



# AltaGas Utilities Inc.

Debentures Application

Cost Awards

**ALBERTA ENERGY AND UTILITIES BOARD**

Utility Cost Order 2005-040: AltaGas Utilities Inc.

Debentures Application

Application No. 1376589

Cost Application No. 1389532

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# ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

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**AltaGas Utilities Inc.  
Debentures Application**

**Utility Cost Order 2005-040  
Application No. 1376589  
Cost Application No. 1389532**

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## 1 INTRODUCTION

On December 17, 2004, AltaGas Utilities Inc. (AltaGas) filed an application with the Alberta Energy and Utilities Board (EUB/Board) requesting approval to issue to AltaGas Utilities Holdings Inc. three particular debentures.

On January 19, 2005 the Board issued a Notice of Application inviting interested parties to register their objections, if any, by January 25, 2005. The Board also advised interested parties that in the event no bona fide objections were received by this date that the Board would proceed to process the application without further notice.

On January 25, 2005 the Board received an intervention from the Municipal and Gas Co-op Interveners (MGCI), and a joint submission from the Alberta Irrigation Projects Association (AIPA) and the Consumers' Coalition of Alberta (CCA) regarding AltaGas' application. No other signatories to the memorandum of agreement (MOA) provided submissions on AltaGas' debenture application.

On March 7, 2005 the Board issued [U2005-102](#).

On March 21, 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 April 4, 2005. 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 April 4, 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' 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 in relation to the value provided and directly and necessarily related to the party's participation in the proceeding.

### **3 VIEWS OF THE BOARD - Assessment**

#### **3.1 AltaGas Utilities Inc. (AltaGas)**

AltaGas submitted a cost claim totaling \$1,620.00 for external legal fees incurred by Ackroyd, Piasta, Roth & Day. The Board has reviewed the Statement of Justification, the legal account, and the submissions filed during the course of this proceeding.

The Board finds that the legal fees incurred are reasonable and commensurate with the level of contribution provided with respect to the issues before the Board. Accordingly the Board approves the legal fees in full.

#### **3.2 Municipal and Gas Co-op Interveners (MGCI)**

MGCI submitted a cost claim totaling \$1,544.94. The claim reflects legal fees incurred by Brownlee LLP in the amount of \$650.00, disbursements of \$6.36, and GST of \$45.95 for a total legal claim of \$702.31. The claim also reflects the professional fees incurred by Campbell Ryder Consulting Group in the amount of \$787.50 together with GST of \$55.13 for an overall consulting claim of \$842.63.

##### Brownlee LLP (Brownlee)

In considering Brownlee's portion of the cost claim, the Board has reviewed the Statement of Justification, the statement of account, and the submission which was filed with respect to the proceeding dated January 25, 2005. In that regard the Board notes the following from the Statement of Justification dated March 2, 2005.

Our involvement in this matter included performing the due diligence necessary to properly represent the interests of our client in this matter. This included reviewing the application and related documents, which included the Memorandum of Understanding dated March 2, 2004; comparing the methods proposed in the application with the principles outlined in the Memorandum of Understanding and assessing the appropriateness of the application. A letter providing our comments was sent to the Board on January 25, 2005. We also reviewed the letter

dated January 25, 2005 submitted on behalf of CCA and AIPA and the AltaGas Utilities Inc. reply dated February 2, 2005.

While the Board can appreciate that the activities reflected in the Statement of Justification greatly assisted MGCI, it must consider whether or not the activities directly and necessarily contributed to a better understanding of the issues before the Board. In this particular instance Brownlee's direct participation with the Board comprised of submitting a single letter dated January 25, 2005 to the Board. The contents of this letter have been reproduced below:

This letter is sent on behalf of the Municipal and Gas Co-op Interveners (MGCI) in response to the Board's request for comment on AltaGas Utilities Inc. Application 1376589 regarding approval to issue debentures.

The MGCI has reviewed this application and does not oppose it. The application appears to be consistent with Board Decision 2004-063 and the memorandum of agreement (MOA) approved therein.

In this particular instance the Board finds that the nature of these comments, particularly the advice that the application appears to be consistent with Board Decision [2004-063](#) and the MOA, does not directly and necessarily assist the Board. The Board has arrived at this determination for a number of reasons. First, the position advanced by MGCI is not definitive. Rather, MGCI indicates that it "appears" to support the Board's prior decision and the MOA. As such, the statement, on its own, provides little assistance to the Board. Second, and more significantly, the position presented by MGCI, such as it is, is not supported by any visible analysis or rationale. The Board may have been able to realize value and greater assistance from these comments had MGCI either outlined in their submission the specific reasons why they considered the debenture application to be consistent with the Board's prior decision, or provided the analysis prepared by their consultant.

The Board has also reviewed the legal account submitted with the cost claim and notes that \$62.50 is allocated to receipt and initial review of file and conducting and reviewing conflict searches. The Board recognizes that this is a standard charge made by most law firms, however, in considering the charge as it relates to a cost claim, the Board does not find that work associated with opening a file and conducting and reviewing conflict searches results in any type of benefit to the Board. As such the Board denies this particular charge.

