



## ATCO Gas South

Errata to Utility Cost Order 2009-047

Removal of Carbon Related Assets from Utility Service  
Pre-hearing Conference Scoping Decision

Preliminary Questions Decision

Cost Awards

**ALBERTA UTILITIES COMMISSION**

Utility Cost Order 2009-047 (Errata): ATCO Gas South  
Removal of Carbon Related Assets from Utility Service  
Pre-hearing Conference Scoping Decision  
Preliminary Questions Decision  
Application No. 1579086  
Cost Application No. 1605312

Published by

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## Contents

<b>1</b>	<b>BACKGROUND</b> .....	<b>1</b>
<b>2</b>	<b>COMMISSION FINDINGS</b> .....	<b>1</b>
<b>3</b>	<b>AMENDMENT</b> .....	<b>1</b>
	<b>APPENDIX A – Summary of Costs Claimed and Awarded</b> .....	<b>3</b>

# ALBERTA UTILITIES COMMISSION

Calgary, Alberta

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**ATCO Gas South  
Removal of Carbon Related Assets from  
Utility Service  
Pre-hearing Conference Scoping Decision**

**Utility Cost Order 2009-047 (Errata)  
Application No. 1579086  
Proceeding ID 87**

**Preliminary Questions**

**Cost Application No. 1605312**

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## **1 BACKGROUND**

1. On November 6, 2009, the Alberta Utilities Commission (Commission) issued Utility Cost Order 2009-047 (UCO 2009-047). UCO 2009-047 was issued in respect of cost claims by ATCO Gas (AG) and interveners in relation to AG's Application 1579086, ID 87, Removal of Carbon Related Assets from Utility Service up to the issuance of Decision 2009-067<sup>1</sup>.

2. On November 14, 2009, the Commission received an email from AG. AG noted that the Bennett Jones disbursement claim of \$1,827.06 was excluded from the calculation of the cost award. AG also noted that the cost award inadvertently increased the claim of \$201.00 for administrative assistant fees at Bennett Jones to \$207.00.

## **2 COMMISSION FINDINGS**

3. The Commission has reviewed the disbursements incurred by Bennett Jones. The Commission finds that the disbursements are reasonable and have been claimed in accordance with Rule 022, *Rules on Intervener Costs in Utility Rate Proceedings*. The Commission approves the disbursements of \$1,827.06 in full.

4. Administrative assistant fees for Bennett Jones were claimed in the amount of \$201.00 and were inadvertently approved in the amount of \$207.00. Accordingly, the Commission is correcting this portion of the cost award by reducing the administrative assistance fees by \$6.00.

5. Taking the foregoing into account the Commission approves disbursement of \$1,827.06 and administrative assistant fees in the amount of \$201.00.

## **3 AMENDMENT**

6. The Commission hereby amends section 5 of the Order section of UCO 2009-047 by deleting section 2(h) and section 3 thereof and replacing the same as follows:

2. ATCO Gas South external costs in the amount of \$168,856.46, as set out in column (h) of Appendix A are approved.

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<sup>1</sup> Decision 2009-067 – ATCO Gas South, Removal of Carbon Related Assets from Utility Service Preliminary Questions (Application No. 1579086) (Released June 26, 2009)

3. ATCO Gas South shall record in its hearing cost reserve account the allowed external applicant and intervener costs in the amount of \$328,932.94 as set out in column (h) of Appendix A.

7. The Commission hereby amends Appendix A of UCO 2009-047 by deleting Appendix A in its entirety and replacing the same with the attached Appendix A.

Dated in Calgary, Alberta on this 30<sup>th</sup> day of November, 2009.

**ALBERTA UTILITIES COMMISSION**

*(Original signed by)*

Willie Grieve  
Chair

*(Original signed by)*

Tudor Beattie, Q.C.  
Commissioner

## **APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED**



Appendix A  
(Amended)

[\(Back to Table of Contents\)](#)

