



# ATCO Gas North ATCO Gas South

Deferred Gas Account Limitation Period

Cost Awards

**ALBERTA ENERGY AND UTILITIES BOARD**

Utility Cost Order 2006-048: ATCO Gas North and ATCO Gas South

Deferred Gas Account Limitation Period

Application No. 1407502

Cost Application No. 1452307

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# ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

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ATCO Gas South  
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## 1 INTRODUCTION

On June 30, 2005 ATCO Gas North (AGN) and ATCO Gas South (AGS), collectively ATCO or AG, filed with the Alberta Energy and Utilities Board (Board/EUB) an application pursuant to Board direction in order to examine whether a policy should be implemented that would limit the extent to which prior period adjustments could be made with respect to deferred gas accounts (DGA).

The application was dealt with by way of a written process. The Panel assigned to consider the matter consisted of B.T. McManus, Q.C. (Presiding), J.I. Douglas, FCA, and C. Dahl Rees, LLB. On May 11, 2006 the Board issued Decision [2006-042](#).

On March 20, 2006, summaries of the costs being claimed were circulated to interested parties. Parties were advised that any comments regarding the figures listed in the summaries or the merits of the total costs claimed were to be filed by April 3, 2006. The Board received comments from ATCO and AltaGas Utilities Inc. (AUI). The Board invited responses to be filed by April 18, 2006. The Board did not receive any responses. Accordingly, the Board considers, for the purposes of this Cost Order, the cost process to have closed on April 18, 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.

Various participants submitted cost claims totalling \$39,809.68 with respect to ATCO Gas North (AGN) and \$78,626.59 with respect to ATCO Gas South (AGS), for an overall amount of \$118,436.27.

### **3 BUSINESS INTEREST RULE**

The Board recognizes that AUI intervened in this proceeding and the Board views this as a utility intervening in another utility's application. As stated in Directive 031B, ordinarily this type of intervention would not be eligible for cost recovery, although exceptions may be permitted, as indicated in Bulletin 2005-31.<sup>1</sup> In addition, the Board must recognize the generic purpose of this proceeding, as indicated in the following extract from Decision 2006-042:

The Board considered it efficient to have AG comply with a direction from Decision 2005-036 to submit the Application as a way of initiating the process of reviewing a limitation period. However, as the Board had previously outlined in its correspondence, the intention of this proceeding was always to be that of a generic application and therefore this Decision will apply to those utilities that use a DGA, presently AG, Direct Energy Regulated Services (DERS) and AltaGas Utilities Inc. Consequently, any reference herein to the DGA, unless otherwise specified, would apply equally to the DGAs used by AG, DERS, and AUI.

In light of the generic aspect to this proceeding and in light of the Board applying its decision to each AG, DERS, and AUI, the Board finds that these circumstances are unique and therefore does not find that the business interest rule applies to AUI in this instance.

### **4 TREATMENT OF APPROVED COSTS**

By way of letter dated April 3, 2006 ATCO Gas submitted the following position with respect to the treatment of approved costs.

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<sup>1</sup> See Directive 031B, Section 2 at page 3; Bulletin 2005-31, Section 2.2 at page 2.

Given the generic nature of this proceeding, ATCO Gas wishes to confirm that any costs claimed by AltaGas, Direct Energy and NGTL are to be recovered through their respective hearing accounts, not through ATCO Gas' hearing accounts (ATCO Gas notes that of these three parties, only AltaGas appears to be claiming costs). While ATCO Gas believes that the intervener costs should also be distributed amongst all of the regulated utilities involved, given the additional administration this would require, and the immateriality of the costs being claimed, ATCO Gas is prepared to use its hearing accounts for the funding of 100% of the approved intervener costs.

By way of letter dated April 3, 2006, AltaGas submitted the following comments regarding this particular issue.

With respect, AltaGas Utilities requests that the Board consider applying the Company's approved costs to AUI's deferred regulatory cost account, rather than charging them to ATCO Gas. The Company respectfully submits that this would be consistent with the nature of the Company's involvement in this proceeding.

The Board appreciates the comments filed by ATCO and AltaGas and finds that the recommendation of the parties is reasonable in the circumstances. The Board therefore directs that the costs approved for AltaGas shall be recorded in AltaGas' deferred regulatory cost account and the costs approved for ATCO and the interveners shall be recorded in each ATCO Gas North's (AGN) and ATCO Gas South's (AGS) respective hearing cost reserve accounts.

