ATCO Pipelines

Contract Transition

April 20, 2011

The Alberta Utilities Commission
Decision 2011-160: ATCO Pipelines
Contract Transition
Application No. 1606374
Proceeding ID No. 732

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1 Introduction

1. ATCO Pipelines (AP), a division of ATCO Gas and Pipelines Ltd., filed an application on July 16, 2010 with the Alberta Utilities Commission (AUC or the Commission) in compliance with directions by the Commission in Decision 2010-228.[1]

2. In Decision 2010-228, the Commission approved AP's 2010-2012 Negotiated Settlement (Settlement) with regard to its 2010-2012 General Rate Application (GRA) Phase I and concluded that the proposal to integrate regulated gas transmission services in Alberta involving the AP and NOVA Gas Transmission Ltd. (NGTL) systems was in the public interest and furthered the convenience of the public. In order to streamline the provision of natural gas transmission services and address competitive pipeline issues in Alberta, AP and NGTL entered into the Alberta System Integration Agreement dated April 7, 2009 (Integration Agreement).[2] The Integration Agreement requires AP and NGTL, subject to acceptable regulatory approvals, to swap ownership of certain physical assets within distinct operating territories or "footprints" in Alberta (Asset Swap), and to work together in Alberta under a single rates and services structure, while maintaining separate ownership, management and operation of their assets (Integration). NGTL would be the party that interfaces contractually with customers for regulated gas transmission services using the combined regulated AP and NGTL gas transmission systems within Alberta (collectively, the Alberta System). AP proposed that NGTL would include AP's approved revenue requirement through a monthly charge by AP to NGTL (AP Charge), in NGTL's revenue requirement which will be collected from customers using the Alberta System. The total Alberta System revenue requirement would therefore be composed of the AP revenue requirement approved by the Commission and charged to NGTL plus the NGTL revenue requirement approved by the National Energy Board (NEB). This would form the basis for the determination of Alberta System rates and tariffs for all customers. As part of the implementation of the Integration, all AP contracts would be transitioned to Alberta System contracts with NGTL (Contract Transition).

3. The application[3] filed in connection with Decision 2010-228 indicated that Integration (the Integration Application) is to occur on the "Integration Effective Date." The Integration Effective Date is estimated to occur 12 months from the date of receipt of the later of the AUC

[1] Decision 2010-228: ATCO Pipelines 2010-2012 Revenue Requirement Settlement and Alberta System Integration, Application No. 1605226, Proceeding ID. 223, May 27, 2010.

[2] On September 8, 2008, ATCO Ltd. issued a news release indicating that AP and NGTL had reached a proposed agreement to provide seamless natural gas transmission service to customers. The Alberta System Integration Agreement, dated April 7, 2009, between AP and NGTL was attached as Appendix 1 to the application.

[3] ATCO Pipelines 2010-2012 Revenue Requirement Settlement and Alberta System Integration, Application No. 1605226, Proceeding, ID No. 223.

and NEB approvals. At that time the AP customers and contracts would be transitioned to NGTL and NGTL would start paying the AP Charge, and regulated transmission service in Alberta would be coordinated. AP indicated in the Integration Application that the swap of assets is estimated to occur within 18 months from the date of the later of each of the necessary AUC and NEB approvals. Unless terminated as a result of the failure to comply with or waive conditions precedent, the Integration Agreement is to remain in effect for the life of the Alberta System facilities.

4. In Decision 2010-228 the Commission approved in principle the Contract Transition and the Asset Swap but considered that these matters, along with gas quality issues and AP's proposal to purchase the line pack on its system, had not been addressed in sufficient detail and required further review and approval.

5. AP filed this application (the Contract Transition Application) to address matters raised by the Commission in Decision 2010-228, including:

1. Gas Quality Specifications
2. The terms of the proposed ATCO Gas delivery contract with NGTL
3. Transition of AP's Non-Standard contracts[4] to NGTL contracts
4. Transition of AP's Straddle Plant Delivery contracts[5] to NGTL contracts, and
5. AP's purchase of line pack from AP's customers

6. AP specifically requested Commission approval of:

1. Contract Transition in its entirety and
2. AP's purchase of line pack

7. On July 19, 2010, the Commission issued a notice of application with regard to the Contract Transition Application. Any party who wished to intervene in this proceeding was requested to submit a statement of intent to participate (SIP) to the Commission by the participation closing deadline of 2 p.m., August 3, 2010.

8. The Commission received SIPs from the following parties:

- AltaGas Ltd. (AltaGas)
- ATCO Gas North
- BP Canada Energy Company (BP)
- Canadian Association of Petroleum Producers
- Consumers' Coalition of Alberta (CCA)
- Cenovus Energy Inc.
- Dow Chemical Canada ULC (Dow)
- ENMAX Energy Corporation

[4] AP entered into contracts that had terms and/or rates that differed from the standard Terms and Conditions or standard rates. The non-standard agreements were entered into to retain the customer where the customer had alternative options for service.

[5] AP entered into specific contracts to transport natural gas to and supply straddle plants with natural gas and which permitted the extraction of natural gas liquids up to and including ethane. The ownership of the liquids transfer from AP to the straddle plant owner in return for maintaining the inlet energy quantity by supplying an equivalent amount of the energy extracted. The transportation rate (SPD rate) is approved by the Commission.

- EnCana Corporation
- Gas Alberta Inc. (Gas Alberta)
- Industrial Gas Consumers Association of Alberta
- NGTL
- TransAlta Corporation
- Office of the Utilities Consumer Advocate (UCA)

9. AltaGas, BP, the CCA, Dow, Gas Alberta, NGTL, and the UCA were all active participants in the proceeding.

10. The Commission established a written process schedule with argument and reply argument due January 6, 2011, and January 20, 2011 respectively. The division of the Commission assigned to the proceeding was Carolyn Dahl Rees (Vice-Chair) and Mark Kolesar (Commission Member). For purposes of this application, the Commission considers that the record closed on January 20, 2011.

11. In reaching the determinations set out within this decision, the Commission has considered all relevant materials comprising the record of this proceeding, including the evidence and argument provided by each party. Accordingly, references in this decision to specific parts of the record are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the record with respect to that matter.

2 Background

12. In Decision 2010-228, the Commission concluded the following with respect to Integration:

- Integration eliminates stacked tolls for customers who transport gas in Alberta on both the AP and NGTL pipeline systems, eliminates the need for duplicative terms of service, and reduces the regulatory burden and costs which result when NGTL and AP compete for customers in Alberta, often leading to protracted and contentious regulatory proceedings.

- Integration should enhance the orderly, efficient, and cost effective expansion of the Alberta System in that system planning for an expansion is anticipated to be performed on a coordinated basis.[6]

- The exclusive footprint areas should lead to efficiencies for facility applications.

- The 2010-2012 GRA Phase I Settlement forecasted cost savings to AP's customers due to Integration, and reduced business risk for AP.[7]

- Most customers requiring the use of both the AP and NGTL pipeline systems should benefit by the removal of dual or stacked tolls that inhibited cost effective transportation

[6] Exhibit 1, AP Integration, page 9, paragraph 32.
[7] Decision 2010-228, paragraph 131.

of gas in the province. However, the rate impact to individual customers will be explored in NGTL's rate application to the NEB.[8]

13. Given the above noted benefits associated with Integration, the Commission concluded that Integration was in the public interest and furthers the convenience of the public. The Commission therefore approved Integration.[9]

14. With regard to Contract Transition, associated gas quality issues, the purchase of line pack and the contemplated Asset Swap with NGTL, the Commission decided in Decision 2010-228 that more detail was necessary prior to a final approval being granted. The Commission was prepared to approve Contract Transition and the Asset Swap in principle at that time, subject to further review and final approvals of these matters. The Commission directed AP to file an application that addressed terms and conditions of service as it relates to gas quality issues, a comprehensive draft or final agreement between NGTL and ATCO Gas, and how AP's non-standard agreements and straddle plant delivery (SPD) contract holders would be transitioned to NGTL contracts.[10]

15. In respect of SPD which is a matter for consideration in this proceeding, the Commission notes that Decision 2009-009[11] considered matters involving natural gas liquids (NGL) extraction in which the Alberta Energy and Utilities Board (EUB or Board) concluded:

1. The Board recommended that the current convention on the NGTL system be changed within three years to a receipt point convention which would give NGL extraction rights to producers/receipt shippers. It considered that a change to a receipt point convention would facilitate the development of a transparent, competitive extraction rights market which should assist in providing producers/receipt shippers value for their extraction rights.

2. The Board considered that producers wherever located within the province should have an equal opportunity to realize value from extraction rights to the NGL entrained in their production and recommended that both ATCO Pipelines and AltaGas Utilities consult with their stakeholders about a possible change to their respective tariffs which currently provide the utility with the right to extract the NGL.[12]

16. These conclusions will provide context for the discussion that follows in respect of NGL conventions.

[8] Decision 2010-228, paragraph 132.
[9] Decision 2010-228, page 38, paragraph 133.
[10] Decision 2010-228, paragraph 162.
[11] Decision 2009-009: Inquiry into Natural Gas Liquids (NGL) Extraction Matters, Application No. 1513726, February 4, 2009.
[12] Decision 2009-009, pages 81-82.

3 Contract Transition

17. In Decision 2010-228, the Commission included an overview of the Contract Transition component of Integration:[13]

> AP indicated that a customer transition mechanism (Customer Transition Mechanism) was being developed by AP and NGTL in consultation with customers, to ensure that customer rights and obligations under AP contracts will be carried forward in NGTL Alberta System contracts.
>
> As of June 1, 2009 AP had a total of approximately 4,500 terrajoules/day under contract, pursuant to a total of about 180 separate contracts with approximately 150 customers. AP contracts are grouped in the following major categories:
>
> 1. FSR (Firm Service Receipt);
> 2. FSD (Firm Service Delivery);
> 3. FSU (Firm Service Delivery Distributing Companies); and
> 4. Non-Standard.
>
> Under the Contract Transition Mechanism, AP contracts, including producer receipt (FSR), industrial delivery (FSD) and distribution (FSU) contracts (AP Contracts), will be converted to NGTL Alberta System contracts (NGTL Contracts) subject to the Alberta System tariff and will be administered by NGTL for the appropriate service which may result from the from the ongoing NGTL rate redesign process.
>
> The Contract Transition Mechanism anticipates the transition occurring as described in the following paragraphs.
>
> **Timing:** Each applicable AP Contract will be replaced with an NGTL Contract on the Integration Effective Date.
>
> **Contract Quantity:** Each NGTL receipt service contract will be for a contract quantity (volumetric basis 10^3m^3/day) equivalent (within +/- 1%) to that contract quantity (energy basis GJ/day) contained in the AP receipt service contract. Each NGTL delivery service contract will be for a contract quantity (energy basis GJ/day) equivalent to that contract quantity (energy basis GJ/day) contained in the AP delivery service contract.
>
> **Receipt / Delivery Points:** Each NGTL Contract will maintain the same receipt point(s) and delivery point(s) as contained in the AP Contract.
>
> **Term:**
>
> (i) ***Evergreening Contracts***
> Each AP Contract that is currently evergreening (rolling, year-to-year contracts subject to termination on 12 months notice) will have a termination date in the NGTL Contract set to October 31 in the year of the Integration Effective Date. The NGTL Contract will contain standard service renewal provisions.

[13] Exhibit 1, AP Integration, pages 10-12.

(ii) ***Contracts with Primary Terms Greater Than 1 Year***
NGTL receipt service contracts will have a primary term (no secondary term obligation) equivalent to the AP receipt service minimum term. NGTL delivery service contracts will have a primary term up to five years equivalent to the AP delivery service minimum term. NGTL delivery service contracts will have an additional three year secondary term if the AP delivery service has a minimum term longer than five years.

FSR, FSD and FSU Contracts:

(i) ***FSR***
AP FSR contracts will have the NGTL receipt toll applicable at the respective receipt points. For receipt points new to the Alberta System, rates will be set in accordance with NGTL's receipt point rate design.

(ii) ***FSD***
AP FSD contracts will have the NGTL delivery toll applicable at the respective delivery points.

(iii) ***FSU***
AP FSU contracts will have a new NGTL rate developed for the Alberta local distribution market.

