



ATCO Gas South

Removal of Carbon Related Assets from Utility Service
Negotiated Settlement Process

Cost Awards



ALBERTA UTILITIES COMMISSION

Utility Cost Order 2010-015: ATCO Gas South
Removal of Carbon Related Assets from Utility Service
Negotiated Settlement Process
Application No. 1579086, Proceeding ID 87
Cost Application No. 1605634

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ALBERTA UTILITIES COMMISSION

Calgary, Alberta

**ATCO Gas South
Removal of Carbon Related Assets from
Utility Service – Negotiated Settlement Process**

**Utility Cost Order 2010-015
Application No. 1579086
Cost Application No. 1605634**

1 INTRODUCTION

1. This Cost Order is the second in a series of cost orders relating to Application No. 1579086, Proceeding ID 87 (Application) filed on July 11, 2008 by ATCO Gas South (ATCO or AGS), a division of ATCO Gas and Pipelines Ltd. The Application relates to the removal from rate base of the Carbon natural gas storage facility and associated producing properties (collectively, Carbon) owned and operated by ATCO. ATCO requested the Alberta Utilities Commission (AUC or Commission) to set aside Order [U2005-133](#)¹ and Decisions [2005-063](#)² and [2007-005](#)³, which were issued by the AUC's predecessor, the Alberta Energy and Utilities Board (EUB or Board), and to grant a new Order implementing the findings of the Alberta Court of Appeal in a Decision issued May 27, 2008 (Carbon Appeal Decision).

2. The Division of the Commission assigned to consider the Application was W. Grieve (Commission Chair and Chair of the panel), and Commissioners N.A. Maydonik Q.C., and T. Beattie Q.C.

3. The first decision in this proceeding (Proceeding), Decision [2009-004](#)⁴, was issued on January 9, 2009, it dealt with the scoping of the proceeding and established the Final Issues List.

4. On June 26, 2009, the Commission issued its second decision in this Proceeding, Decision [2009-067](#)⁵, which dealt with certain preliminary questions requiring consideration.

5. Utility Cost Order [2009-047](#)⁶ (UCO 2009-047) was issued on November 6, 2009, and an Errata to that Cost Order was issued on November 30, 2009. UCO 2009-047 and UCO 2009-047 (Errata) related to all costs incurred in connection with the Application up to and including Decision 2009-067.

¹ EUB Order U2005-133 – ATCO Gas South, 2005/2006 Carbon Storage Plan Interim Order (Application No. 1357130) (Released: March 23, 2005)

² EUB Decision 2005-063 – ATCO Gas South, 2005/2006 Carbon Storage Plan – Preliminary Questions (Application No. 1357130) (Released: June 15, 2005)

³ Decision 2007-005 – ATCO Gas South Carbon Facilities Part 1 Module – Jurisdiction (Application No. 1357130) (Released: February 5, 2007)

⁴ Decision 2009-004 – ATCO Gas South, Removal of Carbon Related Assets from Utility Service Pre-hearing Conference Scoping Decision (Application No. 1579086, Proceeding ID. 87) (Released: January 9, 2009)

⁵ Decision 2009-067 – ATCO Gas South, Removal of Carbon Related Assets from Utility Service Preliminary Questions (Application No. 1579086, Proceeding ID 87) (Released: June 26, 2009)

⁶ UCO 2009-047 – Removal of Carbon Related Assets from Utility Service Pre-hearing Conference Scoping Decision, Preliminary Questions (Application No. 1579086, Cost Application No. 1605312) (Released November 6, 2009, Errata released November 30, 2009)

6. On July 3, 2009 the Commission received a request from ATCO for Commission approval to enter into a negotiated settlement with respect to the outstanding matters related to the Application.
7. On July 31, 2009 the Commission granted ATCO's request for Commission approval to enter into a negotiated settlement. The Commission gave ATCO until September 16, 2009 to file the negotiated settlement, a request for an extension or confirmation that a settlement was not likely to be achieved.
8. Further extensions were granted by the Commission to allow the negotiation process to continue.
9. On September 21, 2009, ATCO advised the Commission that the negotiated settlement process had been terminated as the likelihood of reaching a settlement appeared very low. No party objected to the termination of the settlement process.
10. Section 9(4) of Rule 022, *Rules on Intervener Costs in Utility Rate Proceedings (Rule 022)*, requires parties to submit cost claims within 30 days of the date upon which a settlement is abandoned.
11. This Cost Order includes all costs incurred after Decision 2009-067 was issued on June 26, 2009 up to and including the termination of settlement negotiations on September 21, 2009.
12. On November 19, 2009, a summary of the costs being claimed was circulated to interested parties. Parties were advised that any comments regarding the figures listed in the summary or the merits of the total costs claimed were to be filed by December 3, 2009. The Commission did not receive any comments. Accordingly, the Commission considers, for the purposes of this Cost Order, the cost process to have closed on December 3, 2009.

