Canadian Electricity Association

Electric Utility Regulatory Innovations Workshop

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Stranded Assets – Evolving our Views on Depreciation

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- What is the role of Depreciation in the context of the recovery of prudently incurred capital costs?
- Has Depreciation treatment become an “eligibility” criteria that can impact the right to recovery?
- Can Depreciation parameters be adjusted to reflect recent treatment of cost recovery eligibility – the Alberta context?
- What legislative provisions “trump” the right of a utility to recover prudently incurred costs?

- The starting point for regulatory decisions in Alberta that have created a stranded asset risk for utilities
- SCC Decision in ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board) [2006] S.C.J. No 4 (“Stores Block”)
- Case dealt with the disposition of an asset, previously used in the provision of utility service, outside the ordinary course of business
- Key findings:
  - customers receive access to utility services at a fair price – nothing more

- the provision of utility services does not transfer any property rights to customers – property belongs to the utility and its shareholders
- customers not entitled to any portion of the proceeds of sale of a utility asset no longer required for utility service, regardless of whether the proceeds exceed net book value (UCC)
- ownership of the assets is clearly that of the utility

- Subsequent regulatory/Court Decisions relied upon and refined the SCC's reasoning in Stores Block

- Carbon Storage Facilities: AUC Decision reversed by ABCA – ATCO Gas and Pipeline v. Alberta (Energy and Utilities Board) 2008 ABCA 200, leave to Appeal to SCC refused

- Key finding that led to the position currently adopted by the AUC in future cases:

  > "The Words "used or required to be used" are intended to identify assets that are presently used, are reasonably used, and are likely (to) be used in the future to provide services. Specifically, the past or historical use of assets will not permit their inclusion in rate base unless they continue to be used in the system. The fact that the carbon storage facility was previously used to provide service may provide come context, but it is largely irrelevant to whether that asset should remain in the rate base."

- When referring to s. 37 of the *Gas Utilities Act*, the Court determined that "the only reasonable reading of s. 37 is that the assets that are 'used or required to be used' to provide service are only those used in an operational sense."

- In its Utility Asset Disposition Decision 2013-417, paragraph 327, the AUC found as follows:

  > "Accordingly, the utilities are required to confirm that there is no surplus land in rate base and that there are no depreciation assets in rate base that should be treated as extraordinary retirements and removed because they are obsolete property, property to be abandoned, overdeveloped property and more facilities than necessary for future needs, property used for non-utility purposes, property that should be removed because of circumstances including unusual casualties (fire, storm, flood, etc.) …"

- Expansion of the application of the "used and useful" test to situations beyond a disposition outside of the ordinary course of business

  - Use to override right to recover capital costs that have previously been determined to be prudently incurred

  - Use to override right to recover current period, reasonable and prudent, operating costs, based on what "might" happen during the current period

- AUC's Decision in a generic proceeding to address utility asset dispositions – Decision 2013-417, dated November 26, 2013. Appeal of this Decision denied

- Issue of the treatment of stranded assets specifically addressed in this Decision

  - AUC expanded the "principles" from Stores Block to situations beyond the disposal of property outside the ordinary course of business

  - AUC decided that these principles apply to the disposition of <u>all</u> utility property; whether inside or outside the ordinary course of business

  - Application by the "used or required to be used" test to determine what is in rate base – remove from rate base if this test is not met

- Real Life Examples
  - Slave Lake Fires
  - EPCOR Meters
  - Insurance Costs
  - Where does it go from here?