to arrive at approved pricing as follows:

1. The Board could initiate additional information requests to ATCO, thereby re-opening the hearing with the corresponding delays in finalizing these matters.
2. The Board could accept the ATCO submitted pricing.

⁷⁹ Assessment of ASL Pricing for Customer Relationship Management Services, Deloitte Consulting, August 13, 1999, page 4

3. The Board could accept the intervenor evidence calling for an overall 30% discount in customer accounting costs.
4. The Board could use its own judgment to determine the appropriate adjustments necessary.

The Board will now review the various options to determine the appropriate course of action for determining the final prices payable to Singlepoint.

With respect to the first option of directing ATCO to respond to additional information requests, the Board did request ATCO to provide additional information through the IR process and through examination. However, ATCO was not able to provide the requested information to the satisfaction of the Board. The Board considers that it is likely that the same result would occur again. As discussed earlier in this section, the Board does not accept that ATCO could not have undertaken an analysis for a series of years, taking such things as service volumes and operational changes into account, and the Board must draw an adverse inference from the fact that ATCO did not provide requested information that would be elementary and essential to any internal business analysis of the Singlepoint reorganization. The Board also considers the passage of time since the proceeding would have a detrimental effect on the quality of the information in question. In addition, there would be additional resources consumed by all parties and additional hearing costs that customers would bear for an unlikely improvement in the evidence available to the Board. Accordingly, the Board does not consider the option of asking additional information requests to be a viable option.

With respect to the option of simply accepting ATCO's pricing, the Board considers that there is adequate evidence to indicate that these prices are not sufficiently representative of market prices and should be reduced. Accordingly, the Board does not consider this option to be a viable option.

With respect to the option of simply accepting the intervenors' recommended discount to the ATCO pricing, the Board considers that there is insufficient evidence to justify a reduction of that magnitude. Accordingly, the Board does not consider this option to be a viable option.

As a consequence of the three alternative options not being viable to determining the approved Singlepoint pricing, the Board is left to the remaining available option of using its own judgment to determine the appropriate reduction to the ATCO submitted Singlepoint pricing schedule to arrive at just and reasonable rates.

ATCO has provided two separate studies regarding FMV for services provided by Singlepoint. Mr. Chwalowski of PHB Hagler Bailly (Hagler Bailly report) undertook the first study. Mr. Browne of Deloitte consulting (Deloitte report) undertook the second study. Mr. Stephens, representing Calgary, also provided evidence.

The Hagler Bailly report was provided for development of market prices for billing services (billing cycle and call centre) based on vendor offerings of such services. These market prices were also compared with the costs for AE, AGS and AGN. The applicable market price range for Singlepoint services was defined as prices falling in the second lowest quartile of the study sample. Data from 10 vendors, each offering billing and call centre services, was used to derive market price ranges.

The Hagler Bailly report did not include, in utility costs for comparison, any costs associated with the new CIS, or amortized capital costs associated with billing cycle and call centre. With regards to the call centre, the utility costs used for comparison in the report did not include either building rents or telephone equipment costs. Information for the report was focused on the 1997 data, prior to the changeover to Singlepoint. This information was compared with a Hagler Bailly benchmark study of North American utilities, and other companies in the customer service area. To estimate market prices, 1998 vendor, utility or utility subsidiary prices were used, where these entities offered outsourced billing services. Generally, the Hagler Bailly report found that the AE costs were above the other prices in its benchmark study, while the AGS and AGN costs were below.

In the Hagler Bailly study, billing market prices were based on prices from seven vendors, one utility, and two unregulated subsidiaries. Call centre market prices were based on prices from eight vendors, one utility, and one utility subsidiary. Again, FMV was decided based on the second lowest quartile of available prices.

The Hagler Bailly study again noted that utility costs do not include costs associated with the new CIS or amortized capital costs associated with the billing cycle and call centre. The Hagler Bailly study stated that once these two cost components were included with utility costs, the actual utility billing costs would be properly represented. With regards to the prices from outsourcing vendors, the Hagler Bailly study noted that many vendors assumed the most optimistic (i.e., least costly) scenario. The Hagler Bailly study also noted that tender prices reflect delivery of a restricted range of services. FMV for billing was found to be \$2.24 to \$3.31 per bill. FMV for call centre services was found to be \$40.25 to \$46.38 per seat-hour.

The Hagler Bailly study noted that building rents and telephone equipment costs were not included in utility costs.

The Hagler Bailly study recommended that Singlepoint charge no more than FMV for billing services as defined in the report. The Hagler Bailly study also recommended that prices include operating costs, including new CIS costs, software capitalization, and profits to meet regulatory acceptance tests.

The Deloitte report was commissioned to assess the prices charged by Singlepoint. The report evaluated the pricing for billing, customer assistance center, credit centre, and payment processing segments of the contract between AGS and Singlepoint. The report focused on prices from 2002. The reason given for this was that this was the first year in which the new CIS was fully operational, and it was the first year in which there were no transition fees from the old CIS to the new CIS. AGS provided forecast unit volumes, extended from 1998 volumes using a 2% predicted annual growth factor.

The Deloitte report first evaluated the Singlepoint prices by comparing them against a utility cost database created by Deloitte Consulting. This database contained performance metrics for billing and customer assistance center services, but did not contain collections or payment processing costs. A markup of 10% to 15% was added to these costs to approximate the operating margin of customer relations management outsource providers. Deloitte Consulting also conducted a market survey targeting Canadian and U.S. utilities and customer relations' management outsourcing providers. Finally, the Singlepoint prices were also evaluated against a pricing survey undertaken by Atlanta Gas and Light in November 1998.

In comparing outsource provider prices to Singlepoint prices, Deloitte Consulting noted that normally the price of the CIS would be incurred by the outsource provider. To adjust for this, an amount of \$6.5 million was used as a proxy for this cost on an annual basis, based on the amortization of \$38 million in CIS development costs over a period of 10 years.

The Deloitte utility cost database examined nine U.S. utilities, as well as TransAlta Corporation for cost comparison purposes. The Deloitte market survey received responses from five Canadian utilities, four U.S. utilities, and one U.S. outsource provider.

The comparison with the Deloitte utility cost database noted that, even before considering the ATCO-CIS development costs, the Singlepoint contract price compared unfavorably with the other utility costs, being more than 10% higher than average utility costs plus markup. After considering all costs, but not service levels, the report found that the overall price per customer for Singlepoint was approximately 7% higher than utility costs plus markup. The report considered that this was in the range of FMV. The report also noted that 7 of the 10 respondents to the study were planning to replace their core CIS over the next two years.

In comparison with the market survey, the Deloitte report was found that Singlepoint billing prices were approximately 5% higher than the survey average. The Deloitte report noted that this was prior to consideration of ATCO-CIS development costs. The report found that the overall cost per customer, including the consideration for the ATCO-CIS development costs, were 43.2% higher than the market survey average. The Deloitte report noted that there were limited results from the survey. In particular, only one firm responded with customer assistance center and credit services information. With respect to the Atlanta Gas and Light report, it was noted that prices from Singlepoint fell within the range determined in that report. However, Deloitte was forced to assume that the service volumes of companies in that report were the same as Singlepoint in order to determine per customer prices.

In reaching its conclusions, the Deloitte report focused on the overall price per customer for customer care and accounting services. The Deloitte report found that the Singlepoint price per customer was comparable to its utility database price per customer, after considering the costs of the ATCO-CIS and including an amount of \$1.18 per customer for payment processing in its database results. The Deloitte report found that Singlepoint prices were, in total, 8.63% higher than the average utility database price per customer. The study noted that the Singlepoint prices compared unfavorably to its market survey; however, less weight was placed on the overall results of that survey because of the low number of respondents. Limited reliance was also placed on the Atlanta Gas and Light report.

The summary of findings from the Stephens report for Calgary is as follows:

- AE's costs for Singlepoint, I-Tek, and CIS amortization and cost of capital are more than 200% of FMV.
- AE's customer accounting costs are more than 200% of industry benchmarks, consistent with the Hagler Bailly and Deloitte Consulting reports.
- AE's CIS cost of ownership per customer per year is 200% to 300% of other Canadian utilities.

- AE's billing service, payment processing, credit service, and call centre service costs have increased 30% between 1998 and 1999, the years before and after the Singlepoint and I-Tek agreements became effective.
- Customer care charges that ATCO proposed to be charged to utility customers are not competitive.

In conclusion, the Stephens report recommended that the Board should not allow the Applicants to recover more than FMV for the customer accounting services, including CIS amortization plus cost of capital. The Stephens report recommended that FMV was in the range of \$40 to \$50 per customer per year.

Having reviewed the available evidence regarding pricing and FMV for billing and customer care services, the Board considers that the Deloitte report provides a useful basis for the Board to begin its determinations. The Board notes that the Deloitte report specifically considered the effects of the ATCO CIS costs on charges per customer per year. Further, the Deloitte report considered costs for 2002, following the changeover to Singlepoint. With respect to Calgary's arguments concerning the costs of the new CIS, the Board agrees with ATCO that the capital costs of this system have been reviewed and approved in prior GRAs.

The Board has previously noted its concern that FMV in the Deloitte and Hagler Bailly reports compares the profit margins that accrue to non-regulated entities facing competition with proposed rates for Singlepoint, which does not face that risk at this time with regards to the ATCO regulated utility operations and which uses a CIS developed and retained under regulated service. The markup associated with the CIS risk is specified as between 10% and 15% in the Deloitte report, including an amount for sales and marketing costs. Additionally, the Deloitte report has concluded that an amount above this premium is still within FMV range for these services. The Board is concerned that ATCO would propose to establish rates for Singlepoint above those that are suggested by the methodology adopted by its own consultant.

The Board is concerned that the Deloitte report does not take into account the secure contractual relationship between the ATCO regulated utilities and Singlepoint. The Deloitte report examines the rates expected from a third party service provider, on an item-by-item basis. The Board is of the view that there would be two consequences of a third party service provider being offered such a secure contract, as has been signed with Singlepoint. First, the Board would expect that there would be a discount from a provider that would provide all customer care services, compared with individual service prices; and second, the Board would expect that sales and marketing costs would be reduced, and some of these savings passed to the customer (the utilities).

Considering the above items, the Board notes that the Deloitte report shows that the Singlepoint rates are 8.6% above the average of the utility cost database rates, including markup. Further, the Board notes that the Deloitte report provides for a markup of between 2.5% and 7.5%⁸⁰ as an appropriate reflection of the cost of sales and marketing, and any possible dilution of sales margins due to company cost growth. The Board estimates that the effect of requesting package pricing versus item pricing would be in the range of 0 – 5%. The Board is of the view these amounts are likely in the minimum range of what a third party service provider would discount

⁸⁰ Markup calculated based on recommended 10% to 15% total markup less a markup calculated based on the recommended margin of 7%. The 7% margin equals a (7%/93%) or 7.5% markup.

its service prices compared with the proposed Singlepoint rates in order to win a contract with terms similar to the Singlepoint agreement.

In summary the Board would expect discounts from Singlepoint prices in the following range from an efficient third party service provider:

Table 15. Board Approved Discount - Singlepoint FMV Pricing

Reason for Discount	Discount (%)
Percentage above database average	8.6
Discount due to reduced sales cost	2.5 - 7.5
Discount due to package pricing vs. item pricing	0 – 5
Total	11.1 - 21.1
Board Approved Singlepoint Discount	11.1%

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However, the Board also notes the evidence of the Deloitte report that certain of the companies under study were in the process of upgrading their CIS. The Board does note evidence provided by interveners that, generally, new CIS are not as costly as ATCO's. Due to this evidence the Board is of the view that it is reasonable to select from the lower end of this range of discounts. Therefore, the Board directs ATCO, in its Compliance Filing, to reduce the rates payable to Singlepoint by 11.1% for rate-setting purposes for the ATCO regulated utilities. The Board has included the adjusted Singlepoint charges in the following table based on information obtained from the Application. However the Board directs ATCO, in the Compliance Filing, to identify and correct any inaccuracies in the adjusted Singlepoint charges.

Table 16. Adjusted Singlepoint Charges by Utility (Per Board)

	2001 Per ATCO	2001 Per Board (\$ Thousands)	2002 Per ATCO	2002 Per Board
O & M				
AE:				
DT	9,844	8,751.3	9,118	8,105.9
TFO	0	0	0	0
RRO	3,516	3,125.7	3,501	3,112.4
AGS	17,625	15,668.6	18,096	16,087.3
APS	0	0	0	0
Total O&M	30,985	27,545.6	30,715	27,305.6
Difference (Per Board)		-3,439		-3,409
Capital				
AE:				
DT	0	0	0	0
TFO	0	0	0	0
Total Capital	0	0	0	0
Difference (Per Board)	0	0	0	0
Total Singlepoint Charges	30,985	27,545.6	30,715	27,305.6
Difference (Per Board)		-3,439		-3,409

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With respect to the future operation of the Singlepoint MSA, the Board has continued misgivings with respect to the operation of the pricing mechanisms within the agreement. The Board directs ATCO, prior to any future material engagements as they relate to the regulated utilities, to file terms of reference applicable to any consultants engaged to undertake a price review applicable to Singlepoint. Following input from parties, the Board will make a preliminary determination as to the reasonableness of those terms of reference to assist in providing a complete and useful record for future applications.