2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS

13. In assessing a cost claim pursuant to section 21 of the *Alberta Utilities Commission Act* (AUC Act), the Commission applies Rule 022. Rule 022 was revised on September 30, 2008. Given that this Proceeding commenced on July 11, 2008, the Commission has assessed submitted cost claims in accordance with the wording of Rule 022 and the *Scale of Costs* in place as of that time.
14. In exercising its discretion to award costs, the Commission will, in accordance with section 11 of Rule 022, consider whether an eligible participant acted responsibly and contributed to a better understating of the issues before the Commission, and whether the costs claimed are reasonable and directly and necessarily related to the proceeding. The Commission considers these factors in light of the scope and nature of the issues in question.
15. In the Commission's view, the responsibility to contribute positively to the process is inherent in the choice to intervene in a proceeding. The Commission expects that those who choose to participate will prepare and present a position that is reasonable in light of the issues arising in the proceeding and necessary for the determination of those issues. To the extent reasonably possible, the Commission will be mindful of participants' willingness to co-operate

with the Commission and other participants to promote an efficient and cost-effective proceeding.

16. As the costs of a utility proceeding are generally passed on to customers, it is the Commission's duty to ensure that customers receive fair value for a party's contribution. As such, the Commission only approves those costs that are reasonable and directly and necessarily related to the party's participation in the proceeding.

3 COSTS IN A NEGOTIATED SETTLEMENT

17. In the case of a negotiated settlement process (NSP), the Commission does not directly participate in the process. Rather, the Commission reviews the nature of the process itself and its results to ensure that it was fair, reasonable, and in the public interest. Without the direct opportunity to review the effectiveness of participants, the Commission will take into account other considerations to ensure that the costs of participation in a NSP, which are ultimately passed on to all customers, are reasonable and represent fair value.

18. The Commission observes several time entries by counsel for both ATCO and The City of Calgary (Calgary) which relate to various proceedings before the Court of Appeal relating to the Carbon Appeal Decision and related proceedings. Ordinarily, the Commission will not approve cost claims relating to court proceedings. The negotiated settlement discussions under review in this Cost Order however, required consideration by the parties of the impact to, and possible settlement of ongoing Carbon related litigation. In these rare circumstances, the Commission will permit the recovery of court related costs.

4 VIEWS OF THE COMMISSION – ASSESSMENT

19. Various participants submitted cost claims totaling \$88,651.03 including actual GST of \$296.66 with respect to the Proceeding.

4.1 ATCO Gas South

20. AGS submitted a cost claim totaling \$12,666.30. The claim is comprised of legal fees incurred by Bennett Jones LLP in the amount of \$12,060.00 and internal costs in the amount of \$606.30.

21. The Commission notes that AGS claimed in excess of the Commission's *Scale of Costs* for claimants of Bennett Jones LLP. Mr. Smith claimed 19.3 hours at the hourly rate of \$350 (\$6,755.00). Based on Mr. Smith's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 19.3 hours, results in a total of \$4,825.00. Ms. Illsey claimed 0.8 hours at the hourly rate of \$320 (\$256.00). Based on Ms. Illsey's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$220, which for 0.8 hours results in a total of \$176.00. Ms. Goldbach claimed 6.7 hours at the hourly rate of \$320 (\$2,144.00). Based on Ms. Goldbach's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$220, which for 6.7 hours results in a total of \$1,474.00. Mr. Kay claimed 8.3 hours at the hourly rate of \$350 (\$2,905.00). Based on Mr. Kay's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 8.3 hours results in a total of \$2,075.00. The total claim for Bennet Jones reduced in accordance with the applicable *Scale of Costs* is \$8,550.00.

22. The Statement of Justification submitted with the cost claim did not provide a sufficient basis, in the Commission's view, to justify a rate above the *Scale of Costs*. The Commission considers the claim for Bennett Jones LLP, reduced in accordance with the applicable *Scale of Costs*, reasonable and approves the reduced amount.

23. Taking the foregoing into account, the Commission approves AGS's cost claim, including disbursements of \$606.30, in the total amount of \$9,156.30.

4.2 Public Institutional Consumers of Alberta

24. The Public Institutional Consumers of Alberta (PICA) submitted a cost claim totaling \$10,511.01. The claim is comprised of legal fees incurred by Nancy J, McKenzie Professional Corporation in the amount of \$5,875.00, together with disbursements and GST of \$58.10 and \$296.66, respectively; consulting fees incurred by Energy Management & Regulatory Consulting Ltd. (EMRC) in the amount of \$3,881.25, together with disbursements of \$400.00.

25. The Commission notes that PICA has claimed GST for Nancy J. McKenzie Professional Corporation in the amount of \$296.66. PICA is not entitled to claim GST, as it is eligible to claim for a GST credit. Accordingly, the Commission denies PICA's GST claim of \$296.66.

