



# ATCO Gas South

Carbon Facilities  
Part 1 Module – Jurisdiction  
(2005/2006 Carbon Storage Plan)

Cost Awards

**ALBERTA ENERGY AND UTILITIES BOARD**

Utility Cost Order 2007-007: ATCO Gas South

Carbon Facilities

Part 1 Module – Jurisdiction

(2005/2006 Carbon Storage Plan)

Application No. 1357130

Cost Application No. 1459837

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# **ALBERTA ENERGY AND UTILITIES BOARD**

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**Calgary, Alberta**

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## **1 INTRODUCTION**

On June 10, 2004, the Alberta Energy and Utilities Board (EUB/Board) received a letter from the Consumer Group<sup>1</sup> and the Utilities Consumer Advocate (collectively the CG). Among other things the letter requested the Board to initiate a proceeding to address the concerns raised by ATCO Gas South (AGS or ATCO Gas), an operating division of ATCO Gas and Pipelines Ltd., in prior Board proceedings with respect to the Board's jurisdiction as it relates to the Carbon storage facilities (Carbon Storage) and the related natural gas producing properties (Producing Properties). Collectively Carbon Storage and the Producing properties are herein referred to as "Carbon."

In a letter of July 23, 2004 the Board directed AGS to file an application which would address a 2005/2006 Carbon Storage Plan and the basis on which AGS took issue with the Board's jurisdiction over Carbon.

On August 16, 2004, ATCO Gas South (AGS) submitted an application to the Board regarding the 2005/2006 Carbon Storage Plan.

The Board published an Issues List in its letter of September 13, 2004. The Board established three parts to the Issues List. In summary these three Parts are:

- Part 1 – whether the Carbon facilities are used or required to be used to provide service to the public in Alberta or should otherwise remain in rate base;
- Part 2 – if the facilities are used or required to be used, what should be the lease rate paid by Midstream, and
- Part 3 – if the facilities are not used or required to be used, what should be the process and accounting treatments in removing them from rate base.

In a letter of December 23, 2004, the Board indicated that it would proceed with Part 1 matters before proceeding with either Part 2 or Part 3 of the Issues List. It also determined that it should focus the proceeding on appropriate uses for Carbon, which should be considered in determining whether the facilities are used or required to be used to provide service to the public. To focus and expedite the process the Board posed four preliminary questions (the Preliminary Questions) that were to be examined separately before proceeding to Part 1.

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<sup>1</sup> The Consumers Group includes: Alberta Irrigation Projects Association, Alberta Urban Municipalities Association, Consumers Coalition of Alberta, First Nations, and the Public Institutional Consumers of Alberta.

The Board issued Decision [2005-063](#) dealing with these Preliminary Questions on June 15, 2005. In Decision 2005-063 the Board determined that the question of the Board's jurisdiction with respect to Carbon could best be addressed through an examination of whether or not Carbon is used or required to be used, or should otherwise remain in rate base. In particular, the Board determined that there were two "uses" for Carbon to be considered in the Part 1 Module which were relevant to the Board's analysis. These two uses were revenue generation and distribution system load balancing. The distribution system load balancing use was later added to the matters for consideration in the ATCO Gas – Retailer Services and Gas Utilities Act Compliance - Application No. 1411635 which resulted in Decision [2006-098](#) which was issued on October 10, 2006. The Board considered the costs in respect of the Preliminary Questions proceeding in Utility Cost Order [2005-070](#) dated December 12, 2005. The Board considered costs in respect of the load balancing proceeding in Utility Cost Order [2006-064](#) dated December 1, 2006.

The remaining use left to be considered in the Part 1 Module in determining whether or not Carbon is used or required to be used to provide service to the public, or should otherwise remain in rate base, was revenue generation. On February 5, 2007 the Board issued its Part 1 Module Decision, Decision [2007-005](#).

The Panel assigned to the proceeding leading to Decision 2007-005 consists of B. T. McManus, Q.C. (Presiding Member), J. I. Douglas, FCA, Member and C. Dahl Rees, LL.B., Acting Member.

The Board received cost claims related to the Part 1 Module on or about June 30, 2006. On July 5, 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 July 19, 2006. The Board did not receive any comments.

While the Board considers the cost process to have closed on July 19, 2006, it was not appropriate for the Board to release a Cost Order until Decision 2007-005 was released.

## **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' willingness 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 ATCO Gas South (AGS), the Alberta Urban Municipalities Association (AUMA), and the City of Calgary (Calgary). The cost claims total \$820,423.19 including actual GST of \$36,806.29.

#### **3.1 ATCO Gas South (AGS)**

ATCO Gas submitted a cost claim totalling \$233,991.82. The claim reflects costs for retaining the Law Firm Bennett Jones LLP and AGS' own disbursements.

