



ATCO Gas

Application for Review and Variance of
Decision 2006-004 and Decision 2006-083
ATCO Gas 2006-2007 General Rate Application
Phase I

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2008 – 003: ATCO Gas

Application for Review and Variance of Decision 2006-004 and 2006-083

ATCO Gas 2005-207 General Rate Application – Phase I

Application No. 1481898

Cost Application No. 1508955

Published by

Alberta Energy and Utilities Board

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

ATCO Gas

**Application for Review and Variance of
Decision 2006-004 and Decision 2006-083**

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1 INTRODUCTION

On October 6, 2006, the Alberta Energy and Utilities Board (EUB or Board) received an application (the Application) from ATCO Gas, a division of ATCO Gas and Pipeline Ltd., (AG) for a review and variance (R&V) of certain findings made in Decision 2006-004¹, and Decision 2006-083².

On April 18, 2007; following comments and reply submission, the Board issued its decision to grant the Application. The division of the Board assigned to the Application (the Review Panel) considered the Application by way of a written process.

Participants submitted final reply argument on September 5, 2007. Accordingly, the Review Panel considers the record of this proceeding closed as of September 5, 2007. On November 27, 2007 the Board issued Decision [2007-092](#).

On October 9, 2007, 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 October 16, 2007.

On December 19, 2007 AG submitted comments regarding the treatment of costs; and also included a letter dated December 7, 2007 from AG to Dr. William Tilleman, Chair of the EUB. The December 7, 2007 letter discussed AG's concerns regarding certain comments reflected in Decision 2007-092. On January 15, 2008 the Board provided parties with an opportunity to respond to AG's comments. On January 17, 2008, the Board clarified that it was not requesting responses to the December 7, 2007 letter independent of the December 19, 2007 letter. On January 25, 2008 the Alberta Urban Municipalities Association (AUMA), the City of Edmonton (EDM), and the office of the UCA (AUMA/EDM/UCA); collectively responded to AG's comments. In addition, the City of Calgary (Calgary) submitted a response to AG's comments.

The Board considers the cost process to have closed on January 25, 2008.

¹ Decision 2006-004 – ATCO Gas 2005-2007 General Rate Application Phase I (Application 1400690) (Released January 27, 2006). See also Decision 2006-014 for Errata to this Decision.

² Decision 2006-083 – ATCO Gas 2005-2007 General Rate Application Phase I Compliance Filing to Decision 2006-004 Part B (Application 1452948) (Released: August 11, 2006).

2 AUTHORITY TO AWARD COSTS

The authority to award costs is derived from section 68 of the *Public Utilities Board Act*, R.S.A. 2000, c. P-45, which states in part:

- (1) The costs of and incidental to any proceeding before the Board, except as otherwise provided for in this Act, are in the discretion of the Board, and may be fixed in any case at a sum certain or may be taxed.
- ...
- (3) The Board may order by whom or to whom any costs are to be paid, and by whom they are to be taxed and allowed.

When assessing a cost claim pursuant to section 68, the Review Panel is guided by Part 5 of its *Rules of Practice*, [AR 101/2001](#) and by the principles and policies expressed in Directive 031B, *Guidelines for Utility Cost Claims (Directive 031B)*. Before exercising its discretion to award costs, the Review Panel must consider the effectiveness of a participant's contribution to the process, its relevance to the issues, and whether the costs claimed are fair and reasonable in light of the scope and nature of the issues in question.

In the Review Panel's view, the responsibility to contribute positively to the process is inherent in the choice to intervene in a proceeding. The Review Panel 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. When determining a cost award, the Review Panel will consider if the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Review Panel. To the extent reasonably possible, the Review Panel will be mindful of participants' willingness to co-operate with the Review Panel and other participants to promote an efficient and cost-effective proceeding.

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

3 VIEWS OF THE PARTIES – COMMENTS AND RESPONSES

3.1 ATCO Gas (AG)

By way of letter dated December 19, 2007 AG explained that the R&V Application was made to the Board based on a Board error which raised substantial doubt as to the correctness of Decisions 2006-004 and 2006-083. While the Board agreed and granted the Application, the Review Panel determined that AG should bear 50% of the responsibility for the error. AG submitted that it followed the established rules to have the Board error corrected, and its shareholders should not be penalized for AG pointing out this error and requesting a correction.

AG submitted that 100% of the costs for the R&V process should be approved to the hearing cost reserve account. It was AG's view that the Review Panel's findings in Decision 2007-092 were unsubstantiated, and does not agree with the Review Panel's suggestion that AG was partially responsible for the Board error.

3.2 AUMA/EDM/UCA

On January 25, 2008 AUMA/EDM/UCA collectively responded to AG's comments. It is AUMA/EDM/UCA's views that it would be reasonable for the AG shareholders to bear half of the AG costs and half of the intervener costs, with the remaining half being approved to the hearing cost reserve account.