ATCO Gas  
Cost Application No. 1605312

Removal of Carbon Related Assests Preliminary Questions  
(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)
<b>APPLICANT</b>								
ATCO Gas								
Bennett Jones	\$230,875.00	\$1,827.06	\$0.00	\$232,702.06	\$160,085.00	\$1,827.06	\$0.00	\$161,912.06
Ernst & Young Chartered Accountants	\$6,840.00	\$0.00	\$0.00	\$6,840.00	\$6,260.00	\$0.00	\$0.00	\$6,260.00
ATCO Gas	\$0.00	\$684.40	\$0.00	\$684.40	\$0.00	\$684.40	\$0.00	\$684.40
<b>Sub-Total</b>	<b>\$237,715.00</b>	<b>\$2,511.46</b>	<b>\$0.00</b>	<b>\$240,226.46</b>	<b>\$166,345.00</b>	<b>\$2,511.46</b>	<b>\$0.00</b>	<b>\$168,856.46</b>
<b>INTERVENER</b>								
City of Calgary								
Burnet, Duckworth & Palmer	\$118,751.00	\$1,754.39	\$0.00	\$120,505.39	\$118,751.00	\$1,754.39	\$0.00	\$120,505.39
Stephen Johnson	\$32,750.00	\$0.00	\$0.00	\$32,750.00	\$32,750.00	\$0.00	\$0.00	\$32,750.00
Energy Group, Inc.	\$6,821.09	\$0.00	\$0.00	\$6,821.09	\$6,821.09	\$0.00	\$0.00	\$6,821.09
<b>Sub-Total</b>	<b>\$158,322.09</b>	<b>\$1,754.39</b>	<b>\$0.00</b>	<b>\$160,076.48</b>	<b>\$158,322.09</b>	<b>\$1,754.39</b>	<b>\$0.00</b>	<b>\$160,076.48</b>
<b>TOTAL APPLICANT COSTS</b>	<b>\$237,715.00</b>	<b>\$2,511.46</b>	<b>\$0.00</b>	<b>\$240,226.46</b>	<b>\$166,345.00</b>	<b>\$2,511.46</b>	<b>\$0.00</b>	<b>\$168,856.46</b>
<b>TOTAL APPLICANT AND INTERVENER COSTS</b>	<b>\$396,037.09</b>	<b>\$4,265.85</b>	<b>\$0.00</b>	<b>\$400,302.94</b>	<b>\$324,667.09</b>	<b>\$4,265.85</b>	<b>\$0.00</b>	<b>\$328,932.94</b>



## ATCO Gas South

Removal of Carbon Related Assets from Utility Service  
Pre-hearing Conference Scoping Decision

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**ALBERTA UTILITIES COMMISSION**

Utility Cost Order 2009-047: ATCO Gas South  
Removal of Carbon Related Assets from Utility Service  
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Contents

**1 INTRODUCTION..... 1**

**2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS ..... 2**

**3 VIEWS OF THE COMMISSION – ASSESSMENT..... 2**

**3.1 The City of Calgary..... 2**

**3.2 ATCO Gas..... 3**

**4 GST..... 4**

**5 ORDER ..... 4**

**APPENDIX A – Summary of Costs Claimed and Awarded..... 6**

# ALBERTA UTILITIES COMMISSION

Calgary, Alberta

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## ATCO Gas South

**Removal of Carbon Related Assets from Utility Service  
Pre-hearing Conference Scoping Decision  
Preliminary Questions**

**Utility Cost Order 2009-047  
Application No. 1579086  
Cost Application No. 1605312**

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## 1 INTRODUCTION

1. On July 11, 2008, ATCO Gas South (ATCO or AGS), a division of ATCO Gas and Pipelines Ltd. filed an application (Application) with the Alberta Utilities Commission (AUC or the Commission). The Application requested the Commission to set aside Order [U2005-133](#)<sup>1</sup> and Decisions [2005-063](#)<sup>2</sup> and [2007-005](#)<sup>3</sup>, 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 finding of the Alberta Court of Appeal in a Decision issued May 27, 2008 (Carbon Appeal Decision). The Carbon Appeal Decision dealt with the Carbon natural gas storage facility and associated producing properties (collectively, Carbon) owned and operated by ATCO which had been used for utility services.

2. SIPs were received from the Office of Utilities Consumer Advocate (UCA), BP Canada Energy Company (BP Canada), The City of Calgary (Calgary) and the Public Institutional Consumers of Alberta (PICA).

3. The Commission held a Pre-Hearing Conference on December 16, 2008, before Commission Chair, Mr. Willie Grieve, and Commissioners, Mr. N.A. Maydonik, Q.C, and Mr. T. Beattie Q.C. The Pre-hearing Conference took the form of oral argument and reply presented by counsel for ATCO, Calgary and the UCA followed by questions from Commission Counsel and the Commissioners. BP Canada did not actively participate.

4. On January 9, 2009 the Commission issued Decision 2009-004<sup>4</sup>. The purposes of the Decision 2009-004 were to consider the arguments of the parties with respect to the Final Issues List, to determine the Final Issues List and to establish a process for the balance of the proceeding.

5. The Commission issued a letter on March 6, 2009 establishing a schedule to address certain Preliminary Questions including the filing of written submissions and reply submissions.