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5.2 ATCO Singlepoint Royalty Arrangement

5.2.1 Positions of the Parties

ATCO

ATCO noted that the regulated utilities continue to own the CIS developed to serve their needs. This system has been licensed to ATCO Singlepoint via a commercial agreement between the regulated utilities and ATCO Singlepoint (Ex. 1, Vol. 3, Attachment 8.3-G). As part of this Agreement, Singlepoint would pay a royalty to the regulated utilities if it were able to successfully market the CIS system to third parties. ATCO stated that, in this regard, it must be remembered that ATCO Singlepoint is assuming 100% of the risks associated with such third party ventures, as well as 100% of the additional capital costs required to modify the CIS system in order to enable it to deliver services to such third parties. ATCO stated that there was absolutely no downside to the regulated utilities associated with Singlepoint pursuing any market opportunities, which may be available. ATCO stated that it was of note that this royalty fee has been paid to the utilities with respect to the only transaction entered into by Singlepoint to date, being the agreement with the City of Red Deer. ATCO submitted that its royalty proposal goes beyond the test necessary to ensure that there is no harm to customers, to the point of demonstrating that customers are receiving a benefit (10T954).

ATCO stated that, when attempting to arrive at what was considered to be a reasonable proposal for this royalty fee, the ATCO Group went the “extra mile” by obtaining two independent industry expert opinions on this matter by Messrs. Galluzzi and Dilley, and then choosing the higher of the two. ATCO stated that, this may have been overly optimistic, particularly given the views expressed by Mr. Galluzzi during his appearance. ATCO noted that Calgary did not challenge the credentials of Mr. Galluzzi, and that Calgary wanted to make use of his expertise for matters beyond the scope of his appearance. ATCO stated that this was consistent with the favourable references to Mr. Galluzzi contained in the ATCO Gas (South) GRA Hearing by Calgary (see Rolling Record: ATCO Gas (South) GRA-10T1741-3 and City of Calgary Reply Argument, page 18) regarding positions they were advocating in that proceeding.

ATCO stated that Mr. Galluzzi was clearly knowledgeable about matters related to the ability of an entity, particularly a regulated entity, to successfully take a CIS product into the market. As stated by Mr. Galluzzi, the market is littered with companies that have tried and failed the same sort of outsourcing scenario (7T627-8). ATCO stated that Mr. Galluzzi was also very clear that regardless of the amount of money which was spent to construct the CIS system, this had nothing to do with what one could charge in the marketplace (7T660). His evidence was that the amount spent does not dictate the license fee, as you can only charge what is competitive and what the market will bear (7T661). Mr. Galluzzi indicated that no utility has successfully developed a system and then taken it to the marketplace. He stated that all of the companies that have tried

such an effort have been unsuccessful (7T658). Mr. Galluzzi indicated that simply because a CIS solution satisfies the utility owners' requirements does not necessarily mean that it would be successful in the market; he would be surprised if the ATCO Group situation is any different (7T621-3).

ATCO stated that Mr. Dilley provided evidence to support his views on the maximum prices, which could typically be obtained in the marketplace for the delivery of CIS services. Mr. Dilley stated that the most the utility could look for in such an arrangement, where they were not taking any risk, would be the 50% number he has used in his assessment (15T1571).

ATCO stated that it should be remembered that the ATCO Group has taken the higher of the two numbers recommended, and that by Mr. Dilley's own acknowledgement, this is the maximum number that he would recommend. In retrospect, the ATCO Group argued that it might have been overly aggressive in this area. ATCO noted the evidence of Mr. Galluzzi, that if a party is serious about such a venture; it is not going to work if you pay money out. Mr. Galluzzi stated that you have to reinvest your earnings into your product and research and development (7T659). In this regard, ATCO was prepared to have the applied-for royalty arrangement approved for the purpose of these proceedings. However, ATCO stated that, if the market realities confirm the views expressed by Mr. Galluzzi, the ATCO Group reserved the right to revisit this matter, as clearly there would be no "spoils" to divide between any parties if Mr. Galluzzi's assessment was correct.

Calgary

Calgary noted that the Deloitte Consulting Report indicated⁸¹ that normally CIS development costs would be incurred by the outsource provider, and that most comparison databases contain these development costs. Calgary also noted that the Hagler Bailly Report indicated⁸² that prices should include operating costs including NEW CIS costs and its software capitalization component.

Calgary quoted from the Stephens 2001 Report, which stated:⁸³

The fact that the CIS software asset is in the regulated utility, the computing is with the non-regulated I-Tek division, and the functional billing and call center services are with the non-regulated Singlepoint affiliate makes the determination of how to fix the problem (costs above FMV) very difficult.

Calgary argued that, since the outsourcer generally owns the CIS software, Calgary would recommend that the ATCO Singlepoint Royalty arrangement be disallowed and the undepreciated capital be transferred from AE and AG to Singlepoint. Calgary argued that this would eliminate any issues around a royalty, and also allow future FMV determinations that are more straightforward.

In reply argument, Calgary noted that Mr. Galluzzi's report suggested that commercially available CIS software for utility in the range of 0.75 to 1.5 million customers would be about \$3 per customer. On this basis, it noted that ATCO Gas's cost for a packaged application would be

⁸¹ Application, Attachment 8.3-B, page 10 of 59, lines 4-5, and page 21 of 59, line 20

⁸² Application, Attachment 8.3-A, page 60 of 113

⁸³ Calgary Evidence in AGS 2001/2002 GRA, Stephens 2001 Report, page 26 of 32

about \$2.4 million, while the custom CIS costs almost ten times as much at \$23 million. It argued that this evidence, and the details of the royalty arrangement with Singlepoint, implied that the new CIS cost too much to build.

5.2.2 Board Findings

The Board has reviewed the evidence provided with respect to the existence and quantum of a royalty for the use of the ATCO CIS by Singlepoint.

The Board notes the comments of ATCO that all risks regarding third party contracts lie with Singlepoint. The Board does not find it reasonable to characterize customers as being outside of any risk for such transactions when customers have paid toward, and will continue to pay toward, the entire CIS. The incremental costs payable by Singlepoint under its agreement with the ATCO regulated utilities can be expected to be relatively trivial compared with the CIS development costs. Therefore, the Board is convinced that Singlepoint should pay a royalty for the use of the ATCO CIS for third parties.

The Board notes the argument of Calgary that all CIS development costs should be allocated to Singlepoint. While it understands the rationale for such an argument, the Board does not see that this provides a practical solution to the particular problems of the operation of the ATCO CIS. The information system is necessary for the continued operation of the utility, and even if it were transferred to another entity, the Board would expect the Applicants to seek to recover their costs of developing the system.

With respect to the quantum of the royalty payment, the Board has substantial reservations about the use of a one-time payment schedule. While the Board finds that there is little evidence to draw on as to the ultimate success of the Singlepoint model in securing third party clients, the Board will monitor this situation carefully and will review this royalty arrangement again at future GRAs for the ATCO regulated utilities. For the test years in question, the Board approves the royalty fee proposed by the Applicants for GRA purposes.

Finally, the Board has a concern arising from ATCO's response to information request CG.ATCO-64(b), wherein ATCO states with regards to customers of ATCO Pipelines, "As these customers were billed under the CIS system prior to the license agreement, they do not qualify as a "new client", and therefore, there is no royalty fee applicable." The Board notes that there is no reference to the concept of "new client" in the agreement between AGS and Singlepoint. The Board considers that the criteria for determining whether a royalty fee is applicable should relate more to the change in the level of Singlepoint's business than the definition of what constitutes a "new client".

Since, at the moment, ATCO Gas and ATCO Pipelines are merely divisions of the same corporate entity, the Board will accept that a royalty is not payable when Singlepoint serves ATCO Pipeline customers. However, should another party take over the billing or customer care functions for ATCO Gas customers, using Singlepoint, or should ATCO Pipelines become a separate legal entity, the Board is of the view that a royalty would be payable for use of the ATCO CIS, under the terms of the royalty agreement filed.

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6 ATCO GROUP – AFFILIATE TRANSACTIONS, CORPORATE ALLOCATIONS, AND SHARED SERVICES

6.1 ATCO Gas and ATCO Pipelines Transportation Services Agreement

ATCO filed an unsigned draft copy of the Transportation Service Agreement for Transmission Service between ATCO Gas and ATCO Pipelines as part of the Application. The agreement outlined a variety of matters related to the exclusivity, term, and service requirements that were agreed to between ATCO Gas and ATCO Pipelines.

6.1.1 Positions of Parties

ATCO

ATCO submitted that:

Generally speaking the relationships and transactions between the Applicants and their regulated affiliates have not been included in these applications. The reason for this is that those transactions are subject to regulatory review from the perspective of both the recipient and the supplier of services, with the result that there is already thorough regulatory scrutiny of those transactions, and little additional benefit to be obtained by subjecting those transactions to further scrutiny through this proceeding.

The one exception to this general approach, however, is with respect to the transactions and cost-sharing arrangements in place between ATCO Gas and ATCO Pipelines...

In order to govern the interaction between ATCO Gas and ATCO Pipelines, AGPL and NUL have prepared a Policy Statement, which governs the provision of services from one division to the other, and the sharing of costs between the two divisions... In addition, Attachment 5.3-A contains the proposed contract for transportation service provided by ATCO Pipelines to ATCO Gas. The rate provisions have not been included in this contract as the appropriate rates will be addressed in future Board proceedings.⁸⁴

ATCO confirmed under cross-examination during the APS GRA that:

So at this point in time, we would ask the Board for approval of this agreement, but at least if it is unclear from the unbundling and retail sale aspects, that we would like to see some acknowledgment that it is at this point in time, at least it is prudent to be operating under this kind of agreement with respect to our depreciation policies, our capital expenditures that we are making, those kinds of things.⁸⁵

ATCO did not respond to Calgary's argument, regarding the determination of the peak demand on the APS system, made during this proceeding.

Calgary

Calgary made submissions in the AGS and APS GRAs with respect to the determination of the peak demand on the APS system. Calgary also addressed this topic in argument at this proceeding.

⁸⁴ ATCO Group Application – Volume 1, page 14-15

⁸⁵ Transcript (APS GRA), Volume 3, page 614

Calgary questioned ATCO's determination of peak demand, specifically the assumed temperature parameter. Calgary suggested that ATCO was inconsistent in its approach with respect to the "coldest day". Calgary argued that AGS should be directed to determine its contract demand on APS using minus 36 degrees Celsius and utilize the operational flexibility of the Carbon Storage facility to regulate line pack requirements on the APS system.

FIRM/Core

FIRM/Core referred the Board to the argument on cost related matters submitted at the AGS and APS GRAs.

6.1.2 Board Findings

The Board notes that almost all of the submissions regarding the Transportation Service Agreement for Transmission Service between ATCO Gas and ATCO Pipelines were provided as part of the AGS and APS GRAs. The Board is satisfied that parties were provided an adequate opportunity during the APS GRA to express their concerns regarding the revenue requirement and rate impact with respect to the Transportation Service Agreement. The Board notes that with the exception of the determination of peak demand, parties generally questioned the appropriateness of certain aspects of the agreement, but did not make specific recommendations nor did they quantify the impact on revenue requirement or rates.

The specific issue raised by Calgary, related to the determination of peak demand, was addressed in Decision [2001-97](#).⁸⁶ The Board accepted ATCO's forecast of the peak demands.

The Board considers that it has already determined the revenue requirement and rates for APS, and the APS transportation costs to be included in the AGS revenue requirement in GRA Decisions 2001-96 and 2001-97 (and the subsequent compliance filings). However, the Board did not address the reasonableness or the impact of specific aspects of the Transportation Service Agreement. The Board notes that ATCO is seeking approval of the agreement, or at least, acknowledgement that it is prudent to be operating under the agreement.

The Board appreciates the concern that there may be a problem of enforceability with respect to an agreement between divisions of a single legal entity, however the Board accepts that ATCO was attempting to formalize the relationship between ATCO Gas (North and South) and ATCO Pipelines (North and South), all divisions of AGPL, in compliance with previous Board directions.

The Board is prepared to accept the agreement (Transportation Service Agreement for Transmission Service between ATCO Gas and ATCO Pipelines) as a working arrangement at this time, to enable ATCO Gas and ATCO Pipelines to continue to function. However, the Board is not ready to approve each clause in the agreement, or the agreement as a whole, until parties have had an opportunity to review the Code of Conduct to be approved by the Board. It is entirely possible that the agreement will be found to be acceptable, but it is not possible to make that determination in this Decision. The Board considers that a more focused review of the agreement is required. For example, the right to exclusivity and the term of the agreement were questioned during the hearing, but parties, with the exception of ATCO, did not address the agreement in their argument.

⁸⁶ Decision 2001-97, page 133-136

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6.2 Trademark License Agreement

The Application included the Trademark License Agreements entered into by the Applicants to permit their use of the ATCO name. Each of the Applicants will pay a fee for the right to do so.

The following amounts were included in the 2001/2002 revenue requirements for the use of the ATCO name pursuant to Trademark Licensing Agreements with ATCO Ltd.:

Table 17. 2001/2002 Revenue Requirements -Trademark License Agreement

	2001/2002 Revenue Requirement
ATCO Electric	\$609,000
ATCO Gas	\$750,000
ATCO Pipelines	\$750,000

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AE included \$268,000 in the TFO and \$341,000 in the DTA in each of 2001 and 2002, ATCO Gas included \$375,000 for each of AGN and AGS, and ATCO Pipelines included \$375,000 for each of APN and APS.

However, during the hearing ATCO withdrew its request to include the fee in the revenue requirements of those regulated utilities.