Other Contracts:

(i) ***Non-Standard & Straddle Plant***
AP Non-Standard contracts and AP Straddle Plant delivery contracts will be converted to the extent possible (with consideration for existing AP commitments) to an appropriate NGTL Contract.

(ii) ***Interruptible***
Each AP interruptible receipt service contract will be replaced with an NGTL interruptible receipt service contract where necessary.

(iii) ***Market Account Service & Service to Other Pipelines-Must Flow***
AP's Market Account Service and Service to Other Pipelines – Must Flow contracts will terminate on the Integration Effective Date as they will no longer be required in order to provide service to customers under the operation of an integrated Alberta gas transmission system.

(iv) ***Franchise* Fees**
Each AP delivery service contract that is replaced by an NGTL delivery service contract and is currently subject to payment of franchise fees/taxes will continue to be subject to the payment of franchise fees/taxes.

18. With the exception of SPD customers, no customers have objected to either AP's proposed Integration or to the Contract Transition.

19. In Decision 2010-228 the Commission approved Contract Transition in principle as being in the public interest. The Commission also provided AP with specific directions with respect to

filing additional information on the proposed ATCO Gas contract, non-standard contracts and SPD contracts. These contracts will be reviewed in later sections of this Decision. No special directions were given with respect to the remainder of the AP contracts (Remaining AP Contracts).

20. The Commission has considered the evidence in this proceeding and notes that no customers have objected to either AP's proposed Integration or to the Contract Transition with respect to the Remaining AP Contracts. Further, the Commission has not identified any issues with respect to these contracts that would alter its previous findings that Contract Transition is in the public interest. Accordingly, the Commission continues to view Contract Transition and Integration with respect to the Remaining AP Contracts to be in the public interest. Accordingly, Contract Transition of the Remaining AP Contracts is approved as of the Integration Implementation Date in accordance with the application.

4 Issues

21. The following Contract Transition issues were raised by interveners and are discussed below:

- Transition of SPD Contracts – ownership of extraction rights and title over natural gas liquids extracted at straddle plants on AP system, cost-based tolls, volume pressure and energy content, and termination of transportation agreements.
- Line Pack – AP's purchase of line pack from customers and if approved, the appropriate method to determine volume and price to be refunded to customers.
- Other Integration Issues-gas quality, non-standard contracts, and the proposed ATCO Gas contract.

5 Discussion of issues

5.1 Transition of straddle plant delivery contracts

22. AP has entered into four SPD contracts:[14]

- Edmonton Ethane Extraction Plant (EEEP)[15]
- Ft. Saskatchewan Ethane Extraction Plant(FSEEP)[16]
- Paddle River Plant[17]
- Villeneuve Ethane Extraction Plant (VEEP)[18]

[14] Exhibit 63.01, AUC-AP-15(a).
[15] ATCO Midstream Ltd. owns approximately 51 per cent, AltaGas Holdings Inc. owns 49 per cent, with a notice termination provision by either party of three years.
[16] ATCO Midstream Ltd. owns 100 per cent with a notice termination provision of one year by ATCO Midstream.
[17] Keyera Energy Partnership, by its managing partner Keyera Management Ltd. – 87 per cent ownership, remaining ownership is not known by AP, with a notice termination provision of one year by either party.
[18] ATCO Midstream Ltd., 100 per cent ownership, with a notice termination provision of one year by either party.

23. AP has requested that the Commission approve the transitioning of its SPD contracts to NGTL Other Services Straddle Plant Delivery agreements (OS SPD agreement) and approve the concurrent termination of the SPD contracts.

24. AP submitted that it has worked with NGTL to put in place an OS SPD agreement that achieves the objective of keeping existing SPD customers whole in terms of their contractual terms of service and at the same time recognizing the differences between the AP system and the NGTL system. AP argued:

> With respect to the EEEP Agreement, NGTL has developed the NGTL OS Agreement that provides shippers with the ability to nominate gas for extraction purposes. What the NGTL OS Agreement does not do, as it is not within NGTL's tariff, is provide shippers with title to extracted gas as had been the case under the EEEP Agreement. However, the NGTL OS Agreement, in conjunction with NGTL's exemption of this agreement from its current NGL convention, (the 'Current Convention'), will situate AltaGas similarly in terms of control over, and ability to capture the value of, the NGL it extracts under the NGTL OS Agreement.[19]

25. AP explained that OS SPD agreements would be available only to former AP straddle plant customers and that it was not requesting that the Commission approve of the proposed OS SPD agreement, as the agreement is under the jurisdiction of the NEB.

26. AP submitted that any impact resulting from contract transition of SPD contracts was best understood by comparing the existing AP SPD contract with the proposed replacement OS SPD agreement. AP argued that the replacement terms under the new agreement do not involve a material change to the rights of the holders of SPD service. In particular transition should not impact the ability of holders of SPD contracts to extract and derive value from NGL.[20] AP considered that the proposed OS SPD agreement, in conjunction with the commitments made by NGTL as the operator of the NGTL system puts straddle plants in functionally the same position as they were under the SPD contract.[21] AP concluded that the transition package that has been proposed was a creative way, given the differences between the two systems, of preserving the rights of SPD contract holders in the context of Integration.[22]

27. The only parties to file evidence and take issue with transitioning of the SPD contracts were AltaGas and BP Canada. AltaGas operates the Edmonton ethane extraction plant (EEEP). As a buyer of NGL extracted from EEEP, BP Canada expressed concerns in support of AltaGas' position, however BP is not a SPD contract holder. The concerns raised by these parties related to:

- title to the natural gas liquids processed at the EEEP plant
- continuation of cost-based rates
- timing of the transition
- jurisdiction of the Commission to terminate SPD contracts

[19] Exhibit 103.01, AP argument, paragraph 42, page 8.
[20] Exhibit 110.01, AP reply argument, paragraph 33, pages 5-6.
[21] Exhibit 103.01, AP argument, paragraph 54, page 12.
[22] Exhibit 110.01, AP reply argument, paragraph 38, page 7.

- commitments related to the energy content and volume of natural gas flowing through the EEEP plant
- term of the OS SPD contract

28. Each of the issues raised by AltaGas and BP is addressed in the Commission's findings that follow at the end of this section.

Title to natural gas liquids

29. Under AP's Transportation Service Regulation, AP currently acquires title to the NGL content of the natural gas from receipt shippers.[23] AP transfers title to any NGL extracted at a straddle plant to the holder of the SPD contract as per the terms of the SPD contract.[24]

30. SPD gas transportation service is provided by AP to the EEEP plant pursuant to the Gas Supply Agreement among AP, AltaGas Operating Partnership and ATCO Midstream Ltd., dated August 19, 1977, as amended, (EEEP Contract).[25] AP stated that EEEP Contract "was originally a contract for the sale of gas which evolved into an SPD contract."[26] Pursuant to the EEEP Contract, delivery gas transportation services are provided by AP at the SPD rates specified from time to time in AP's approved rate tariff. The EEEP Contract provides SPD contract rights to the owners of the EEEP plant, permitting AltaGas as operator of EEEP to extract and take title to the NGL entrained in the gas stream processed by the plant. AP indicated that the EEEP Contract was a SPD contract for gas transportation delivery service to a straddle plant even though it did not use the standard pro-forma Transportation Agreement[27] filed by AP as Exhibit 39.01[28] in this

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[23] Order U2006-107: ATCO Pipelines Revised Transportation Service Regulations and Rate Schedules, Application No. 1454000, April 25, 2006.

Article 2.5 Title or Interest in the Gas

The Agreement is solely for the receipt, transportation, and delivery of Gas and Customer shall not acquire any title or interest in the Gas Pipeline System of ATCO Pipelines and ATCO Pipelines shall not acquire any title or interest in the Gas being transported under the Agreement.

Gas received by ATCO Pipelines from Customer shall be under the exclusive control of ATCO Pipelines from the time such Gas is received until it is delivered.

ATCO Pipelines does not dedicate the Gas Pipeline System or any segment thereof to Customer, and accordingly the routing and facilities used in the movement of Gas for Customer shall be at ATCO Pipelines' discretion and may change from time to time.

ATCO Pipelines may in the course of receiving and delivering Gas in the Gas Pipeline System commingle such Gas with or exchange for Gas owned by or transported for others, or remove certain hydrocarbon components present in the Gas. As commingling, exchanging, or the removal of certain hydrocarbon components may alter the Gross Heating Value or constituent parts of the Gas received by ATCO Pipelines at the Point of Receipt, ATCO Pipelines shall not be required to deliver Gas with the same Gross Heating Value or containing the same constituent parts as Gas received and ATCO Pipelines shall make whatever compensating adjustments to volume and Gross Heating Value as may be warranted. In the event, and to the extent, that any hydrocarbon components in the Gas received at the Point of Receipt are absent from the Gas delivered as the result of commingling, exchanging or removal of such hydrocarbon components in the course of transporting the Gas, title to such hydrocarbon components shall, notwithstanding anything to the contrary otherwise contained in the Agreement, be deemed conclusively to have passed to ATCO Pipelines.

[24] After integration AP will no longer have any third party contracts or a tariff.

[25] Exhibit 95.02. The contracting parties to the EEEP Contract were originally Northwestern Utilities Limited, Dome Petroleum Limited and CU Ethane Limited.

[26] Exhibit 103.01, AP argument, paragraph 37, page 7.

[27] Exhibit 103.01, AP argument, paragraph 40, page 8.

proceeding. AltaGas did not take issue with this characterization. References to SPD contracts in this decision include the EEEP Contract.

31. The NGTL system tariff is silent on the issue of title to NGL and receipt shippers on the NGTL system do not relinquish title to the NGL. In Decision 2009-009, the EUB summarized the current convention as follows:

> NGL extraction on the NGTL System occurs at Cochrane, Joffre and Empress/McNeill. On the NGTL western leg, a single straddle plant at Cochrane is located approximately 150 kilometers [sic] north of the Alberta/British Columbia border point (A/BC). At the Alberta/Saskatchewan (Empress/McNeill) border point, four straddle plants are in operation. The Joffre Ethane Extraction Plant (JEEP) is located at the Joffre intra-Alberta delivery location in central Alberta.
>
> Under the current convention (Current Convention), the right to extract NGL from natural gas transported on the NGTL System is held by shippers placing gas nominations under firm or interruptible NGTL delivery service contracts at the border export point downstream of a straddle plant. An administrative exception to the Current Convention is at JEEP where the right to extract NGL is held by shippers who hold delivery service within Alberta at a point immediately downstream of that straddle plant.[29]
>
> … To the extent that parties removed or extracted components upstream of the delivery point, they would, by convention, negotiate with the delivery shippers for the right to have gas directed to their straddle plant for the purposes of extraction.[30]

32. Conversely, NGTL's proposed OS SPD agreement is summarized as follows:

> With respect to whether AltaGas will become subject to the Current Convention, NGTL confirms that it will treat the OS SPD shippers as an exception to the Current Convention until the NEB makes a determination regarding potential changes to the Current Convention or otherwise orders changes to the Proposed OS SPD Agreement.[10]NGTL will not accept instructions from downstream shippers to direct deliveries of gas for the purposes of extraction, and therefore, OS SPD shippers will not be required to purchase extraction rights from downstream shippers as is required of existing straddle plants on the Alberta System under the Current Convention.[11]As recognized by the Alberta Energy and Utilities Board ("EUB"), the Current Convention evolved over time and is not formalized in any tariff document;[12]therefore, it is unnecessary for the Proposed OS SPD Agreement to expressly exempt SPD shippers from acquiring extraction rights. Rather, AltaGas will pay the OS SPD charge and gas will be delivered to the inlet of AltaGas' plant for the purposes of extraction in accordance with section 5.1 of the Proposed OS SPD Agreement.[31]
>
> [10] Exhibit 0062.00. AUC-NGTL 2(a) & (b).
> [11] Ibid
> [12] Decision 2009-009, page 12

[28] Exhibit 39.01, BP-NGTL 1.2(a), Attachment - Proforma ATCO Pipelines Straddle Plant Delivery North Zone Transportation Agreement.
[29] Decision 2009-009, page 12
[30] Exhibit 63, AUC-AP-015(c), page 4.
[31] Exhibit 102.01, NGTL argument, page 5.

