



ATCO Gas North ATCO Gas South

Retailer Service and Gas Utilities Act Compliance
Phase 2, Part B
Customer Account Balancing and
Load Balancing

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2006-064

ATCO Gas North and ATCO Gas South

Retailer Service and Gas Utilities Act Compliance
Phase 2, Part B

Customer Account Balancing and Load Balancing

Application No. 1411635

Cost Application No. 1464136

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**ATCO Gas North and South
Retailer Service and Gas Utilities Act Compliance
Phase 2, Part B
Customer Account Balancing and
Load Balancing**

**Utility Cost Order 2006-064
Application No. 1411635
Cost Application No. 1464136**

1 INTRODUCTION

The Alberta Energy and Utilities Board (EUB/Board) received an application (Application) from ATCO Gas, a division of ATCO Gas and Pipelines Ltd. (ATCO Gas) on July 29, 2005 dealing with Phase 2 Part B of the Retailer Service and Gas Utilities Act Compliance process. This was in response to directions from the Board in a letter of July 26, 2005, which was issued in conjunction with Decision 2005-081. In the Application ATCO Gas proposed a consultative process to advance topics related to customer account balancing and load balancing procedures using modules.

The Division of the Board assigned to this Application was Ian Douglas (Chairman), Brad McManus and Carolyn Dahl Rees. On October 10, 2006 the Board issued [Decision 2006-098](#) and on November 7, 2006 the Board issued an Erratum to the Decision.

On August 22, 2006, summaries of the costs being claimed with respect to AGN and AGS 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 September 5, 2006 and responses were to be filed by September 19, 2006.

The Board received comments from ATCO Gas and a response to those comments was filed by the City of Calgary. Accordingly, the Board considers, for the purposes of this Cost Order, the cost process to have closed on September 19, 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 \$123,250.28 with respect to AGN and \$619,327.01 with respect to AGS, for a combined total of \$742,577.29.

3 VIEWS OF THE PARTIES – Comments and Responses

3.1 ATCO Gas (ATCO)

By way of letter dated August 24, 2006 ATCO submitted comments with respect to the cost claim filed by Calgary. Following a review of Calgary's claims for the Carbon Storage Plan Revised Part 1 Module Schedule and the costs incurred for this Application ATCO believes the claims show a trend of excessive amounts. ATCO noted that Calgary's costs represent 3.6 times the costs incurred by ATCO Gas North and ATCO Gas South.

With respect to the legal service provided, ATCO noted that the lawyers representing Calgary are experienced regulatory lawyers and have a long history of working with the consultants reflected in the cost claim. It is ATCO's view that given the narrow scope of the proceeding the costs incurred by counsel are excessive. ATCO submits that Calgary's intervention was poorly controlled and coordinated and as noted in previous Cost Order, this is a key role for counsel.

3.2 City of Calgary (Calgary)

By way of letter dated September 19, 2006 Calgary responded to ATCO's comments. With respect to ATCO's comments including reference to the costs incurred for the Carbon Storage Plan, Calgary argues that such reference is inappropriate, an abuse of process, and should be disregarded. Calgary also takes issue with ATCO's approach to benchmarking Calgary's claim against other intervenor cost claims and that such an approach has been rejected by the Board and by the Courts. Calgary submits that without the comprehensive evidence it developed, presented, and defended, there would be no evidence before the Board to address the matters identified by the Board as issues.

With respect to ATCO's comments concerning the control and coordination of Calgary's intervention, Calgary noted that ATCO failed to provide any specific examples on this issue and goes on to provide the following with respect to its participation at page 3 of its response.

- Calgary followed the suggestions of the Board in past proceedings and provided alternatives rather than engaging in a detailed or "line by line" analysis of the ATCO Gas application.
- Calgary used the Information Request Process in the manner in which it was intended; to clarify the application and approach, to confirm what analysis was and was not undertaken by ATCO Gas, and to obtain information necessary both for the analysis of the ATCO Gas approach and for the development and evaluation of alternatives.
- Calgary was the only party to provide alternatives to the ATCO Gas approach and to provide an analysis of the approach and the alternatives. As the only party to do so Calgary naturally incurred significant costs.
- Calgary was the only party to address the feasibility and economics of using Carbon Storage for load balancing in evidence filed before the Board. Calgary gathered data, provided evidence, answered IRs, and defended the evidence.
- Calgary's cross-examination related almost entirely on the extensive Rebuttal Evidence filed by ATCO Gas, including Mr. Engbloom's expert report. This contrasts to the ATCO Gas cross-examination of the Calgary panel which consisted entirely of questions that could have been asked in the IR process and which, in hindsight had little or nothing to do with the core issues of the proceeding.
- Although Calgary alerted the Board to its concerns regarding the Rebuttal Evidence¹ and the potential need for process to address such evidence, in the interests of efficiency and hearing schedule Calgary proceeded without making an application and relied on cross-examination to address the Rebuttal Evidence.