6.2.1 Positions of Parties

ATCO

ATCO withdrew its request to include the fee for corporate signature rights pursuant to the Trademark Licensing Agreements with ATCO Ltd. in the 2001 and 2002 revenue requirements of the regulated utilities.

Calgary

Calgary recognized ATCO's withdrawal of the charge for corporate signature rights from the revenue requirements of the regulated entities⁸⁷. Calgary also noted that the companies still paid the charge, but did not intend to pass the charge on to customers at this time⁸⁸. Calgary submitted the Board should take note of the millions of dollars spent by the companies to re-brand, and the impact the ongoing charges would have on corporate returns. Calgary also suggested that it appeared odd that ATCO's senior management felt that it could not justify the amount to be included in the revenue requirement but continued to still pay it to ATCO.

Calgary recommended the Board direct the ATCO regulated entities to treat any signature rights payments as "non-utility" for reporting purposes.

⁸⁷ Transcript, Volume 3, page 233

⁸⁸ Transcript, Volume 8, page 752

FIRM/Core

FIRM/Core noted that ATCO decided to withdraw the request for inclusion of the corporate signature rights fees in the 2001/2002 test periods.

FIRM/Core considered that any fees for the use of the “ATCO” name are inappropriate, not only for the 2001/2002 test periods, but also for future periods.

6.2.2 Board Findings

The Board notes FIRM’s suggestion that fees pursuant to the use of the ATCO name are inappropriate for current and future test periods. The Board also notes that ATCO voluntarily removed this item from the GRA Amounts, with the expectation that it could be re-introduced at a future proceeding. The Board expects that, at that time, ATCO would provide further justification for its application.

The Board accepts ATCO’s withdrawal of this amount from the Application and the Board directs ATCO, in future Filings (GRA, Statutory Review, Annual Report of Finances and Operations, etc.) to treat any amounts paid for signature rights as a non-utility expense, consistent with utility reporting (i.e. reconciling items between corporate financial and utility income).

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6.3 Leases for Office Space in Calgary/Edmonton

ATCO Gas, ATCO Pipelines and AE all rent downtown office space from their parent or related companies in Calgary and/or Edmonton. The lease arrangements were provided in the Application as Attachments 6.2-A, 6.2-B, and 6.2-C.

6.3.1 Positions of Parties

ATCO

ATCO summarized the lease arrangements between ATCO Gas, ATCO Pipelines, and AE and their parent or related companies.

ATCO submitted that in Edmonton the Applicants leased space in the ATCO Centre from CUL, who in turn leased the space from ATCO Housing and Development Ltd. The Applicants rented space from CUL based on an allocation of the costs incurred by CUL. The allocation was based on the space occupied by each of the Applicants.

ATCO submitted that in Calgary, AE and ATCO Gas leased space in ATCO Centre I and II from ATCO Investments Ltd. ATCO Gas allocated a portion of its lease cost to ATCO Pipelines and other affiliates based on the amount of space they occupied.

ATCO submitted that building rental expense had been the subject of prior Board decisions with respect to both gas and electric rates. ATCO submitted that the amounts calculated for rent in the Application were in accordance with the rent previously determined to be appropriate by the Board. However, ATCO acknowledged in response to an IR from Calgary that APS used an incorrect rent expense and quantified the amount of the discrepancy.

ATCO suggested that based on previous decisions wherein the Board determined that the rent expense paid by the Applicants was reasonable and in accordance with market rates, the affiliate transactions underlying such rent should also be accepted as prudent.

Calgary

Calgary submitted that the Board had already reviewed the treatment of rent in the Calgary and Edmonton buildings and only allowed the regulated companies to recover what the Board considered to be the FMV of rent.

Calgary argued that, on the basis of the Board's previous decisions, the ATCO companies should not be able to do indirectly what the Board has ruled they cannot do directly. Specifically, the regulated companies should not pay any more for the space that is occupied by affiliates than they would pay if they occupied the space directly. For example, unless it could be conclusively established that the service was at a FMV the customer should not be saddled with the cost from the affiliate, particularly I-Tek and Singlepoint, that the regulated company would not be able to include in its revenue requirement itself.⁸⁹

FIRM/Core

FIRM observed AGS's confirmation that Board approved rental rates had been used for revenue requirement purposes while APS advised had erroneously used the \$16.95 per square foot that it is charged for the ATCO Center – Edmonton, rather than the \$13.58 per square foot approved by the Board⁹⁰. FIRM submitted that the APS error was noted in CAL-APS.77(b) from the APS 2001/2002 GRA. FIRM argued that the APS rent should be reduced by \$20,000 in each of 2001 and 2002 to reflect the Board approved rate.

FIRM also submitted that AE did not confirm whether Board approved rental rates had been used, and suggested that confirmation should be provided. FIRM argued that if Board approved rates were not used for revenue requirement purposes, AE should be directed to refile its rent costs at the Board approved rates.

6.3.2 Board Findings

The Board notes that AGS confirmed its use of approved rental rates for 2001 and 2002 forecast revenue requirement purposes, while APS confirmed that it did not use approved rates in the forecast of 2001 and 2002 rent expense for the Edmonton ATCO Centre. The Board agrees that APS should have used the previously approved rates of \$13.58 per square foot for the Edmonton ATCO Centre and therefore the Board directs APS, in its Compliance Filing, to reduce its 2001 and 2002 forecast rent expense by \$20,000 per year (based upon CAL-APS.77(b)).

The Board also notes that AE did not confirm whether it had used approved rental rates for 2001 and 2002 forecast revenue requirement purposes. The Board notes that the situation for AE is somewhat different from that of AGS and APS, in that, there is a negotiated settlement for AE already approved by the Board. The Board is only determining the amount of certain placeholders in this Decision. Therefore the Board directs AE, in its Compliance Filing, to advise the Board whether any of the placeholder amounts, other than Building Rent, include rent paid to CUL or ATCO Investments Ltd. at non-approved rates.

⁸⁹ Transcript, Volume 17, page 1871

⁹⁰ Transcript, page 1033

The Board notes that the Applicants are allocated a portion of the Building Rent as part of the allocation of corporate and head office charges. Similarly, the Board notes most of the non-regulated affiliates providing services to the Applicants pay rent to an ATCO Group company.

The Board is concerned that the Applicants or other regulated utilities in the ATCO Group should not be permitted to do indirectly what they could not do directly. The Board notes, as suggested by certain parties, there is a possibility that customers could indirectly pay more than the approved rates for rent. The Board considers that situation represents precisely the type of problem the Board can encounter when it loses transparency and ready access to the underlying costs of the utility.

The Board notes that the allocated rent paid by APS and presumably all of the regulated affiliates is included in the revenue requirement with adjustment to an approved rate.⁹¹ The Board is sensitive to interveners' concerns about indirect rent, however the Board is not persuaded there is sufficient reason during this proceeding to delve into the indirect rent paid by AE, AGS and APS to ATCO Group companies. In the meantime, the Board will deal with matters such as indirect rent by confirming the appropriate transfer price for transactions between utilities and their non-regulated affiliates. The Board expects, for example, that the approved I-Tek and Singlepoint costs do not leave room for rent that exceeds the Board approved rates.

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6.4 Services Provided by Frontec and ATCO Travel

In addition to the I-Tek and Singlepoint transactions, there was interest in the Applicants' transactions with Frontec and ATCO Travel. The Application contained the results of a review of certain Frontec and ATCO Travel agreements with AE, AGS, and APS. The scope of the review included an opinion on whether or not the transactions were within a reasonable range of FMV as at July 1, 2000.

6.4.1 Positions of Parties

ATCO

ATCO submitted that a detailed examination of each of the agreements between the ATCO Group utilities and Frontec and ATCO Travel was not warranted. ATCO argued that the majority of those transactions were either not material, or the vast majority of the gross revenues were a straight 'pass-through' of actual operating costs. ATCO argued that if a great deal of work were done in an attempt to verify the pricing of many of the agreements the cost of such an exercise would outweigh any benefits received by the ATCO utilities.

ATCO submitted that the ATCO Group developed a Master Services Contract in response to the Board's direction that affiliate transactions be better documented, and argued that the negotiation and development of individual contracts for each type of transaction was simply not warranted or economic. Therefore, the ATCO Group adopted an approach of developing a "pro forma" Master Services Contract that would apply to all such transactions, with the specific detail of the particular contract being dealt with via schedules to the Master Services Contract (see Ex. 1, Vol. 1, Appendix A and Attachment 4-A). This was seen as an efficient and effective way of ensuring

⁹¹ CAL-ATCO(PIPELINES).77 c)

standard terms and conditions were applied, formal agreements were entered into and that the individual circumstances were taken into account. ATCO submitted that the pro forma Master Services Contract was structured along the lines of commercial agreements between independent arm's length third parties and, as such, should represent an acceptable commercially sensible arrangement (for what really are relatively minor commercial arrangements between the ATCO Group regulated utilities and their unregulated affiliates). ATCO noted that significant transactions such as Singlepoint and I-Tek had their own unique contracts due to the specific nature of the subject matter.

ATCO submitted that the approach taken by its expert, Mr. Martin, was reasonable and appropriate in the circumstances. Most of the Frontec transactions were only a fraction of the business of the ATCO entity involved and Mr. Martin's work confirmed that the prices charged to the ATCO Group regulated utilities were the same as those prices being charged in the market place to arm's length third parties. ATCO suggested that Dr. Gordon clearly indicated that this was one appropriate method of determining the FMV of a transaction. ATCO submitted that the examination provided a satisfactory benchmark versus industry norms for the Board to conclude that the pricing of these transactions was reasonable. ATCO noted that it was left completely to the discretion of Mr. Martin to decide on the comparables and to apply the appropriate benchmarks. The ATCO Group submitted that Mr. Martin's report was professional, independent and sufficiently detailed to provide a basis to approve the subject transactions as applied for.

Calgary

Calgary suggested that virtually all of the services provided to the Applicants from the unregulated affiliates, other than the parents (ATCO/CUL/CU Inc.) were provided at what was alleged to be FMV. Calgary submitted that in most of the cases the determination of FMV was undertaken after the fact by a consultant. Calgary argued that the amount charged should be at the lower of cost or FMV, and that FMV should ideally be determined on the basis of tenders, where the criteria were not biased in favour of an affiliate.

Calgary specifically addressed the various Frontec contracts.⁹² Calgary suggested that the ATCO evidence did not address whether or not ATCO demonstrated that the services provided by Frontec were required. Calgary noted that Frontec was the manager of the principal facilities rented by ATCO, however Calgary argued that the need for Frontec to provide separate services to ATCO was not demonstrated. Calgary also argued the allocation of costs between landlord services and tenant services was not established.

Calgary submitted the ATCO approach to determining pricing with affiliates was problematic. Calgary argued that using numerous expert witnesses after the fact to deal with FMV and the prudence of transactions was not an effective use of the time or money of those involved.

FIRM/Core

FIRM/Core argued the most reliable means of estimating FMV pursuant to the asymmetric pricing principle was by way of a fair and well understood tendering and bidding process. FIRM/Core submitted that ATCO's proposed benchmarking process to determine FMV was subject to considerable subjectivity, prone to bias, and required ongoing regulatory oversight.

⁹² Exhibit 301

FIRM/Core considered benchmarking a poor second choice to the fair bid or tendering process. FIRM/Core did not specifically address the Frontec or ATCO Travel transactions.

6.4.2 Board Findings

The Board agrees with ATCO that the development of the Master Services Contract has resulted in the transactions with Frontec and ATCO Travel being better documented than before. Taken on an individual basis, the Board also agrees with ATCO these transactions are not material in most cases. The Board also notes that in many cases the revenues paid to Frontec and ATCO Travel contain a significant pass through component. The Board also agrees that it would not be prudent to spend too much hearing examination time analyzing each transaction. However, the Board does not regard any of the foregoing factors as justification for ATCO or the Board to relax the overall standard for these types of transactions.

With respect to the Frontec and ATCO Travel agreements filed in the Application and reviewed by Mr. Martin, the Board accepts that they are at FMV. The Board accepts that the prices charged are the same as those charged in the market place to arm's length third parties. The Board accepts that the presence of other active and capable service providers, and access to comparable pricing data contributed to a more objective benchmark study by Mr. Martin.

Therefore, the Board accepts that Mr. Martin's review of Frontec and ATCO Travel was objective and provided a satisfactory benchmark versus industry norms. Although the current practices for ATCO Travel are competitive, the Board notes that the changes only now reflect what was a standard competitive practice for many years. The Board expects that ATCO will stay abreast of changing competitive practices and reflect those competitive advantages promptly to customers to avoid any perception of increased hidden costs from affiliate transactions.

The Board notes Calgary's suggestion that ATCO had not demonstrated the services provided by Frontec were required. The Board notes that many of the services contracted to Frontec were previously performed by the utility. The Board accepts ATCO's position that the Frontec and ATCO Travel services are required for the 2001 and 2002 test period. However, the need for these services should be evaluated on an ongoing basis as to need, price and terms, in similar fashion to what the Board would expect for any other service or contract.

On an ongoing basis, ATCO must initially justify its decision to "outsource" or "insource" the service involved, especially if the service is already being performed within the utility. This is consistent with the asymmetric pricing recommended by Calgary and FIRM/Core with respect to services provided by non-regulated affiliates to the regulated utilities. After the initial test is satisfied, whether ATCO is dealing with an affiliate or an arms length third party, the Board expects ATCO to obtain services at FMV. The Board accepts ATCO's pro forma approach to the Master Services Contract, whereby the details of the particular contract are appended as a schedule to the contract. The Board also expects ATCO to be diligent in the ongoing management of the price and the need for the services contracted.

