



Review of Utility Cost Order 2003-13

Congestion Management

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2005-022:

Review of Utility Cost Order 2003-13 (Congestion Management)

Application No. 1298609

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Alberta Energy and Utilities Board

640 – 5 Avenue SW

Calgary, Alberta

T2P 3G4

Telephone: (403) 297-8311

Fax: (403) 297-7040

Web site: www.eub.gov.ab.ca

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**Review of Utility Cost Order 2003-13
Congestion Management
Cost Claims**

**Utility Cost Order 2005-022
Application No. 1298609
File No. 8000-1298609-01**

1 INTRODUCTION

On April 8, 2003, the Alberta Energy and Utilities Board (EUB/Board) received an application for a review and variance (R&V) of Utility Cost Order 2003-13 (UCO [2003-13](#)) from the Public Institutional Consumers of Alberta (PICA). In addition, the Board also received the following R&V applications with respect to UCO 2003-13:

- Alberta Urban Municipalities Association (AUMA) (April 11, 2003),
- Alberta Association of Municipal District & Counties (AAMDC) and Alberta Federation of Rural Electrification Associations (AFREA), collectively (April 11, 2003),
- Independent Power Producers Society of Alberta (IPPSA) and Senior Petroleum Producers Association (SPPA), collectively (April 25, 2003),
- SPPA (April 25, 2003),
- Consumers' Coalition of Alberta (CCA) (May 20, 2003),
- Industrial Power Consumers and Cogenerators Association of Alberta (IPCCAA) (April 29, 2003), and
- Alberta Irrigation Projects Association (AIPA) (July 25, 2003).

On August 30, 2004, the Board issued a Notice of Review to interested parties, stating that it was granting a limited review of UCO 2003-13. In response to the Notice of Review, the Board received two responses, one from SPPA alone and one from SPPA and IPPSA; both submissions were dated September 15, 2004.

The panel assigned to consider the R&V consisted of R.G. Lock (Presiding Member), J.I. Douglas, FCA (Member), and R.C. Clark (Acting Member). On February 8, 2005 the Board issued Decision [2005-006](#).

On January 19, 2005, 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 February 3, 2005. The Board did not receive any comments. Accordingly, the Board considers, for the purposes of this Cost Order, the cost process closed on February 3, 2005.

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 Guide 31B, *Guidelines for Utility Cost Claims* ([Guide 31B](#)). 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 totaling \$15,217.84 including actual GST of \$995.56 with respect to the Proceeding.

3 VIEWS OF THE BOARD – Assessment

3.1 Alberta Association of Municipal Districts & Counties (AAMD&C) and Alberta Federation of REA's Ltd. (AFREA)

AAMD&C submitted a cost claim totaling \$911.53 representing legal fees of \$850.00, disbursements of \$1.90, and GST of \$59.63. AFREA submitted a cost claim totaling \$1,890.59 representing legal fees of \$1,750.00, disbursements of \$16.90, and GST of \$123.69.

The Board has reviewed the claims submitted by AAMD&C and AFREA and is of the view that both claims must be denied. The Board notes that AAMD&C filed its review request in association with the AFREA and that both parties participated in the Congestion Management proceeding as members of the FIRM Group. These parties primarily relied upon the submissions of the Public Institutional Consumers Association (PICA) in support of their request for the review. By way of letter dated August 30, 2004, the Board granted a review of [UCO 2003-13](#) on the following limited grounds.

- Whether the Board made an error of law or jurisdiction by applying the Negotiated Settlement Guidelines (2003) rather than the Negotiated Settlement Guidelines (2001), which were applicable at the time of the CM proceeding.
- Did the Board commit an error of law or jurisdiction when it determined that the costs incurred by OEMI on behalf of SPPA should be treated solely as expert consultant costs rather than as a combination of general and expert consultant costs?

The Board observes that these interveners raised neither of these grounds in support of their collective request for a review and that their request for a review was effectively denied on the preliminary question. The Board finds that it is not in the public interest to require Alberta rate payers to bear the expenses associated with a review request of a cost order that is dismissed on the preliminary question. The Board finds that it is fair and reasonable to require the AAMD&C and the AFREA to bear their own limited review costs in this situation.