33. Under the proposed Contract Transition, the OS SPD agreement will be an exception to the current convention on the NGTL system. OS SPD agreement holders will not be required to purchase extraction rights from downstream export or intra-Alberta delivery shippers. As such, they will be able to capture the value associated with NGL for the same cost as the current SPD charge under the SPD contracts, including the charge under the EEEP Contract. NGTL stated the following:

> Therefore, with respect to the OS SPD charge, NGTL submits that AltaGas will be in the same position post-Integration as it is immediately preceding Integration under the terms of the Proposed OS SPD Agreement.[32]

34. NGTL explained that the OS SPD agreements will be subject to the provisions of the Alberta System Tariff where a schedule of service number and an OS charge will be incorporated into NGTL's Table of Rates, Tolls and Charges for each OS agreement.[33] Under the agreement, straddle plants on the AP system will continue to pay a straddle plant delivery charge for the exclusive right to nominate deliveries of gas for extraction purposes and NGTL will deliver natural gas to the inlet of the straddle plants for the purpose of extracting natural gas liquids.[34] Specifically, the OS SPD agreement states that "Customer shall have the exclusive right to extract all Plant Liquids."[35] NGTL submitted that this places the OS SPD shippers in a similar position regarding acquisition and conveyance of title to the position of the existing straddle plants on the Alberta System and therefore EEEP will be able to continue the current extraction practices until the current convention is changed by the NEB or the OS SPD agreements are otherwise amended or terminated.[36]

35. AltaGas expressed concern that the OS SPD agreement will not provide the same clear and unambiguous right to extract and process NGL that the current EEEP Contract provides to the EEEP plant. AltaGas explained that EEEP had entered into contractual arrangements with purchasers of the plant's products and EEEP's ability to balance plant processing capacity with downstream purchasers of the plant products is premised on its ownership rights.[37] As a result, AltaGas and other stakeholders in EEEP bear the risk that the removal of ownership rights, as a result of transition, will prejudice EEEP's ability to extract liquids in the same manner and at the same cost as under the existing SPD contracts. For this reason, AltaGas requested that any transition of the EEEP Contract and SPD contracts preserve the essential commercial terms of the existing arrangement, including EEEP's ownership of NGL.[38]

36. AltaGas requested that the Commission not approve the transition of SPD contracts in a manner that takes away significant rights. It argued that extinguishing contractual rights and placing EEEP in an uncertain world of newly formed conventions creates commercial uncertainty, both for the straddle plant itself and other stakeholders.

37. AltaGas considered that it could face rival claimants to the NGL if it were to lose title provided under the SPD contract. AltaGas argued that producers could challenge the ownership right of AltaGas to NGL, because the NGTL convention has never historically applied to EEEP.

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[32] Exhibit 102.01, NGTL argument, page 8.
[33] Exhibit 39.01, BP-NGTL-1.4.
[34] Exhibit 36.01, AUC-NGTL-2(a & b).
[35] Exhibit 97.01, Section 5.1 of NGTL's draft OS Agreement.
[36] Exhibit 102.01, NGTL argument, paragraph 24, page 7.
[37] Exhibit 56.02, AltaGas evidence, paragraphs 21-22, page 9.
[38] Ibid., paragraph 29 and 32, pages 11-12.

Conversely, AltaGas could face claims by shippers located downstream of EEEP on the grounds that the NGTL convention grants ownership rights to shippers downstream of the straddle plant and therefore NGTL would not be entitled to impose an administrative exception over something which NGTL does not own.[39]

38. In the event a rival claimant successfully challenged the ownership of natural gas liquids, for example through a conversion or trespass claim, EEEP's ability to carry on its business could be compromised.[40] The commercial risks to AltaGas and other stakeholders could include the following:[41]

- In the event that a rival claimant for ownership of NGL sought and obtained a temporary or permanent injunction, the EEEP plant would be unable to carry on its business. AltaGas estimates that the aggregate losses per year would be in the order of $125 million.

- In the event that a rival claimant for ownership of NGL were to obtain an award of damages for trespass or wrongful conversion of NGL, AltaGas and other stakeholders in EEEP could be exposed to significant damages.

39. AltaGas argued that it must be protected from rival claims to NGL and, as AP and NGTL are proposing integration, they should mitigate any title deficiency which may be exploited by a third party.

40. AltaGas requested that the Commission direct that the proposed OS SPD agreement contain the following conditions:[42]

- NGTL will ensure that Customer will continue to enjoy the right to possess and extract NGL delivered at EEEP and pass good title to products produced at EEEP. In the event that an adverse claim to NGL is made by any person, NGTL will at its sole expense perfect Customer's title to NGL extracted and to be extracted at EEEP.

- Customer shall have the exclusive right to extract all Plant Liquids. Customer shall not be required to purchase extraction rights for NGL that it wishes to extract at EEEP from any other person, including any shipper on the Alberta System.

41. BP Canada indicated that it is a buyer of the NGL that are extracted at EEEP from gas delivered by AP under the SPD contracts. It submitted that the proposed transition to an OS SPD agreement failed to carry forward the provisions dealing with liquids title and extraction rights. BP Canada submitted that NGTL does not obtain title to the natural gas liquids by way of the NGL convention, the NGTL transportation agreement, or the NGTL tariff and therefore NGTL does not have the right to convey it to another party. It argued that, if NGTL cannot legally grant extraction rights, then EEEP owners cannot legally acquire them, nor can they legally covey title

[39] Exhibit 84.01, AUC-ALTAGAS-3(b).
[40] Exhibit 84.01, AUC-ALTAGAS-4.
[41] Exhibit 84.01, AUC-ALTAGAS-1(b).
[42] Exhibit 99.02, AltaGas argument, paragraph 67, page 18.

to the extracted liquids, thereby harming both the SPD contract holders and third parties such as BP Canada.[43]

42. BP Canada pointed out that straddle plant owners on both systems are currently in a position to convey title to their commercial counterpart. Under the existing SPD contract there is no question that both the right to extract liquids and title to them once they are extracted are conveyed from AP to straddle plant owners. Under the NGL convention, BP Canada argued that it was not in dispute that extraction rights and title are conveyed from delivery shippers to the straddle plant owners.[44]

43. While both AP and NGTL have stated that the EEEP owners would be in the same position regarding extraction rights after Integration, given the proposed exemption to the existing NGL convention, BP Canada suggested that merely saying so, did not make it so.[45]

44. AP pointed out that under the existing EEEP Contract there are no assurances that AltaGas will be protected from rival claims to NGL extraction rights. AP referred to section 3.01 of the EEEP Contract which states:

> 3.01 ATCO Pipelines shall deliver to the Plant the Gas from time to time in the Pipelines, when the Pipelines traverse the Plant Site, up to the capacity of the Plant, to the extent only that ATCO Pipelines has the right to extract, or sell for the Purpose of extraction, the Ethane Product and Plant Liquids contained therein.

45. Based on this provision of the EEEP Contract, AP submitted that it can not pass on any better title to gas than the title applicable to the gas at the point of delivery into the AP pipeline system. AP further stated:

> Clause 3.01 also recognizes that AP is subject to regulatory oversight and may not always have the right to extract gas or sell gas for the purpose of extraction. To the extent that AP's ability to extract or sell gas is limited, that limitation "flows through" to AltaGas in the EEEP Agreement. Thus, the "title" received by AltaGas is qualified, and there is no guarantee or indemnity from AP with respect to third party or rival claims.[46]

46. AP noted that, should the AP tariff be amended to remove the transfer of title to the NGL content of the natural gas from receipt shippers, then AP would be unable to provide title to the NGL to AltaGas under the EEEP Contract.[47]

47. BP Canada proposed that the existing SPD contracts remain in place and Integration proceed as proposed in all other respects. BP Canada proposed that the SPD contract should be recognized as a distinct service and remain a service offered by AP.[48] BP Canada argued that as AP was the current service provider, AP must remain engaged in finding and possibly being part of the solution.[49]

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43 Exhibit 86.01, AUC-BP-1(b).
44 Exhibit 106.02, BP Canada argument, paragraph 18, page 5.
45 Exhibit 112.02, BP Canada reply argument, paragraph 18, page 5.
46 Exhibit 103.01, AP argument, paragraph 52, page 11.
47 Exhibit 103.01, AP argument, paragraph 53, page 12.
48 Exhibit 54.02, BP Canada evidence, paragraph 34, page 10.
49 Exhibit 106.02, BP Canada argument, paragraph 36, page 11.

48. Both AP and NGTL submitted that failure to transition SPD contracts to OS SPD agreements will prevent Integration. Preserving the SPD contracts as suggested by BP Canada would require AP to retain its FSR[50] service so it can acquire title to the liquids from receipt shippers and to balance receipts; it would also have to continue to offer delivery service.

49. NGTL stated that other than integrating the OS SPD contract agreements, it did not anticipate any other changes to its Alberta System Tariff. It warned that requiring NGTL to seek the NEB's approval of changes to the Alberta System Tariff or to the current convention in advance of Integration would significantly delay the implementation of Integration and the realization of its associated benefits.[51]

50. The UCA submitted that there was sufficient evidence on the record of this proceeding for the AUC to determine the issues related to SPD contract transition. The UCA urged the Commission to rule without further delay and not hold its deliberation in abeyance for some unspecified period of time pending further attempts by the interested parties to resolve this single issue by negotiation.[52]

Continuation of cost-based rates

51. AP confirmed that the SPD rate charged under SPD contracts and under the EEEP Contract is a cost-based toll comprised of a monthly fixed charge and a variable rate per gigajoule (GJ) that reflects the average system delivery cost, which is calculated based on the energy content of the NGL removed plus the energy content of any gas used as fuel. The SPD charge was not designed to capture the value of the NGL. AP submitted that the OS SPD contract would carry forward the existing commodity rate per GJ that is charged for all deliveries off AP's North System.

52. NGTL stated that the charge under the proposed OS SPD agreement was not expected to change as a result of Contract Transition. The initial rate under the OS SPD contract would be the cost-based rate currently paid to AP under the SPD contracts at the time of Integration, and would continue to be based on the energy content of the NGL removed plus the energy content of any gas used as fuel.[53] NGTL explained that once the OS SPD agreements are finalized, they will be filed with the NEB for review and approval. However, it pointed out that the NEB had already approved[54] NGTL's proposed contractual transition mechanism for Integration, which included the proposed transition of AP's SPD contracts to the OS SPD agreements.[55] The NEB made the following statement in its reasons for decision:

> The Board notes that NGTL presented the Settlement and the Integration Agreement as a consolidated package and that certain parties commented that their support for the Settlement was conditional on the integration of the Alberta System with the AP. Opportunity was provided for parties to comment on the commercial implications of the Integration Agreement for the rate design. No parties to this proceeding requested that the Board reject the Integration Agreement. As noted earlier, the Board has considered the Settlement and Integration Agreement as a consolidated package. Accordingly, the Board

[50] Firm Receipt Transportation Service.
[51] Exhibit 102.01, NGTL argument, paragraph 40, page 12.
[52] Exhibit 101.02, UCA argument, paragraphs 6-7, page 1.
[53] Exhibit 62.01, AUC-NGTL-2(a&b) and (f).
[54] National Energy Board (NEB) Reason for Decision RHW-1-2010 and Board Order TG-04-2010 approving the NGTL Rate Design, Services and AB System Integration Application, (released August 12, 2010).
[55] Exhibit 62.01, AUC-NGTL-2(c).

> approves the Integration Agreement between NGTL and AP insofar as its commercial implications are incorporated in NGTL's rate design methodology and services.[56]

53. AltaGas indicated that the cost-based rates for SPD services it currently pays were approximately $0.10 per extracted GJ and the charge had been approved by the AUC[57] on the principle of cost causation. AltaGas estimated that, if the charge was market-based or non-cost-based, the cost of service rate (which is currently in the order of $1.5 million to $2.5 million year) could increase to as much as $20-$40 million per year.[58]

54. AltaGas requested that the Commission direct that the proposed OS SPD agreement contain the following condition:[59]

> The fixed and commodity charges shall equal the cost-based SPD charges in effect on the ATCO Gas and Pipelines Ltd. System on the day immediately prior to the Billing Commencement Date for the term of the OS Agreement; subject to changes in the cost of service to provide SPD service at EEEP as approved by NGTL's regulator following a proceeding in which AltaGas has participatory rights.