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

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

<sup>3</sup> EUB Decision 2007-005 – ATCO Gas South Carbon Facilities – Part 1 Module – Jurisdiction (2005/2006 Carbon Storage Plan) Application No. 1357130) (Released: February 5, 2007)

<sup>4</sup> Decision 2009-004 – ATCO Gas South, Removal of Carbon Related Assets from Utility Service Pre-hearing Conference Scoping Decision (Application No. 1579086) (Released January 9, 2009)

On June 26, 2009, the Commission issued Decision 2009-067<sup>5</sup> addressing the three Preliminary Questions.

6. On July 28, 2009, a summary of the costs being claimed with respect to the application up to the issuance of Decision 2009-067 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 August 11, 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 August 11, 2009.

## **2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS**

7. In assessing a cost claim pursuant to section 21 of the *Alberta Utilities Commission Act* (AUC Act), the Commission applies Rule 022, *Rules on Intervener Costs* (Rule 022) when considering cost claims for application 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 this Application.

8. 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.

9. 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.

10. 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 VIEWS OF THE COMMISSION – ASSESSMENT**

### **3.1 The City of Calgary**

11. The Commission received cost claims from the city of Calgary (Calgary) in the amount of \$160,076.48. Calgary claimed legal fees incurred by Burnet, Duckworth & Palmer in the amount of \$118,751.00, together with disbursements of \$1,754.39 respectively; consulting fees

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<sup>5</sup> Decision 2009-067 – ATCO Gas South, Removal of Carbon Related Assets from Utility Service Preliminary Questions (Application No. 1579086) (Released June 26, 2009)

incurred by Stephen Johnson in the amount of \$ 32,750.00; and consulting fees incurred by Energy Group Inc. in the amount of \$6,821.09.

12. 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 notes the scope and complexity of the issues before it and the extent of the examination thereof. 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 Calgary to be reasonable in the total amount of \$160,076.48.

### 3.2 ATCO Gas

13. The Commission received cost claims from AG in the amount of \$240,226.46. AG claimed legal fees incurred by Bennet Jones in the amount of \$230,875.00, together with disbursements of \$1,827.06 respectively; consulting fees incurred by Ernst & Young Chartered Accountants in the amount of \$6,840; and internal fees in the amount of \$684.40 for transcripts.

14. The Commission notes that AG claimed in excess of the Commission's *Scale of Costs* for Bennett Jones LLP. Ms. Goldbach claimed 62.1 hours at the hourly rate of \$320 (\$19,872.00). Based on Ms. Goldbach's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$220, which for 62.1 hours results in a total of \$13,662.00. Mr. Smith claimed 215.4 hours at the hourly rate of \$350 (\$75,390.00). Based on Mr. Smith's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 215.4 hours results in a total of \$53,850.00. Ms. Gray claimed 63.8 hours at the hourly rate of \$280 (\$17,864.00). Based on Ms. Gray's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$180.00, which for 63.8 hours results in a total of \$11,484.00. Mr. Kay claimed 89.1 hours at the hourly rate of \$350 (\$31,185.00). Based on Mr. Kay's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 89.1 hours results in a total of \$22,275.00. Mr. Rook claimed 0.50 hours at the hourly rate of \$350 (\$175.00). Based on Mr. Rook's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 0.50 hours results in a total of \$125.00. Ms. Buchinski claimed 22.4 hours at the hourly rate of \$350 (\$7,840.00). Based on Ms. Buchinski's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 22.4 hours results in a total of \$5,600.00. Ms. Bilsland claimed 0.40 hours at the hourly rate of \$350 (\$140). Based on Ms. Bilsland's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 0.40 hours results in a total of \$100.00. Ms. Drozdowski claimed 20.1 hours at the hourly rate of \$280 (\$5,628). Based on Ms. Drozdowski's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$180, which for 20.1 hours results in a total of \$3,618.00. C.B. Thompson claimed 9 hours at an hourly rate of \$280 (\$2,520.00). Based on C.B. Thompson's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$180, which for 9 hours results in a total of \$1,620.00. Ms. Beattie claimed 24.5 hours at the hourly rate of \$240 (\$5,880). Based on Ms. Beattie's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$140, which for 24.5 hours results in a total of \$3,430.00. Ms. Beattie also claimed 0.30 hours at the hourly rate of \$280 (\$84.00). Based on Ms. Beattie's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$180, which for .30 hours results in a total of \$54.00. Ms. Illsey claimed 200.3 hours at the hourly rate of \$320 (\$64,096.00). Based on Ms. Illsey's experience, the applicable *Scale of Costs* allows for a

maximum hourly rate of \$220, which for 200.3 hours results in a total of \$44,066.00. Bennett Jones LLP also claimed administrative assistant fees in the amount of \$207.00. The total claim for Bennett Jones LLP reduced in accordance with the *Scale of Costs* is \$160,091.00.