26. With the exception of the GST reduction, the Commission considers the amounts claimed to be reasonable. The Commission finds that PICA's claims for professional fees and other fees were in accordance with the Scale of Costs. Accordingly, the Commission approves PICA's cost claim in the amount of \$10,214.35.

4.3 Calgary

27. Calgary submitted a cost claim totaling \$65,473.72. The claim is comprised of legal fees incurred by Burnet, Duckworth & Palmer in the amount of \$57,150.00, together with disbursements of \$648.72; consulting fees incurred by Stephen Johnson in the amount of \$6,375.00; consulting fees incurred by P.R. Walsh in the amount of \$675.00; and consulting fees incurred by Sproule Associates Ltd. in the amount of \$625.00.

28. The Commission has considered the costs submitted by Calgary. The Commission finds that the participation of Calgary was, for the most part, effective and of assistance in reviewing the Application. The Commission also notes that the claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission considers the claims for fees, disbursements and applicable GST for all participants to be reasonable in the total amount of \$65,473.72.

5 GST

29. In accordance with the Commission's treatment of the GST on cost awards, AGS is required to pay only that portion of the GST paid by interveners that may not be recoverable through the GST credit mechanism. Accordingly where parties are eligible for a GST credit the Commission has reduced this particular portion of their claim. Eligible GST approved by the Commission amounts to \$0.00. The GST allowed by the Commission may also be charged against AGS's Hearing Cost Reserve Account.

30. The Commission emphasizes that its treatment of the GST claimed in no way relieves participants or their lawyers and consultants from their GST obligations pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15.

6 ORDER

IT IS HEREBY ORDERED:

1. ATCO Gas South shall pay intervener costs in the amount of \$75,688.07, as set out in column (h) of [Appendix A](#).
2. ATCO Gas South external costs in the amount of \$9,156.30, as set out in column (h) of [Appendix A](#), are approved.
3. ATCO Gas South shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$84,844.37, as set out in column (h) of [Appendix A](#).

Dated on March 3, 2010.

ALBERTA UTILITIES COMMISSION

(Original signed by)

Willie Grieve
Chair

(Original signed by)

N. Allen Maydonik, Q.C.
Commissioner

(Original signed by)

Tudor Beattie, Q.C.
Commissioner

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A

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Removal of Carbon Related Assets from Utility Service - Negotiated Settlement Process
 (1579086)

Costs Claimed and Awarded

	Total Fees Claimed (a)	Total Expenses Claimed (b)	Total GST Claimed (c)	Total Amount Claimed (d)	Total Fees Awarded (e)	Total Expenses Awarded (f)	Total GST Awarded (g)	Total Amount Awarded (h)
APPLICANT								
ATCO Gas South								
Bennett Jones	\$12,060.00	\$0.00	\$0.00	\$12,060.00	\$8,550.00	\$0.00	\$0.00	\$8,550.00
ATCO Gas	\$0.00	\$606.30	\$0.00	\$606.30	\$0.00	\$606.30	\$0.00	\$606.30
Sub-Total	\$12,060.00	\$606.30	\$0.00	\$12,666.30	\$8,550.00	\$606.30	\$0.00	\$9,156.30
INTERVENERS								
Public Institutional Consumers of Alberta								
Energy Management & Regulatory Consulting Ltd	\$3,881.25	\$400.00	\$0.00	\$4,281.25	\$3,881.25	\$400.00	\$0.00	\$4,281.25
Nancy J. McKenzie Professional Corporation	\$5,875.00	\$58.10	\$296.66	\$6,229.76	\$5,875.00	\$58.10	\$0.00	\$5,933.10
Sub-Total	\$9,756.25	\$458.10	\$296.66	\$10,511.01	\$9,756.25	\$458.10	\$0.00	\$10,214.35
The City of Calgary								
Burnet, Duckworth & Palmer	\$57,150.00	\$648.72	\$0.00	\$57,798.72	\$57,150.00	\$648.72	\$0.00	\$57,798.72
Stephen Johnson	\$6,375.00	\$0.00	\$0.00	\$6,375.00	\$6,375.00	\$0.00	\$0.00	\$6,375.00
P.R. Walsh	\$675.00	\$0.00	\$0.00	\$675.00	\$675.00	\$0.00	\$0.00	\$675.00
Sproule Associates Limited	\$625.00	\$0.00	\$0.00	\$625.00	\$625.00	\$0.00	\$0.00	\$625.00
Sub-Total	\$64,825.00	\$648.72	\$0.00	\$65,473.72	\$64,825.00	\$648.72	\$0.00	\$65,473.72
TOTAL INTERVENER COSTS	\$74,581.25	\$1,106.82	\$296.66	\$75,984.73	\$74,581.25	\$1,106.82	\$0.00	\$75,688.07
TOTAL INTERVENER AND APPLICANT COSTS	\$86,641.25	\$1,713.12	\$296.66	\$88,651.03	\$83,131.25	\$1,713.12	\$0.00	\$84,844.37