Timing of the transition

55. AP indicated that the EEEP Contract with AltaGas is terminable on three years notice by either party.[60] AP has requested that the Commission approve the termination of AP SPD contracts concurrent with Integration. The timing of implementation of Integration was currently unknown, but AP expected Integration to occur within one-year from the latter of approvals from the AUC or NEB.[61] AP considered the transition period to be reasonable because the key aspect of the SPD contract (the ability to extract natural gas liquids) was essentially retained under the NGTL contract and the cost-based charge would remain the same.

56. NGTL submitted that there was no need for a transition period or post-implementation mechanism given that the proposed OS SPD agreements effectively provided the same service at the same rate as AP's SPD contracts.

57. AltaGas submitted that, as long as the key commercial rights continue under the OS SPD agreement including notice of termination, it was not requesting the Commission impose a transition period to move from SPD service to OS SPD service on the NGTL system.

Jurisdiction with respect to the EEEP Contract

58. In the Integration Application which led to Decision 2010-228, AP applied for an order, pursuant to sections 22 and 36 of the *Gas Utilities Act*, declaring Integration, including Contract Transition, to be in the public interest and convenience and granting approval for AP to proceed with implementing Integration. Section 22 provides:

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56 NEB RHW-1-2010, page 12.

57 Decision 2010-613: ATCO Pipelines, 2011 Interim Revenue Requirement and 2011 Interim Rates, Application No. 1606838, Proceeding ID. 985, December 22, 2010.

58 Exhibit 62.01, AUC-NGTL-2(c).

59 Exhibit 99.02, AltaGas argument, paragraph 67, page18-19.

60 Exhibit 63.01, AUC-AP-15(a).

61 National Energy Board (NEB) Reason for Decision RHW-1-2010 and Board Order TG-04-2010 approving the NGTL Rate Design, Services and AB System Integration Application was approved on August 12, 2010, which dealt with the issue of Integration. AUC Decision 2010-228 approved AP's Integration Application on May 27, 2010. As a result, implementation of Integration is likely to be in August 2011.

> **22(1)** The Board shall exercise a general supervision over all gas utilities, and the owners of them, and may make any orders regarding equipment, appliances, extensions of works or systems, reporting and other matters, that are necessary for the convenience of the public or for the proper carrying out of any contract, charter or franchise involving the use of public property or rights.
>
> **(2)** The Board shall conduct all inquiries necessary for the obtaining of complete information as to the manner in which owners of gas utilities comply with the law, or as to any other matter or thing within the jurisdiction of the Board under this Act.

59. Section 36 of the *Gas Utilities Act* provides:

> 36. The Commission, on its own initiative or on the application of a person having an interest, may by order in writing, which is to be made after giving notice to and hearing the parties interested,
>
> (a) fix just and reasonable individual rates, joint rates, tolls or charges or schedules of them, as well as commutation and other special rates, which shall be imposed, observed and followed afterwards by the owner of the gas utility,
> (b) fix proper and adequate rates and methods of depreciation, amortization or depletion in respect of the property of any owner of a gas utility, who shall make the owner's depreciation, amortization or depletion accounts conform to the rates and methods fixed by the Commission,
> (c) fix just and reasonable standards, classifications, regulations, practices, measurements or service, which shall be furnished, imposed, observed and followed thereafter by the owner of the gas utility,
> (d) require an owner of a gas utility to establish, construct, maintain and operate, but in compliance with this and any other Act relating to it, any reasonable extension of the owner's existing facilities when in the judgment of the Commission the extension is reasonable and practical and will furnish sufficient business to justify its construction and maintenance, and when the financial position of the owner of the gas utility reasonably warrants the original expenditure required in making and operating the extension, and
> (e) require an owner of a gas utility to supply and deliver gas to the persons, for the purposes, at the rates, prices and charges and on the terms and conditions that the Commission directs, fixes or imposes.

60. AP stated in argument that "[T]he AUC has the jurisdiction to terminate the EEEP Agreement in the present circumstances."[62] AP stated further:

> While AltaGas and BP may argue that in the case of AP, we are dealing with tariffs and agreements rather than a convention, the Commission still maintains jurisdiction over such arrangements, particularly as they relate to the Commission's rate making mandate.[63]

61. AP also referred to Decision 2009-065[64] where the Commission rejected arguments that it could not interfere with transportation contracts on the basis that it would violate the "sanctity of contracts." This decision was upheld on appeal to the Alberta Court of Appeal.[65]

[62] Exhibit 103.01, AP argument, paragraph 92, page 23.
[63] Exhibit 103.01, AP argument, paragraph 93, page 23.

62. With respect to the ability of the Commission to adjust rates embodied in negotiated contracts for regulated utility services, AP stated:

> Ultimately, for regulated utilities such as AP and NGTL it is the regulator that determines whether tolls are just and reasonable, notwithstanding what contractual provisions may say. In AUC Decision 2009-065, a decision upheld by the Alberta Court of Appeal, the Commission ruled (at page 21):
>
> As noted earlier in this Decision, the Commission has the power under the Gas Utilities Act and the Public Utilities Act to override contracts if it determines the rates charged to shippers who receive service…are unjust or unreasonable, unjustly discriminatory or unduly preferential.[66]

63. AP also pointed to the provisions of Section 3.01 of the existing EEEP Contract to demonstrate that the contract was subject to regulatory oversight. Section 3.01 of the EEEP Contract states:

> 3.01 ATCO Pipelines shall deliver to the Plant the Gas from time to time in the Pipelines, when the Pipelines traverse the Plant Site, up to the capacity of the Plant, to the extent only that ATCO Pipelines has the right to extract, or sell for the Purpose of extraction, the Ethane Product and Plant Liquids contained therein.

64. AP submitted that "Clause 3.01 also recognizes that AP is subject to regulatory oversight and may not always have the right to extract gas or sell gas for the purpose of extraction."[67] Further, Section 6.02 recognizes that the rates charged by AP under the EEEP Contract will be the rates determined in accordance with the agreement "or such other rate or rates as may be approved from time to time by the Public Utilities Board."

65. AP also referred to Decision 2009-009 in respect of NGL extraction matters and the finding of the EUB with respect to the public interest in ensuring that receipt point shippers are able to obtain value for the NGL that they deliver to regulated pipeline systems, including AP. The EUB stated:

> …The Board is reluctant to make any specific recommendations with respect to the ATCO Pipelines or AltaGas Utilities tariffs given that issues relating to extraction rights on these pipelines were not explored to the same degree as they were in relation to the NGTL System. Further, extraction rights is a matter dealt with by tariffs in the case of ATCO Pipelines and AltaGas Utilities and not by convention. The tariff provides the contractual context for the relationship of the producer/receipt shipper and the pipeline transporter. Parties had and continue to have the ability to raise concerns with these tariffs in each regulatory application in which the tariff is being considered. Nonetheless, the Board considers that producers throughout the province should be treated equitably with respect to the ownership of their resources and should be given equal opportunity to realize the value of their extraction rights no matter which means of transportation they use, particularly where they have no choice as to the system they contract with. The

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[64] Decision 2009-065: TransCanada Pipeline Ventures Ltd. Suncor Energy Inc. Application to Have the Ventures Pipeline (Oil Sands Pipeline) Regulated Under the Provisions of the *Gas Utilities Act*, Section 24 of the *Gas Utilities Act* – Investigation, Application No. 1568110, Proceeding ID. 27 (Released: May 20, 2009)

[65] TransCanada Pipeline Ventures Ltd. v. Alberta (Utilities Commission), 2010 ABCA 96.

[66] Exhibit 103.01, AP argument, paragraph 64, page 14.

[67] Exhibit 103.01, AP argument, paragraph 52, page 11.

> Board considers that ATCO Pipelines and AltaGas Utilities should address this issue with their customers with respect to possible changes to their Terms and Conditions of Service.[68]

66. AP suggested that the above statement by the EUB would support a determination by the Commission that Contract Transition for SPD contracts, including the EEEP Contract to a NGTL service agreement, would be in the public interest given that it would position shippers on the AP pipeline system to receive value for NGL should the current convention on the NGTL system change.[69]

67. AP also noted that the EEEP Contract is terminable by AP on three years notice under the provisions of section 8.01. It further stated that "the filing of the Integration application constituted constructive notice to AltaGas that the EEEP Contract would be terminated and transitioned to NGTL service."[70]

68. AltaGas stated in its reply argument:

> AltaGas acknowledges that tariff rights can be altered by the regulator.[71]

69. AltaGas submitted, however, that sections 22 and 36 of the *Gas Utilities Act* are insufficient authority for the Commission to approve the extinguishment of contractual rights of a customer in the manner contemplated by Contract Transition. AltaGas stated:

> It is doubtful that the legislation contemplates that the AUC should take away vested rights of a customer even if this were applied for by AP in its Contract Transition Application.[72]…
>
> Nowhere in these general provisions does it state that the Commission should take away the vested rights of a person who is not a gas utility or an owner of a gas utility. While the Commission may require an *owner of a gas utility* to supply and deliver gas to persons on terms and conditions that the Commission directs, fixes or imposes there is no contemplation that contractual rights of other persons should be rescinded. (footnote omitted)[73]

70. AltaGas observed that, since 1978 when the EEEP plant began operations, the EEEP Contract has been relied upon to provide for security of supply for its operations. AltaGas submitted that it is in the public interest to allow Alberta industrials to continue operations and to provide certainty of contractual relations.

71. NGTL submitted that "AltaGas does not have vested rights and that the Commission has the jurisdiction to terminate the EEEP Contract in these circumstances".[74] NGTL further stated:

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[68] Decision 2009-009, page 86.
[69] Exhibit 103.01, AP argument, paragraphs 83 and 96.
[70] Exhibit 103.01, AP argument, paragraph 79, page 19.
[71] Exhibit 107.02, AltaGas reply argument, paragraph 19, page 7.
[72] Exhibit 99.02, AltaGas argument, paragraph 7, page 3.
[73] Exhibit 99.02, AltaGas argument, paragraph 8, page 4.
[74] Exhibit 113.01, NGTL reply argument, paragraph 10, page 4.

> The EEEP Contract is a service agreement with a fully regulated utility and is therefore subject to change by the regulator. Indeed, Article 10.06 of the EEEP Contract expressly recognizes this:
>
> This Agreement is subject to all laws, orders, rules and regulations, and approvals of Governmental bodies having jurisdiction in the premises.[75]

72. AltaGas preferred that Integration would proceed in a manner that maintains its SPD contract in full force but was willing to enter into an OS SPD contract with NGTL in order to facilitate Integration, provided the key provisions of the EEEP Contract were maintained for the longer of the three-year notice period contemplated under the EEEP Contract and the period prior to a change to the NGTL current convention.[76]

73. AltaGas noted the submissions of AP that the provisions of the EEEP Contract suggest that the EEEP Contract is subject to the regulatory authority of the Commission. AltaGas submitted, however, that AP should not be permitted to evade its obligations through "self-induced frustration."[77]

Commitments related to the energy content and volume of natural gas

74. AP submitted that the proposed OS SPD agreement would allow shippers to preserve the same commitments related to energy content and volumes of natural gas with comparative terms and conditions under the NGTL tariff as exist under the SPD contracts.

75. NGTL submitted that it would operate the Alberta System to maximize the amount of NGL directed to straddle plants, where doing so does not cause any material adverse impact to NGTL and other stakeholders and it would continue to do so post-integration. It also noted that the proposed OS SPD agreement would include a commitment on the part of NGTL to endeavour to maximize volume, heat content and pressure similar to the commitments made in the existing SPD contracts and subject to similar qualifications.[78]

76. AltaGas submitted that it relied on adequate volumes of gas to effectively and efficiently process NGL. In the event that NGTL were to operate its system in a manner by which it did not maximize volumes delivered to the inlet at EEEP, the plant could face increased operating costs, reduced revenues and, in a worst case scenario, be unable to meet its obligations.

