



ATCO Gas

2008-2009 General Rate Application
Phase I

Cost Awards



ALBERTA UTILITIES COMMISSION

Utility Cost Order 2009-014: ATCO Gas

2008-2009 General Rate Application

Phase I

Application No. 1553052

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1 INTRODUCTION

1. On November 2, 2007, ATCO Gas (AG), a division of ATCO Gas and Pipelines Ltd., filed a Phase I 2008-2009 General Rate Application (GRA) for ATCO Gas North (AGN) and ATCO Gas South (AGS) (Application) with the Alberta Energy and Utilities Board (Board). By way of letter dated December 12, 2007, the Board suspended the process in light of submissions and objections made by parties and the proposed establishment of the Alberta Utilities Commission (Commission), and directed AG to submit its application to the Commission in January 2008. On January 2, 2008, AG filed its Application with the Commission without changes, adjustments or alterations.

2. On November 21, 2008, the Commission issued Decision [2008-120](#), with respect to the Application.

3. The Commission heard the Application by way of an oral hearing held in Edmonton, Alberta beginning on May 29, 2008, before Commission Chair, Mr. Willie Grieve, and Commissioners, Mr. Bill Lyttle and Mr. Allen Maydonik, Q.C. Written argument and reply argument were filed on July 17 and August 15, 2008, respectively. Accordingly, the Commission considers that August 15, 2008 was the close of the record for this proceeding (Proceeding).

4. On November 13, 2008, the Commission issued Decision [2008-113](#), in respect of the GRA.

5. On November 24, 2008, 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 1, 2008. The Commission received comments from the Office of the Utilities Consumer Advocate (UCA). On December 2, 2008, parties were invited to respond to the UCA's comments by December 16, 2008. The Commission received responses from AG on December 16, 2008. Accordingly, the Commission considers, for the purposes of this Cost Order, the cost process to have closed on December 16, 2008.

2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS

6. When assessing a cost claim pursuant to section 21 of the AUC Act, the Commission applies Rule 022, *Rules on Intervener Costs* ([Rule 022](#)) when considering cost claims for applications filed prior to October 1, 2008. The Commission has assessed the costs claimed in

respect of the Application in accordance with Rule 022 and the *Scale of Costs* in place at the time of the Application.

7. Before exercising its discretion to award costs, the Commission must consider whether the participant acted responsibly and contributed to a better understanding 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.

8. In the Commission's view, each party to a proceeding should contribute positively to a proceeding. The Commission considers that parties 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. When determining a cost award, the Commission will consider if the party acted responsibly in the proceeding and contributed to a better understanding of the issues before the Commission. To the extent reasonably possible, the Commission will be mindful of parties' willingness to co-operate with the Commission and other parties to promote an efficient and cost-effective proceeding.

9. 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 BUDGETS

10. By letter dated January 23, 2008, the Commission required registered parties to file budgets by February 22, 2008. The Commission received budget submissions from:

- Alberta Sugar Beet Growers and Potato Growers of Alberta (ASBG/PGA),
- City of Calgary (Calgary),
- City of Edmonton (Edmonton),
- Consumers Coalition of Alberta (CCA),
- Public Institutional Consumers of Alberta (PICA),
- Rate 13 Groups (R-13), and
- ATCO Gas (AG).

11. On February 29, 2008, the Commission responded to the budgets that were filed. The following table summarizes the budget submitted by AG:

Table 1. AG Budget Costs

	Legal Services (\$)	Expert Consultant Services (\$)	General Consultant Services (\$)	Total Professional Services Estimate (\$)
ATCO Gas	345,662.33	143,750	0	489,412.33
TOTAL	\$345,662.33	\$100,000	\$ 0	\$489,412.33

12. The following table summarizes the budgets submitted by the interveners:

Table 2. Intervenors Budget Costs

	Legal Services (\$)	Expert Consultant Services (\$)	General Consultant Services (\$)	Forecast Disbursements (\$)	Total Intervener Budgeted Estimates (\$)
ASBG-PGA	0	0	48,315	0	48,315
Calgary	85,000	45,000	85,000	0	215,000
Edmonton	0	0	50,000	0	50,000
CCA	52,440	0	116,290	0	168,730
PICA	38,375	0	34,200	0	72,575
R-13	15,250	0	0	0	15,250
TOTAL	\$ 191,065	\$ 45,000	\$ 333,805	\$ 0	\$ 569,870

13. In reviewing the budget submissions of the parties, the Commission provided the following comments:

3.1 Alberta Sugar Beet Growers / Potato Growers of Alberta

14. The Commission considered that the total budget estimates submitted by ASBG/PGA appeared to be high given the areas of investigation. While the ASBG/PGA appeared to be coordinating its efforts within the Consumer Group (CG), the Commission noted that there appeared to be some overlap with Calgary with respect to concerns related to the Information Technology and Customer Care and Billing functions. The Commission encouraged these interveners to explore additional opportunities for coordination with respect to these matters. The Commission further noted that while ASBG/PGA was pursuing a number of general issues, it appeared only to be exploring one issue of particular importance to the group that it represents.

3.2 ATCO Gas

15. The Commission noted the budget items submitted by AG with respect to consultants by AG and indicated that it expected a detailed summary of the work performed in AG's cost claim submission.