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6.5 Other Services Provided by Non-Regulated Affiliates to Regulated Affiliates

In addition to those services and contracts that have already been reviewed in greater detail, the Applicants also received services from a number of other affiliates: Midstream, ATCO Noise Management Ltd., ATCO Power Ltd., ATCO Structures Ltd., ATCO Energen, and Genics Inc.

Most of these transactions are not material, on an individual basis, and were not specifically addressed during the proceeding, however ATCO sought approval of the transactions in the 2001 and 2002 revenue requirements for AE, AGS and APS.

The transactions with Midstream, which are material, were transferred to the Carbon Transfer proceeding where the Board will consider them.

6.5.1 Positions of Parties

ATCO

ATCO submitted that there were two types of services the Applicants received from affiliates: services that could potentially be outsourced to a commercial third party, and services that could not. ATCO submitted that in both cases the key principle for the Applicants was whether contracting for the service with an affiliate was prudent and was consistent with the requirement that the rates charged by the Applicants be just and reasonable. ATCO submitted that when the service could be obtained in the marketplace, the Applicants were concerned whether the affiliate was competitively priced. ATCO also submitted that when the service could not be obtained in the marketplace, the Applicants were concerned whether the affiliate was competitively priced compared to the internal cost of performing the service.

ATCO submitted that all of the transactions with non-regulated affiliates were consistent with the requirement that the Applicants acted prudently and consistently with just a reasonable ratemaking. ATCO suggested that the Applicants had taken steps to ensure that services were paid for on a FMV basis or, where appropriate, consumers were realizing cost-savings by having the services provided by an affiliate rather than by the utility itself.

Calgary

Calgary noted ATCO's submission that virtually all of the services provided to the Applicants by the unregulated affiliates were provided at FMV.⁹³ Calgary did not individually address any of the 'other' services or transactions, however Calgary questioned ATCO's submission. Calgary submitted that in most of the cases the determination of FMV was undertaken after the fact by a consultant. Calgary argued that FMV should ideally be determined on the basis of tenders, where the tendering process was not biased in favour of the affiliate. Calgary also argued that the amount charged should be at the lower of cost or FMV (asymmetric pricing).

FIRM/Core

FIRM/Core did not individually address the "other" services; rather FIRM/Core concentrated its efforts on the most significant affiliate transactions, being those with I-Tek and Singlepoint. FIRM/Core reiterated its position that ATCO should use asymmetric pricing when contracting for services from non-regulated affiliates. FIRM/Core also argued that the most reliable means of estimating FMV was by way of a fair and well understood tendering and bidding process.

⁹³ Exhibit 3, Volume 1, Appendix A, Tab 1B, pages 5 and 6 of 6

FIRM/Core submitted that ATCO's proposed benchmarking process to determine FMV was subject to considerable subjectivity, was prone to bias, and required ongoing regulatory oversight. FIRM/Core considered benchmarking a poor second choice to a fair bid or tendering process.

6.5.2 Board Findings

The Board notes that the “other” services provided by non-regulated affiliates were not individually addressed in the proceeding. The Board also notes that, aside from general concerns with respect to the use of asymmetric pricing, and the determination of FMV, parties did not raise any particular objections to any of these transactions. The Board considers that the transactions were not material for 2001 or 2002, and it appears that the services provided were fairly specialized (e.g. noise management, pole treatment materials).

The Board again notes that ATCO's development of the Master Services Contract has resulted in better documentation of these “other” types of affiliate transactions (other services provided by Midstream, ATCO Noise Management Ltd., ATCO Power Ltd., ATCO Structures Ltd., ATCO Energen, and Genics Inc.).

The Board agrees that it would not be prudent to spend too much hearing examination time analyzing each transaction. However, the Board does not accept any of the foregoing factors as a reason or excuse for ATCO or the Board to relax the standard for these types of transactions on a go-forward basis.

Based on the record, the Board is persuaded that, these “other” services are priced at FMV and were required for the period under review.

Therefore, the Board approves the requested amounts for other services provided by Midstream, ATCO Noise Management Ltd., ATCO Power Ltd., ATCO Structures Ltd., ATCO Energen, and Genics Inc. for inclusion in the 2001 and 2002 revenue requirements of AE, AGS and APS (the Board notes that APS included contract D-8 in Attachment 1-B, however no amount was transferred from the APS GRA for this amount). Further, the Board directs ATCO, in its Compliance Filing, to summarize all these costs by regulated entity in a convenient tabular form. Consistent with the Board's determinations regarding ATCO Frontec and ATCO Travel, need, price, and terms for these other services should be evaluated on an ongoing basis, similar to what the Board would expect for any other service or contract.

On an ongoing basis, ATCO must initially justify its decision to “outsource” or “insource” the service involved, especially if the service is already being performed within the utility. This is essentially the asymmetric pricing recommended by Calgary and FIRM/Core with respect to services provided by non-regulated affiliates to the regulated utilities. After the initial test is satisfied, whether ATCO is dealing with an affiliate or an arms length third party, the Board expects ATCO to obtain services at FMV. The Board accepts ATCO's pro forma approach to the Master Services Contract, whereby the details of the particular contract are appended as a schedule to the contract. The Board also expects ATCO to be diligent in the ongoing management of the price and the need for the services contracted.

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6.6 Services Provided by Regulated Affiliates to Non-Regulated Affiliates

ATCO summarized the various services being provided by regulated utilities to non-regulated affiliates in the Application.⁹⁴ The GRA Amounts for AE, AGS and APS were previously summarized in Section 2 of this decision. While the Application indicates that services are provided by APS, no GRA Amounts were transferred to this proceeding for the Board's consideration.

6.6.1 Positions of Parties

ATCO

ATCO submitted that the services provided by the Applicants to non-regulated ATCO Group companies could be loosely divided into two categories, those on a fee for service basis and those at a fee established through regulation.

ATCO submitted that the services provided on a fee for service basis were primarily administrative and office type services. ATCO suggested those services were not offered by the Applicants in the marketplace, nor would they be appropriate or consistent with the utility function if they were offered. ATCO argued that by providing those services to affiliated companies on a limited basis, the Applicants were able to enhance efficiency and obtained the benefit of cost sharing.

ATCO submitted that its practice was to use a fully burdened cost approach, whereby the unregulated affiliate was charged significantly above incremental cost. ATCO argued that the use of fully burdened cost offered a higher level of protection to customers than the minimum, incremental cost. ATCO argued that any margin a customer received above incremental cost protected them from cross-subsidizing a transaction, and provided them with a share of the scope economies.

ATCO disagreed with Calgary's recommended asymmetrical pricing. ATCO argued it was impractical and unenforceable. ATCO concluded that the pricing of services to non-regulated affiliates at fully burdened cost met Calgary's test. ATCO argued that when a regulated utility provided service to non-regulated affiliate it was probably making use of excess or idle capacity, and left the ratepayer at a minimum no worse off.

ATCO noted that the determination of fully burdened cost was slightly different for AE compared to AGS and APS. AE allocated costs on a transaction specific basis, while AGS and APS allocated costs on a general basis. ATCO recommended the general methodology be used for future cost allocation purposes.

Calgary

Calgary argued that asymmetrical pricing would eliminate the need for subjective analysis as it was predicated on fully allocated cost or market prices. Calgary suggested the Board, in Decision [2000-9](#), set forth the requirement for tendering to determine FMV. Calgary also suggested that fully allocated cost was a concept the Board dealt with in many preceding GRAs.

⁹⁴ ATCO Group Application – Volume 1, page 20, and Attachment 1-B, pages 3-4

Calgary submitted that Cost Allocation Manuals would assist all parties with respect to the determination of fully allocated cost. Calgary also submitted Cost Allocation Manuals were objective measures that should allow for expeditious compliance auditing and could remain in place for many years.

Calgary argued that asymmetrical pricing should be used when the regulated utility provided services to a non-regulated affiliate. Calgary submitted that rates paid by consumers were predicated upon fully allocated embedded costs. Calgary argued, therefore, that the affiliate should be charged the same level of cost that the ratepayer is charged. Calgary argued that charging less than fully allocated embedded costs provided a subsidy to the affiliate at the expense of the ratepayer. Calgary then argued that asymmetrical pricing protected the customer in that the fully allocated cost became both the floor and ceiling in affiliate transactions. Under asymmetrical pricing the ratepayer was held whole in all transactions and received the benefit of either fully allocated cost or FMV.

Calgary understood that AE, as with the other Applicants, provided services to its unregulated affiliates at embedded cost, although the method of determining the embedded costs was different from the method used by AGS. Calgary argued the charges to unregulated affiliates should be at the higher of embedded cost and FMV.

Calgary again argued that services provided to unregulated affiliates should be at the higher of embedded cost or FMV.

In addition, Calgary suggested that although ATCO and the Applicants had set up many divisions, trade names and operating entities, it seemed that operations continued to be integrated. Calgary submitted that the structural separation of the ATCO companies was undone by the operational use of one entity to provide office services, indicating the integrated nature of the operations.

FIRM/Core

FIRM/Core submitted that, in a deregulated marketplace, utility groups such as ATCO were undergoing structural reorganization whereby the regulated utility could be providing services to non-regulated affiliates. When all activities of the utility were under regulation, the no harm test was the benchmark for many transactions. FIRM/Core suggested, however, the benchmark was now different. A higher standard was demanded to provide assurance that the transactions between the regulated utility and its non-regulated affiliates were at FMV. The transfer price used should not confer an advantage to the non-regulated affiliate operating in the competitive marketplace. FIRM/Core argued that a transfer price that was below market value would cross-subsidize the non-regulated affiliate at the expense of the ratepayers of the regulated utility. FIRM/Core argued that ATCO's use of 'fully allocated costs' as the transfer pricing method in the Application for the services provided by the ATCO Group to non-regulated affiliates did not meet the requirements of the codes of conduct set forth by the OEB, Alberta Regulation, or Power Budd.

FIRM/Core advocated asymmetrical pricing as the standard for transactions between affiliates. This meant the transfer price should be the greater of cost or FMV where the ATCO Group was providing services to affiliates. Third parties could provide the services the ATCO Group was providing to its affiliates so it would be possible to obtain a market price and apply the 'greater of' test.

FIRM/Core recommended the Board require the ATCO Group to determine the FMV for the services it is providing to its non-regulated affiliates, and to include the greater of the fully allocated cost or FMV as revenue offset in the revenue requirement for each of the test years.

FIRM/Core noted that AE sought Board approval for a number of services provided to non-regulated affiliates. The total to be included as a revenue offset in the AE revenue requirement was forecast per schedule 3-B, Volume 1 of the AE Application at \$576,000 for 2001 and \$501,000 for 2002.

FIRM/Core submitted that AE established the transfer price for the services provided to its affiliates on fully allocated costs which were based on the time spent on those services with one exception, the land lease that was Board approved. Fully allocated costs for those services were based on the labour loading charge as detailed in schedule 3-A, Volume 1 of the AE Application. For non-construction services, the labour loading charge multiplier was 150.09%. The multiplier included actual labour cost, salary burden, fringe benefits, Human Resources, general overhead, ATCO shared costs, and a charge for rent and furniture. The allocation appears reasonable and was not disputed.

In addition to the Carbon Storage Services that were deferred to a separate hearing, AGS charged rent to various non-regulated affiliates based on the allocation of appropriate footage to those affiliates and also provided office services to a variety of non-regulated affiliates, all as shown in Exhibit 40. Those charges were based on fully burdened costs.

Other than providing transportation service to AGS at (yet to be approved) regulated rates, APS did not provide any other services to non-regulated affiliates (per Exhibit 83). The Transportation Service Rates applicable to AGS and the Industrial/Producers were matters that were to be dealt with in the context of the APS 2001/2002 GRA.

6.6.2 Board Findings

The Board agrees with ATCO's submission that the charges for services provided by regulated utilities to their non-regulated affiliates can generally be categorized as fee for service, or a fee established by regulation. The Board notes that there is a range of prices proposed by parties for services provided by regulated utilities to their non-regulated affiliates.

For those services where the fee is established by regulation, the Board notes that none were included in the GRA Amounts. The Board agrees those services must be charged at the regulated tariff, or the rate otherwise determined through regulation.

For services charged on a fee for service basis, the Board considers they can be broadly grouped into two categories: those provided on an ongoing basis, and those provided on an ad hoc or incidental basis. In either case, the Board notes that, with the exception of rent, ATCO proposes to charge the fully allocated cost, whereas Calgary and FIRM/Core recommend the use of asymmetric pricing based on the higher of fully allocated cost or FMV.

The Board notes ATCO's view that customers are not harmed as long as the non-regulated affiliate pays the utility's incremental cost of providing service. The Board agrees, that on a short-term basis, customers are not harmed as long as the fee charged covers the short-term incremental costs of providing service. The Board also agrees that on a long-term basis

customers are not harmed if the fee charged covers the long-term incremental costs of providing service.

However, the Board notes that the previous two statements are only true if there is “excess” capacity in the utility that would not otherwise be used or eliminated. The Board also notes that excess capacity can arise in a variety of ways. The Board considers that the review of each service provided by the utility would be difficult and time-consuming to administer. The Board also notes that the amount of services being provided to non-regulated affiliates is not usually material. The Board considers that, at a minimum, customers should be unharmed by affiliate transactions. Above and beyond that, the Board considers that customers should benefit from affiliate transactions when the circumstances confirm that there should be a more equitable sharing of the benefits, and that the utility should recover more than its fully allocated costs. The Board considers the onus to be on the utility to demonstrate that excess capacity does not exist merely to service non-regulated affiliates.

