



ATCO Gas South

2005/2006 Carbon Storage Plan
Preliminary Questions

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2005-070: ATCO Gas South
2005/2006 Carbon Storage Plan – Preliminary Questions
Application No. 1357130
Cost Application No. 1399267

Published by

Alberta Energy and Utilities Board
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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

ATCO Gas South
2005/2006 Carbon Storage Plan
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1 INTRODUCTION

On August 16, 2004, ATCO Gas South (AGS) submitted an application to the Alberta Energy and Utilities Board (Board / EUB) regarding the 2005/2006 Carbon Storage Plan. During the course of the proceeding only the Consumers Group and the Utilities Consumer Advocate (collectively the CG) and the City of Calgary (Calgary) had filed intervener submissions.

The panel assigned to deal with the application consisted of B.T. McManus, Q.C. (Presiding Member), C. Dahl Rees, LL.B., (Acting Member), and J.I. Douglas, FCA, (Member). On June 15, 2005 the Board issued Decision [2005-063](#).

On May 4, 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 May 19, 2005. The Board did not receive any comments.

By way of e-mail dated August 29 and August 30, 2005 Board staff invited Calgary and AGS to comment on the issue of computer searches, specifically Quicklaw, and the eligibility of cost recovery for such overhead expenses. Each party was also advised of the Board's concern regarding specific entries with respect to their legal accounts and provided each party with an opportunity to provide a revised cost claim or comments. The Board received a revised cost claim from AGS on September 9, 2005 and from Calgary on October 18, 2005.

Accordingly, the Board considers, for the purposes of this Cost Order, the cost process to have closed on October 18, 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 \$559,791.08 including actual GST of \$24,784.11 with respect to the Proceeding.

3 VIEWS OF THE BOARD – Assessment

3.1 Aboriginal Communities (Abcomm)

Abcomm submitted a cost claim consisting of consulting fees incurred by Jim Graves in the amount of \$1,282.50 and representing 13.5 hours of preparation.

In considering the cost claim the Board notes that the record for this particular matter closed on March 23, 2005 when the Board provided interested parties with notice that it was now considering the Preliminary Questions and would be issuing its decision in due course. In the Board's letter of March 23, 2005, parties were advised that given the length of time that passed since the filing of the Application, and the modular nature of the proceeding, it was appropriate for parties to submit cost claims reflecting the costs incurred to date. Accordingly, cost claims were due April 22, 2005, 30 days following the Board's March 23, 2005 letter.

Mr. Graves filed Abcomm's claim on May 15, 2005 indicating that Abcomm was unaware that the cost claims had been requested until he had received the Board's circulation of the costs being claimed on May 4, 2005.

It is the Board's view that Mr. Graves, as Abcomm's representative, is responsible for following the process before the Board to ensure that the cost claim on behalf of his client is filed in accordance with the Board's rules and guidelines.

The Board notes that Mr. Graves' cost claim has been denied in the past due to insufficient justification warranting a late filing¹. It is the Board's view that Mr. Graves is aware that cost claims not received within the 30-day period are not considered unless special circumstances exist.

In light of the Board's notification that it was considering the Preliminary Questions and issuing a decision is due course as well as advising that cost claims should be filed for costs incurred to date, given Mr. Graves' experience and expertise, and given the Board's previous decision with respect Mr. Graves' late filing, the Board finds that the justification provided does not warrant consideration of a late filing in this instance. Accordingly the Board denies the Abcomm cost claim in full.

3.2 The City of Calgary (Calgary)

Calgary submitted a cost claim totaling \$347,413.55 comprising of legal fees and various consulting fees as well as disbursements, all of which is outlined in Appendix A attached.

Burnet, Duckworth & Palmer (BDP)

BDP's portion of the claim includes legal fees in the amount of \$213,459.50, disbursements of \$5,739.82, and GST of \$15,010.32. Subject to the comments below, the Board notes that all fees have been claimed within the prescribed Scale of Costs and the disbursements have also been claimed in accordance with Guide 31B.

The Board notes that 8.1 hours of time (\$2,025.00) incurred by Mr. Brander are with respect to appeal and R&V work². It is the Board's view that services provided for this type of work are not normally directly and necessarily related to assisting the Board with the issues in the proceeding before it. Mr. Brander provided the following comments with respect to this issue³.

With respect to the references to "R&V" on certain time entries in May 2004, those time entries relate to the examination by Calgary, the Utilities Consumer Advocate ("UCA") and the Consumer Group ("CG") of the best way to deal with the jurisdictional issues arising out of Decision 2004-022. At that time, as the Board is aware, ATCO Gas South had already filed its application for Leave to Appeal Decision 2004-022. Calgary, the UCA and the CG were then faced with deciding on the best approach to dealing with the jurisdictional issues, and how to allocate activities. The options considered available were to rely solely on the Appeal process, apply for an R&V of Decision 2004-022 to address jurisdictional issues, or to bring an application for a separate proceeding to address Carbon jurisdiction.

Calgary undertook the review of the pros and cons of the options for consideration by the intervenor group. The references to "R&V", therefore, relate to consideration of whether an R&V of Decision 2004-022 would be an effective way of addressing the jurisdictional issue. The intervenor group eventually decided that an R&V was not an effective way of addressing the issues and, instead, decided that Calgary would take the lead on the AGS Leave to Appeal, while the UC/CG would take the lead in bringing an application before the Board for a separate jurisdictional proceeding.