3.3 Consumers' Coalition of Alberta

16. The Commission considered that the total budget estimates submitted by the CCA appeared to be high in light of the issues allocated to the CCA by the CG.

3.4 City of Calgary

17. With regard to Calgary's budget submission, the Commission noted that the proposed budget appeared reasonable given the areas of investigation. The Commission noted that in comparison to AG's previous GRA application, Calgary had identified double the areas of interest and noted that the potential for duplication of coverage with other interveners may impact cost recovery.

3.5 City of Edmonton

18. The Commission noted that the proposed budget appeared high given that only one area of interest was indicated.

3.6 First Nations

19. The Commission noted that while First Nations submitted information requests, it did not submit a budget as directed. It is unclear to the Commission from a review of the Statement of Intent to Participate and the filed information requests how the intervention by the First Nations was intended to address matters that would not have otherwise been addressed by other consumer groups. Similarly, the Commission was unaware of the efforts made by the First Nations to avoid duplications of effort. Accordingly, the Commission indicated that this intervener may be at risk for cost recovery.

3.7 Public Institutional Consumers of Alberta

20. With regard to PICA's budget submission, the Commission noted that it appeared to be reasonable given the areas of investigation and that the level of detail provided was appropriate.

21. The Commission notes that PICA submitted a revised budget on June 6, 2008. PICA stated that it became apparent that its original budget should be revised based on a review of the time spent to date and the anticipated time required for completion of the proceeding.

22. In its revised budget, PICA budgeted \$47,500.00 for legal fees, and \$49,400.00 for consulting fees.

3.8 Rate 13 Group

23. The Commission considered that the proposed budget estimates submitted by R-13 to be high given that R-13 appeared to be monitoring the Proceeding and was interested in topics that were being dealt with by other groups. The Commission noted that it does not intend to award costs for monitoring proceedings and that R-13 may be at risk for cost recovery based on their planned level of participation.

4 COST CLAIMS

24. Various participants submitted cost claims totaling \$1,331,140.81, including actual GST of \$10,334.78, with respect to the Proceeding. The claims submitted by parties are detailed below under Section 6 - "Commission Findings". As noted above, the Commission requested comments from parties on November 24, 2008 on the cost claims submitted.

5 VIEWS OF THE PARTIES REGARDING COST CLAIMS

25. On November 25, 2008, the UCA submitted comments regarding the summaries of costs claimed in the Proceeding. The UCA stated that it was unable to respond to the costs claimed until it received further clarification of AG's cost claim as it related to the following matters:

Were all legal and consulting fees claimed at Commission approved rates? In this regard, the UCA notes that the ATCO Gas budget, filed with the Commission February 25, 2008, included legal fees in excess of these rates and hourly rates for expert consultants were not specified. Full particulars are required.

Is the Ernst & Young claim of \$75,153.73 (total north and south) some form of allocation of costs incurred by that firm? The UCA is not aware that this firm participated or

contributed in any way to this proceeding, nor was this firm identified in the ATCO Gas budget submissions. Full particulars and justification for this claim are required.

26. The UCA requested a copy of all cost claim information and justifications pertaining to AG's cost claim.

27. Under the direction of the Commission, AG served a copy of its cost claim to each interested party involved in the Proceeding.

28. Further to its letter dated November 25, 2008, the UCA submitted comments on December 1, 2008, regarding AG's cost claim. The UCA noted that it did not receive a copy of AG's cost claim until the afternoon of November 27, 2008. The UCA also noted that AG failed to "serve a copy of the claim on the other participants" as required pursuant to Section 7(3) (b) of Rule 022.

29. The UCA submitted that AG's cost claim was based on an incorrect interpretation of the Commission's enabling legislation, as well as a report by Ernst and Young (E&Y Report) that was not filed with the Commission until after the close of the Proceeding. The UCA stated that AG was inviting the Commission to ignore the rules of natural justice and its own legislated authority, which includes Sections 3 and 4 of the *Administrative Procedures and Jurisdiction Act*, and Section 9(2) of the *Alberta Utilities Commission Act* (AUC Act).

30. The UCA noted that AG claimed hourly rates which exceed the Commission's *Scale of Costs*. UCA also noted that the E&Y Report was filed without the knowledge of interveners and in the absence of a process for testing this 'evidence' and as a result, cannot be relied upon to support AG's position that its costs were "prudently incurred".

31. The UCA stated that AG has based its position on the suggestion that the Commission's authority to award costs pursuant to section 21 of the AUC Act differs from that of its predecessor. The UCA submitted that the new legislation clearly gives the Commission a broad mandate regarding the determination and recovery of costs for regulatory proceedings.

32. The UCA disagreed with AG's suggestion that subsection 4(3) of the *Roles, Relationships and Responsibility Regulations* A.R. 186/2003, set out below, had any relevance to the recovery of legal and consultant costs:

(4)(3) A gas distributor is entitled to recover in its tariffs the prudent costs as determined by the Commission that are incurred by the gas distributor to meet the requirements of subsection (1).

33. The UCA noted that subsection (1) does not refer to the costs of regulatory proceedings, but only to the functions which gas distributors are to provide. The UCA submitted that even if the Commission were to accept AG's interpretation of this regulation, the Commission has established a tariff of fees in 2008 which were based on a clear understanding of what is reasonably required for its regulatory proceedings.