AUMA/EDM/UCA disagreed with AG's argument that the Review Panel made an error. Rather, AUMA/EDM/UCA was of the view that the Review Panel relied on information submitted by AG in order to reach its decisions. In that regard, it was AUMA/EDM/UCA's view that Decision 2007-092 indicated that AG contributed to the findings in Decision 2006-004 and in Decision 2006-083. Regarding Decision 2006-004, AUMA/EDM/UCA referenced the following excerpts from Decision 2007-092.

The Review Panel considers that AG, in its application, has the onus to justify and support its application by providing the necessary information in sufficient detail to allow the Board to reach a fair conclusion. [page 11.]

and

The Review Panel finds that the Board did not err in the determination of its findings in Decision 2006-004. [page 11.]

Regarding Decision 2006-083, UCA references the following from Decision 2007-092.

The Review Panel finds that, in the absence of clear information, it was left to the Board to reconcile these amounts the best it could. The Review Panel finds that it was not unreasonable for the Board to have substituted the values of the Placeholders as they were submitted by ATCO in the Common Matters Application. [pages 11-12.]

Accordingly, the Review Panel finds that AG failed to identify and detail the impact of the Board's Decision 2006-004 on the revenue requirement for Account 721 in its Compliance filing. [page 12.]

The Review Panel finds that the Board did not act unreasonably in making its determinations in Decision 2006-083, given that AG did not respond appropriately to Board Direction 40 and AG did not identify the impact on Account 721 in its Compliance Filing. [page 13.]

and

Consequently, the Review Panel finds that this issue and the current R&V proceeding could have been avoided if AG had provided better information in its original application and in its compliance filing with respect to Account 721, and the Placeholder amounts and if AG had clearly identified the related issues in its Compliance Filing.

AUMA/EDM/UCA also noted that pursuant to section 5.1 of Directive 031B, the Review Panel may deny costs if the participant failed to comply with a direction by the Review Panel, or if the participant engaged in conduct that unnecessarily lengthened the duration of the proceeding. Further, section 5.3 of Directive 031B deals with Applicant costs attributable to inefficiencies, such as where the hearing process is lengthened as a result of filing an incomplete application or inadequate responses to information requests. In such cases the Review Panel may order that the shareholders bear the costs.

In light of the excerpts above from Decision 2007-097, AUMA/EDM/UCA submitted that AG's cost claim was not filed in accordance with Directive 031B.

3.3 Calgary

On January 25, 2008 Calgary also responded to AG's comments. Calgary agrees with the Review Panel that AG did not provide all of the pertinent information necessary for the EUB to make a decision. Calgary is of the view that AG provided what it thought was necessary to make the decision that it was seeking.

Calgary submits that any errors alleged by AG are largely the result of AG not being explicit in the amounts for certain items contained in the application, such as information concerning Account 721. Further, AG's computational error regarding placeholder amount is a matter that results from AG not making the proper adjustment in the first instance. Calgary expects that AG's costs for the R&V proceeding would be minimal given that the issues raised are both mathematical and related to AG's internal costs, and as such do not require much by way of consultant or legal costs.

4 VIEWS OF THE REVIEW PANEL

The Review Panel received cost claims totalling \$11,330.60 including actual GST of \$396.67 with respect to the Proceeding.

The Review Panel has reviewed the costs submitted by the participants, bearing in mind the principles specified in the Board's *Scale of Costs* set out in Appendix C to [Directive 031B](#). The Review Panel finds that the participation of the participants was, for the most part, effective and of assistance in reviewing the Application. The Review Panel notes the scope and complexity of the issues before it and the extent of the examination thereof. The Review Panel also notes that the claims for professional fees and expenses were in accordance with the *Scale of Costs*.

Calgary's costs are generally allocated against AG South only. While this is the appropriate allocation for the majority of Calgary's cost claims, in this instance the Review Panel finds that issues addressed by Calgary are those affecting both north and south. Therefore the Review Panel finds it appropriate to allocate Calgary's cost claim and award equally between AG North and AG South.

Accordingly, the Review Panel considers the claims for fees, disbursements, and applicable GST for all participants to be reasonable as outlined in Tables 1 and 2 in [Appendix A](#) in the total amount of \$5,665.29 and \$5,665.31, respectively.

The Review Panel agrees with the AUMA/EDM/UCA that the Board could order some or all of the costs to be paid by the shareholders, however, in this case it is clear that AG was able to persuade the Review Panel that certain expenses had not been initially approved to be included in AG's revenue requirement for 2005 to 2007. It is also clear that without AG's application for an R&V the award identified in Decision 2007-092 would not have been made. Therefore, since AG was successful in arguing that an additional expense amount should be included in its 2005-2007 revenue requirements, the Board finds it is reasonable that all the proceeding costs be paid and accounted for in the Hearing Cost Reserve Accounts.

