



ATCO Gas North

Disposition of Red Deer Operating Centre

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2007-004: ATCO Gas North

Disposition of Red Deer Operating Centre

Application No. 1421444

Cost Application No.: 1435745

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**ATCO Gas North
Disposition of Red Deer Operating Centre**

**Utility Cost Order 2007-004
Application No.: 1421444
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1 INTRODUCTION

On October 3, 2005 ATCO Gas North (AGN), a division of ATCO Gas and Pipelines Ltd., filed an application (the Application) with the Alberta Energy and Utilities Board (Board or EUB) requesting approval for the sale of AGN's old Red Deer Operating Centre assets pursuant to section 26(2)(d) of the *Gas Utilities Act* (GUA). AGN submitted that it was prepared to defer the issue of the disposition of the proceeds of the sale transaction until the Supreme Court of Canada (SCC) rendered a judgment in the appeal regarding the ATCO Gas South Calgary Stores Block disposition and allocation of proceeds (SCC Stores Block Appeal). As a condition of the purchase agreement, Board approval of the sale was required by December 19, 2005. On December 14, 2005, the Board issued Decision [2005-141](#), which approved the sale of the old Red Deer Operating Centre assets from AGN to 1135968 Alberta Ltd. with conditions. The judgment in the SCC Stores Block Appeal was issued on February 9, 2006.

The Board considered the final disposition through Decision [2006-127](#). The Board issued the Decision on December 13, 2006.

The division of the Board assigned to hear the Application was Mr. B. T. McManus Q.C. (Chair), Mr. G. J. Miller and Mr. J. I. Douglas, FCA.

On October 24, 2006, 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 November 7, 2006. The Board did not receive any comments. Accordingly, the Board considers, for the purposes of this Cost Order, the cost process to have closed on November 7, 2006.

2 VIEWS OF THE BOARD – Authority to Award Costs

The Board's 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 Board 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 Board 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 Board's view, the responsibility to contribute positively to the process is inherent in the choice to intervene in a proceeding. The Board 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 Board will consider if the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board. To the extent reasonably possible, the Board will be mindful of participants' will to co-operate with the Board 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 Board's duty to ensure that customers receive fair value for a party's contribution. As such, the Board only approves those costs that are reasonable and directly and necessarily related to the party's participation in the proceeding.

3 VIEWS OF THE BOARD - Assessment

The Board received a cost claim from the following participants:

- AGN totalling \$12,325.56
- Consumers' Coalition of Alberta (CCA), totalling \$4,620.81
- Consumer Group (CG), totalling \$16,877.73

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

While the Board does not take issue with the value these participants brought to the process, it does note that counsel for CG, J. Alan Bryan, Q.C., has included 11.2 hours (\$2,800.00) of work associated with a review and variance (R&V) application. It is the Board's view that Mr. Bryan's costs for an R&V application are not directly and necessarily related to the issues before the Board in this proceeding. Therefore, the Board disallows Mr. Bryan's fees of \$2,800.00.

The Board approves the remainder of Mr. Bryan's fees and expenses, as well as the costs incurred by the remaining participants, AGN and CCA.

4 GST

In accordance with the Board's treatment of the GST on cost awards, ATCO Gas North 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 Board has reduced this particular portion of their claim. Eligible GST approved by the Board

amounts to \$1,048.90 as shown in column (g) of [Appendix A](#). The GST allowed by the Board may also be charged against AGN's Hearing Cost Reserve Account.

The Board 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 North shall pay intervener costs in the amount of \$18,530.54, as set out in column (h) of [Appendix A](#).
2. ATCO Gas North's external costs in the amount of \$12,325.56, 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 costs and intervener costs in the amount of \$30,856.10, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 26th day of January, 2007.

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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AGN
Cost No. 1435745

Disposition of Red Deer Operating Centre
(1421444)

Claims and Awards

	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	\$7,578.00	\$41.42	\$0.00	\$7,619.42	\$7,578.00	\$41.42	\$0.00	\$7,619.42
Bennett Jones LLP	\$4,614.50	\$91.64	\$0.00	\$4,706.14	\$4,614.50	\$91.64	\$0.00	\$4,706.14
Sub-Total	\$12,192.50	\$133.06	\$0.00	\$12,325.56	\$12,192.50	\$133.06	\$0.00	\$12,325.56
INTERVENERS								
Consumers' Coalition of Alberta								
Wachowich & Company	\$4,359.25	\$0.00	\$261.56	\$4,620.81	\$4,359.25	\$0.00	\$261.56	\$4,620.81
Sub-Total	\$4,359.25	\$0.00	\$261.56	\$4,620.81	\$4,359.25	\$0.00	\$261.56	\$4,620.81
Consumer Group								
Bryan & Company	\$15,875.00	\$47.39	\$955.34	\$16,877.73	\$13,075.00	\$47.39	\$787.34	\$13,909.73
Sub-Total	\$15,875.00	\$47.39	\$955.34	\$16,877.73	\$13,075.00	\$47.39	\$787.34	\$13,909.73
TOTAL INTERVENER COSTS	\$20,234.25	\$47.39	\$1,216.90	\$21,498.54	\$17,434.25	\$47.39	\$1,048.90	\$18,530.54
TOTAL INTERVENER AND APPLICANT COSTS	\$32,426.75	\$180.45	\$1,216.90	\$33,824.10	\$29,626.75	\$180.45	\$1,048.90	\$30,856.10