## **5 VIEWS OF THE BOARD – Assessment**

### **5.1 City of Calgary (Calgary)**

Calgary submitted a cost claim totalling \$53,855.02 allocated to AGS. The claim represents legal fees incurred by D'Arcy & Deacon LLP in the amount of \$27,080.00, expenses of \$751.80, and GST of \$1,948.22 for a total legal bill of \$29,780.02. The remaining portion of the cost claim represents consulting fees incurred by Peter J. Milne & Associates Inc. in the amount of \$22,500.00 and GST of \$1,575.00.

In reviewing this claim the Board finds that the work performed by Calgary's consultant does not warrant full cost recovery. The Board found the work to be of limited assistance and as such a significant reduction is appropriate. In part this reduction relates to the Board's conclusion that this application focused on policy and statutory interpretation. The Board also believes that the Calgary claim does not reflect the efficiencies that should have been achieved from their participation on issues in prior related proceedings, specifically the ATCO Gas Imbalance and Production Adjustments Deferred Gas Account proceeding which resulted in Decision [2005-036](#). The Board finds that a 50% reduction to the consulting fees is appropriate in the circumstances.

The Board therefore awards Calgary consulting costs in the amount of \$11,250.00 and legal fees in the amount of \$27,080.00 together with expenses as claimed in the amount of \$751.80. GST is awarded in accordance with section 6 below in the amount of \$1,172.53.

## 5.2 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 Board considers the claims for fees, disbursements, and applicable GST for all participants to be reasonable as outlined in [Appendices A and B](#) to this Order in the total amount of \$39,809.68 and \$65,025.90, respectively.

## 6 GST

In accordance with the Board's treatment of the GST on cost awards, AGN and AGS are 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 \$647.60 as shown in column (g) of [Appendix A](#) and \$1,820.13 as shown in column (g) of [Appendix B](#). The GST allowed by the Board may also be charged against each Applicant's respective 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.

## 7 ORDER

IT IS HEREBY ORDERED:

1. ATCO Gas North shall pay intervener costs in the amount of \$9,898.97, as set out in column (h) of [Appendix A](#).
2. ATCO Gas North's external costs in the amount of \$14,872.60, 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 and intervener costs in the amount of \$24,771.57, as set out in column (h) of [Appendix A](#).
4. ATCO Gas South shall pay intervener costs in the amount of \$50,153.30, as set out in column (h) of [Appendix B](#).
5. ATCO Gas South's external costs in the amount of \$14,872.60, as set out in column (h) of [Appendix B](#), 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 \$65,025.90, as set out in column (h) of [Appendix B](#).
7. AltaGas Utilities Inc.'s external costs in the amount of \$15,038.11, as set out in column (h) of [Appendix A](#), are approved.
8. AltaGas Utilities Inc. shall record in its Hearing Cost Reserve Account the allowed costs in the amount of \$15,038.11, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 6th day of October, 2006.

**ALBERTA ENERGY AND UTILITIES BOARD**

*Original Signed by Thomas McGee*

Thomas McGee  
Board Member

**APPENDIX A – Summary of Costs Claimed and Awarded (AGN)**



Appendix A (AGN)

**APPENDIX B – Summary of Costs Claimed and Awarded (AGS)**



Appendix B (AGS)

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**AGN**  
**Deferred Gas Account Limitation Period**  
**App. No. 1407502**  
**Cost App. No. 1452307**