5 GST

In accordance with the Review Panel'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 Review Panel has reduced this particular portion of their claim. Eligible GST approved by the Review Panel amounts to \$198.33 and \$198.34 as shown in column (g) of Tables 1 and 2 in [Appendix A](#), respectively. The GST allowed by the Review Panel may also be charged against the respective Hearing Cost Reserve Account for AG North and AG South.

The Review Panel 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 North shall pay intervener costs in the amount of \$3,512.24, as set out in column (h) of Table 1 in [Appendix A](#).
2. ATCO Gas North's external costs in the amount of \$2,153.05, as set out in column (h) of Table 1 in [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 \$5,665.29, as set out in column (h) of Table 1 in [Appendix A](#).
4. ATCO Gas South shall pay intervener costs in the amount of \$3,512.26, as set out in column (h) of Table 2 in [Appendix A](#).
5. ATCO Gas South's external costs in the amount of \$2,153.05, as set out in column (h) of Table 2 in [Appendix A](#), 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 \$5,665.31, as set out in column (h) of Table 2 in [Appendix A](#).

Dated in Calgary, Alberta on this 12th day of February, 2008.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member

APPENDIX A – Summary of Costs Claimed and Awarded



Appendix A

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Costs Claims and Awards

TABLE 1		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 North									
	Bennett Jones LLP	\$2,147.00	\$6.05	\$0.00	\$2,153.05	\$2,147.00	\$6.05	\$0.00	\$2,153.05
	Total	\$2,147.00	\$6.05	\$0.00	\$2,153.05	\$2,147.00	\$6.05	\$0.00	\$2,153.05
INTERVENERS									
AUMA / City of Edmonton									
	Bryan & Company	\$275.00	\$0.00	\$16.50	\$291.50	\$275.00	\$0.00	\$16.50	\$291.50
	Robert Bruggeman Regulatory Consulting Ltd.	\$1,334.37	\$3.50	\$80.27	\$1,418.14	\$1,334.37	\$3.50	\$80.27	\$1,418.14
	Total	\$1,609.37	\$3.50	\$96.77	\$1,709.64	\$1,609.37	\$3.50	\$96.77	\$1,709.64
City of Calgary									
	McLennan Ross LLP	\$1,639.00	\$62.04	\$101.56	\$1,802.60	\$1,639.00	\$62.04	\$101.56	\$1,802.60
	Total	\$1,639.00	\$62.04	\$101.56	\$1,802.60	\$1,639.00	\$62.04	\$101.56	\$1,802.60
TOTAL INTERVENER COSTS		\$3,248.37	\$65.54	\$198.33	\$3,512.24	\$3,248.37	\$65.54	\$198.33	\$3,512.24
TOTAL INTERVENER AND APPLICANT COSTS		\$5,395.37	\$71.59	\$198.33	\$5,665.29	\$5,395.37	\$71.59	\$198.33	\$5,665.29

TABLE 2		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 LLP	\$2,147.00	\$6.05	\$0.00	\$2,153.05	\$2,147.00	\$6.05	\$0.00	\$2,153.05
	Total	\$2,147.00	\$6.05	\$0.00	\$2,153.05	\$2,147.00	\$6.05	\$0.00	\$2,153.05
INTERVENERS									
AUMA / City of Edmonton									
	Bryan & Company	\$275.00	\$0.00	\$16.50	\$291.50	\$275.00	\$0.00	\$16.50	\$291.50
	Robert Bruggeman Regulatory Consulting Ltd.	\$1,334.37	\$3.50	\$80.27	\$1,418.14	\$1,334.37	\$3.50	\$80.27	\$1,418.14
	Total	\$1,609.37	\$3.50	\$96.77	\$1,709.64	\$1,609.37	\$3.50	\$96.77	\$1,709.64
City of Calgary									
	McLennan Ross LLP	\$1,639.00	\$62.05	\$101.57	\$1,802.62	\$1,639.00	\$62.05	\$101.57	\$1,802.62
	Total	\$1,639.00	\$62.05	\$101.57	\$1,802.62	\$1,639.00	\$62.05	\$101.57	\$1,802.62
TOTAL INTERVENER COSTS		\$3,248.37	\$65.55	\$198.34	\$3,512.26	\$3,248.37	\$65.55	\$198.34	\$3,512.26
TOTAL INTERVENER AND APPLICANT COSTS		\$5,395.37	\$71.60	\$198.34	\$5,665.31	\$5,395.37	\$71.60	\$198.34	\$5,665.31