77. AltaGas explained that the EEEP Contract stipulated that AP would maximize the energy content of process inlet gas and while the OS SPD agreement included a similar provision, it stipulated that NGTL would control delivery pressures, volumes and energy content to EEEP at its sole discretion.[79] AltaGas argued that the protection it would receive under the proposed OS SPD agreement would be diminished and this potentially exposed EEEP to an inferior stream of gas relative to its rights under the SPD contract.[80] Sections 7.01 and 7.02 of the EEEP stipulates that AP will maximize the energy content of process inlet gas and provides as follows:

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75 Exhibit 113.01, NGTL reply argument, paragraph 12, page 5.
76 Exhibit 99.02 AltaGas Argument, paragraph14, page 5.
77 Exhibit 107.02 AltaGas Reply Argument, paragraph 27, page 9.
78 Exhibit 102.01 NGTL Argument, paragraph 32, page 10.
79 Exhibit 99.02, AltaGas Argument, paragraph 50,page 14.
80 Exhibit 56.02 AltaGas Evidence, paragraphs 26-27, page 11.

> 7.01 Seller will endeavour to maximize the volume of and the number of Therms in the Gas in the Pipelines, provided always that Seller shall be permitted to remove quantities of Gas from the Pipelines to supply the requirements of other consumers connected to the Pipelines, and that seller does not warrant the volume or number of Therms from time to time in the Pipelines. Seller will also endeavour to maximize the pressure in the Pipelines consistent with its facilities existing from time to time. [emphasis added by AltaGas]
>
> 7.02 ATCO Pipelines agrees that during the term of this Agreement ATCO Pipelines shall endeavour to utilize the Pipelines connected to the Plant for the transmission of Gas having the highest content of Ethane Product and Plant Liquids, having regard to ATCO Pipelines' quality specifications, the quality of Gas available to ATCO Pipelines from producers and the interests of its customers, including Plant Owner.[81]

78. AltaGas requested that the Commission direct that the proposed OS SPD agreement contain the following condition:[82]

- Articles 7.01 and 7.02 of the EEEP Gas Supply Contract dated August 19, 1977 will be included in the OS Agreement without amendment or limitation other than revising imperial units to metric units.

Term of the OS SPD agreement

79. AP recommended that the term of the OS SPD agreement be set at one-year, so that all shippers were treated equally in the event a new NGL convention change is implemented in the future.

80. NGTL submitted that a one-year termination provision for the OS SPD agreement would be consistent with the other OS agreements. NGTL argued that, while it did not intend to terminate the OS SPD agreements given the potential for changes to a new extraction convention for the Alberta System, consistency across termination provisions was needed to ensure an orderly transition of all SPD shippers to the new extraction convention, should it be required.

81. AltaGas stated that it was willing to be transitioned to an OS SPD agreement provided that all of the interrelated rights under the SPD contract were provided for and AltaGas has assurance that this bundle of rights would be preserved for at least the three-year notice period contemplated under the SPD contract.[83]

82. AltaGas requested that the Commission direct that the proposed OS SPD agreement contain the following condition:[84]

> The OS Agreement will have a minimum term of at least the three year notice period in accordance with Article 8 of the EEEP Contract and, if longer, the implementation date determined by the NEB for any new regime of NGL extraction rights that may be determined in the future.[85]

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81 Exhibit 99.02, AltaGas argument, paragraphs 50-51, Attachment NGTL-AltaGas-1(b).
82 Exhibit 99.02, AltaGas argument, paragraph 67, page19.
83 Exhibit 99.02, AltaGas argument, paragraph 14, page 5.
84 Exhibit 99.02, AltaGas argument, paragraph 67, page19
85 Exhibit 99.02, AltaGas argument, paragraph 14, page 5.

83. The CCA expressed concern with the related party agreements between ATCO Midstream and AP, and considered favourable term periods were obtained by ATCO Midstream for EEEP in its negotiations with AP. The CCA submitted that the AUC should exercise its discretion in the case of related party agreements and suggested that the AUC has the ability to shorten the notice of termination periods under the OS SPD agreements.[86]

Commission findings

Jurisdiction

84. AP requested that the Commission approve the transitioning of all AP SPD contracts to NGTL OS SPD agreements and the concurrent termination of the SPD contract upon implementation of Integration. AP explained that post-integration, AP's SPD customers would be subject to NGTL contracts and tariff. AP would no longer have any third party contracts or any tariff.

85. In the Integration Application, which led to Decision 2010-228, AP submitted that sections 22 and 36 of the *Gas Utilities Act* provided the Commission with the authority to declare Integration (including Contract Transition) to be in the public interest and convenience and to approve AP's request to proceed with implementing Integration. Accordingly, AP submitted, sections 22 and 36 provide the Commission with the jurisdiction to direct a transition of the SPD contracts, including the EEEP Contract, to an OS SPD agreement and the concurrent termination of the SPD contracts, including the EEEP Contract, upon implementation of Integration.

86. AltaGas and BP took the position that sections 22(1) and 36 of the *Gas Utilities Act* should not be interpreted so as to "take away the vested rights of a person who is not a gas utility or an owner of a gas utility."[87]

87. In Decision 2010-228 the Commission considered Section 22 of the *Gas Utilities Act* and its jurisdiction to approve Integration in the following words:

> 128. Section 22 of the Gas Utilities Act authorizes the Commission to exercise a general supervision over AP and to make orders with respect to its pipeline transmission system that are necessary for the convenience of the public. Integration as proposed by AP is a significant step that will impact the tolls, contractual provisions and costs for regulated service for all AP customers. The Commission considers that an application for the requested order is consistent with the supervisory obligations of the Commission under section 22 of the *Gas Utilities Act*. No party made any submission to the contrary.[88]

88. Sections 22(1) and 36 of the *Gas Utilities Act* provide the Commission with jurisdiction over the rates, tolls, charges, tariffs and related contracts of gas utilities and the owners of gas utilities within the province of Alberta. The SPD contracts, including the EEEP Contract, provide for gas transportation delivery services by AP at the SPD Rate set out from time to time in the AP Commission approved rate schedules.

[86] Exhibit 104.01, CCA argument, paragraph 11, page 7.
[87] Exhibit 99.02, AltaGas argument, paragraph 8, page 4.
[88] Decision 2010-228, paragraph 128, page 35.

89. The authority of the Commission with respect to utility contracts and the rates charged thereunder was directly considered by the Commission in Decision 2009-065.[89] In that decision the Commission stated:

> 62. Although the Commission is reluctant to interfere in freely negotiated contracts, the Commission is mindful of its mandate under the *Gas Utilities Act* to protect the public interest by way of regulating public utilities. The *Gas Utilities Act* requires the Commission to balance competing interests. Once Ventures was declared a gas utility, the rates set in the contract of each shipper are subject to the provisions of the *Gas Utilities Act* and *Public Utilities Act* allowing the Commission to change rates in a contract if it finds that the rates are unjust or unreasonable, unjustly discriminatory or unduly preferential.[90]

90. The Commission also observes that the provisions of the EEEP Contract itself acknowledge that the parties are subject to law, orders and regulatory approvals. Section 10.06 of the EEEP Contract provides:

> 10.06 This Agreement is subject to all laws, orders, rules and regulations, and approvals of Governmental bodies having jurisdiction in the premises.[91]

91. The provisions of sections 22(1) and 36 of the *Gas Utilities Act* have been previously set out in this decision. Section 17 of the *Gas Utilities Act* is also relevant to a consideration of the authority of the Commission with respect to utility contracts for gas transmission services. Section 17 provides:

> **Change of rates**
>
> **17** When by a contract between an owner of a gas utility and a municipality or person for the supply of gas by means of the gas utility, any rate, toll or charge is agreed on either as a fixed or variable rate, toll or charge, or a maximum or minimum rate, toll or charge, and whether that rate, toll or charge is agreed on with respect to a present or future supply of gas, then, notwithstanding anything in this Act, the *Public Utilities Act* or the *Alberta Utilities Commission Act*, the Commission may, on the application of the owner, municipality or person and on it being shown on the hearing of the application that the rate, toll or charge is insufficient, excessive, unjust or unreasonable, change the rate, toll or charge to any other greater or lesser rate, toll or charge that it considers fair and reasonable.

92. The application of Section 17 to utility transportation service contracts, as opposed to utility gas sale contracts, was considered by the Alberta Court of Appeal in *TransCanada Pipeline Ventures Ltd. v. Alberta (Utilities Commission)*, 2010 ABCA 96. In that decision the Court commented on the authority provided to the Commission over utility transportation service contracts pursuant to Section 17 in the following words:

> [37] The plain and ordinary meaning of a contract for the supply of gas by means of a gas utility encompasses, on its face, a contract for transmission of natural gas. The natural gas is supplied by the transmission service. The contract may properly be characterized as one for the supply of gas.

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89 Decision 2009-065, paragraph 62.
90 Decision 2009-065, page 14, paragraph 62.
91 Exhibit 95.02.

> [38] In the first appeal in these proceedings, the appellant argued that the word "supply" necessarily imported a sale of gas in order for the pipeline to fit within the definition of a gas utility under the *GUA*. This Court rejected the notion that a sale was required in order to carry on the supply of gas, ...

93. The Court went on to refer to the powers granted to the Commission under section 36 of the *Gas Utilities Act* with respect to the regulation of gas transmission contracts negotiated between the parties. The Court stated:

> [41] The appellant seemingly argues that the power to interfere with contractual rates resides only in section 17, so that section 36 is not applicable *vis-à-vis* negotiated rates embodied in a contract between parties. We are unable to ascertain any such limitation within section 36. The power to fix rates "which shall be imposed, observed and followed thereafter" implicitly grants the power to adjust contractual rates. Having regard to the public interest objective of the statute, we view the statement of the Commission's power in section 36 to be complimentary and supportive of the express powers to alter contractual rates conferred by section 17.

94. The Court further stated with respect to the protection of the public interest and the jurisdiction of the Commission over utility service contracts:

> [46] The interpretation advanced by the appellant would allow gas utilities providing services to escape regulation merely by entering into contracts with members of the public, and the Commission would be powerless to change those rates no matter how unjust, unreasonable or discriminatory they may be. Such a result would be contrary to the public interest mandate entrusted to the Commission. We are reluctant to construe legislation in a manner to defeat its purpose when other reasonable interpretations are available that achieve the legislative objective.

95. In light of the above statutory provisions and the guidance provided by the Court of Appeal, the Commission concludes that it has jurisdiction over the SPD contracts and specifically the EEEP Contract. The Commission may alter, amend or terminate the provisions of these contracts if it finds doing so to be in the public interest.

96. The Commission has already found Integration on the whole to be in the public interest in Decision 2010-228. It also determined Contract Transition, in principle, to be in the public interest.

Proposal to Transition the four SPD Contracts

97. The Commission has considered the proposal by AP to transition the four SPD contracts. The Commission recognizes that, under the proposed Contract Transition, the OS SPD agreement will be an exception to the current convention on the NGTL system. OS SPD agreement holders will be granted an exception to the current convention that gives extraction rights to export customers and will retain the right to extract NGL on the NGTL system consistent with its current treatment under SPD contracts on the AP system. As a result, OS SPD agreement holders will not be required to purchase extraction rights from downstream export shippers.

98. NGTL stated that "it is not aware of any concerns that existing NGTL system shippers have with the proposed entitlement to extraction rights at straddle plants under the proposed OS SPD agreements other than those raised by BP Canada and AltaGas"[92] and that "the NEB has approved NGTL's proposed contractual transition mechanism for Integration, which includes the proposed transition of ATCO Pipelines SPD contracts to NGTL OS SPD agreements."[93]

99. The Commission has relied on these statements by NGTL and the other commitments it has made as the operator of the Alberta System. The Commission accepts the argument of AP and NGTL that the combination of the OS SPD agreements and the exception to the extraction convention will put the straddle plants in functionally the same position as they are under the SPD contract with respect to the ability to extract NGL and to receive the value of the extracted NGL.

100. With respect to the transitioning of the SPD contracts to an OS SPD agreement, the Commission makes the following observations:

- **Cost-based rates** – The Commission considers that there is little disagreement among parties that the cost-based rates that exist under the SPD contract at the time of integration would be initially carried forward to the OS SPD agreement and remain in effect until such time as the current convention is changed by the NEB or the OS SPD agreements are otherwise amended or terminated.

- **Timing of the transition** – No party has requested a post-integration transition period to move from the SPD contract to OS SPD service on the NGTL system.