34. In respect of AG's claim for prudent costs of legal counsel and consultants, the UCA stated the following:

AG goes on at length and in a somewhat convoluted fashion to indicate that, pursuant to Section 76 of the *Alberta Utilities Commission Act*, the Commission "...has the authority to make rules regarding an applicant's costs related to a rate application." The UCA is not aware that this was ever in question and has always accepted the Commission's Rule 022 as fully applicable to both intervener and applicant. AG then goes on to suggest that Section 7(2) of Rules 022, which states that "a participant may only claim costs in accordance with the scale of costs" is not enforceable because it is, somehow, in conflict with the provisions of the Appendix A, Scale of Costs. This seems to be totally inappropriate given the fact that Rules 022 was approved on January 2, 2008, prior to the commencement of this proceeding and specifically states in Appendix A that:

The Scale of Costs represents a fair and reasonable tariff to provide any interested party with adequate, competent and professional assistance in making an effective submission before the Commission.

35. The UCA submitted that at the beginning of the Proceeding, the Commission issued a letter which indicated to interested parties that the final assessment of value and assistance to the Commission in terms of costs awards would be made with respect to the Commission's rules at the end of the current proceeding. Therefore, the UCA noted, that if AG was not familiar with the Commission's *Scale of Costs*, the Commission's letter provided specific directions as to the limitations on cost recovery.

36. The UCA noted that AG is not only claiming costs in excess of the *Scale of Costs* for the current proceeding (Application No. 1553052), but it is also claiming excess costs for its original application (Application No. 1544779) for work done in 2007, which was subject of EUB Utility Cost Order 2008-037 (UCO 2008-037). The UCA further noted that UCO 2008-037 did not suggest that these costs would be reviewed in a subsequent proceeding.

37. With respect to the Commission's IAR system, the UCA noted that AG indicated that its cost claim would be accessible on this system. The UCA noted that this system has not been in existence for some time and that was of concern since interested parties did not receive AG's cost recovery application.

38. Lastly, the UCA submitted that recovery of the following claimed by AG should be denied:

- Costs for counsel, consultants or otherwise in excess of the Commission's *Scale of Costs*,
- Excess costs for the original application; and
- Costs of the E&Y Report.

39. On December 16, 2008, AG responded to the UCA's comments on its cost claim.

40. AG acknowledged that it was required to serve a copy of its cost claim upon other participants pursuant to section 7(3)(b) of Rule 022. AG stated that the Commission has typically provided participants with electronic notice of all filings; therefore it has been standard practice not to serve cost claims to participants. AG also noted that the Commission was to place all cost claims in its IAR system for viewing by participants and the public, however this was not done.

41. With respect to the UCA's comments that AG is making a second claim for costs in its original GRA, AG submitted that this is incorrect as its current cost claim only claims those amounts incurred in the original application that were above the *Scale of Costs* and the actual costs for the current application. AG submitted that its budget was clear that it was including both original and current application costs, less amounts claimed in the initial cost claims and that the Commission expressly acknowledged that approach.

42. AG noted that in its letter of February 8, 2008, the Commission confirmed that AG could include costs from the original application in the current application:

However, the Commission will allow ATCO Gas to include any costs not included in the cost claim associated with the Original Application to be submitted as part of the cost process associated with the Current Application.

43. With regards to the UCA's objection to the inclusion of the E&Y Report as part of AG's cost claim, AG noted that the E&Y Report was not included as evidence because it was not relevant to the Proceeding. AG submitted that the report relates to cost claims and should be considered by the Commission as it confirms AG's costs are within fair market value and are therefore reasonable and prudent. AG stated that this is consistent with the utility's entitlement to recover its costs as determined by the Commission (*Roles, Relationships and Responsibilities Regulation*, A.R. 186/203, s. 4(3)).

44. AG disagreed with the UCA's comment that by including the E&Y Report in its cost claim AG is inviting the Commission to ignore the rules of natural justice and its own legislated authority. AG noted that its cost claim was filed in accordance with Rule 022, which provides for a process that exhibits procedural fairness and natural justice.

45. With respect to the UCA's disagreement on AG's suggestion Subsection 4(3) of the *Roles, Relationships and Responsibility Regulations* A.R. 186/203 had relevance to the recovery of legal and consultant costs, AG submitted the following:

Subsection 1 of the Regulation sets out specific functions of the gas distributor. As a gas distributor regulated by the AUC, ATCO Gas is obligated to make general rate application to the Commission in order to provide those functions set out in subsection 1, and as such, the prudent costs of general rate application are necessarily "costs incurred by the gas distributor to meet the requirements of subsection 1".

46. AG further noted that the Alberta Energy and Utilities Board had recognized that a regulated utility has the right to recover its costs incurred with respect to a regulatory proceeding, and also the Commission recognized this in its July 31, 2008 *Bulletin 2008-16: Draft Revised Rule 022, Rules on Intervener Costs in Utilities Rate Matters*.

47. With regards to AG claiming costs in excess of the *Scale of Costs*, AG submitted that Rule 022 clearly allows for prudent costs to be claimed in excess of the *Scale of Costs*. AG noted that Appendix A of Rule 022 states the following:

In a case where a participant can advance persuasive argument that the scale is inadequate given the complexity of the case, the Commission may award an amount greater than stated in the Scale of Costs to address such circumstances.