**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 North</b>								
Bennett Jones LLP	\$11,530.75	\$75.62	\$0.00	\$11,606.37	\$11,530.75	\$75.62	\$0.00	\$11,606.37
ATCO Gas	\$0.00	\$3,266.23	\$0.00	\$3,266.23	\$0.00	\$3,266.23	\$0.00	\$3,266.23
<b>Sub-Total</b>	<b>\$11,530.75</b>	<b>\$3,341.85</b>	<b>\$0.00</b>	<b>\$14,872.60</b>	<b>\$11,530.75</b>	<b>\$3,341.85</b>	<b>\$0.00</b>	<b>\$14,872.60</b>
<b>INTERVENERS</b>								
<b>AltaGas Utilities Inc.</b>								
MacPherson, Leslie & Tyeman	\$13,926.00	\$78.75	\$0.00	\$14,004.75	\$13,926.00	\$78.75	\$0.00	\$14,004.75
Ackroyd, Piasta, Roth & Day LLP	\$1,025.00	\$8.36	\$0.00	\$1,033.36	\$1,025.00	\$8.36	\$0.00	\$1,033.36
<b>Sub-Total</b>	<b>\$14,951.00</b>	<b>\$87.11</b>	<b>\$0.00</b>	<b>\$15,038.11</b>	<b>\$14,951.00</b>	<b>\$87.11</b>	<b>\$0.00</b>	<b>\$15,038.11</b>
<b>Alberta Urban Municipalities Association / Edmonton</b>								
Bryan & Company	\$7,462.50	\$39.50	\$525.14	\$8,027.14	\$7,462.50	\$39.50	\$525.14	\$8,027.14
Robert Bruggeman Regulatory Consulting Ltd.	\$1,728.12	\$21.25	\$122.46	\$1,871.83	\$1,728.12	\$21.25	\$122.46	\$1,871.83
<b>Sub-Total</b>	<b>\$9,190.62</b>	<b>\$60.75</b>	<b>\$647.60</b>	<b>\$9,898.97</b>	<b>\$9,190.62</b>	<b>\$60.75</b>	<b>\$647.60</b>	<b>\$9,898.97</b>
<b>TOTAL INTERVENER COSTS</b>								
	<b>\$24,141.62</b>	<b>\$147.86</b>	<b>\$647.60</b>	<b>\$24,937.08</b>	<b>\$24,141.62</b>	<b>\$147.86</b>	<b>\$647.60</b>	<b>\$24,937.08</b>
<b>TOTAL INTERVENER AND APPLICANT COSTS</b>								
	<b>\$35,672.37</b>	<b>\$3,489.71</b>	<b>\$647.60</b>	<b>\$39,809.68</b>	<b>\$35,672.37</b>	<b>\$3,489.71</b>	<b>\$647.60</b>	<b>\$39,809.68</b>

**AGS**  
**Deferred Gas Account Limitation Period**  
**App. No. 1407502**  
**Cost App. No. 1452307**

**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	\$11,530.75	\$75.62	\$0.00	\$11,606.37	\$11,530.75	\$75.62	\$0.00	\$11,606.37
ATCO Gas	\$0.00	\$3,266.23	\$0.00	\$3,266.23	\$0.00	\$3,266.23	\$0.00	\$3,266.23
<b>Sub-Total</b>	<b>\$11,530.75</b>	<b>\$3,341.85</b>	<b>\$0.00</b>	<b>\$14,872.60</b>	<b>\$11,530.75</b>	<b>\$3,341.85</b>	<b>\$0.00</b>	<b>\$14,872.60</b>
<b>INTERVENERS</b>								
<b>Alberta Urban Municipalities Association / Edmonton</b>								
Bryan & Company	\$7,462.50	\$39.50	\$525.14	\$8,027.14	\$7,462.50	\$39.50	\$525.14	\$8,027.14
Robert Bruggeman Regulatory Consulting Ltd.	\$1,728.12	\$21.25	\$122.46	\$1,871.83	\$1,728.12	\$21.25	\$122.46	\$1,871.83
<b>Sub-Total</b>	<b>\$9,190.62</b>	<b>\$60.75</b>	<b>\$647.60</b>	<b>\$9,898.97</b>	<b>\$9,190.62</b>	<b>\$60.75</b>	<b>\$647.60</b>	<b>\$9,898.97</b>
<b>City of Calgary</b>								
D'Arcy & Deacon LLP	\$27,080.00	\$751.80	\$1,948.22	\$29,780.02	\$27,080.00	\$751.80	\$835.01	\$28,666.81
Peter J. Milne & Associates Inc.	\$22,500.00	\$0.00	\$1,575.00	\$24,075.00	\$11,250.00	\$0.00	\$337.52	\$11,587.52
	\$49,580.00	\$751.80	\$3,523.22	\$53,855.02	\$38,330.00	\$751.80	\$1,172.53	\$40,254.33
<b>TOTAL INTERVENER COSTS</b>								
	\$58,770.62	\$812.55	\$4,170.82	\$63,753.99	\$47,520.62	\$812.55	\$1,820.13	\$50,153.30
<b>TOTAL INTERVENER AND APPLICANT COSTS</b>								
	\$70,301.37	\$4,154.40	\$4,170.82	\$78,626.59	\$59,051.37	\$4,154.40	\$1,820.13	\$65,025.90