- **Commitments related to the energy content and volume of natural gas** – The Commission notes that the OS SPD agreement will include a commitment on the part of NGTL to endeavour to maximize volume, heat content and pressure similar to the commitment made in the existing SPD contracts and subject to similar qualifications. While AltaGas has expressed a concern that the protection received under the OS SPD agreement will be diminished from the protection it currently receives under the SPD contract, the Commission considers that any commitment made in this respect is ultimately limited by the volume and quality that results from the gas having been transported and commingled on the system. Therefore, the Commission is satisfied that the commitment made by NGTL sufficiently preserves the protection AltaGas currently receives under the SPD contract.

- **Term of the OS SPD Agreement** – No party other than AltaGas and BP objected to the proposed termination of the SPD contracts upon implementation of Integration and the one-year termination provision of the proposed OS SPD agreements.

101. In light of the above, the Commission considers that the proposed OS SPD agreement and the commitments made by NGTL provide sufficiently analogous commercial provisions to those contained in the SPD contracts, including the EEEP Contract, such that straddle plant

[92] Exhibit 62.01, AUC-NGTL-2(g), page 4.

[93] Exhibit 62.01, AUC-NGTL-2(c), page 4. NGTL indicated to the NEB that "As of the Integration Effective Date, NGTL will transition ATCO Pipelines SPD contracts to NGTL OS agreements with terms and conditions similar to SPD service." (AUC-NGTL-1(b), Attachment 3, page 19 of 22).

owners should be able to continue to extract and derive value from natural gas liquids pursuant to the OS SPD agreement after Integration. The Commission notes that no party, other than AtlaGas and BP Canada, objected to the transition plan.

102. BP Canada suggested that the public interest would best be served if the SPD contracts are recognized as a distinct service and remain a service offered by AP. Preserving the SPD contracts as suggested by BP Canada would require AP to retain its FSR service so it can acquire title to the liquids from receipt shippers and to balance receipts, it would also have to continue to offer delivery service. The Commission accepts the submission of AP and NGTL that failure to transition SPD contracts to OS SPD agreements will prevent Integration. Further, given that the replacement terms under the new agreement do not involve a material change to the ability of the holders of SPD contracts to extract NGL, the BP Canada proposal in neither warranted nor desirable. Accordingly, the Commission does not accept BP Canada's proposal that the SPD contracts be recognized as a distinct service and remain a service offered by AP.

103. AltaGas and BP suggested that the transition of the EEEP Contract to an OS SPD agreement is not in the public interest because the proposed Contract Transition places the owners and the stakeholders in EEEP at risk of rival claims to ownership to the extracted NGL and interferes with vested commercial rights. They allege that, if such claims are successful, they would cause substantial commercial harm to the owners of the EEEP Contract facility.

104. The Commission understands AltaGas' position to be that it is "willing to have these vital rights transitioned to an OS SPD agreement, provided that all of the interrelated rights are provided for and AltaGas has an assurance that this bundle of rights will be preserved for at least the three-year notice period contemplated under the EEEP Contract and, if longer, the implementation date determined by the NEB for any new regime of NGL extraction rights that may be determined in the future."[94] AltaGas agreed that Integration as proposed could proceed without amendment and without impairment to the existing contractual rights under the EEEP Contract if NGTL agrees to take any "commercial measures it chooses to ensure that AltaGas will continue to enjoy the right to possess and extract NGL delivered at EEEP and pass good title to products produced at EEEP to its customers."[95]

105. In making a determination with respect to the position of AltaGas on the matter of contract transitioning, the Commission has considered the potential risk faced by AltaGas, even given the assurances of NGTL and AP that the proposal put forward for contract transitioning will provide analogous commercial positions for parties and allow AltaGas and other stakeholders to continue to derive value from the OS SPD agreements.

106. In addition the Commission has considered the acknowledgement by AltaGas that the EEEP Contract is subject to regulatory change. In this regard the Commission observes that Section 10.06 of the EEEP Contract provides:

> 10.06 This Agreement is subject to all laws, orders, rules and regulations, and approvals of Governmental bodies having jurisdiction in the premises.[96]

[94] Exhibit 99.02, AltaGas argument, paragraph 14, page 5.
[95] Exhibit 107.02, AltaGas reply argument, paragraph 57, page 17.
[96] Exhibit 95.02.

107. Further Section 3.01 of the EEEP Contract provides that AP shall deliver gas to the EEEP plant to the extent of its right to extract or sell the NGL contained therein.

> ATCO Pipelines shall deliver to the Plant the Gas from time to time in the Pipelines, when the Pipelines traverse the Plant Site, up to the capacity of the Plant, to the extent only that ATCO Pipelines has the right to extract, or sell for the Purpose of extraction, the Ethane Product and Plant Liquids contained therein.

108. The combination of these elements of the EEEP Contract recognizes that the provision of gas delivery transportation services by AP is regulated. Further, a change in regulatory approvals could result in a change to the obligations and rights of the parties under the contract. All parties assume some risk that contractual rights and obligations may change should the regulator direct changes in regulated rates, to the terms and conditions of regulated service or to the related contracts. Accordingly, the Commission is not prepared to require as a condition of the approval of Contract Transition that AP or NGTL provide AltaGas or BP with an indemnification or other contractual security with respect to extraction rights or with respect to the title to extracted NGLs.

109. With respect to the term of an OS SPD agreement replacing the EEEP Contract, AltaGas has requested that the term be at least the three-year notice period contemplated under the EEEP Contract and, if longer, the implementation date determined by the NEB for any new regime of NGL extraction rights that may be determined in the future. The Commission notes that the Integration Application and subsequent process would have made AltaGas aware that the EEEP Contract could be terminated or altered should Integration be approved by the regulators.

110. The Commission also notes that each of the SPD contracts, other than the EEEP Contract provides for a one-year termination provision. Only the EEEP Contract has a three-year termination provision. Regulatory principles of non-discrimination and fair and equitable rates suggest that SPD contract holders be accorded similar treatment with respect to existing contractual rights in implementing Integration. The preservation of the termination provisions of the EEEP Contract would be in keeping with these principles in the abstract. However, the Commission is not prepared to make the preservation of the EEEP three-year termination provision a precondition to its approval of Contract Transition given:

- The above finding that the proposed OS SPD agreement and the commitments made by NGTL provide sufficiently analogous commercial provisions to those contained in the SPD contracts, including the EEEP Contract, such that straddle plant owners should be able to continue to extract and derive value from natural gas liquids pursuant to the OS SPD agreement after Integration.

- The above contractual provisions of the EEEP Contract recognize that the provision of gas delivery transportation services by AP is regulated and that a change in regulatory approvals could result in a change to the obligations and rights of the parties under the contract; and

- That AltaGas would have been aware of the potential for termination or alteration of the EEEP Contract at least from the time that the Integration Application was filed.

111. Consequently, the Commission declines to direct an extension to a notice period in AltaGas' OS SPD agreements with NGTL to a three-year notice requirement as a condition to its

approval of Contract Transition or of Integration. The Commission does consider, however, that it would be consistent with regulatory principles of non-discrimination, fairness and equity for NGTL to reflect the longer term of the EEEP Contract in its NEB application for final approval of the specific OS SPD agreements. The extended term should take into account the existing three-year term under the EEEP Contract balanced with the fact that AltaGas has been aware of the potential changes to the EEEP Contract since the filing of the Integration Application and the public interest of moving to receipt point contracting as determined in Decision 2009-009. Accordingly, while recognizing that approval of OS SPD agreements is within the jurisdiction of the NEB, the Commission recommends that NGTL apply to the NEB for approval of an OS SPD agreement for the EEEP facility with a termination provision terminating the contract at a date being the earlier of:

- three years from the date of notice, or
- the date that the current extraction convention changes on the NGTL system

112. Accordingly, subject to the recommendation above with respect to the term of the OS SPD agreement for the EEEP facility, the Commission finds that the proposed NGTL agreements reasonably preserve the positions of parties, including parties to the EEEP Contract, as they currently exist in respect of the AP system, thereby leading to an orderly transition on implementation of Integration. The Commission also recognizes that final approval of all transitioned AP contracts, including the OS SPD agreements ultimately rests with the NEB and assumes that AltaGas and BP will participate in proceedings before the NEB to represent their respective interests.

113. Given all of the above, the Commission finds that the AP proposal for Contract Transition is reasonable and is in the public interest.

5.2 Line pack

114. AP proposed to buy the line pack and reimburse customers based on the premise that the line pack had been paid for or supplied by customers through contributions for unaccounted-for-gas (UFG). In Decision 2010-228, the Commission agreed in principle that the ownership of the line pack should be with AP if Integration was approved, at least for the assets to be swapped given that NGTL owns its line pack. Accordingly, if AP was to acquire the line pack associated with the assets to be swapped with NGTL, the assets to be swapped would be equivalent. , However, the Commission agreed with Gas Alberta that there was significant outstanding issues that needed to be dealt with before the Commission could approve the purchase for the entire line pack as proposed in the Integration Application. The timing, price and volume were of particular concern and, since line pack was considered an asset, the Commission deferred its decision regarding line pack until further review in conjunction with the future submission by AP of a detailed application regarding the Asset Swap. AP's application addressing the Asset Swap was expected to include a business case (complete with alternatives) for purchasing and selling line pack on the swapped assets alone as compared to purchasing and selling line pack on the total AP system.[97]

[97] Decision 2010-228, paragraphs 175, 176, and 178.

115. In Decision 2010-228, the Commission directed AP to defer the purchase of line pack and address line pack issues in the Asset Swap application.[98] As the Asset Swap application will not be filed until near the end of 2010, AP is concerned a decision will not be provided by the Commission in time to practically refund AP's customers prior to the Integration implementation date. AP discussed this timing issue with the two interveners (CCA and Gas Alberta) who raised concerns regarding line pack in the Integration Application. These parties agreed that addressing line pack in this application was appropriate.[99] The Commission agrees for the reasons set out in the application that consideration of line pack issues should be addressed in this decision.

116. AP's proposal with regard to the purchase of line pack is summarized as follows: (i) the volume/energy of system line pack should be calculated at 770 terajoules (TJ); and (ii) the line pack purchase price should be the most recent 12-month average price from the Canadian Gas Price Reporter NGX AB-NIT Same Day Index Weighted Average (Index #1). Assuming a price of $3.8587/GJ,[100] the total cost would be approximately $3 million. AP submitted that it would purchase the line pack within 30 days of the date of a Commission affirmative decision and refund this amount to its customers before the Integration implementation date. AP owned line pack will be included in its rate base, with the resulting revenue requirement being passed on to NGTL to be collected from all Alberta System customers. If AP were to purchase only a portion of the line pack, the following issues would result:

a. Increased administration required to track the line pack owned by customers (e.g. includes line pack in AP system pipelines) and the line pack owned by AP.

b. Who would own line pack for AP pipeline extensions/expansions?

c. What happens to the customer owned line pack in pipelines that are abandoned? Who receives the proceeds on the sale of gas?[101]

117. Although no parties opposed AP's purchase of line pack and its proposed refund to customers, Gas Alberta and the UCA took issue with AP's method for determining the volume and price to be refunded to customers from AP's purchase of line pack.