With respect to the legal costs incurred the Board notes that AGS had two lawyers in attendance at the hearing, specifically Mr. L.E. Smith and Ms. K.L. Illsey. The Board in the past has denied the costs for second counsel where the need has not been justified<sup>2</sup>. The Board recognizes the history, volume of material, and complexity of this matter and therefore finds it appropriate for AGS to have had second counsel in attendance. The Board does wish to caution AGS that multiple lawyers in attendance is considered on a case by case basis and is not approved as a matter of course. As such, the Board encourages AGS to provide adequate justification for the need of second counsel in future cost claims.

The Board has reviewed AGS' disbursements and notes that \$1,075.53 is attributed to external printing. The Board does not consider that external printing costs should be eligible for recovery from the Hearing Cost Reserve Account. Rather, disbursements of this type would more appropriately be included as part of AGS' forecast revenue requirement. Accordingly the Board disallows this portion of AGS' disbursements.

#### **3.2 Remaining Participants**

The Board has reviewed the costs submitted by the remaining 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 interveners 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*. Accordingly, the

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<sup>2</sup> Utility Cost Order 2004-73 and Utility Cost Order 2005-020

Board considers the claims for fees, disbursements, and applicable GST for all participants to be reasonable as outlined in [Appendix A](#) to this Order in the total amount of \$801,785.26.

#### **4 GST**

In accordance with the Board'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 Board has reduced this particular portion of their claim. Eligible GST approved by the Board amounts to \$19,243.89 as shown in column (g) of [Appendix A](#). The GST allowed by the Board may also be charged against AGS' 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 South shall pay intervener costs in the amount of \$568,868.97, as set out in column (h) of [Appendix A](#).
2. ATCO Gas South's external costs in the amount of \$232,916.29, 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 \$801,785.26, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 8<sup>th</sup> day of February, 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

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

**ATCO Gas South  
Carbon Storage Plan  
(Revised Part 1 Module)**

**App. No. 1357130  
Cost App. No. 1459837**

**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>								
<b>ATCO Gas South</b>								
Bennett Jones LLP	\$216,823.50	\$2,493.56	\$0.00	\$219,317.06	\$216,823.50	\$2,493.56	\$0.00	\$219,317.06
ATCO Gas South	\$0.00	\$14,674.76	\$0.00	\$14,674.76	\$0.00	\$13,599.23	\$0.00	\$13,599.23
<b>Sub-Total</b>	<b>\$216,823.50</b>	<b>\$17,168.32</b>	<b>\$0.00</b>	<b>\$233,991.82</b>	<b>\$216,823.50</b>	<b>\$16,092.79</b>	<b>\$0.00</b>	<b>\$232,916.29</b>
<b>INTERVENERS</b>								
<b>Alberta Urban Municipalities Association</b>								
Bryan & Company	\$56,534.00	\$1,742.13	\$3,496.56	\$61,772.69	\$56,534.00	\$1,742.13	\$3,496.56	\$61,772.69
Liddle Engineering Ltd.	\$42,900.00	\$0.00	\$2,574.00	\$45,474.00	\$42,900.00	\$0.00	\$2,574.00	\$45,474.00
<b>Sub-Total</b>	<b>\$99,434.00</b>	<b>\$1,742.13</b>	<b>\$6,070.56</b>	<b>\$107,246.69</b>	<b>\$99,434.00</b>	<b>\$1,742.13</b>	<b>\$6,070.56</b>	<b>\$107,246.69</b>
<b>City of Calgary</b>								
Burnet, Duckworth & Palmer LLP	\$296,267.50	\$8,225.62	\$20,843.29	\$325,336.41	\$296,267.50	\$8,225.62	\$8,933.43	\$313,426.55
Energy Group, Inc.	\$62,602.31	\$1,915.26	\$4,516.23	\$69,033.80	\$62,602.31	\$1,915.26	\$1,935.66	\$66,453.23
Energy Objective	\$30,600.00	\$0.00	\$2,142.00	\$32,742.00	\$30,600.00	\$0.00	\$918.06	\$31,518.06
Sproule Associates Limited	\$720.00	\$1,915.26	\$0.00	\$2,635.26	\$720.00	\$1,915.26	\$0.00	\$2,635.26
Stephen Johnson	\$46,200.00	\$3.00	\$3,234.21	\$49,437.21	\$46,200.00	\$3.00	\$1,386.18	\$47,589.18
<b>Sub-Total</b>	<b>\$436,389.81</b>	<b>\$12,059.14</b>	<b>\$30,735.73</b>	<b>\$479,184.68</b>	<b>\$436,389.81</b>	<b>\$12,059.14</b>	<b>\$13,173.33</b>	<b>\$461,622.28</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$535,823.81</b>	<b>\$13,801.27</b>	<b>\$36,806.29</b>	<b>\$586,431.37</b>	<b>\$535,823.81</b>	<b>\$13,801.27</b>	<b>\$19,243.89</b>	<b>\$568,868.97</b>
<b>TOTAL INTERVENER AND APPLICANT COSTS</b>	<b>\$752,647.31</b>	<b>\$30,969.59</b>	<b>\$36,806.29</b>	<b>\$820,423.19</b>	<b>\$752,647.31</b>	<b>\$29,894.06</b>	<b>\$19,243.89</b>	<b>\$801,785.26</b>