



ATCO Gas South

Carbon Facilities Part 1B Module
Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2007-043: ATCO Gas South

Carbon Facilities Part 1B Module

Application No. 1506285

Cost Application No. 1511108

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**ATCO Gas South
Carbon Facilities
Part 1B Module**

**Utility Cost Order 2007-043
Application No. 1506285
Cost Application No. 1511108**

1 INTRODUCTION

On June 10, 2004, the Alberta Energy and Utilities Board (the Board or EUB) received a letter from the Consumer Group¹ and the Utilities Consumer Advocate (collectively the CG). The letter requested the Board to initiate a collaborative process regarding the use of the Carbon storage facilities and the related natural gas producing properties (Carbon) for the 2005/2006 gas year. The letter also requested the Board to initiate a proceeding to address the concerns raised by ATCO Gas South (AGS), an operating division of ATCO Gas and Pipelines Ltd., in prior Board proceedings with respect to the Board's jurisdiction as it relates to Carbon.

In a letter of July 23, 2004 the Board did not require a collaborative process for the 2005/2006 gas year, but 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, AGS submitted an application to the Board regarding the 2005/2006 Carbon Storage Plan (the Application). The Board has issued the following Decisions and Orders relating to the Application.

- Interim Order U2005-133 (March 23, 2005)
- Decision [2005-063](#): 2005/2006 Carbon Storage Plan Preliminary Questions (June 15, 2005)
- Decision [2006-098](#): Retailer Service and Gas Utilities Act Compliance Phase 2, Part B, Customer Account Balancing and Load Balancing (December 10, 2006)
- Decision 2006-098 Errata (November 7, 2006)
- Decision [2007-005](#): Carbon Facilities Part 1 Module – Jurisdiction (February 5, 2007)

In Decision 2007-005, the Board identified the need for a further process, the Part 1B Module. By way of letter dated February 22, 2007 the Board commenced proceedings for the Part 1B Module process by providing parties with the opportunity to comment on a Preliminary Issues List, and requesting parties to file a Statement of Intention to Participate.

On February 26, 2007 AGS applied to the Court of Appeal of Alberta for leave to appeal Decision 2007-005 (Leave Application).

On March 9, 2007 AGS filed a Motion, pursuant to section 9 of the Alberta Rules of Practice, for an order adjourning the proceeding until the Leave Application has been decided by the Court of Appeal.

¹ 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.

On April 13, 2007 the Board granted AGS' Motion.

The City of Calgary (Calgary) also filed a Motion in the Part 1B Module dated March 27, 2007. Calgary's Motion was with respect to the Storage Value Placeholder established by Order U2005-133.

By way of letter dated April 13, 2007 the Board denied Calgary's Motion. In the same letter, the Board directed parties to file their cost claims for the Part 1B Module.

On May 18, 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 May 25, 2007. 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 May 25, 2007.

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

Various participants submitted cost claims totalling \$76,449.13 including actual GST of \$561.90 with respect to the Part 1B Module.

The Board 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 Board finds that the participation of the parties 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 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 \$76,449.13.

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 \$561.90 as shown in column (g) of [Appendix A](#). The GST allowed by the Board may 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 \$63,380.93, as set out in column (h) of [Appendix A](#).
2. ATCO Gas South's external costs in the amount of \$13,068.20, 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 \$76,449.13, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 3rd day of July, 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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**ATCO Gas South
Carbon Facilities Part 1B Module
(1506285)**

**Costs Claimed and Awarded
(Cost App. No. 1511108)**

| | 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 | \$12,854.00 | \$214.20 | \$0.00 | \$13,068.20 | \$12,854.00 | \$214.20 | \$0.00 | \$13,068.20 |
| Sub-Total | \$12,854.00 | \$214.20 | \$0.00 | \$13,068.20 | \$12,854.00 | \$214.20 | \$0.00 | \$13,068.20 |
| INTERVENERS | | | | | | | | |
| City of Calgary | | | | | | | | |
| Burnet, Duckworth & Palmer | \$37,855.00 | \$86.61 | \$0.00 | \$37,941.61 | \$37,855.00 | \$86.61 | \$0.00 | \$37,941.61 |
| Energy Group, Inc. | \$5,792.39 | \$0.00 | \$0.00 | \$5,792.39 | \$5,792.39 | \$0.00 | \$0.00 | \$5,792.39 |
| Energy Objective | \$5,400.00 | \$0.00 | \$0.00 | \$5,400.00 | \$5,400.00 | \$0.00 | \$0.00 | \$5,400.00 |
| Stephen Johnson | \$4,320.00 | \$0.00 | \$0.00 | \$4,320.00 | \$4,320.00 | \$0.00 | \$0.00 | \$4,320.00 |
| Sub-Total | \$53,367.39 | \$86.61 | \$0.00 | \$53,454.00 | \$53,367.39 | \$86.61 | \$0.00 | \$53,454.00 |
| Consumers' Group | | | | | | | | |
| Bryan & Company | \$9,290.00 | \$75.03 | \$561.90 | \$9,926.93 | \$9,290.00 | \$75.03 | \$561.90 | \$9,926.93 |
| Sub-Total | \$9,290.00 | \$75.03 | \$561.90 | \$9,926.93 | \$9,290.00 | \$75.03 | \$561.90 | \$9,926.93 |
| TOTAL INTERVENER COSTS | | | | | | | | |
| | \$62,657.39 | \$161.64 | \$561.90 | \$63,380.93 | \$62,657.39 | \$161.64 | \$561.90 | \$63,380.93 |
| TOTAL INTERVENER AND APPLICANT COSTS | | | | | | | | |
| | \$75,511.39 | \$375.84 | \$561.90 | \$76,449.13 | \$75,511.39 | \$375.84 | \$561.90 | \$76,449.13 |