Calgary submits that its costs are reasonable given the complexity of the issues, the significance of the impact of the issues on ratepayers, and the need for a comprehensive examination.

4 VIEWS OF THE BOARD – Assessment

4.1 ATCO Gas (ATCO)

ATCO submitted a cost claim totalling \$136,145.16. The claim represents the costs incurred for legal services provided by Bennett Jones LLP, consulting services provided by Confer Consulting Ltd., and expenses incurred by ATCO.

The Board acknowledges that the expenses claimed by ATCO include external printing charges in the amount of \$4,910.71. 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 ATCO's forecast revenue requirement. Accordingly the Board disallows this portion of ATCO's disbursements.

The Board finds the remainder of ATCO's cost claim to be appropriate and is therefore approved.

¹ Letter on behalf of Calgary dated June 1, 2006

4.2 City of Calgary (Calgary)

Calgary submitted a cost claim totalling \$496,077.70. The claim represents costs incurred for legal services provided by Burnet, Duckworth and Palmer LLP (BDP) and D'Arcy & Deacon LLP. The claim also includes costs for consulting services provided by Energy Group, Inc., Energy Objective, Peter J. Milne & Associates Inc., and Stephen Johnson.

The Board recognizes that alternative views were presented by Calgary. However, the Board views Calgary's evidence with respect to the potential use of Carbon storage for load balancing to be overly complex, somewhat incomplete and ambiguous in several respects. At page 30 of Decision [2006-098](#) the Board stated:

As a finding of fact, the Board has determined that the Calgary proposal:

- is overly complicated and unclear both as to annual development of storage requirements and as to the actual daily mechanics to be employed;
- provides ambiguous benefits when compared to potential risks and costs to be borne by ratepayers;
- has implications with respect to retail competition given the reduction in volumes that would be controlled and supplied by the DSP/retailers; and
- indicates a potential to impact third party storage arrangements.

Overall, the Board found the Calgary evidence with respect to monthly account balancing using Carbon storage in connection with load balancing of the ATCO Gas distribution system to be unpersuasive.

Accordingly, the Board finds it appropriate to reduce all Calgary fees, other than Energy Objective, by 20%.

With respect to Energy Objective the Board finds that the IRs and cross examination was not overly helpful. The Board also finds that Mr. Walsh's knowledge of how the ATCO system works was somewhat limited. Overall the Board does not find that Energy Objective contributed to the Board's understanding of the issues before it. In the circumstances the Board finds a reduction of 30% to be appropriate.

The costs being claimed and awarded to Calgary are shown in [Appendix B](#) attached.

4.3 Direct Energy Partnership (DEP) and Direct Energy Regulated Services (DERS)

DEP submitted a cost claim totalling \$10,534.18 allocated equally between AGN and AGS. The claim represents legal fees incurred by BDP in the amount of \$9,412.50 together with expenses in the amount of \$780.30. DEP also claims expenses in the amount of \$341.38.

DERS submitted a cost claim totalling \$10,534.20 allocated equally between AGN and AGS. DERS retained the same counsel as DEP and incurred similar expenses as well.

With respect to the application of the business interest rule, the Board made the following determination by way of letter dated June 5, 2006.

The Board finds that this hearing will require it to determine several issues that it considers to have generic or systemic relevance that will have a direct, significant and continuing effect on these interveners and on customers overall. For this reason the Board believes that DEP, DERS and AES are not ineligible for a cost award by virtue of the business interest rule.

The Board has reviewed the totality of the two cost claims submitted and while it does not take issue with the expenses that have been incurred it is concerned with the amount of preparation time incurred, particularly 18 hours with respect to DEP and a further 18 with respect to DERS, for a combined total of 36 hours.

It is the Board's view that the preparation hours are disproportionate to the overall value received from the IRs and limited cross examination. In addition the Board also recognizes that these parties did not file evidence. Therefore, the Board does not find it appropriate to pass on the entire cost of preparation by counsel to customers and therefore applies a 10% reduction to the preparation time. The Board recognizes that for each DEP and DERS preparation fees total \$4,512.50 and therefore a reduction of \$451.25² is applied to each cost claim.

With respect to DEP the Board approves legal fees in the amount of \$8,961.25 together with expenses in the amount of \$780.30. The Board also approves DEP's expenses in the amount \$341.38.

With respect to DERS the Board approves legal fees in the amount of \$8,961.25 together with expenses in the amount of \$780.30. The Board also approves DERS' expenses in the amount of \$341.40.