48. AG submitted that its cost claim and the E&Y Report were filed within the Commission's Rules.

49. AG responded to the UCA's comments regarding Section 21 of the AUC Act and the Commission's discretion, by stating that the UCA is suggesting that the Commission's discretion regarding cost claims is limited to determining what portion of costs incidental to any hearing should be borne to customers. AG submitted that Section 21 allows for the Commission to make rules regarding the payment of costs to an intervener; rules which are found in Rule 022.

50. Further, AG submitted that it has demonstrated that its costs are fair and reasonable and that the Commission has the discretion, and should, award AG's costs incurred for the original and current applications. Lastly, AG submitted that it is entitled to recover the costs of the E&Y Report submitted in support of its cost claim.

6 COMMISSION FINDINGS

6.1 Alberta Sugar Beet Growers/ Potato Growers of Alberta

51. The ASBG/PGA submitted a cost claim totaling \$66,429.20. The claim was comprised of consulting fees incurred by Unryn & Associates Ltd. in the amount of \$59,865.00, together with disbursements of \$6,564.20. The costs claimed by ASBG/PGA were allocated 75% (being \$49,821.90) to AGS and 25% (being \$16,607.30) to AGN.

52. The Commission has considered its initial comments on the budget submitted by ASBG/PGA, in particular, the Commission's concern about the potential overlap with Calgary on issues related to Information Technology and Customer Care and Billing functions. In this regard, the Commission notes ASBG/PGA's submission in its cost claim that it had "an increased effort with respect to major issues of concern and only a reduced effort with respect to the Information Technology related issues" and, that while it had developed IRs on these issues, ASBG/PGA deferred to Calgary for Argument and Reply in these areas.

53. The Commission considered ASBG/PGA's submission that, as part of the CG, it was allocated a number of issues in the Proceeding. Upon reviewing the record of the Proceeding, the Commission is of the view that while ASBG/PGA's participation was of some assistance overall in the issues it addressed as part of CG, that these areas were relatively limited in scope, especially given the deferral to Calgary on the IT-related matters. While this deferral avoided duplication of efforts, it also meant that ASBG/PGA did not require the amount of time allocated to this area in its initial budget.

54. The Commission notes that ASBG/PGA stated that it was over budget for the reasons set out in its cost submission. The Commission is not persuaded by the reasons cited, and in particular, does not consider that the issues that ASBG/PGA addressed within the Proceedings were of such complexity so as to warrant additional costs.

55. As a result, the Commission weighed the reasonableness of the costs claimed by ASBG/PGA on the issues it pursued in light of the costs claimed by the other members of the CG. The Commission is of the opinion that ASBG/PGA's participation was of some assistance but that some reduction to the costs claimed was warranted.

56. For the foregoing reasons, the Commission considers a percentage reduction of 25% (or \$14,966.25) to consulting fees is reasonable. Therefore, the Commission approves consulting fees in the amount of \$44,898.75. The Commission considers disbursements incurred by Unryn & Associates in the amount of \$6,564.20 to be reasonable and the disbursements are approved in full. Accordingly, the Commission approves ASBG/PGA's cost claim in the amount of \$51,462.95.

6.2 ATCO Gas

57. AG submitted a cost claim totaling \$641,352.04. This total included \$87,130.00 for legal fees incurred by Bennett Jones LLP and \$94.24 claimed by Foster Associates Inc. in respect of Application No. 1544779.

58. The balance of AG's claim was comprised of claims relating to Application No. 1553052, namely: legal fees incurred by Bennett Jones LLP in the amount of \$385,884.50, together with disbursements of \$5,814.22; and consulting fees incurred by Gannett Fleming Inc. in the amount of \$12,400.00; and consulting fees incurred by M.B Percy Consulting in the amount of \$11,812.50. AG also claimed consulting fees incurred by Ernst & Young in the amount of \$67,402.50, together with disbursements of \$7,751.28. AG claimed disbursements of \$63,062.80 for various expenses, including Notice of Application costs.

59. The costs claimed by AG were allocated equally amongst AGN and AGS.

60. As stated in Section 2 of this cost order, as this Application was filed with the Commission on January 2, 2008, the Commission is assessing the claims based on Rule 022 and the *Scale of Costs* in force at that time.

61. Upon review of AG's cost claim and the above-noted submissions, the Commission notes that AG has claimed the costs that it actually incurred with regard to its consultants and legal counsel, rather than costs based on the Commission's *Scale of Costs* which applies to the Proceeding.