The Board notes ATCO proposes to set the fee for these services provided by regulated utilities to their non-regulated affiliates at fully allocated cost. The Board acknowledges ATCO’s argument that customers receive a benefit from the use of fully allocated costs, in that the utility recovers a portion of its fixed costs that would otherwise be recoverable from customers. The Board notes that ATCO’s argument is premised on the assumption that the non-regulated affiliate is using “excess or idle” capacity in the utility’s operations. The Board agrees that if excess capacity exists, regardless of how it arose, customers do receive some benefit from ATCO’s proposed transfer price.

The Board also notes Calgary and FIRM/Core suggestions that the utility should charge the higher of fully allocated cost and FMV, thereby providing a greater benefit to customers and not conferring an advantage to the non-regulated affiliate operating in the competitive marketplace. While the appeal of that method to customers is obvious, the Board notes that it has some weaknesses.

The Board was not provided any direct evidence that that it would be difficult and unproductive in most cases to determine the FMV of the services provided by regulated utilities to their non-regulated affiliates. The Board believes that the FMV of many of the services provided by the utility to non-regulated affiliates would not be difficult to determine given that administrative and office type services are routinely available in the market. However, it is conceivable that most of the fully allocated costs would not be materially different from FMV. Since the costs of market studies are also costs that customers would have to bear, the Board is not convinced that the costs of determining FMV is justified for incidental and minor transactions. The Board notes that the dollar value of these transactions is typically small.

Alternatively, the Board considers that most of the services provided by utilities to their non-regulated affiliates are done so on the basis of convenience, efficiency and economy. The Board observes that most of the services being provided to the non-regulated affiliates could be provided by the affiliates themselves or outsourced, but not without additional cost and administrative effort.

Therefore, the Board considers that both parties should benefit from these transactions. Where the utility is providing ongoing services to the non-regulated affiliate, the Board considers that it is appropriate for ATCO to continue using fully allocated cost to charge the non-regulated

affiliate for these services. The Board is convinced that as long as the excess capacity arose from prudent utility operations, and cannot otherwise be mitigated, the customer is not harmed and should receive some contribution toward fixed costs that would otherwise be borne by customers.

Where the utility is providing incidental services to the non-regulated affiliate, the Board considers it appropriate to continue using fully allocated costs to charge for services provided. The Board is convinced that as long as the excess capacity arose from prudent utility operations, and cannot otherwise be mitigated, the customer is not harmed and should receive some contribution toward fixed costs that would otherwise be borne by customers.

Accordingly, the Board is not implementing asymmetric or FMV transfer pricing for incidental and minor transactions. However, the Board prefers the option of using FMV transfer pricing for major ongoing transactions or for a collection of minor transactions that is significant.

The Board notes Calgary's suggestion that ATCO be directed to use Cost Allocation Manuals. The Board does not know, at this time, the degree to which Cost Allocation Manuals would be of any assistance. The Board notes that Cost Allocation Manuals are used in other jurisdictions, however, the Board considers that the introduction and implementation of Cost Allocation Manuals would require more attention than was given in the context of this proceeding. The Board also considers that the implementation of Cost Allocation Manuals would require the involvement of other utilities in this jurisdiction, not just ATCO.

Notwithstanding, the Board is interested in exploring the merit of the development and use of Cost Allocation Manuals in this jurisdiction. The development of Cost Allocation Manuals could be beneficial in conjunction with the Code of Conduct. However, the Board cannot make that determination at this time, in the absence of evidence with respect to the ongoing costs and benefits associated with the development and use of Cost Allocation Manuals. The Board directs ATCO, at its next GRA, to file its assessment with respect to the ongoing costs and benefits of the development of Cost Allocation Manuals.

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6.7 Shared Services and Cost Allocation

Regulated utilities within the ATCO Group have a long-standing practice of sharing services amongst themselves. Prior to recent reorganizations within the ATCO Group, CWNG and NUL shared the cost of "intercompany" functions (e.g. Gas Supply). Presently, the various divisions and 'functional' entities have numerous shared costs and relationships. For example AGN, AGS, APN and APS are distinct regulatory entities all operating as divisions within ATCO Gas and Pipelines Ltd., the legal entity. Similarly, AE's DT, TFO, and RRO are distinct for regulatory purposes, all operating within AE, the legal entity.

6.7.1 Positions of Parties

ATCO

ATCO submitted that the relationships and transactions between their regulated affiliates were not included in the Application. ATCO suggested the reason was that those transactions were subject to regulatory review from the perspective of both the recipient and the supplier of services. ATCO argued that there was already thorough regulatory scrutiny of those transactions

and there was little additional benefit to be obtained by subjecting those transactions to further scrutiny. ATCO suggested that it did not matter whether or not the transactions occurred “inside” or “outside” a GRA test year.

ATCO noted that ATCO Gas and ATCO Pipelines were operating divisions of AGPL. ATCO submitted that dividing the company into two operating divisions allowed the company to focus its activities on a functional basis and to operate effectively in the new marketplace. ATCO suggested that advantages and efficiencies remained that could be created by service/cost sharing arrangements for those activities that both divisions were required to perform. In addition, there were certain functions performed by one division that the other division required. ATCO submitted that while AGPL had two operating divisions, those divisions interacted and co-operated in a variety of ways.

ATCO Gas and ATCO Pipelines prepared a Policy Statement that governed the provision of services of services from one division to the other, and the sharing of costs between the two divisions⁹⁵. ATCO also prepared a policy for sharing costs between the north and south of both ATCO Gas and ATCO Pipelines.⁹⁶ Certain of these policies were updated and supplemented by additional policies provided in the AGS GRA.⁹⁷ For example, ATCO provided further guidelines regarding the determination and reporting of north/south financial information for ATCO Gas and ATCO Pipelines.⁹⁸

ATCO submitted the purpose of these policies was to ensure that there was consistency in the treatment and reporting of north/south financial information over time. ATCO submitted that both policies were reviewed in considerable detail in the GRA proceedings. ATCO argued⁹⁹ that a significant portion of the revenues, costs, assets and liabilities of the north and the south did not require an allocation method as separate accounts were maintained on a north/south basis. ATCO submitted that where a sharing or allocation of amounts was required, the gas utilities established allocation methods based on appropriate cost drivers. ATCO remarked that the gas utilities made a commitment¹⁰⁰ to maintain the current allocation percentages that were used in the development of the 2001/2002 GRA revenue requirement forecast for the south. ATCO suggested that maintenance of those allocation factors should provide a further level of comfort for the Board.

ATCO argued the requirement to report north/south transactions separately was solely a regulatory requirement, due to the fact that an incentive based agreement existed in the north (North Core Agreement). ATCO submitted that the sharing of services between the north and the south resulted in lower costs for customers. ATCO argued those benefits would be lost if the regulator required code of conduct type rules between the north and the south. ATCO argued that neither the ATCO utilities nor Dr. Gordon¹⁰¹ considered that this type of separation was warranted, given the policies in place governing the sharing of costs, the minimal level of allocations required, and the regulatory oversight that existed. Furthermore, ATCO argued that the ATCO gas utilities expected that the requirement to maintain distinct north/south information would be short term in nature, ending in 2002 upon the conclusion of the North Core Agreement.

⁹⁵ ATCO Group Application, Volume 1, attachment 5.1-A

⁹⁶ ATCO Group Application, Volume 1, attachment 5.2-A

⁹⁷ AGS 2001/2002 GRA Application, Volume 2, Tab 14

⁹⁸ CAL-ATCO Gas.153(d) (AGS GRA)

⁹⁹ AGS 2001/2002 GRA – ATCO Gas argument, page 4

¹⁰⁰ Exhibit 77, Discussion at Transcript page 112-113

¹⁰¹ Exhibit 78

Calgary

Calgary noted that ATCO provided a shared service accounting policy¹⁰² in the Application. Calgary suggested that in a number of cases, the allocations were arbitrary, both between ATCO Gas and ATCO Pipelines, and between AGS and AGN and APS and APN. Calgary submitted that the provision of 1999 allocation factors was not appropriate for 2001 and 2002. Calgary submitted that, conceptually, it supported the use of a procedure to allocate costs. That procedure should be based upon a systematic and rational allocation procedure that reflected the costs of providing the service and the relative sizes of the entities. Calgary supported the use of Corporate Cost Allocation manuals. Calgary argued the use of those manuals would provide clear guidelines as to how cost should be determined and allocated between entities.

Calgary disagreed with the Applicants' position that the Board did not have to review the transactions between the regulated affiliates and the Applicants. Calgary argued that all transactions between the Applicants and regulated affiliates that were not at regulated rates should require explicit approval by the Board. Calgary submitted that the parameters and the Code of Conduct should apply to those transactions just as they would apply to transactions with unregulated affiliates. Calgary argued that to the extent ATCO wished to segregate operations into operating entities and trade name entities, each of those should be required to comply with the Code of Conduct and price their services on a basis similar to the unregulated entities. Calgary submitted that purchases should be at the lower of cost or FMV and that sales should be at the higher of cost or FMV.

Calgary argued with respect to AE that all charges for services between itself and its subsidiary/affiliates should be approved. Calgary submitted that ATCO's initial justification was that the Board approved all dealings between regulated affiliates and there was no need for further oversight by way of a Code of Conduct. Calgary also submitted that ATCO expanded the definition to include all regulated affiliates – wherever they are regulated – including those affiliates of AE, which were regulated by the PUBs of the Yukon and the Northwest Territories. Calgary suggested that while the PUB of the Yukon or the Northwest Territories may consider that the charges from AE to the AE subsidiaries in their territory were appropriate, that should in no way affect the Board's requirement to assess proper utility cost structures. Calgary suggested the Board, with access to the cost information of the parent, AE, might consider that the costs allocated to the subsidiary were too low. Calgary suggested, for example, AE did not provide information to indicate that the charges to its subsidiaries/affiliates for billing and customer information services were appropriate given its costs that were paid to I-Tek and Singlepoint.

Calgary noted that AGS transactions with ATCO Pipelines were not part of this proceeding. Calgary submitted there were significant costs related to transactions between ATCO Gas and ATCO Pipelines. Calgary was particularly concerned that allocated amounts included in the GRA Amounts of AGS and APS were not in agreement.

FIRM/Core

FIRM/Core disagreed with ATCO's view that the Board did not need to review transactions between regulated affiliates. FIRM/Core suggested the potential for market power abuse between two regulated affiliates was as great as between regulated and non-regulated affiliates.

¹⁰² Application, Volume 1, attachment 5.2-A

FIRM/Core also addressed the degree of separation, sharing of services and resources, and transfer pricing between affiliates, however, FIRM/Core directed the majority of its argument toward transactions between regulated and non-regulated affiliates.

FIRM/Core suggested the need for the ATCO Group to adhere to cost allocation principles and to maintain a Cost Allocation Manual.

6.7.2 Board Findings

The Board observes that there is a legitimate concern of parties with respect to the potential to adjust or otherwise manipulate ‘allocated’ amounts between divisions, functions, and other regulated entities, particularly when non-aligned test years, negotiated settlements, and other jurisdictions are involved. The Board needs to ensure that safeguards and tracking measures are in place in order to monitor all relationships and transactions to confirm appropriate transparency of allocations among the respective regulated utilities. The Board believes that utilities should be prepared to justify all revenues and expenses included in their revenue requirement and ultimately in their rates, regardless where they originate or how they occur.

The Board notes submissions by Calgary and FIRM/Core that all transactions between affiliates should be reviewed, and should require explicit approval by the Board. Those parties disagreed with ATCO’s exclusion of transactions and relationships between regulated affiliates in the Code of Conduct.

The Board notes ATCO’s argument that the Board’s ability to regulate is not affected whether the utility is ‘inside’ or ‘outside’ a GRA or test year. The Board also notes ATCO’s submission that there is full regulation by the Board in either case. The Board agrees in principle that that is the case. However, it is clear that a utility’s affairs are not subject to the same level of scrutiny in a non-test year as they are in the test year of a GRA. During non-test years, the Board conducts after the fact reviews via the Annual Report of Finances and Operations, or possibly by a Statutory Review. Those reviews are not performed to the same degree as a GRA, and are not typically used to establish or adjust the utility’s rates or revenue requirement.

The Board considers that additional protection, by way of an approved Code of Conduct, should be in place to address transactions between regulated affiliates. The Board notes that ATCO Gas and ATCO Pipelines documented the various shared services between themselves, and between their North and South divisions. The Board agrees that the documentation of those arrangements benefits the Applicants and the customers. The Board has also considered whether those agreements were sufficient, or whether regulated affiliates should be included in the Code of Conduct.

The Board also notes ATCO’s submission that customers benefit from the sharing of costs and services between the various regulated functions, divisions and utilities in the ATCO Group. The Board considered ATCO’s argument that some of those benefits could be lost if the Code of Conduct was applied to transactions and relationships between the regulated functions, divisions and utilities. The Board agrees with ATCO that losing benefits would not be in customers’ best interest.

However, the Board is not persuaded that transactions between regulated utilities should be exempt from the Code of Conduct. Rather, ATCO should identify those aspects of the Code of Conduct that should not apply to transactions between regulated utilities, and apply for an

exemption. For example, Transfer Pricing provisions of a code might be problematic or unnecessary when dealing with shared services between regulated affiliates. While certain aspects of the Code of Conduct would not be conducive to shared services, the Board is convinced that other aspects of the Code of Conduct are beneficial. In those cases where an aspect of the Code of Conduct could otherwise harm customers or the Applicants, the Board would expect the Applicant(s) to apply for an exemption, along with a justification for the request.