3.2 Senior Petroleum Producers Association (SPPA)/ Industrial Power Producers Society of Alberta (IPPSA)/ Industrial Power Consumers Association of Alberta (IPCAA)

SPPA, IPPSA, and IPCAA submitted one cost claim collectively totaling \$12,415.72. The claim included legal fees of \$3,300.00 for services provided by Faskin Martineau DuMoulin LLP and consulting fees of \$7,740.00 for Optimum Energy Management Inc. and \$504.00 for Stantec Consulting Ltd. (collectively, the Consultants).

The fees claimed relate solely to the review proceeding and not to matters related to the preliminary question. The Board recognizes that it was the grounds raised by these interveners that gave rise to the review hearing however it finds that the costs claimed are excessive given the nature and scope of the proceeding.

The Board notes that the matters raised by these interveners in support of their variance application were primarily legal in nature. The Board considers that the first ground raised required the consideration of regulatory instruments and the application of legal analysis to those instruments. With respect to the second ground, the Board finds that this was primarily a question of interpretation of [UCO 2003-13](#), also a matter that requires the application of legal principles and analysis. The Board therefore questions the necessity for the Consultants' involvement in the proceeding, other than to provide background information. Further, the Board is of the view that the issues raised are outside of the Consultants' area of expertise.

The Board finds that these interveners have not established the need for the Consultants' assistance on this matter. The Board therefore denies the costs claimed with respect to these services in their entirety pursuant to section 55(2)(g) of the *AEUB Rules of Practice*.

The Board finds that the fees and disbursements claimed on behalf of Faskin Martineau DuMoulin LLP to be reasonable and directs that they be approved in full.

4 GST

In accordance with the Board's treatment of the GST on cost awards, ESBI Alberta Ltd. (now Alberta Electric System Operator) 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 \$0.00 as shown in column (g) of [Appendix A](#).

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

THEREFORE, for and subject to the reasons set out in this Order, the Alberta Energy and Utilities Board, pursuant to the provisions of the *Public Utilities Board Act* and regulations thereunder, HEREBY ORDERS AS FOLLOWS:

1. Alberta Electric System Operator shall pay intervener costs in the amount of \$3,359.48, as set out in column (h) of [Appendix A](#).
2. Alberta Electric System Operator shall record in its Hearing Cost Reserve Account the allowed intervener costs in the amount of \$3,359.48, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 02 day of May, 2005.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



UCO 2005-022
Appendix A (Review of

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

**IPCAA, SPPA, IPPSA,
et. al.
Review of UCO 2003-13
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Total 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)
PARTICIPANTS								
Alberta Association of Municipal Districts & Counties								
Brownlee LLP	\$850.00	\$1.90	\$59.63	\$911.53	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$850.00	\$1.90	\$59.63	\$911.53	\$0.00	\$0.00	\$0.00	\$0.00
Alberta Federation of REAs Ltd.								
Sisson Warren Sinclair	\$1,750.00	\$16.90	\$123.69	\$1,890.59	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$1,750.00	\$16.90	\$123.69	\$1,890.59	\$0.00	\$0.00	\$0.00	\$0.00
Senior Petroleum Producers Association Independent Power Producers Society of Alberta Industrial Power Consumers Association of Alberta								
Optimum Energy Management Inc.	\$7,740.00	\$0.00	\$541.80	\$8,281.80	\$0.00	\$0.00	\$0.00	\$0.00
Stantec Consulting Ltd.	\$504.00	\$0.00	\$35.28	\$539.28	\$0.00	\$0.00	\$0.00	\$0.00
Fasken Marineau	\$3,300.00	\$59.48	\$235.16	\$3,594.64	\$3,300.00	\$59.48	\$0.00	\$3,359.48
Sub-Total	\$11,544.00	\$59.48	\$812.24	\$12,415.72	\$3,300.00	\$59.48	\$0.00	\$3,359.48
TOTAL PARTICIPANT COSTS								
	\$14,144.00	\$78.28	\$995.56	\$15,217.84	\$3,300.00	\$59.48	\$0.00	\$3,359.48