62. In particular, AG's legal counsel, Bennett Jones LLP, claimed in excess of the *Scale of Costs* for all of its claimants. In respect of Application No. 1553052, L.E. Smith claimed 0.2 hours at an hourly rate of \$650 (\$130), and 337.2 hours at an hourly rate of \$685 (\$230,982). Based on Mr. Smith's years of experience the *Scale of Costs* allows for a maximum hourly rate of \$250, which for 337.4 hours results in a total of \$84,350.00. K.J Drosdowski claimed 342.8 hours at an hourly rate of \$400 (\$137,120). Based on Ms. Drosdowski's experience, the *Scale of Costs* allows for a maximum hourly rate of \$140, which for 342.8 hours results in a total of \$47,992.00. D.M McPherson claimed 36.3 hours at an hourly rate of \$250 (\$9,075). Based on Mr. McPherson's experience, the *Scale of Costs* allows for a maximum hourly rate of \$140, which for 36.3 hours results in a total of \$5,082.00. K.M. Beattie claimed 17 hours at an hourly rate of \$300 (\$5,100). Based on Ms. Beattie's experience, the *Scale of Costs* allows for a maximum hourly rate of \$180, which for 17 hours results in a total of \$3,060.00. H.M Kay claimed 3.1 hours at an hourly rate of \$650 (\$2,015). Based on Mr. Kay's experience, the *Scale of Costs* allows for a maximum hourly rate of \$250, which for 3.1 hours results in a total of \$775.00. D.J. Sullivan, an articling student, claimed 1 hour at an hourly rate of \$175 (\$175). Based on Mr. Sullivan's experience, the *Scale of Costs* allows for a maximum hourly rate of \$90, which for 1 hour results in a total of \$90.00. R.B Williams, an articling student, claimed 3.5

hours at an hourly rate of \$175 (\$612.50). Based on Mr. Williams' experience, the *Scale of Costs* allows for a maximum hourly rate of \$90, which for 3.5 hours results in a total of \$315.00.

63. Bennett Jones LLP also claimed for legal research in the amount of \$675.00. As legal research costs are not recognized in the Commission's *Scale of Costs*, the Commission denies this portion of AG's cost claim.

64. The Commission *Scale of Costs* provides that a participant may submit argument that the scale is inadequate given the complexity of a proceeding. However, the Commission is of the view that AG is not basing its claim for costs in excess of the *Scale of Costs* on the complexity of the Proceeding. Rather, AG argues that its cost claims are reflective of fair market value and are therefore reasonable and prudent. The Commission finds that Rule 022 as it existed on January 2, 2008 provided that a party to a hearing in a utility rate proceeding could only claim costs in accordance with the Commission's *Scale of Costs* unless the Commission was persuaded by a submission that, due to the complexity of the case, an amount higher than that scale should be awarded. The Commission and its predecessor, the Board, awarded costs in accordance with its *Scale of Costs*, to interveners and applicants alike. There is no reason for AG to believe that the Commission in the Proceeding would change the manner in which it has previously awarded costs. As the Commission is applying its *Scale of Costs*, it need not comment on the arguments presented regarding fair market value and prudently incurred hearing costs. The Commission finds that the costs claimed above the *Scale of Costs* in the Proceeding are unreasonable. As a result, the Commission reduces the amounts claimed by Bennett Jones LLP to accord with the *Scale of Costs*.

65. In keeping with the above findings, the Commission denies the costs in the amount of \$67,402.50, together with disbursements of \$7,751.29, incurred by Ernst & Young to conduct a survey of a range of market rates for current legal and consultant services for regulatory proceedings in the utilities industry, both in Alberta, regulated by the AUC, and across Canada in other regulated jurisdictions where investor-owned utilities operate. This survey, as acknowledged by AG, was not relevant to the Proceeding, nor was it tested by interveners, but was submitted in support of AG's claim for costs higher than those provided for by the *Scale of Costs*.

66. Furthermore, the Commission denies AG's claim for costs totaling \$87,224.24.00 relating to Application No. 1544779 regarding costs incurred in 2007 with respect to this GRA, as the costs claimed are again those which are in excess of the *Scale of Costs*; the costs that were in accordance with the *Scale of Costs* had previously been approved in Utility Cost Order 2008-037.¹

67. Taking the foregoing into account, the Commission approves legal fees in the amount of \$84,300 for Mr. Smith; legal fees in the amount of \$47,992.00 for Ms. Drosdowski; legal fees in the amount of \$5,082.00 for Mr. McPherson; legal fees in the amount of \$3,060.00 for Ms. Beattie; legal fees in the amount of \$775.00 for Mr. Kay; and articling student fees in the amount of \$90.00 and \$315.00 for Mr. Sullivan and Mr. Williams, respectively.

68. The Commission approves the costs claimed by AG for Gannet Fleming Inc., and M.B. Percy Consulting as filed as these costs appear reasonable and are in accordance with the *Scale of Costs*.

¹ Utility Cost Order 2008-137: 2008-2009 General Rate Application

6.3 Consumers' Coalition of Alberta

69. The CCA submitted a cost claim totaling \$146,990.66. The claim was comprised of legal fees incurred by Wachowich & Company in the amount of \$42,000.00, together with disbursements and GST of \$5,746.00 and \$2,387.30, respectively; and consulting fees incurred by Regulatory Services, Inc. in the amount of \$92,028.00, together with disbursements and GST of \$217.10 and \$4,612.26, respectively. The costs claimed by the CCA were allocated equally amongst AGN and AGS.

70. The Commission has reviewed the CCA's cost claim and notes that these costs are less than its budgeted amount. The Commission considers the amounts claimed to be reasonable and views the participation of the CCA as having assisted the Commission in gaining a better understanding of the issues in this Proceeding.

71. Accordingly, the Commission approves the CCA's cost claim in the full amount of \$146,990.66.

6.4 City of Calgary

72. Calgary submitted a cost claim totaling \$290,441.32. The claim was comprised of legal fees incurred by McLennan Ross LLP in the amount of \$81,631.00, together with disbursements of \$8,927.19; and consulting fees incurred by Stephen Johnson in the amount of \$131,950.00, together with disbursements in the amount of \$2,776.62. Calgary also claimed consulting fees incurred by Stephens Consulting Ltd. in the amount of \$64,848.00, together with disbursements of \$308.51. The costs claimed by Calgary have been allocated 100% to AGS.