To alleviate these concerns, ATCO could, for example, apply for a code exemption on the basis that maximum customer benefits are achieved if regulated affiliates commit to follow a methodology which allocates costs on some predetermined Board approved basis. This methodology is similar to the one for the allocation of overall corporate costs using criteria appropriate to the particular service, such as time, number of employees, square footage, capital employed, capital expenditures in a year, fixed asset ratios, annual revenues or some other means.

The Board considers that an application for an exemption from a section of the Code of Conduct could be made in the context of either a GRA or a separate application. With respect to the timing of the application, however, the Board's clearly stated preference is for the utility to make any application on a prospective basis, rather than after the fact.

With respect to the Application and the GRA Amounts, the Board considered matters specific to AE, AGS and APS.

The Board notes Calgary's submission that the allocation procedures used by AGS and APS were not current and may not reflect the cost of providing service and the size of the entities. The Board also notes ATCO's submission that it should use the same allocation parameters that were used to develop the 2001 and 2002 GRAs. In the majority of situations, the Board would prefer the utility to be consistent in a test year and the corresponding actual year, rather than proposing an allocation in a test year and then actually doing something else. The Board would prefer that the utility be consistent, except where there is an unavoidable and unforeseen material change in circumstances.

The Board also notes Calgary's submission that a number of the ATCO allocations between AGS, APS, AGN and APN were arbitrary. The Board recognizes that the ATCO allocations are not necessarily complex or 'activity based', however, the Board does not agree they are arbitrary. The Board would support the use of more complex allocation methods in future GRAs, however the Board is satisfied with respect to 2001 and 2002 with the Shared Service Agreements and Financial Reporting – North and South Shared Services as filed. Therefore, the Board approves the use of the Shared Service Agreements and Financial Reporting – North and South Shared Services for AGS and APS for 2001 and 2002.

While the issue of the shared services between the AE DT, TFO and RRO functions, and between the other regulated utilities owned by AE was not raised during the proceeding, similar concerns exist between those functions and utilities as do between the Gas and Pipelines divisions. Accordingly, commencing forthwith, the Board directs AE to maintain and file similar documentation of the shared services between the DT, TFO and RRO functions, and between the other regulated utilities owned by AE.

The Board also notes suggestions that there was no information provided that confirmed whether other regulated utilities (i.e. those serving Yukon and NWT customers) were paying a fair amount for I-Tek and Singlepoint. The Board directs AE, in its Compliance Filing, to clarify this matter.

The Board notes that ATCO did not request approval of 2001 and 2002 transactions between AE and other regulated utilities. The Board accepts that these transactions were not included in the AE GRA Amounts; rather ATCO incorporated these transactions in the revenue requirements of the DT, RRO and TFO settlements already approved by the Board.

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6.8 Corporate Cost Allocations - Services Provided by ATCO, CUL, and CU Inc.

The relationship of the Applicants within the ATCO Group was summarized earlier in the Decision. The Applicants receive various corporate services from CU Inc., CUL, and ATCO Ltd.

Generally, ATCO submitted that the corporate structure of the ATCO Group benefited the Applicants and their customers by ensuring the Applicants receive corporate services and financing on an efficient and cost-effective basis. ATCO also submitted that many of the costs associated with the provision of corporate services were already subject to Board scrutiny and have previously received Board approval. Those services were listed¹⁰³ and generally described as: Administration, Corporate Aircraft, Building Rent, and Corporate Signature Rights.

The Board will address each service separately in the following sections.

6.8.1 Corporate Services – Administration

6.8.1.1 Positions of Parties

ATCO

ATCO submitted these costs were allocated to each of the Applicants with respect to costs incurred by CUL and CU Inc. ATCO suggested the costs assisted the Applicants to function as corporations. The costs included audit fees, listing fees, fees for the preparation of the annual report and fees for Directors. ATCO submitted the costs also included general administrative corporate costs such as salaries and benefits, travel, office expenses and rent.

ATCO submitted that the performance of head office and corporate functions on behalf of the applicants was a necessary and appropriate expense for the utilities, and that the performance of those functions by CUL and CU Inc. remained prudent and consistent with just and reasonable rate making. Those functions were more efficiently incurred through the parent company than through each individual utility.

The allocation of those costs to subsidiaries was based on an average of revenue, assets and capital expenditures. The average of the second preceding year's audited financial figures was used as the basis for allocation, as those figures were available at the beginning of the year. ATCO submitted that the allocation was reasonable as the allocation factors reflected the time and effort demanded of corporate personnel by the subsidiary companies. ATCO suggested that

¹⁰³ ATCO Group Application, Volume 1, Attachment 1-B, page 2 of 6

much of the time of corporate personnel was directed towards subsidiaries with substantive issues, and that those issues increased with the size of the operations.

ATCO allocated the costs to the subsidiaries of ATCO, CUL and CU Inc. using a common cost allocation methodology. The allocation factors were determined separately for ATCO, CUL and CU Inc. and applied to the corporate administrative costs of each of those entities¹⁰⁴. ATCO noted that General ATCO costs were allocated 11% to ATCO Ltd. subsidiaries, 22% to CUL subsidiaries other than CU Inc., and 67% to CU Inc. subsidiaries. ATCO noted that the ATCO subsidiaries could be allocated as little as 4% historically using the allocation methodology, however ATCO was allocating a minimum of 11%.

ATCO suggested the debate regarding the minimum rate of 11% that was charged to all subsidiaries was puzzling. ATCO argued the 11% was used to ensure that the historic allocation to ATCO Ltd.'s wholly owned unregulated affiliates was not decreased. ATCO added that measure was adopted out of an abundance of caution and operated to the favour of the regulated ATCO Group subsidiaries. ATCO submitted that any change to the allocation process that eliminated the floor amount would result in more costs being allocated to the regulated entities.

ATCO noted that the allocation methodology with respect to corporate services attracted attention during the proceedings. ATCO submitted there was no disagreement with the view that the consolidation of corporate service functions into a single overall group achieved economies of scope and scale, the benefits of which were shared by customers as well as shareholders. ATCO submitted the amount of overhead costs allocated to the utilities had decreased significantly (from 73% in 1998 to approximately 53% in 2001) and at the same time the overall costs had decreased by approximately 14%.¹⁰⁵ ATCO argued that both of those factors reduced the costs to utility customers associated with corporate services and clearly reflected the benefits associated with the consolidation of those functions and the allocation of their costs across all corporate entities.

The ATCO Group presented Mr. Casey Herman of PriceWaterhouseCoopers LLP to speak to the matter of the allocation of corporate costs. ATCO submitted that Mr. Herman examined the ATCO methodology and concluded that it was reasonable, based on other methodologies he had seen in industry. ATCO argued that Mr. Herman responded adequately to the criticisms leveled by Mr. Johnson on behalf of Calgary. ATCO described the three-part allocation formula used by the ATCO Group as an effort to capture a variety of inputs, including set up businesses, growth businesses and businesses with large rate bases or revenue based operations. ATCO concluded the three-part test based on revenues, assets and capital expenditures was a reasonable approach that should be accepted by the Board.

ATCO submitted that the method adopted by the ATCO Group in allocating corporate services was fair and reasonable to all subsidiaries and properly allocated a reasonable percentage of costs to all of the regulated and unregulated subsidiaries in the ATCO Group. ATCO suggested the fact that both regulated and unregulated companies were treated in exactly the same manner removed the potential for cross subsidization. In addition, since both regulated and unregulated companies were sharing in the same overhead cost pool, the regulated companies would benefit from the natural competitive market incentives on the unregulated companies to keep overhead

¹⁰⁴ AE Application, Schedule 2.1-5

¹⁰⁵ Transcript page 1404

costs down. ATCO argued those factors should mitigate the need for the Board to rely on a detailed line-by-line review, which was unlikely to lead to a more valid conclusion in any event. The ATCO Group utilities urged the Board to adopt an overall approach that was reasonable, instead of becoming embroiled in unnecessary detail.

ATCO argued the quantum of corporate service costs was not an issue for the Board to address in the proceeding; the Board should restrict its review to the allocation methodology.

Calgary

Calgary supported the use of Corporate Cost Allocation manuals as suggested in both the evidence of Mr. Johnson and Mr. Vander Veen. Calgary suggested the use of the manuals would provide clear guidelines as to how costs should be determined and could provide the allocation of costs between entities.

Calgary dealt with corporate services provided by ATCO, CUL, and CU Inc. as a whole. Calgary indicated its concerns related to the allocation methodology used by ATCO. Calgary argued that the inclusion of revenues as an allocation factor overstated the allocation of costs to the Applicants. Calgary submitted the commodity cost of gas or coal increased the revenue of the Applicants. Calgary also suggested Midstream revenues used for allocation purposes did not include gas purchased directly for ATCO Gas or purchased and resold to ATCO Gas.

Calgary also questioned the method by which ATCO calculated the average of the three allocation factors (Revenue, Total Assets, and Capital Expenditures). Calgary noted that the weighting of the three allocation criteria was an average of the averages, not an average of the actual amounts.

Calgary submitted that the administrative costs were too high. Calgary specifically questioned whether rent and remuneration of senior executives were appropriate. Calgary suggested the administrative costs included non-allowed costs (rent in excess of that approved by the Board for the same facilities) associated with rent on facilities rented by ATCO/CUL/CU Inc. Calgary also suggested the remuneration for the senior executives of ATCO/CUL/CU Inc. was out of line with the size of the company and its operations.

Calgary further submitted the administrative costs could include improper pension costs. Calgary submitted that pension costs should reflect the determinations made in the Pension proceeding. Calgary argued it would be inappropriate for the Board to approve pension costs using a different method from the one approved in the Pension proceeding.

FIRM/Core

FIRM/Core summarized the amounts included in the revenue requirements of each of the Applicants related to ATCO, CUL and CU Inc., but made no specific recommendations regarding the allocation methodology used to by the ATCO Group.

6.8.1.2 Board Findings

The Board notes ATCO's submission that there were economies of scope and scale achieved by consolidating corporate service functions, and that customers and shareholders shared in the benefits achieved. The Board notes ATCO's suggestion that its allocation methodology should

remove the potential for cross-subsidization between affiliates and should also remove the need for a detailed line-by-line review of corporate administration costs.

The Board also notes that customers did not object to the consolidation of corporate services, but rather to the allocation methodology and the quantum of certain costs. The Board agrees with ATCO that economies of scope and scale should yield benefits that could be shared by customers and shareholders. The Board also notes that the benefits of consolidating corporate service functions could be eroded or skewed in favor of either customers or shareholders if inappropriate costs were incurred at the corporate level, or the allocation methodology favored one stakeholder at the expense of another.

The ATCO allocation methodology was endorsed by ATCO's expert, Mr. Herman, and described as fair and reasonable. The Board notes ATCO's submission that the allocation methodology was fair to all of the regulated and non-regulated subsidiaries in the ATCO Group by virtue of the three-part test that was applied to all subsidiaries. The Board notes ATCO's suggestion that the three-part test was an effort to accommodate a variety of businesses, from small set up or growth businesses to those with significant assets or revenues. In response, the Board also notes Calgary's suggestion that certain of the allocation factors overstated the allocation of costs to the regulated utilities.

Some parties noted that the allocation formula appeared to be weighted toward utilities (capital intensive and significant revenues). The allocation methodology was reviewed during the proceeding, with Mr. Herman defending its reasonableness. Mr. Herman compared ATCO's allocation to others and considered it to be fair. The Board considers that while parties had questions or proposed the use of alternative Corporate Cost Allocation manuals, there was no evidence that persuaded the Board that ATCO's methodology was unreasonable. The Board considers that the approval of the allocation methodology for 2001 and 2002 will not on its own result in unreasonable corporate administration costs.

Notwithstanding, the Board will hereafter review several concepts suggested as modifications to this methodology. Further, the Board believes ATCO's methodology should be reviewed periodically to test the allocation validity, to determine if other cost drivers would be more appropriate, and if corporate costs/activities have changed significantly.

The Board is concerned that the high electricity and gas prices in the year 2000 and 2001 and the resulting revenue impacts could unnecessarily skew the assignment of corporate overhead costs when those years are used. Accordingly, the Board directs ATCO in its next GRA to address the impact of fluctuating commodity prices on corporate costs and to consider the advisability of an amendment to the allocation formula whereby the revenue factor would exclude commodity revenue.

The Board notes that there was concern or disagreement regarding other aspects of the allocation methodology, those being the minimum rate of 11% charged to subsidiaries, the alteration of allocation criteria, the weighting of the three allocation criteria, and the use of 2nd prior year actuals as allocation criteria.

The Board considers that the concern regarding the minimum rate of 11% charged to subsidiaries was largely resolved during the proceeding. The Board notes that no party proposed an alternative minimum rate, higher or lower. The Board notes ATCO's suggestion that, based on

historical information, a lower minimum rate could have been justified. In the absence of analysis the Board considers that ATCO's suggestion is not convincing. For example, the fact that the proposed allocation methodology would have historically yielded a lower allocation factor could simply mean that the proposed methodology is flawed, or it could mean that whatever analysis was used to justify the 11% minimum rate was flawed, or it could mean that there is an aberration in the historical data, or there could be some other explanation.