4.4 Remaining Parties

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 [Appendix A](#) and [Appendix B](#) to this Order in the total amount of \$119,892.42 and \$501,674.28, respectively.

5 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 \$2,733.44 as shown in column (g) of [Appendix A](#) and \$13,854.05 as shown in column (g) of [Appendix B](#). The GST allowed by the Board may also be charged against applicant's respective Hearing Cost Reserve Account.

² \$4,512.50 x 10% = \$451.25

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.

6 ORDER

IT IS HEREBY ORDERED:

1. ATCO Gas North shall pay intervener costs in the amount of \$54,275.20, as set out in column (h) of [Appendix A](#).
2. ATCO Gas North's external costs in the amount of \$65,617.22, 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 \$119,892.42, as set out in column (h) of [Appendix A](#).
4. ATCO Gas South shall pay intervener costs in the amount of \$436,057.06, as set out in column (h) of [Appendix B](#).
5. ATCO Gas South's external costs in the amount of \$65,617.22, 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 \$501,674.28, as set out in column (h) of [Appendix B](#).

Dated in Calgary, Alberta on this 1st day of December, 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
Retailer Service and GUA Compliance

Application No. 1411635
Cost App. No. 1464136

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)
APPLICANT								
ATCO Gas North								
Bennett Jones LLP	\$46,556.50	\$390.83	\$0.00	\$46,947.33	\$46,556.50	\$390.83	\$0.00	\$46,947.33
Confer Consulting Ltd.	\$11,400.00	\$0.00	\$0.00	\$11,400.00	\$11,400.00	\$0.00	\$0.00	\$11,400.00
ATCO Gas North	\$0.00	\$9,725.25	\$0.00	\$9,725.25	\$0.00	\$7,269.89	\$0.00	\$7,269.89
Sub-Total	\$57,956.50	\$10,116.08	\$0.00	\$68,072.58	\$57,956.50	\$7,660.72	\$0.00	\$65,617.22
INTERVENERS								
Alberta Urban Municipalities Association								
Bryan & Company	\$7,700.00	\$454.25	\$489.26	\$8,643.51	\$7,700.00	\$454.25	\$489.26	\$8,643.51
Robert L. Bruggeman Regulatory Consulting Ltd.	\$10,981.25	\$115.00	\$665.78	\$11,762.03	\$10,981.25	\$115.00	\$665.78	\$11,762.03
Sub-Total	\$18,681.25	\$569.25	\$1,155.04	\$20,405.54	\$18,681.25	\$569.25	\$1,155.04	\$20,405.54
Consumers' Coalition of Alberta								
Wachowich & Company	\$8,268.75	\$1,064.67	\$645.58	\$9,979.00	\$8,268.75	\$1,064.67	\$645.58	\$9,979.00
Professional Regulatory Services, Inc.	\$12,775.00	\$551.00	\$932.82	\$14,258.82	\$12,775.00	\$551.00	\$932.82	\$14,258.82
Sub-Total	\$21,043.75	\$1,615.67	\$1,578.40	\$24,237.82	\$21,043.75	\$1,615.67	\$1,578.40	\$24,237.82
Direct Energy Partnership								
Burnet, Duckworth & Palmer	\$4,706.25	\$390.15	\$0.00	\$5,096.40	\$4,255.00	\$390.15	\$0.00	\$4,645.15
Direct Energy Regulated Services	\$0.00	\$170.69	\$0.00	\$170.69	\$0.00	\$170.69	\$0.00	\$170.69
Sub-Total	\$4,706.25	\$560.84	\$0.00	\$5,267.09	\$4,255.00	\$560.84	\$0.00	\$4,815.84

AGN
Retailer Service and GUA Compliance

Application No. 1411635
Cost App. No. 1464136

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)
Direct Energy Regulated Services								
Burnet, Duckworth & Palmer	\$4,706.25	\$390.30	\$0.00	\$5,096.55	\$4,255.00	\$390.30	\$0.00	\$4,645.30
Direct Energy Regulated Services	\$0.00	\$170.70	\$0.00	\$170.70	\$0.00	\$170.70	\$0.00	\$170.70
Sub-Total	\$4,706.25	\$561.00	\$0.00	\$5,267.25	\$4,255.00	\$561.00	\$0.00	\$4,816.00
TOTAL INTERVENER COSTS	\$49,137.50	\$3,306.76	\$2,733.44	\$55,177.70	\$48,235.00	\$3,306.76	\$2,733.44	\$54,275.20
TOTAL INTERVENER AND APPLICANT COSTS	\$107,094.00	\$13,422.84	\$2,733.44	\$123,250.28	\$106,191.50	\$10,967.48	\$2,733.44	\$119,892.42