73. In its review of Calgary's cost claim, the Commission notes that it Calgary was significantly over budget with regard to the consulting fees claimed. This was of concern to the Commission since it considers that Calgary is experienced in budgeting for such proceedings, and that the issues in the Proceeding were, for the most part, similar to previous AG general rate applications. Therefore, the Commission scrutinized the justification provided for these costs to determine whether the additional costs were warranted and reasonable.

74. Calgary explained that it had not anticipated requiring the services of Mr. Matwichuk, C.A. of Stephen Johnson in its budget. However, the nature of the AG filings regarding the Benchmark/Evergreen process and the updating of the GRA IT placeholders related to the Proceeding made it necessary to retain him. The Commission notes that Mr. James Stephens of Stephens Consulting Ltd. was also retained to provide expert advice regarding IT and Benchmarking/Evergreen matters. The Commission considers that Calgary did foresee that IT and Benchmarking/Evergreen issues were part of the GRA application as it had retained Mr. Stephens. Therefore, the Commission is not persuaded that it was not foreseeable that these issues would be raised in the Proceeding. Also, the Commission is of the view that there was overlap in the expert services retained.

75. In addition, the Commission is of the view that some of the procedural motions brought forward by Calgary, in particular those which related to revisions of Commission rulings, were not generally of assistance and did not contribute to an efficient hearing process.

76. The Commission strives to incent greater co-operation between the interveners, as noted above, as ratepayers pay the costs awarded in a proceeding. The Commission appreciates that Calgary concentrated its intervention on issues related to IT in the Proceeding. However, the

Commission noted that costs were also claimed for issues which were primarily advanced by other interveners.

77. Taking the foregoing into account, the Commission finds that a percentage reduction of 5% (or \$4,081.55) to Calgary's legal fees and a 25% (\$49,199.50) reduction in consulting fees is reasonable. Accordingly, the Commission approves legal fees incurred by McLennan Ross LLP the amount of \$77,549.45, consulting fees incurred by Stephen Johnson in the amount of \$98,962.50 and consulting fees incurred by Stephens Consulting Ltd. in the amount of \$48,636.00. The Commission considers the disbursements claimed in the amount of \$12,012.32 to be reasonable and the disbursements are approved in full.

6.5 City of Edmonton

78. Edmonton submitted a cost claim totaling \$70,372.08. The claim was comprised of consulting fees incurred by Chymko Consulting in the amount of \$55,788.75, together with disbursements and GST of \$2,360.01 and \$2,893.75, respectively. Edmonton also claimed for disbursements and GST incurred by Amicus Reporting Group in the amount of \$8,885.30 and \$444.27, respectively. The costs claimed by Edmonton have been allocated 100% to AGN.

79. The Commission notes that Edmonton's involvement was restricted to the issue of a single revenue requirement. In its letter dated February 29, 2008, the Commission commented on Edmonton's budget submission. The Commission stated that the proposed budget filed by Edmonton appeared high given that only one area of interest was indicated.

80. The Commission is of the view that the fees claimed are not reasonable seeing that Edmonton explored only the issue of the single revenue requirement and did not submit any evidence with regard to its position. However, Edmonton's submissions were of some assistance to the Commission.

81. Taking the foregoing into account, the Commission reduces the claim for consulting fees incurred by Chymko Consulting by 15% (or \$8,368.31).

82. Also, the Commission considers the disbursements and GST incurred by Amicus Reporting Group for transcripts in the amount of \$8,885.30 and \$444.27, respectively, to be reasonable. The Commission notes that transcripts were necessary for Edmonton's participation and helped to reduce costs.. Accordingly, the Commission approves this disbursement in its full amount of \$9,329.57.

83. In summary, the Commission approves consulting fees of \$47,420.44, including GST of \$2,371.02. The Commission considers disbursements of \$2,360.01 incurred by Chymko Consulting and the costs of transcripts incurred by Amicus Reporting Group to be reasonable and are approved in full.

6.6 First Nations

84. First Nations submitted a cost claim totaling \$10,937.50. The claim was comprised of consulting fees incurred by Graves Engineering Corporation in the amount of \$10,937.50. The costs claimed by First Nations have been allocated equally amongst AGN and AGS.

85. In Decision 2008-113, the Commission made the following observation regarding the First Nations intervention in this Proceeding:

However, the Commission notes that the First Nations intervention in this proceeding was not of assistance to the Commission in making a decision and, therefore, is not referred to in this Decision.

86. Based on the foregoing, the Commission considers that the cost claim should be denied in its entirety.

6.7 Public Institutional Consumers of Alberta

87. PICA submitted a cost claim totaling \$104,676.80. The claim was comprised of legal fees incurred by Nancy J. McKenzie Professional Corporation in the amount of \$46,162.50, together with disbursements of \$187.10; and consulting fees incurred by Energy Management & Regulatory Consulting Ltd. in the amount of \$53,200.00, together with disbursements of \$5,127.20. The costs claimed by PICA have been allocated equally amongst AGN and AGS.