The Board is not persuaded to adjust the minimum 11% rate charged to subsidiaries, higher or lower, at this time, however, the Board would like to review the minimum rate and the affiliates it should be applied to at the next ATCO GRA. Accordingly, the Board directs ATCO, at the next GRA, to file a review of the minimum rate of 11% charged to subsidiaries.

The Board notes Calgary's suggestion that certain allocation factors might have been adjusted, particularly the revenues related to Midstream. The Board notes that there was no evidence to confirm whether Calgary's suggestion was valid. Accordingly, the Board directs ATCO, in future reporting, whether for a GRA test year or a Filing (Statutory Review, Annual Report of Finances and Operations, etc.), to identify and elaborate on any allocation criteria or input that has been adjusted from actual, or where the allocation factor has been interpreted as something other than the plain meaning (i.e. Revenue should simply be the subsidiary's total reported revenue). The Board considers that this type of documentation should help to avoid unnecessary speculation about inappropriate adjustments to the allocation of corporate administration costs.

The Board also notes there were questions regarding the use of 2nd prior year actuals as the basis for the allocation. The Board notes that Mr. Herman recommended using more current information (prior year instead of 2nd prior year). However, the Board agrees with ATCO's suggestion that prior year information would not normally be available when most GRA forecasts are prepared. The Board also notes that the use of 2nd prior year information should be less subjective and should lead to less controversy than the use of forecast data would. The Board is prepared to accept a slightly less responsive allocation methodology in favor of actual objective allocation factors.

The Board observes that a reasonable exception would be to use forecast data when there is a material change in circumstances (i.e. the transfer of a business unit from a utility to a non-regulated subsidiary, such as I-Tek or Singlepoint or the generation units out of AE). The Board notes that ATCO agreed to include I-Tek in its corporate cost allocation¹⁰⁶, even though there was no actual information to use from the 2nd prior year. The Board considers that this type of amendment would be an appropriate modification to the use of 2nd prior year actuals. Accordingly, the Board directs ATCO to continue using 2nd prior year data, however, the Board considers that the cost allocation should, to the extent reasonably possible, reflect the corporate structure in place. In the Compliance Filing the Board directs ATCO to confirm whether or not this occurred in 2001 and 2002.

Overall, the Board considers ATCO's allocation methodology to be satisfactory for the 2001 and 2002 test years, however it should be reviewed as previously mentioned. To assist the Board, effective forthwith, the Board directs ATCO to maintain sufficient records to enable future review. At a minimum, corporate administration costs should be tracked by function.

¹⁰⁶ BR-ATCO.36 and CAL-ATCO.53

Aside from concerns about the allocation methodology, the Board notes there were specific concerns related to certain corporate administration costs. Calgary submitted that the level of remuneration for ATCO/CUL/CU Inc. executives was out of line. ATCO suggested that specific costs were not to be considered in the proceeding. The Board does not agree with ATCO that costs such as executive remuneration are out of the scope of the proceeding, since such costs could materially affect allocations to the regulated utilities.

However, the Board finds that there was little or no evidence from which it could assess the reasonableness of executive remuneration. The Board is not persuaded to delve any further into this area in this Decision, but agrees that this issue could be explored again at a future GRA. The Board notes that executive remuneration has been addressed in the context of prior GRAs and agrees that it would be reasonable to do so again. Accordingly, the Board directs ATCO, in the next GRA for each regulated utility, to justify its executive and senior management compensation program through a competitive market comparison.

Calgary submitted that Pension costs included in the GRA Amounts of this proceeding must be consistent with those approved in the Pension proceeding (Decision 2001-105). The Board agrees and directs ATCO, in its Compliance Filing, to adjust and explain any necessary changes to Pension costs included in the GRA Amounts.

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6.8.2 Corporate Services – Corporate Aircraft Charges

6.8.2.1 Positions of Parties

ATCO

ATCO referred to the two corporate aircraft owned by CUL and submitted that the Office of the Chairman (OOC) and the Applicants were the primary users of the aircraft. ATCO noted that there were fixed and variable costs associated with the operation of the aircraft.

In the Application, ATCO submitted that the fixed costs included insurance, depreciation, pilot salaries and benefits. ATCO proposed to allocate the fixed costs to the utilities, with a contribution to be obtained by non-utility users through a premium levied on the variable costs allocated to those same non-utility users. The monthly allocation of fixed costs to each utility was based on the weighted average of the actual 12-month rolling flying hours for that utility, plus an allocation of the 12-month rolling flying hours for the OOC.

ATCO submitted that the variable costs included fuel, repairs and maintenance, flight plan registration charges, catering and meals, and other related expenses. ATCO proposed to allocate the variable costs based on flying hours. ATCO proposed to increase the charge to non-utility affiliates by 15% as a contribution toward fixed costs.

ATCO submitted that a year-end reconciliation would be done to identify, and adjust for any over/under recovery of expenses. ATCO submitted that the Board has reviewed corporate aircraft charges in previous GRAs. ATCO suggested the proposed methodology to allocate corporate aircraft charges was consistent with the previously approved methodology. ATCO suggested the only change was that operating costs had increased.

ATCO disagreed with Calgary's suggestion that ATCO has not justified the need for the aircraft or the cost. ATCO argued the capital costs of the aircraft assets was not the subject of the proceeding and that it was entirely inappropriate to raise them. ATCO submitted the capital costs had been tested elsewhere. ATCO argued that every issue related to corporate aircraft charges did not need to be reopened just because the allocation methodology was an issue.

Subsequent to filing the Application, ATCO later advised the Board that it reviewed the proposed allocation methodology¹⁰⁷ and recommended a change. ATCO proposed the new methodology to be effective January 1, 2002. ATCO argued the revised methodology should be approved for prospective implementation. ATCO indicated that it was changing the methodology on that date.

ATCO advised they would allocate corporate aircraft fixed costs to all companies in the ATCO Group based on the same percentages used for other General Corporate Costs. Variable costs would continue to be allocated to the respective companies using the aircraft based on the related flying hours.

Calgary

Calgary considered that ATCO's proposed allocation methodology was not appropriate¹⁰⁸. Calgary suggested that the allocation percentage for fixed costs, based on the corporate allocation factors, was probably incorrect when compared to the allocation percentage for variable costs, based on actual usage.

Calgary further argued that ATCO had not justified the need for the aircraft nor the cost. Calgary suggested it was insufficient for ATCO to simply note that the Board had not disallowed the cost of corporate aircraft in the past. Calgary argued that in the absence of a justification from ATCO for both the need and the cost of corporate aircraft the amount should be denied.

FIRM/Core

FIRM/Core noted the amounts included in the 2001 and 2002 revenue requirements and the allocation methodology proposed in the Application, as well as the change to the allocation methodology recommended by ATCO for 2002. FIRM/Core submitted that ATCO did not provide the changes that would result to the 2001 and 2002 costs included in the revenue requirements of the three utilities affected, AE, AGS and APS. FIRM/Core recommended that ATCO be directed to file the revised 2001 and 2002 costs for each of the utilities.

6.8.2.2 Board Findings

The Board notes Calgary's suggestion that ATCO had not justified the need for, or the cost of corporate aircraft. The Board does not agree that a justification is required each time an ATCO utility has a GRA, however, the Board does agree that ATCO should review its operations whenever there is a significant change in circumstances or usage, either internally within the ATCO Group or externally. The Board expects that the management of the utilities would exercise the same degree of cost discipline on these costs as they would on other costs.

¹⁰⁷ BR-ATCO.8(Supplementary)

¹⁰⁸ Transcript, Volume 18, page 1901

The Board notes that ATCO has reviewed the allocation methodology used with respect to corporate aircraft. The Board notes that ATCO has proposed a different methodology for 2001 and 2002, and proposed a different allocation methodology for fixed and variable costs. There did not appear to be disagreement with respect to the allocation of variable costs, however the Board notes that ATCO, Calgary and FIRM/Core disagreed as to the appropriate allocation methodology for fixed costs and the years it should be applicable to. While there was disagreement and alternative recommendations with respect to fixed costs, parties including ATCO did not justify alternative approaches by providing supporting analysis.

The Board considers that there is some merit to both of ATCO's proposals. In the Application, fixed costs were allocated to utilities based on flying hours, while non-utility affiliates contributed to fixed costs through a premium charged on variable costs that are based on aircraft usage. In ATCO's proposed new methodology, fixed costs were allocated to utility and non-utility affiliates based on the general corporate allocation. In either case, ATCO was allocating some fixed costs to non-utility affiliates. The Board notes that Calgary disagreed with allocating fixed costs using the general corporate allocation. The Board understood that Calgary preferred to allocate fixed cost similarly to variable costs, although Calgary did not make a specific recommendation.

The Board considers that an allocation methodology should provide criterion for an appropriate contribution toward fixed costs, while being fair, flexible, and reflective of the short-run and long run usage of the aircraft. The Board notes that while there was debate, there was limited data or analysis to support various alternatives. For example, the Board was not provided a comparison of the fixed cost allocation for 2001 and 2002 using the two ATCO proposals. The Board considers there to be an inherent attraction to basing the fixed cost contribution on the actual aircraft usage. The Board is not convinced that ATCO's variable cost plus 15% is the best approach for future years, since perhaps a different 'markup' is more appropriate.

Based on the record the Board does not approve ATCO's proposed methodology that allocates 2001 and 2002 fixed costs based on general corporate allocations. Rather, the Board directs ATCO to use the original allocation method, set out in the Application. The Board finds it appropriate in 2001 and 2002 to continue charging affiliates for variable costs plus 15% as per the Application.

Analysis was not performed on the range of methodologies the Board could consider. The Board is interested in testing an allocation of fixed costs to all affiliates (utility and non-utility) based on the prior year's aircraft usage. That methodology appears to be superior to the two ATCO proposals, however the Board finds itself unable to assess the cost implications of the various alternatives at this time. As well, the Board considers the recent series of ATCO restructurings of regulated and non-regulated subsidiaries as a significant change in circumstances that merit a review of the use of the corporate aircraft. Furthermore, the Board is interested in changes in the historical usage of the corporate aircraft and would like to test the extent of those changes. For the foregoing reasons the Board directs ATCO to file information at the next GRA of an ATCO utility that would enable the Board and other parties to confirm the usage of the aircraft by each affiliate, and to assess the impact of allocating fixed costs using different approaches.

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6.8.3 Corporate Services – Building Rent

6.8.3.1 Board Findings

The Board considers that the issue of building rent was substantially dealt with earlier in Section 6.3.2. To be clear, the Board finds that utilities in the ATCO Group should continue to only include rent at approved rates in their revenue requirement. The Board notes that this includes any portion of building rent allocated to a regulated utility by way of a corporate allocation. The Board agrees that a utility should not be permitted to do indirectly what it could not previously do directly.

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6.8.4 Corporate Services – Corporate Signature Rights

6.8.4.1 Board Findings

The Board considers that the issue of corporate signature rights was substantially dealt with in Section 6.2 of this Decision.

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7 COMPLIANCE FILING AND REFILING

The Board directs ATCO to submit a Compliance Filing according to the Board findings in this Decision on or before September 2, 2002, with a copy to each interested party. Parties shall have until September 16, 2002 to provide any comments on the Compliance Filing to the Board. Further, the Board directs ATCO, in its Compliance Filing, to resubmit Tables 3, 5, and 6 with the updated numbers arising from the Board's findings in this Decision.

8 SUMMARY OF DIRECTIONS

This section is provided for the convenience of readers. In the event of any difference between the Approvals in this section and those in the main body of the report, the wording in the main body of the Decision shall prevail.

1. ATCO submitted that the contract with ATCO Power for Isolated Generation was terminated, but did not indicate if the termination affected any of the GRA Amounts..... 15
2. The Board also notes that ATCO did not identify any revisions to the GRA Amounts as a result of the termination of the contract with ATCO Power for Isolated Generation. The Board directs AE, in its Compliance Filing, to confirm whether any revisions should have been identified, and to provide any necessary revisions. 16
3. The Board notes that AGS did not identify the affiliate related capital items in the Application. The Board agrees with Calgary that this information is important. Accordingly, the Board directs ATCO, in future GRAs and reporting to the EUB (e.g. Report of Finances and Operations), to provide this information. In this case, the Board has already approved the AGS 2001/2002 revenue requirement, including capital items, with the exception of those items outlined in Exhibit 42, and those transferred to other proceedings..... 19
4. The Board notes that APS did not identify the affiliate related capital items in the Application. The Board agrees with Calgary that this information is important and should be provided in future GRAs and reporting to the EUB (e.g. Report of Finances and Operations). In this case, the Board has already approved the APS 2001/2002 revenue requirement, including capital items, with the exception of those items outlined in Exhibit 83, and those transferred to other proceedings. Accordingly, the Board directs ATCO, in future GRAs, and reporting to the EUB, to identify the affiliate related capital items. 21
5. Consequently, the Board would provide retroactive approval for the sale of computer assets from the ATCO Group regulated utilities to I-Tek, effective January 1, 1999, subject to ATCO amending its Application to match the Board’s findings with respect to FMV for this transfer and its findings with respect to service charges of I-Tek. If ATCO does not amend its Application in this fashion by the date of the Compliance Filing, the Board considers that the transfer of assets from the ATCO regulated utilities to I-Tek would be void pursuant to the PUBA. In that instance, the Board directs ATCO, in its Compliance Filing, to address all consequential effects of voiding the I-Tek transfer, including the effects on the ongoing provision of services to customers. 29
6. As the Board is satisfied that the salvage value of the equipment is reasonable, the Board is only adjusting the purchase price to reflect that I-Tek was transferred as a going concern, and the sole source service provider. The Board directs ATCO, in its Compliance Filing, to add 10% or \$649,000 (see table below) to the deemed purchase price of assets transferred from the ATCO Group regulated utilities to I-Tek. This revises the deemed purchase price from \$6.487 million to \$7.135 million. The Board is of the view that this is a conservative estimate of the value associated with the nature of the transfer and the ongoing use of the I-Tek assets. 34
7. Further, the Board directs ATCO, in its Compliance Filing, to identify and correct any inaccuracies in the information presented in the table below on the adjustment to the I-Tek Transfer price. 35