**AGS
Retailer Service and GUA Compliance**

**Application No. 1411635
Cost App. No. 1464136**

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)
APPLICANT								
ATCO Gas South								
Bennett Jones LLP	\$46,556.50	\$390.83	\$0.00	\$46,947.33	\$46,556.50	\$390.83	\$0.00	\$46,947.33
Confer Consulting Ltd.	\$11,400.00	\$0.00	\$0.00	\$11,400.00	\$11,400.00	\$0.00	\$0.00	\$11,400.00
ATCO Gas South	\$0.00	\$9,725.25	\$0.00	\$9,725.25	\$0.00	\$7,269.89	\$0.00	\$7,269.89
Sub-Total	\$57,956.50	\$10,116.08	\$0.00	\$68,072.58	\$57,956.50	\$7,660.72	\$0.00	\$65,617.22
INTERVENERS								
Alberta Urban Municipalities Association								
Bryan & Company	\$7,700.00	\$454.25	\$489.26	\$8,643.51	\$7,700.00	\$454.25	\$489.26	\$8,643.51
Robert I. Bruggeman Regulatory Consulting Ltd.	\$10,981.25	\$115.00	\$665.78	\$11,762.03	\$10,981.25	\$115.00	\$665.78	\$11,762.03
Sub-Total	\$18,681.25	\$569.25	\$1,155.04	\$20,405.54	\$18,681.25	\$569.25	\$1,155.04	\$20,405.54
City of Calgary								
Burnet, Duckworth & Palmer	\$204,775.50	\$6,677.62	\$14,041.29	\$225,494.41	\$163,820.40	\$6,677.62	\$5,115.28	\$175,613.30
Energy Group, Inc.	\$70,110.10	\$1,915.26	\$3,802.42	\$75,827.78	\$56,088.08	\$1,915.26	\$1,740.22	\$59,743.56
Energy Objective	\$39,150.00	\$0.00	\$2,740.50	\$41,890.50	\$27,405.00	\$0.00	\$822.20	\$28,227.20
D'Arcy & Deacon LLP	\$3,275.00	\$34.96	\$231.70	\$3,541.66	\$2,620.00	\$34.96	\$79.65	\$2,734.61
Peter J. Milne & Associates Inc.	\$88,060.00	\$0.00	\$6,121.20	\$94,181.20	\$70,448.00	\$0.00	\$2,113.58	\$72,561.58
Stephen Johnson	\$51,840.00	\$180.90	\$3,121.25	\$55,142.15	\$41,472.00	\$180.90	\$1,249.67	\$42,902.57
Sub-Total	\$457,210.60	\$8,808.74	\$30,058.36	\$496,077.70	\$361,853.48	\$8,808.74	\$11,120.61	\$381,782.83
Consumers' Coalition of Alberta								
Wachowich & Company	\$8,268.75	\$1,064.00	\$645.58	\$9,978.33	\$8,268.75	\$1,064.00	\$645.58	\$9,978.33
Professional Regulatory Services, Inc.	\$12,775.00	\$551.00	\$932.82	\$14,258.82	\$12,775.00	\$551.00	\$932.82	\$14,258.82
Sub-Total	\$21,043.75	\$1,615.00	\$1,578.40	\$24,237.15	\$21,043.75	\$1,615.00	\$1,578.40	\$24,237.15

**AGS
Retailer Service and GUA Compliance**

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Cost App. No. 1464136**

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)
Direct Energy Partnership								
Burnet, Duckworth & Palmer	\$4,706.25	\$390.15	\$0.00	\$5,096.40	\$4,255.00	\$390.15	\$0.00	\$4,645.15
Direct Energy Regulated Services	\$0.00	\$170.69	\$0.00	\$170.69	\$0.00	\$170.69	\$0.00	\$170.69
Sub-Total	\$4,706.25	\$560.84	\$0.00	\$5,267.09	\$4,255.00	\$560.84	\$0.00	\$4,815.84
Direct Energy Regulated Services								
Burnet, Duckworth & Palmer	\$4,706.25	\$390.00	\$0.00	\$5,096.25	\$4,255.00	\$390.00	\$0.00	\$4,645.00
Direct Energy Regulated Services	\$0.00	\$170.70	\$0.00	\$170.70	\$0.00	\$170.70	\$0.00	\$170.70
Sub-Total	\$4,706.25	\$560.70	\$0.00	\$5,266.95	\$4,255.00	\$560.70	\$0.00	\$4,815.70
TOTAL INTERVENER COSTS	\$506,348.10	\$12,114.53	\$32,791.80	\$551,254.43	\$410,088.48	\$12,114.53	\$13,854.05	\$436,057.06
TOTAL INTERVENER AND APPLICANT COSTS	\$564,304.60	\$22,230.61	\$32,791.80	\$619,327.01	\$468,044.98	\$19,775.25	\$13,854.05	\$501,674.28