88. The Commission has reviewed PICA's cost claim and notes that the claim is in excess of its revised budget. Given the scope of the issues addressed by PICA, and the fact that PICA had revised its budget for the reasons set out in its letter of June 6, 2008, the Commission is of the view that PICA's costs were, for the most part, determinable by June 6, 2008. As a result, the Commission is of the view that the costs, namely those claimed by Energy Management & Regulatory Consulting Ltd., that were in excess of PICA's revised budget, were not reasonable. Therefore, the Commission reduces the costs of Energy Management & Regulatory Consulting Ltd. by 10% (or \$5,320.00). Accordingly, the Commission approves PICA's cost claim in the amount of \$99,356.80.

7 GST

89. In accordance with the Commission's treatment of the GST on cost awards, AG 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 \$9,812.05. The GST allowed by the Commission may also be charged against AG's Hearing Cost Reserve Account.

90. 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.

8 ORDER

IT IS HEREBY ORDERED:

1. ATCO Gas North shall pay intervener costs in the amount of \$197,491.11, as set out in column (h) of [Appendix A](#).
2. ATCO Gas North external costs in the amount of \$117,351.76, as set out in column (h) of [Appendix A](#), are approved.

3. ATCO Gas North shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$314,842.87, as set out in column (h) of [Appendix A](#).
4. ATCO Gas South shall pay intervener costs in the amount of \$398,901.81, as set out in column (h) of [Appendix B](#).
5. ATCO Gas South external costs in the amount of \$117,351.76, as set out in column (h) of [Appendix B](#), are approved.
6. ATCO Gas South shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$516,253.57, as set out in column (h) of [Appendix B](#).

Dated in Calgary, Alberta on this 16th day of March, 2009.

ALBERTA UTILITIES COMMISSION

(original signed by)

Willie Grieve
Chair

(original signed by)

N. Allen Maydonik, Q.C.
Commissioner

(original signed by)

Bill Lyttle
Commissioner

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A (AGN)

APPENDIX B – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix B (AGS)

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AGN
Cost Application No. 1586981

2008-2009 General Rate Application
(1553052)

Total 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								
Bennett Jones LLP	\$192,942.25	\$2,907.11	\$0.00	\$195,849.36	\$70,807.00	\$2,907.11	\$0.00	\$73,714.11
Bennett Jones LLP (Application No. 1553418)	\$43,565.00	\$0.00	\$0.00	\$43,565.00	\$0.00	\$0.00	\$0.00	\$0.00
ATCO Gas North	\$0.00	\$31,531.40	\$0.00	\$31,531.40	\$0.00	\$31,531.40	\$0.00	\$31,531.40
Gannett Fleming Inc.	\$6,200.00	\$0.00	\$0.00	\$6,200.00	\$6,200.00	\$0.00	\$0.00	\$6,200.00
M.B Percy Consulting	\$5,906.25	\$0.00	\$0.00	\$5,906.25	\$5,906.25	\$0.00	\$0.00	\$5,906.25
Ernst & Young	\$33,701.25	\$3,875.64	\$0.00	\$37,576.89	\$0.00	\$0.00	\$0.00	\$0.00
Foster Associates Inc. - Application No. 1553418	\$47.12	\$0.00	\$0.00	\$47.12	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$282,361.87	\$38,314.15	\$0.00	\$320,676.02	\$82,913.25	\$34,438.51	\$0.00	\$117,351.76
INTERVENERS								
Alberta Sugar Beet Growers/Potato Growers of Alberta								
Unryn & Associates Ltd.	\$14,966.25	\$1,641.05	\$0.00	\$16,607.30	\$11,224.69	\$1,641.05	\$0.00	\$12,865.74
Sub-Total	\$14,966.25	\$1,641.05	\$0.00	\$16,607.30	\$11,224.69	\$1,641.05	\$0.00	\$12,865.74
City of Edmonton								
Chymko Consulting	\$55,788.75	\$2,360.01	\$2,893.75	\$61,042.51	\$47,420.44	\$2,360.01	\$2,371.02	\$52,151.47
Amicus Reporting Group	\$0.00	\$8,885.30	\$444.27	\$9,329.57	\$0.00	\$8,885.30	\$444.27	\$9,329.57
Sub-Total	\$55,788.75	\$11,245.31	\$3,338.02	\$70,372.08	\$47,420.44	\$11,245.31	\$2,815.29	\$61,481.04
Consumers' Coalition of Alberta								
Wachowich & Company	\$21,000.00	\$2,873.00	\$1,193.65	\$25,066.65	\$21,000.00	\$2,873.00	\$1,193.65	\$25,066.65
Regulatory Service, Inc.	\$46,014.00	\$80.55	\$2,304.73	\$48,399.28	\$46,014.00	\$80.55	\$2,304.73	\$48,399.28
Sub-Total	\$67,014.00	\$2,953.55	\$3,498.38	\$73,465.93	\$67,014.00	\$2,953.55	\$3,498.38	\$73,465.93
First Nations								
Graves Engineering Corporation	\$5,468.75	\$0.00	\$0.00	\$5,468.75	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$5,468.75	\$0.00	\$0.00	\$5,468.75	\$0.00	\$0.00	\$0.00	\$0.00
Public Institutional Consumers of Alberta								
Energy Management & Regulatory Consulting Ltd.	\$26,600.00	\$2,563.60	\$0.00	\$29,163.60	\$23,940.00	\$2,563.60	\$0.00	\$26,503.60
Nancy J. McKenzie Professional Corporation	\$23,081.25	\$93.55	\$0.00	\$23,174.80	\$23,081.25	\$93.55	\$0.00	\$23,174.80
Sub-Total	\$49,681.25	\$2,657.15	\$0.00	\$52,338.40	\$47,021.25	\$2,657.15	\$0.00	\$49,678.40
TOTAL INTERVENER COSTS	\$192,919.00	\$18,497.06	\$6,836.40	\$218,252.46	\$172,680.38	\$18,497.06	\$6,313.67	\$197,491.11
TOTAL INTERVENER AND APPLICANT COSTS	\$475,280.87	\$56,811.21	\$6,836.40	\$538,928.48	\$255,593.63	\$52,935.57	\$6,313.67	\$314,842.87