118. Gas Alberta supported the purchase of line pack, but suggested that the Commission should not, at this time, approve the requested volume of 770 TJ. Gas Alberta indicated that it was concerned that AP's line pack volume only represented 10 months of data and lacked at least three months of the most current data (November and December 2009 and January 2010). Ten months of data omits the annual seasonality of line pack volume and gas price. Consequently, Gas Alberta submitted that, when AP updates the price of gas, the Commission direct that the line pack be updated to include 13 months of verifiable data.[102]

119. Gas Alberta and the UCA proposed that the line pack be purchased and placed in rate base at a 13-month average volume priced monthly rate based on separate volumes and respective Direct Energy Regulated Services gas cost flow-through rates (GCFR) for AP North and South for the most current January to January period. Gas Alberta submitted that a 13-month method for determining the value of line pack was consistent with the method used by NGTL for

98 Decision 2010-228, paragraph 134.
99 Exhibit 1, AP Contract Transition application, paragraph 21.
100 Exhibit 1, AP Contract Transition application, paragraph 33, Table 3.
101 Exhibit 1, AP Contract Transition application, page 14, paragraph 27.
102 Exhibit 100, Gas Alberta argument, page 8 paragraph 16.

valuing line pack for rate base. Since AP North and AP South customers have historically provided different amounts of line pack at different costs on the respective systems, it follows that the most accurate value of line pack should be calculated separately for the North and South systems according to the monthly line pack volume and GCFR pertaining to each system. This methodology, Gas Alberta contended, was a more reasonable assessment of the value of line pack relative to AP's proposed 12-month method which undervalues line pack. Gas Alberta also argued that the price of gas and the volume of line pack vary by month so that a monthly evaluation of line pack will better match volume to the price of gas.[103]

120. AP argued that the 13-month average methodology used by NGTL for calculating the average balance for a rate base item using the month end (last day of the month) balances for 13 months was not preferable to AP's proposal to use 12 months of average monthly prices. AP considered its methodology was appropriate for two reasons. First, NGTL's methodology was applied to rate base balances which typically do not experience large up and down swings, whereas AP's methodology was applied to market prices, which can experience large up and down variability. Second, NGTL's methodology considered balances at 13 data points over a year, whereas AP's methodology essentially considered prices using 365 data points over a year. AP suggested that a 12-month weighted average price was a reasonable proxy to be used to value AP's system line pack.[104]

121. In response to Gas Alberta's request for the latest January to January period line pack volumes, AP provided, in Attachment GA-AP-2(d), 10 months of volume data and indicated that the monthly line pack volumes were not available from November 2009 to January 2010.[105] AP submitted that its request to use a line pack volume/energy of 770 TJ provided for a representative line pack volume and should be approved as the volume basis for the line pack purchase/refund given that line pack volume did not fluctuate greatly.[106]

122. AP argued that Gas Alberta's GCFR proposal for line pack pricing was inappropriate for the following reasons:

- The GCFR is a core market gas rate that is only available to ATCO Gas North and South customers.
- The GCFR is neither a transmission service rate nor an Alberta market-based price that would be available to AP for the purchase or sale of system line pack and, therefore, is not representative of a transmission pipeline gas purchase transaction price.
- The DERS GCFR includes the impact of prior period adjustments, forecasts and gas transaction costs that would tend to make the GCFR less representative of the Alberta gas market price than the AP proposal.[107]

123. AP submitted that calculating the value of system line pack based on a 12-month average of Index #1 provides a known market-based price that includes a full annual period of gas price data (365 daily data points). In contrast to the GCFR, Index #1 is applicable on the entire AP system and line pack valuation based on Index #1 does not require separate North and South

[103] Exhibit 100, Gas Alberta argument, page 8, paragraph 18.
[104] Exhibit 103.01, AP argument, page 28, paragraph 109.
[105] Exhibit 110.01, AP reply argument, page 14, paragraph 73.
[106] Exhibit 110.01, AP reply argument, page 14, paragraph 74 and 75.
[107] Exhibit 110.01, AP reply argument, page 15, paragraph 77.

calculations. AP submitted that the use of the 12-month average gas price of Index #1 accounts for a full annual period of gas price seasonal variance. The use of Index #1 therefore provides a fair (no seasonal influence) market valuation of the AP system line pack purchase/refund and should be approved as requested. The use of 13 months (January-January) of gas prices data would overweight line pack for January.[108]

Commission findings

124. In Decision 2010-228, the Commission agreed in principle that the ownership of the line pack should be with AP if Integration was approved, at least for the assets to be swapped given that NGTL owns its line pack. The Commission also approved AP's 2010-2012 Settlement wherein parties to the Settlement agreed that, if regulatory approval of the line pack purchase is received, AP will pay the Commission approved value to its customers in the year in which the line pack is purchased, prior to the transfer of customers to NGTL, and place this value in Necessary Working Capital. AP included a $2.5 million estimate as the placeholder in its 2010 revenue requirement. The Commission did, however, agree with Gas Alberta that there were significant outstanding issues that need to be dealt with before the Commission can approve the line pack purchase as proposed. The timing, price and volume were of particular concern. The Commission also raised concerns with respect to who actually owns the line pack on the AP system and whether or not it might be more reasonable for AP to purchase only a portion of the line pack associated with assets to be swapped with NGTL rather than purchasing the entire line pack of the AP system.[109]

125. In Decision 2010-228,[110] the Commission directed AP to substantiate the response AP provided in AUC-AP-24(a), which the Commission stated "indicates that customers have not always been the owner of line pack and therefore brings into question to what extent does AP remain the owner of some line pack."

126. With respect to the ownership of line pack, AP provided the following in response to the Commission direction in Decision 2010-228:

> 29. In paragraph 178 of Decision 2010-228, the Commission directed AP to substantiate the response AP provided in AUC-AP-24(a), which the Commission states "indicates that customers have not always been the owner of line pack and therefore brings into question to what extent does AP remain the owner of some line pack". AP notes paragraph 178 includes a portion of AP's response. Following is the full response provided by AP:
>
> > No. AP Customers have been responsible for providing line pack through Rider D (Unaccounted For Gas/Fuel) for APN/APS since the implementation of the ATCO Gas Deferred Gas Accounts (DGA) in 1988. Prior to the implementation of the DGA, pipeline line pack, including first fills, may have been provided through various means including company owned production, connecting pipeline operators or customers. AP does not have a record of line pack ownership identified in any of its fixed asset accounts or inventory accounts and therefore believes that AP customers are the owners of AP's current system line pack.

[108] Exhibit 110.01, page 15, paragraph 79.
[109] Decision 2010-228, paragraphs 175-178.
[110] Ibid, paragraph 178.

> 30. The "No" response was intended to convey that AP could not absolutely confirm that customers always owned the line pack, and this was explained by the remainder of the response. Despite anecdotal discussions about pre DGA treatment of line pack, AP has no evidence that customers do not own all the current line pack. As noted in the response, "AP does not have a record of line pack ownership identified in any of its fixed asset accounts or inventory accounts and therefore believes that AP customers are the owners of AP's current system line pack". AP still has no reason to believe that this statement is incorrect.[111] (emphasis added)

127. The Commission is of the view that prior to the implementation of the DGA, the evidence does not clearly show who provided first fills or line pack as noted in AP's response above. However, given the evidence on the record with respect to the DGA and Rider "D" post 1988, along with AP's explanation that there is no evidence in AG's fixed asset or inventory accounts that definitively proves ownership of line pack, the Commission is prepared to accept that customers are the owners of the line pack on the AP system. The Commission also notes that interveners supported AP proposal to purchase line pack to facilitate Integration with the NGTL system and raised no concern with regard to ownership of line pack. The only issue raised by interveners is the proper volume and pricing of line pack.

128. The Commission accepts AP's explanation, supported by NGTL, that AP should purchase all line pack in its system prior to Integration to minimize administrative complexity and to ensure equity amongst customers.

129. With regard to Gas Alberta's proposal to separate monthly North and South system line pack calculations based on the product of North and Nouth line pack volumes and the respective Direct Energy Regulated Services GCFR, the Commission concurs with AP that GCFR is not a market based rate for natural gas that is accessible by AP.

130. The Commission also considers that AP's proposed use of 12 months of average monthly prices multiplied by the volume/energy of system line pack is reasonable because it accounts for a full annual period of gas price seasonal variance. The Commission also notes that Gas Alberta expressed concern that AP's volume/energy estimate of 770 TJ did not reflect the most accurate information and may under estimate line pack. Given AP's response that line pack volume does not fluctuate greatly and that Gas Alberta's own table[112] supported AP's estimate of 770 TJ being representative of the line pack volume of the system, the Commission considers AP's estimate of the line pack volume included for the line pack purchase/refund to be reasonable. Although the Commission notes that Gas Alberta does not agree with AP's monthly weighted average price approach, Gas Alberta's table[113] clearly shows that the 12-month valuation of line pack is not materially different than the 13-month valuation. The Commission considers this to be further evidence that supports AP's proposed line pack valuation and volume/pricing approach.

131. The Commission also considers that inclusion of the issue of line pack within this application instead of the Asset Swap application is reasonable because any refund with respect to line pack needs to be implemented before contracts transition to NGTL because after Integration AP would no longer have any mechanism or rates in place to refund the value of line pack to its customers.

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[111] Exhibit 1, AP Contract Transition application, paragraphs 29-30.
[112] Exhibit 100.02, Gas Alberta argument, Table 1, page 10.
[113] Exhibit 100.02, Gas Alberta argument, Table 1, page 10.

132. Therefore, the Commission approves AP's proposal for line pack in contemplation of the implementation of Integration as follows:

(i) The volume/energy of system line pack should be calculated at 770 TJ.

(ii) The line pack purchase price should be the most recent 12-month average price from the Canadian Gas Price Reporter NGX AB-NIT Same Day Index Weighted Average (Index #1). AP will purchase the line pack within 30 days of the date of this decision.

133. AP is directed to file a compliance application with respect to the refund of the line pack value to customers within 60 days of the date of this decision.

5.3 Other Integration issues

5.3.1 Gas quality

134. AP and NGTL have requirements for gas quality specifications that differ. The most significant difference is the hydrogen sulphide and total sulphur content. AP's specification has been the more stringent in that it required the gas to contain a lower sulphur content and therefore concerns were raised by interveners about NGTL's less stringent specification becoming the standard.

135. AP submitted that while its and NGTL's receipt gas quality tariff specifications may differ, neither AP nor NGTL had a delivery gas specification in their respective tariffs. Currently 30-40 per cent of AP's receipts are from the NGTL system, with a large part of these volumes being delivered to distributing companies. Also, AP noted that while local distribution companies (LDCs) had the onus of meeting codified delivery gas specifications, AP and NGTL had always worked with the LDCs and would continue to work with them to help them manage their gas quality requirements. These existing practices appear to have worked to date for all gas delivered to LDCs off both the AP system and NGTL system. ATCO Gas, the largest LDC in the province, had not raised any concerns regarding the transition of its contract from AP to NGTL in any Commission proceedings nor in the NGTL Integration Application to the NEB.[114]

136. Gas Alberta pointed out that there were significant differences between the gas quality specifications on the NGTL and AP's systems. Although gas quality specifications have not been entirely trouble-free for Gas Alberta's customers in the past, Gas Alberta submitted that it had been able to work with both NGTL and AP to resolve any problems as they arose and expected to be able to do so after Integration.[115]

137. The CCA noted that AP was requesting certain changes in natural gas quality specifications. The CCA suggested that the AUC must ensure that it maintains jurisdiction to ensure that natural gas quality specifications were adequate to serve residential, commercial and industrial customers in Alberta. AP should be directed to report all natural gas quality specification issues on a go forward basis to the AUC.[116]

[114] Exhibit 103.01, page 4, paragraphs 17 and 20.
[115] Exhibit 100.02, Gas Alberta argument, page 12, paragraph 27.
[116] Exhibit 104.01, CCA argument, page 4, paragraph 5.

Commission findings

138. The Commission notes the absence of concern by ATCO Gas, which would be the recipient of the bulk of the natural gas. The Commission observes further that according to the CSA Z662 code, the LDC (in this case ATCO Gas) is ultimately responsible to meet gas quality specifications.[117] The only party that remains concerned with the gas quality issue is the CCA, which asked the Commission to direct AP to report all natural gas quality specification issues. Notwithstanding the responsibility lies with the LDC, the Commission is satisfied that, to date, AP and NGTL and the LDCs have all been able to address concerns as required with regard to gas quality, and expects that after Integration that practice will continue. Consequently, the CCA's proposal is denied.