8. However, the Board directs the ATCO Group regulated utilities, in their Compliance Filing, to reduce the amount of the loss amortized for the 2001 and 2002 test years in keeping with the Board’s finding to deem a higher value for the asset transfer. The Board has included the adjusted amortization amounts in the following tables based on information obtained from the Application. 37
9. However, the Board directs ATCO, in its Compliance Filing, to identify and correct any inaccuracies in the following four tables..... 38
10. The Board is of the view that it is appropriate to reduce the rates payable to I-Tek by the mid-point value of this range. Accordingly, the Board directs ATCO, in its Compliance Filing, to reduce rates payable directly to I-Tek from the ATCO regulated utilities by the amount of 7.5% for all items. The Board has included the adjusted I-Tek charges on the following table, based on information obtained from the Application, however the Board directs ATCO, in the Compliance Filing, to identify and correct any inaccuracies. 51
11. With respect to the future operation of the I-Tek MSA, the Board has continued misgivings with respect to the operation of the pricing mechanisms within the agreement. The Board directs ATCO, prior to any future material engagements of consultants to undertake a price review applicable to I-Tek and the regulated Utilities, to file terms of reference applicable to the engagements. Following participation of the parties, the Board will make a preliminary determination as to the reasonableness of those terms of reference to assist in providing a complete and useful record for future applications. 52
12. However, the Board also notes the evidence of the Deloitte report that certain of the companies under study were in the process of upgrading their CIS. The Board does note evidence provided by interveners that, generally, new CIS are not as costly as ATCO’s. Due to this evidence the Board is of the view that it is reasonable to select from the lower end of this range of discounts. Therefore, the Board directs ATCO, in its Compliance Filing, to reduce the rates payable to Singlepoint by 11.1% for rate-setting purposes for the ATCO regulated utilities. The Board has included the adjusted Singlepoint charges in the following table based on information obtained from the Application. However the Board directs ATCO, in the Compliance Filing, to identify and correct any inaccuracies in the adjusted Singlepoint charges..... 66
13. With respect to the future operation of the Singlepoint MSA, the Board has continued misgivings with respect to the operation of the pricing mechanisms within the agreement. The Board directs ATCO, prior to any future material engagements as they relate to the regulated utilities, to file terms of reference applicable to any consultants engaged to undertake a price review applicable to Singlepoint. Following input from parties, the Board will make a preliminary determination as to the reasonableness of those terms of reference to assist in providing a complete and useful record for future applications..... 67
14. The Board accepts ATCO’s withdrawal of this amount from the Application and the Board directs ATCO, in future Filings (GRA, Statutory Review, Annual Report of Finances and Operations, etc.) to treat any amounts paid for signature rights as a non-utility expense, consistent with utility reporting (i.e. reconciling items between corporate financial and utility income)..... 73
15. The Board notes that AGS confirmed its use of approved rental rates for 2001 and 2002 forecast revenue requirement purposes, while APS confirmed that it did not use approved rates in the forecast of 2001 and 2002 rent expense for the Edmonton ATCO Centre. The Board agrees that APS should have used the previously approved rates of \$13.58 per square

- foot for the Edmonton ATCO Centre and therefore the Board directs APS, in its Compliance Filing, to reduce its 2001 and 2002 forecast rent expense by \$20,000 per year (based upon CAL-APS.77(b)). 74
16. The Board also notes that AE did not confirm whether it had used approved rental rates for 2001 and 2002 forecast revenue requirement purposes. The Board notes that the situation for AE is somewhat different from that of AGS and APS, in that, there is a negotiated settlement for AE already approved by the Board. The Board is only determining the amount of certain placeholders in this Decision. Therefore the Board directs AE, in its Compliance Filing, to advise the Board whether any of the placeholder amounts, other than Building Rent, include rent paid to CUL or ATCO Investments Ltd. at non-approved rates. 74
17. Therefore, the Board approves the requested amounts for other services provided by Midstream, ATCO Noise Management Ltd., ATCO Power Ltd., ATCO Structures Ltd., ATCO Energen, and Genics Inc. for inclusion in the 2001 and 2002 revenue requirements of AE, AGS and APS (the Board notes that APS included contract D-8 in Attachment 1-B, however no amount was transferred from the APS GRA for this amount). Further, the Board directs ATCO, in its Compliance Filing, to summarize all these costs by regulated entity in a convenient tabular form. Consistent with the Boards determinations regarding ATCO Frontec and ATCO Travel, need, price, and terms for these other services should be evaluated on an ongoing basis, similar to what the Board would expect for any other service or contract. 79
18. Notwithstanding, the Board is interested in exploring the merit of the development and use of Cost Allocation Manuals in this jurisdiction. The development of Cost Allocation Manuals could be beneficial in conjunction with the Code of Conduct. However, the Board cannot make that determination at this time, in the absence of evidence with respect to the ongoing costs and benefits associated with the development and use of Cost Allocation Manuals. The Board directs ATCO, at its next GRA, to file its assessment with respect to the ongoing costs and benefits of the development of Cost Allocation Manuals. 84
19. The Board also notes Calgary’s submission that a number of the ATCO allocations between AGS, APS, AGN and APN were arbitrary. The Board recognizes that the ATCO allocations are not necessarily complex or ‘activity based’, however, the Board does not agree they are arbitrary. The Board would support the use of more complex allocation methods in future GRAs, however the Board is satisfied with respect to 2001 and 2002 with the Shared Service Agreements and Financial Reporting – North and South Shared Services as filed. Therefore, the Board approves the use of the Shared Service Agreements and Financial Reporting – North and South Shared Services for AGS and APS for 2001 and 2002. 88
20. While the issue of the shared services between the AE DT, TFO and RRO functions, and between the other regulated utilities owned by AE was not raised during the proceeding, similar concerns exist between those functions and utilities as do between the Gas and Pipelines divisions. Accordingly, commencing forthwith, the Board directs AE to maintain and file similar documentation of the shared services between the DT, TFO and RRO functions, and between the other regulated utilities owned by AE. 88
21. The Board also notes suggestions that there was no information provided that confirmed whether other regulated utilities (i.e. those serving Yukon and NWT customers) were paying a fair amount for I-Tek and Singlepoint. The Board directs AE, in its Compliance Filing, to clarify this matter. 89
22. The Board is concerned that the high electricity and gas prices in the year 2000 and 2001 and the resulting revenue impacts could unnecessarily skew the assignment of corporate overhead

- costs when those years are used. Accordingly, the Board directs ATCO in its next GRA to address the impact of fluctuating commodity prices on corporate costs and to consider the advisability of an amendment to the allocation formula whereby the revenue factor would exclude commodity revenue..... 92
23. The Board is not persuaded to adjust the minimum 11% rate charged to subsidiaries, higher or lower, at this time, however, the Board would like to review the minimum rate and the affiliates it should be applied to at the next ATCO GRA. Accordingly, the Board directs ATCO, at the next GRA, to file a review of the minimum rate of 11% charged to subsidiaries..... 93
24. The Board notes Calgary’s suggestion that certain allocation factors might have been adjusted, particularly the revenues related to Midstream. The Board notes that there was no evidence to confirm whether Calgary’s suggestion was valid. Accordingly, the Board directs ATCO, in future reporting, whether for a GRA test year or a Filing (Statutory Review, Annual Report of Finances and Operations, etc.), to identify and elaborate on any allocation criteria or input that has been adjusted from actual, or where the allocation factor has been interpreted as something other than the plain meaning (i.e. Revenue should simply be the subsidiary’s total reported revenue). The Board considers that this type of documentation should help to avoid unnecessary speculation about inappropriate adjustments to the allocation of corporate administration costs..... 93
25. The Board observes that a reasonable exception would be to use forecast data when there is a material change in circumstances (i.e. the transfer of a business unit from a utility to a non-regulated subsidiary, such as I-Tek or Singlepoint or the generation units out of AE). The Board notes that ATCO agreed to include I-Tek in its corporate cost allocation, even though there was no actual information to use from the 2nd prior year. The Board considers that this type of amendment would be an appropriate modification to the use of 2nd prior year actuals. Accordingly, the Board directs ATCO to continue using 2nd prior year data, however, the Board considers that the cost allocation should, to the extent reasonably possible, reflect the corporate structure in place. In the Compliance Filing the Board directs ATCO to confirm whether or not this occurred in 2001 and 2002..... 93
26. Overall, the Board considers ATCO’s allocation methodology to be satisfactory for the 2001 and 2002 test years, however it should be reviewed as previously mentioned. To assist the Board, effective forthwith, the Board directs ATCO to maintain sufficient records to enable future review. At a minimum, corporate administration costs should be tracked by function. 93
27. However, the Board finds that there was little or no evidence from which it could assess the reasonableness of executive remuneration. The Board is not persuaded to delve any further into this area in this Decision, but agrees that this issue could be explored again at a future GRA. The Board notes that executive remuneration has been addressed in the context of prior GRAs and agrees that it would be reasonable to do so again. Accordingly, the Board directs ATCO, in the next GRA for each regulated utility, to justify its executive and senior management compensation program through a competitive market comparison..... 94
28. Calgary submitted that Pension costs included in the GRA Amounts of this proceeding must be consistent with those approved in the Pension proceeding (Decision 2001-105). The Board agrees and directs ATCO, in its Compliance Filing, to adjust and explain any necessary changes to Pension costs included in the GRA Amounts. 94

- 29. Based on the record the Board does not approve ATCO’s proposed methodology that allocates 2001 and 2002 fixed costs based on general corporate allocations. Rather, the Board directs ATCO to use the original allocation method, set out in the Application. The Board finds it appropriate in 2001 and 2002 to continue charging affiliates for variable costs plus 15% as per the Application. 96
- 30. The Board directs ATCO to submit a Compliance Filing according to the Board findings in this Decision on or before September 2, 2002, with a copy to each interested party. Parties shall have until September 16, 2002 to provide any comments on the Compliance Filing to the Board. Further, the Board directs ATCO, in its Compliance Filing, to resubmit Tables 3, 5, and 6 with the updated numbers arising from the Board’s findings in this Decision. 97

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9 ORDER

THEREFORE, IT IS ORDERED THAT:

- 1) The transfer of computer assets to I-Tek, effective January 1, 1999, is approved provided the Applicants adjust the transfer price as directed by the Board. If the Applicants do not comply with the Board's directions the transaction is considered void pursuant to section 26 of the PUB Act.
- 2) The Applicants shall submit a Compliance Filing according to the Board's findings in this Decision on or before September 2, 2002.
- 3) The Applicants, in the Compliance Filing, shall include all of the supporting schedules and information necessary for the Board to make its final determination respecting the 2001 and 2002 GRA Amounts.

Dated at Calgary, Alberta on July 26, 2002

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

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

<original signed by>

A. J. Berg, P. Eng.
Board Member

<original signed by>

M. J. Bruni, Q.C.
Acting Board Member

APPENDIX 1: ATCO ORGANIZATIONAL CHARTS

During the proceeding, ATCO filed the following organizational charts to assist in the understanding of the structure.

The following chart is the ATCO Group – Operational Chart. Clicking on the icon below will allow the reader to access the chart.



"ATCO Group -
Operational Chart.do

[\(Click here to return to Decision text where Appendix 1 is referred to\)](#)

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The following chart is the ATCO Ltd – Organizational Chart. Clicking on the icon below will allow the reader to access the chart.



"ATCO Ltd -
Organizational Chart.

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APPENDIX 2: COMPANY ABBREVIATIONS

Company	Abbreviation
Alberta Association of Municipal Districts and Counties	AAMDC
Alberta Federation of REAs Ltd.	REA
Alberta Irrigation Projects Association	AIPA
Alberta Urban Municipalities Association and Municipal Intervenors	MI
ATCO Electric Ltd.	AE
ATCO Frontec	Frontec
ATCO Gas and Pipelines Ltd.	AGPL
ATCO Gas North	AGN
ATCO Gas South	AGS
ATCO Group	ATCO, AE, AGPL, or the Company
ATCO I-Tek	I-Tek
ATCO Midstream Ltd.	Midstream
ATCO Pipelines North	APN
ATCO Pipelines South	APS
ATCO Singlepoint Ltd.	Singlepoint
Canadian Association of Petroleum Producers	CAPP
Canadian Utilities Limited	CUL
Compass Analysis Canada	Compass
Consumers Coalition of Alberta	CCA
CUL Information Systems	CUIS
EDS Canada	EDS
ENMAX Energy Corporation, ENMAX Power Corporation	ENMAX
Enron Canada Corp.	Enron
EPCOR Energy Services (Alberta) Inc.	EESAI
Federation of Alberta Gas Co-ops Ltd and Gas Alberta Ltd.	FGA
Independent Power Producers Society of Alberta and Senior Petroleum Producers Association	IPPSA/SPPA
Northwestern Utilities Limited	NUL
Office of the Chairman	OOC
Public Institutional Consumers of Alberta	PICA
The City of Calgary	Calgary

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