AGS
Cost Application No. 1586981

2008-2009 General Rate Application
(1553052)

Total 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								
Bennett Jones LLP	\$192,942.25	\$2,907.11	\$0.00	\$195,849.36	\$70,807.00	\$2,907.11	\$0.00	\$73,714.11
Bennett Jones LLP (Application No. 1553418)	\$43,565.00	\$0.00	\$0.00	\$43,565.00	\$0.00	\$0.00	\$0.00	\$0.00
ATCO Gas South	\$0.00	\$31,531.40	\$0.00	\$31,531.40	\$0.00	\$31,531.40	\$0.00	\$31,531.40
Gannett Fleming Inc.	\$6,200.00	\$0.00	\$0.00	\$6,200.00	\$6,200.00	\$0.00	\$0.00	\$6,200.00
M.B Percy Consulting	\$5,906.25	\$0.00	\$0.00	\$5,906.25	\$5,906.25	\$0.00	\$0.00	\$5,906.25
Ernst & Young	\$33,701.25	\$3,875.65	\$0.00	\$37,576.90	\$0.00	\$0.00	\$0.00	\$0.00
Foster Associates Inc. - Application No. 1553418	\$47.12	\$0.00	\$0.00	\$47.12	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$282,361.87	\$38,314.16	\$0.00	\$320,676.03	\$82,913.25	\$34,438.51	\$0.00	\$117,351.76
INTERVENERS								
Alberta Sugar Beet Growers/Potato Growers of Alberta								
Unryn & Associates Ltd.	\$44,898.75	\$4,923.15	\$0.00	\$49,821.90	\$33,674.06	\$4,923.15	\$0.00	\$38,597.21
Sub-Total	\$44,898.75	\$4,923.15	\$0.00	\$49,821.90	\$33,674.06	\$4,923.15	\$0.00	\$38,597.21
City of Calgary								
McLennan Ross LLP	\$81,631.00	\$8,927.19	\$0.00	\$90,558.19	\$77,549.45	\$8,927.19	\$0.00	\$86,476.64
Stephen Johnson	\$131,950.00	\$2,776.62	\$0.00	\$134,726.62	\$98,962.50	\$2,776.62	\$0.00	\$101,739.12
Stephens Consulting Ltd.	\$64,848.00	\$308.51	\$0.00	\$65,156.51	\$48,636.00	\$308.51	\$0.00	\$48,944.51
Sub-Total	\$278,429.00	\$12,012.32	\$0.00	\$290,441.32	\$225,147.95	\$12,012.32	\$0.00	\$237,160.27
Consumers' Coalition of Alberta								
Wachowich & Company	\$21,000.00	\$2,873.00	\$1,193.65	\$25,066.65	\$21,000.00	\$2,873.00	\$1,193.65	\$25,066.65
Regulatory Services, Inc.	\$46,014.00	\$80.55	\$2,304.73	\$48,399.28	\$46,014.00	\$80.55	\$2,304.73	\$48,399.28
Sub-Total	\$67,014.00	\$2,953.55	\$3,498.38	\$73,465.93	\$67,014.00	\$2,953.55	\$3,498.38	\$73,465.93
First Nations								
Graves Engineering Corporation	\$5,468.75	\$0.00	\$0.00	\$5,468.75	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$5,468.75	\$0.00	\$0.00	\$5,468.75	\$0.00	\$0.00	\$0.00	\$0.00
Public Institutional Consumers of Alberta								
Energy Management & Regulatory Consulting Ltd.	\$26,600.00	\$2,563.60	\$0.00	\$29,163.60	\$23,940.00	\$2,563.60	\$0.00	\$26,503.60
Nancy J. McKenzie Professional Corporation	\$23,081.25	\$93.55	\$0.00	\$23,174.80	\$23,081.25	\$93.55	\$0.00	\$23,174.80
Sub-Total	\$49,681.25	\$2,657.15	\$0.00	\$52,338.40	\$47,021.25	\$2,657.15	\$0.00	\$49,678.40
TOTAL INTERVENER COSTS	\$445,491.75	\$22,546.17	\$3,498.38	\$471,536.30	\$372,857.26	\$22,546.17	\$3,498.38	\$398,901.81
TOTAL INTERVENER AND APPLICANT COSTS	\$727,853.62	\$60,860.33	\$3,498.38	\$792,212.33	\$455,770.51	\$56,984.68	\$3,498.38	\$516,253.57