5.3.2 ATCO Gas contract

139. In Decision 2010-228, the Commission directed AP to file an application with the Commission, as soon as may be practicable, that clearly addressed the Contract Transition matters of concern in this decision. Specifically, AP was required to address terms and conditions of service as it relates to gas quality issues, a comprehensive draft or final agreement between NGTL and ATCO Gas, and how AP's non-standard agreements and SPD contract holders will be transitioned to NGTL contracts.[118]

140. As noted in the application, AP currently provides gas transmission service to ATCO Gas (AG) under a January 1, 2003 Transportation Service Agreement. This agreement and extensions were filed on January 22, 2010, as an attachment to information request UCA-AP-14(a) in the Integration Application proceeding.[119] The extension, dated December 10, 2010, stated that "…The extension will be in effect until the earlier of the Integration implementation date following the final regulatory approvals for ATCO Pipelines' arrangement with NGTL, or December 31, 2011." Accordingly, upon implementation of Integration, AP's Transportation Service Agreement with AG will terminate and AG will contract for standard tariff service with NGTL.[120] As noted in NGTL's reply argument filed in the Integration Application, the transportation agreement between AG and NGTL will be provided under NGTL's Alberta System tariff, which is subject to oversight by the NEB. NGTL has proposed FT-D[121] Service at Group 3 delivery points to meet AG's requirements.[122]

141. AP submitted that there are no AG contract issues that impede the Commission's ability to approve Contract Transition.[123]

142. No party made submissions opposed to the transition of the AG contract to an NGTL contract.

[117] Exhibit 44.01 AUC-AP-1 and AUC-AP-2.
[118] Decision 2010-228, paragraph 162.
[119] Application No. 1605226, Proceeding ID No. 223.
[120] Exhibit 103.01, AP argument, page 5, paragraph 24.
[121] Firm Delivery Transportation Service.
[122] Exhibit 103.01, AP argument, page 5, paragraph 26.
[123] Exhibit 103.01, AP Argument, page 5, paragraph 28.

Commission findings

143. The Commission notes that no parties expressed concern with respect to transitioning from AG's transportation service agreement with AP to NGTL. Upon implementation of Integration, AP's transportation service agreement with AG will terminate and AG will contract for standard tariff service with NGTL subject to oversight by the NEB. The Commission concurs with AG that there are no apparent AG contract issues that impede the Commission's ability to approve Contract Transition, but sees merit in AP providing the Commission and customers adequate notice to transition to NGTL service. AP is directed to notify customers and post on its website the effective date of transitioning contracts from AP to NGTL.

5.3.3 Non-standard contracts

144. As noted in the application, AP has 10 non-standard transportation agreements (NSTAs) with customers.[124] Since the announcement of Integration, AP indicated that NGTL has been working with AP's NSTA customers to transition these contracts to NGTL standard tariff service contracts (FT-D2[125]). One NSTA expired December 31, 2010, and reverted to standard AP service. AP submitted that six of the remaining nine NSTA customers have indicated to NGTL they will each convert their existing NSTA to NGTL Standard Tariff Service, upon implementation of Integration. With respect to the remaining three NSTAs, AP indicated that one party will convert its NSTA to an Other Services Agreement (OS Agreement) where its existing terms and conditions will essentially be maintained. A second customer will assign its NSTA contract to NGTL. A third customer, Dow, initially raised issues on the transitioning of NSTAs in this proceeding. However, Dow has subsequently signed an OS Agreement with NGTL as noted in Dow's December 15, 2010 correspondence to the Commission.[126] Accordingly, AP submitted there are no unresolved issues with respect to non-standard agreements and AP requested the Commission to terminate the outstanding non-standard transportation agreements effective upon the Integration Effective Date.

145. The CCA submitted that all customers which received discounted rates because of a competitive situation between AP and NGTL should now pay standard rates including standard UFG charges. The CCA saw no reason why certain customers should continue to receive discounted rates at the expense of other customers. The CCA submitted that all contract provisions should expire at the time of Integration.[127]

146. In reply argument, AP submitted that NSTAs were converting to standard service on the Alberta System but the grandfathering of the competitive mechanism included in Dow's NSTA with AP was reasonable as it allows the Alberta System to retain this load in the event of a competitive threat from any future pipeline (other than AP or NGTL) that may be capable of serving Dow.[128]

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[124] Agrium-Fort Saskatchewan and Redwater; ATCO Power-Valleyview; Dow Chemical-Fort Saskatchewan; North West Upgrader-Fort Saskatchewan; Nova Gas Transmission Ltd.-East Edmonton; Nova Gas Transmission Ltd.-Grande Cache; Shell-Fort Saskatchewan; Sherritt-Fort Saskatchewan; Calpine Calgary Energy Centre; and EnCana-Carsland.

[125] Firm Delivery Transportation Service - Group 2 Delivery Points will be non-Group 1 Delivery Points where the Customer elects to contract for the standard service attributes.

[126] Exhibit 103.01, AP argument, page 6, paragraph 32.

[127] Exhibit 104.01, CCA argument, page 6, paragraph 9.

[128] Exhibit 110.01, AP reply argument, page 21, paragraph 21.

Commission findings

147. The Commission is of the view that there are no issues with respect to NSTAs that would prevent approval of Contract Transition. Accordingly, any outstanding AP non-standard agreements will be transitioned to NGTL contracts as of the Integration Effective Date. With respect to the CCA's submission that certain customers should not continue to receive discounted rates subsequent to Integration at the expense of other customers, the Commission considers that any determination with respect to OS Agreements that retain discounted rates are subject to ultimate approval under NEB jurisdiction.

6 Is AP's Contract Transition in the public interest?

148. In Decision 2010-228, the Commission concurred with AP that Integration provided substantial benefits to customers:

> 131. Although not all facets of AP's Integration proposal have been finalized, the Commission concurs with AP that Integration eliminates stacked tolls for customers who transport gas in Alberta on both the AP and NGTL pipeline systems, eliminates the need for duplicative terms of service, and reduces the regulatory burden and costs which result when NGTL and AP compete for customers in Alberta, often leading to protracted and contentious regulatory proceedings. The Commission also recognizes that Integration should enhance the orderly, efficient, and cost effective expansion of the Alberta System in that system planning for an expansion is anticipated to be performed on a coordinated basis.[67] Further, the exclusive footprint areas should lead to efficiencies for facility applications. The Commission also notes that the revised response to UCA-AP-2 included in Attachment 1 of the Settlement forecasted cost savings to AP's customers due to Integration, and reduced business risk for AP.
>
> 132. With respect to rates, the Commission anticipates that most customers requiring the use of both the AP and NGTL pipeline systems should benefit by the removal of dual or stacked tolls that inhibited cost effective transportation of gas in the province. However, the rate impact to individual customers will unfold in NGTL's rate application to the NEB. The Commission notes that no parties objected to AP's request that the Commission declare Integration to be in the public interest and convenience, but some interveners expressed reservations as to whether or not such a declaration should be conditional until matters related to line pack, Contract Transitioning, the swap of assets between NGTL and AP, gas quality, and other matters are addressed and/or finalized.
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> 133. Given the above noted benefits associated with Integration, the Commission has concluded that Integration is in the public interest and furthers the convenience of the public. The Commission therefore approves Integration.
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> 134. With regard to Contract Transitioning (including gas quality issues), the purchase of line pack and the contemplated Asset Swap with NGTL, more detail is necessary and further Commission approvals will be required. The Commission is prepared to approve Contract Transitioning and the Asset Swap in principle at this time, subject to further review and final approvals of these matters.[129]

[67] Exhibit 1, AP Integration, page 9, paragraph 32.

[129] Decision 2010-228, page 38, paragraph 131-134.

149. In Decision 2010-228 the Commission determined that Integration was in the public interest but considered approval of Contract Transition was premature given the concerns expressed by interveners with respect to straddle plant delivery, non-standard agreements, gas quality, and the future transportation agreement between NGTL and ATCO Gas. The Commission directed AP to file an application as soon as may be practicable with the Commission that clearly addressed the Contract Transition matters of concern.

150. Given the Commission's determinations above with respect to AltaGas' EEEP Contract, gas quality, line pack, and non-standard contracts, the Commission considers that the benefits associated with Integration are furthered by AP's Contract Transition and considers that contract transitioning from AP to NGTL service is in the public interest. Based on the evidence filed in this application, the Commission is satisfied that there are no outstanding concerns with regard to Contract Transition. Pursuant to sections 17, 22 and 36 of the *Gas Utilities Act* the transitioning of AP contracts to NGTL Alberta System contracts, effective on the Integration Effective Date, in accordance with this application, is hereby approved subject to the directions of the Commission herein and the prior receipt of all necessary NEB and Competition Bureau approvals.

151. The Commission notes that an AP Asset Swap application has not yet been filed. The filing and approval of an Asset Swap application by the Commission shall not be a precondition to implementation of Integration. However, AP is directed to provide the Commission by May 15, 2011, with an update of the anticipated timing for filing of AP's Asset Swap application. AP is further directed to notify the Commission of the date that AP contracts cease to exist and customer contracts are transitioned to NGTL.

152. AP is also directed to provide the Commission by May 15, 2011, with a status update of all existing or anticipated applications for regulatory approvals with respect to Integration from the NEB and the federal Competition Bureau.

7 Order

153. It is hereby ordered that:

(1) Pursuant to sections 17, 22 and 36 of the *Gas Utilities Act* that the transitioning of ATCO Pipelines' contracts to NGTL Alberta System contracts, effective on the Integration Effective Date in accordance with this application is hereby approved subject to the directions of the Commission herein and the prior receipt of all necessary NEB and Competition Bureau approvals.

(2) The Commission approves ATCO Pipeline's proposal for the purchase of line pack in accordance with the terms of this decision.

Dated on April 20, 2011.

The Alberta Utilities Commission

(original signed by)

Carolyn Dahl Rees
Vice-Chair

(original signed by)

Mark Kolesar
Commission Member

Appendix 1 – Proceeding participants

Name of organization (abbreviation) counsel or representative
ATCO Pipelines (AP) J. Burnett E. Jansen N. MacLean D. Dunlop C. Mayross
AltaGas Ltd. (AltaGas) N. Guay
ATCO Gas R. Trovato D. Wilson J. Santos D. Zavaduk V. Porter
BP Canada Energy Company (BP) D. Brett C. Worthy G. Boone
Canadian Association of Petroleum Producers R. Fairbairn L. Stevenson
Consumers' Coalition of Alberta (CCA) J. A. Wachowich J. A. Jodoin
Cenovus Energy Inc. K. Hadley
Dow Chemical Canada ULC (Dow) J. E. Lowe R. D. McNeil
ENMAX Energy Corporation J. Schlauch R. Stubbings P. Haldane C. Fluke L. Freund R. Findlay
EnCana Corporation R. Powell

Name of organization (abbreviation) counsel or representative
Gas Alberta Inc. (Gas Alberta) T. D. Marriott R. Daw K. Dannacker G. Garbutt D. Symon
Industrial Gas Consumers Association of Alberta (IGCAA) G. Sproule
Nova Gas Transmission Ltd. (NGTL) C. Shaw R. Stevens T. Eastman
TransAlta Corporation K. Perley
Office of the Utilities Consumer Advocate (UCA) T. Marriott L. Kerckhof R. Daw K. Kellgren

The Alberta Utilities Commission Commission Panel C. Dahl Rees, Vice-Chair M. Kolesar, Commission Member   Commission Staff B. McNulty (Commission counsel) R. Armstrong, P.Eng. M. McJannet W. MacKenzie U. Pillai

Appendix 2 – Summary of Commission directions

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

1. AP is directed to file a compliance application with respect to the refund of the line pack value to customers within 60 days of the date of this decision. ..... Paragraph 133

2. The Commission notes that no parties expressed concern with respect to transitioning from AG's transportation service agreement with AP to NGTL. Upon implementation of Integration, AP's transportation service agreement with AG will terminate and AG will contract for standard tariff service with NGTL subject to oversight by the NEB. The Commission concurs with AG that there are no apparent AG contract issues that impede the Commission's ability to approve Contract Transition, but sees merit in AP providing the Commission and customers adequate notice to transition to NGTL service. AP is directed to notify customers and post on its website the effective date of transitioning contracts from AP to NGTL. ..... Paragraph 143

3. The Commission notes that an AP Asset Swap application has not yet been filed. The filing and approval of an Asset Swap application by the Commission shall not be a precondition to implementation of Integration. However, AP is directed to provide the Commission by May 15, 2011, with an update of the anticipated timing for filing of AP's Asset Swap application. AP is further directed to notify the Commission of the date that AP contracts cease to exist and customer contracts are transitioned to NGTL. ..... Paragraph 151

4. .. AP is also directed to provide the Commission by May 15, 2011, with a status update of all existing or anticipated applications for regulatory approvals with respect to Integration from the NEB and the federal Competition Bureau. ..... Paragraph 152