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

16. The Commission notes that AG also claimed in excess of the Commission's *Scale of Costs* for Ernst & Young LLP Chartered Accountants. Mr. Bootle claimed 14 hours at the hourly rate of \$270 (\$3,780). Based on Mr. Bootle's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 14 hours results in a total of \$3,500.00. Luana Comin-Sartor claimed 6 hours at the hourly rate of \$270 (\$1,620.00). Based on Luana's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 6 hours results in a total of \$1,500.00. Morenys Andrews claimed 9 hours at the hourly rate of \$160 (\$1,440.00). Based on Morenys's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$140, which for 9 hours results in a total of \$1,260.00. The total claim for Ernst & Young LLP Chartered Accountants reduced in accordance with the *Scale of Costs* is \$6,260.00.

17. The Statement of Justification submitted with the cost claim did not provide a sufficient basis, in the Commissions view, to justify a rate above the *Scale of Costs*. The Commission considers the claim for Ernst & Young LLP Chartered Accountants, reduced in accordance with the *Scale of Costs*, to be reasonable and approves the reduced amount.

18. Taking the foregoing into account, including AG's internal costs of transcripts, the Commission approves a total award in the amount of \$167,035.40 for AG.

#### **4 GST**

19. 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.

20. 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.

#### **5 ORDER**

IT IS HEREBY ORDERED:

1. ATCO Gas South shall pay intervener costs in the amount of \$160,076.48 as set out in column (h) of [Appendix A](#).
2. ATCO Gas South external costs in the amount of \$167,035.40 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 \$327,111.88 as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 6<sup>th</sup> day of November, 2009.

**ALBERTA UTILITIES COMMISSION**

*(Original signed by)*

Willie Grieve  
Chair

*(Original signed by)*

Tudor Beattie, Q.C.  
Commissioner

## **APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED**



Appendix A

[\(Back to Table of Contents\)](#)



Removal of Carbon Related Assests Pre-hearing Conference Scoping Preliminary Questions  
 (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)
<b>APPLICANT</b>								
ATCO Gas								
Bennett Jones	\$230,875.00	\$1,827.06	\$0.00	\$232,702.06	\$158,263.94	\$1,827.06	\$0.00	\$160,091.00
Ernst & Young Chartered Accountants	\$6,840.00	\$0.00	\$0.00	\$6,840.00	\$6,260.00	\$0.00	\$0.00	\$6,260.00
ATCO Gas	\$0.00	\$684.40	\$0.00	\$684.40	\$0.00	\$684.40	\$0.00	\$684.40
<b>Sub-Total</b>	<b>\$237,715.00</b>	<b>\$2,511.46</b>	<b>\$0.00</b>	<b>\$240,226.46</b>	<b>\$164,523.94</b>	<b>\$2,511.46</b>	<b>\$0.00</b>	<b>\$167,035.40</b>
<b>INTERVENER</b>								
City of Calgary								
Burnet, Duckworth & Palmer	\$118,751.00	\$1,754.39	\$0.00	\$120,505.39	\$118,751.00	\$1,754.39	\$0.00	\$120,505.39
Stephen Johnson	\$32,750.00	\$0.00	\$0.00	\$32,750.00	\$32,750.00	\$0.00	\$0.00	\$32,750.00
Energy Group, Inc.	\$6,821.09	\$0.00	\$0.00	\$6,821.09	\$6,821.09	\$0.00	\$0.00	\$6,821.09
<b>Sub-Total</b>	<b>\$158,322.09</b>	<b>\$1,754.39</b>	<b>\$0.00</b>	<b>\$160,076.48</b>	<b>\$158,322.09</b>	<b>\$1,754.39</b>	<b>\$0.00</b>	<b>\$160,076.48</b>
<b>TOTAL APPLICANT COSTS</b>	<b>\$237,715.00</b>	<b>\$2,511.46</b>	<b>\$0.00</b>	<b>\$240,226.46</b>	<b>\$164,523.94</b>	<b>\$2,511.46</b>	<b>\$0.00</b>	<b>\$167,035.40</b>
<b>TOTAL APPLICANT AND INTERVENER COSTS</b>	<b>\$396,037.09</b>	<b>\$4,265.85</b>	<b>\$0.00</b>	<b>\$400,302.94</b>	<b>\$322,846.03</b>	<b>\$4,265.85</b>	<b>\$0.00</b>	<b>\$327,111.88</b>