The legal account also reflects activity performed after the filing of the comments. Specifically \$362.50 was incurred as a result of receiving e-mails regarding the submission of CCA/AIPA; various telephone attendances with Mr. Greg Garbutt; and receipt of correspondence from AltaGas commenting on the CCA/AIPA comments. The Board did not receive any further comments from counsel regarding this matter and therefore the Board did not realize any value from the activities performed by counsel after January 25, 2005. As such the Board finds that this particular portion of the account is related to monitoring activities which do not directly and necessarily assist the Board and the cost of these activities are therefore appropriately denied.

Taking all of the foregoing into account the Board reduces Brownlee's legal fees by \$425.00 thereby approving legal fees in the amount of \$225.00 together with disbursements in the amount of \$6.36 for an overall award of \$231.36.

Campbell Ryder Consulting Group (Campbell Ryder)

In considering Campbell Ryder's portion of the claim the Board has again considered the Statement of Justification, the comments of January 25, 2005, and Campbell Ryder's statement of account. In that regard the Board notes the following from the Statement of Justification.

Input was received from well known expert consultants Campbell Ryder. Campbell Ryder is retained by our client to assist in the review and assessment of filings. Input from Campbell Ryder was received to ensure that the interests of our client were protected.

The Board recognizes the experience that Campbell Ryder brings to applications that are before the Board, however, in this particular instance the Board must note that it was not aware of the input described in the Statement of Justification. The comments filed by MGCI's counsel did not include any supporting materials made by this expert consultant.

In reviewing the statement of account the Board has determined that Campbell Ryder was charged with the following responsibility.

Reviewing the application and related documents, including the Memorandum of Understanding dated March 23, 2004;

comparing the methods proposed in the application with the principles outlined in the Memorandum of Understanding and assessing appropriateness of the application;

drafting and forwarding to the Board a letter of January 25 commenting on this matter<sup>1</sup>

The Board has considered the participation of Campbell Ryder in so far as it is described in the noted account and considers a total of 4.5 hours to be unreasonable and excessive given the limited value of their contribution to a better understanding of the issues before the Board.

The Board finds it difficult to justify why the drafting of the January 25 comments was required by both an expert consultant and a senior lawyer given the overall general nature of the comments. It is the Board's view that this type of letter should only require the attention of either the lawyer or consultant in terms of drafting, not both. In that regard the Board notes that Brownlee has received costs incurred for this activity.

Moreover, the Board finds it difficult to determine whether a reasonable amount of time was spent on the reviewing and comparing activities as the entries in the account do not provide an allocation of the time incurred. In that regard the Board notes the recent update to Guide 31B, in particular Part 1 of Appendix C, which states in part the following.

Statements of account must include the following:

- the date of activity undertaken;
- a description of the activity undertaken; and
- the time incurred with respect to each described service.

Taking all of the foregoing into account the Board finds it appropriate to reduce Campbell Ryder's fees by 50%. Therefore the Board approves fees in the amount of \$393.75.

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<sup>1</sup> Campbell Ryder statement of account dated March 1, 2005



### 3.3 Alberta Irrigation Projects Association (AIPA) and the Consumers' Coalition of Alberta (CCA)

As the Board did not receive any cost submission from either of AIPA or CCA, no costs are awarded to these entities in respect of their participation in the proceeding.

## 4 GST

In accordance with the Board's treatment of the GST on cost awards, AltaGas 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. AltaGas Utilities Inc. shall pay intervener costs in the amount of \$625.11, as set out in column (h) of [Appendix A](#).
2. AltaGas Utilities Inc.'s external costs in the amount of \$1,620.00, as set out in column (h) of [Appendix A](#), are approved.
3. AltaGas Utilities Inc. shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$2,245.11, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 20th day of June, 2005.

### ALBERTA ENERGY AND UTILITIES BOARD

Thomas McGee  
Board Member

## **APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED**



UCO 2005-040  
Appendix A (AltaGas)

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**AltaGas  
Cost App No. 1389532  
Debenture Application**

**Summary of 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 (d)	Total Amount Awarded (e)
<b>APPLICANT</b>								
AltaGas Utilities Inc.								
Ackroyd, Piasta, Roth & Day	\$1,620.00	\$0.00	\$0.00	\$1,620.00	\$1,620.00	\$0.00	\$0.00	\$1,620.00
Sub-Total	\$1,620.00	\$0.00	\$0.00	\$1,620.00	\$1,620.00	\$0.00	\$0.00	\$1,620.00
<b>INTERVENERS</b>								
Municipal and Gas Co-op Intervenors								
Brownlee LLP	\$650.00	\$6.36	\$45.95	\$702.31	\$225.00	\$6.36	\$0.00	\$231.36
Campbell Ryder Consulting Group	\$787.50	\$0.00	\$55.13	\$842.63	\$393.75	\$0.00	\$0.00	\$393.75
Sub-Total	\$1,437.50	\$6.36	\$101.08	\$1,544.94	\$618.75	\$6.36	\$0.00	\$625.11
<b>TOTAL INTERVENER COSTS</b>								
	\$1,437.50	\$6.36	\$101.08	\$1,544.94	\$618.75	\$6.36	\$0.00	\$625.11
<b>TOTAL INTERVENER AND APPLICANT COSTS</b>								
	\$3,057.50	\$6.36	\$101.08	\$3,164.94	\$2,238.75	\$6.36	\$0.00	\$2,245.11