¹ UCO 2005-007

² Statement of Account dated November 3, 2004 (page 2)

³ Letter to EUB dated September 12, 2005

In the circumstances of this case Calgary considers that the time spent in reviewing alternative courses of action is a legitimate cost for consideration by the Board.

The Board has considered the comments provided by Mr. Brander and finds that the costs are inappropriate and not directly related to the matters considered by the Board with respect to the present proceedings. Accordingly, these costs are denied (\$2,025.00).

With respect to Quicklaw searches totaling \$4,118.64 the Board notes Mr. Brander's advice that arrangements are in place where monthly flat rates are paid for the on-line search capability by Burnet Duckworth & Palmer. The amounts provided for in the cost claim are based on a pro-rata share of the flat rates incurred by a particular matter. Calgary does not consider these costs to be "overhead" in the same sense as rent or administrative support staff, but rather discretionary costs incurred by the firm to increase efficiency.

While the Board may reconsider cost recovery for this type of charge at a later date it does approve the Quicklaw expense in this instance together with the remaining expenses being claimed on the basis that these costs resulted in overall efficiencies and cost savings.

Taking all of the foregoing into account the Board approves legal fees in the amount of \$211,434.50, expenses in the amount of \$5,739.82, and applicable GST in the amount of \$6,515.66, for an overall award of \$223,689.98.

Sproule Associates Ltd. (Sproule)

Sproule's portion of the claim included consulting fees in the amount of \$16,679.79 and disbursements of \$3,604.64. The Board notes that all fees have been claimed within the prescribed Scale of Costs and does not take issue with that portion of the claim.

The Board does however take issue with the disbursement claim of \$3,335.96 for computer services. BDP staff advised the Board that this charge is a flat rate of 20% of the fees incurred and is common practice for an engineering firm. In considering this portion of the claim the Board is mindful of the prescribed Scale of Costs which states in part the following:

Fees of Consultants, Analysts, and Experts

The Board recognizes that the above professionals may not include the costs of secretarial work in their fees and thus may recognize a claim for secretarial or clerical services. However, the Board will not recognize claims for overhead based upon percentages of the fees or disbursements claimed.

The Board does not find this portion of the disbursements has been claimed in accordance with Guide 31B and is therefore disallowed.

Taking the foregoing into account the Board approves consulting fees in the amount of \$16,679.79 and disbursements in the amount of \$268.68. The Board notes that no GST has been claimed for Sproule and accordingly no GST is awarded on the approved fees and disbursements.

3.3 ATCO Gas South (AGS)

AGS submitted a claim totaling \$144,882.09 comprising of legal fees incurred by Bennett Jones in the amount of \$142,682.50 and disbursements in the amount of \$1,455.89. AGS also claims its own transcript expenses in the amount of \$743.70.

The Board requested AGS to provide comments on the issue of on-line search expenses and entries in the Bennett Jones legal account relating to Court of Appeal matters, Stay Application, and with respect to preparation of the cost claim. AGS reviewed the cost claim and submitted a revised claim excluding costs incurred in relation to the cost claim and provided the following comments on Court of Appeal matters and the Stay Application.

... AGS made every attempt to ensure that the costs incurred as a result of its appeal of Board Decision 2004-022 were excluded from this cost claim.

In AGS' view, the costs incurred as a result of filing the Stay Application for is 2005/06 Carbon Storage Plan are prudently incurred costs that are validly part of the cost claim associated with the Carbon Proceeding.

AGS filed the Stay Application relating to the Carbon Proceeding in order to ensure that no additional costs associated with the Carbon Proceeding would be incurred pending the Court of Appeal decision relating to Carbon. Since the Court of Appeal decision had the potential to render the Application a nullity, AGS considered it prudent and necessary to apply for the Stay.

It should be emphasized that the costs incurred, the motions, affidavits and so forth were all related to a matter raised with the Board and not the Courts. They were part and parcel of the process ongoing before the Board and were intended to avoid unnecessary expenditures of time and money as more fully detailed in the actual Stay Application presented to the Board under cover of AGS' counsel's letter dated March 8, 2005. Moreover, the Stay Application was not a review or appeal of a Board decision; rather, it was a pause in light of a collateral development.

The Board has considered the comments provided by AGS and finds the costs related to the Stay Application to be appropriate and the costs will be allowed. The Board also recognizes that costs associated with appeal work have not been claimed through this cost application.

The Board also approves, in this instance, the on-line search expenses incurred in the amount of \$105.31 together with the remaining expenses being claimed on the basis that these costs resulted in overall efficiencies and cost savings. The Board may reconsider cost recovery for this type of charge at a later date.

Taking all of the foregoing into account the Board approves legal fees in the amount of \$142,682.50 and disbursements in the amount of \$1,455.89 together with transcript expenses in the amount of \$743.70 for an overall award of \$144,882.09.

3.4 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 [Guide 31B](#). 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](#) to this Order in the total amount of \$541,835.36.

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 \$13,471.85 as shown in column (g) of [Appendix A](#). The GST allowed by the Board may also 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 \$396,953.27, as set out in column (h) of [Appendix A](#).
2. ATCO Gas South's external costs in the amount of \$144,882.09, 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 \$541,835.36, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 12th day of December, 2005.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A (AGS
2005-2006 Carbon St

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

**AGS
2005-06 Carbon Storage Plan - Preliminary Question
(1357130)**

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 (g)	Total Amount Awarded (h)
APPLICANT								
ATCO Gas South								
ATCO Gas	\$0.00	\$743.70	\$0.00	\$743.70	\$0.00	\$743.70	\$0.00	\$743.70
Bennett Jones LLP	\$142,682.50	\$1,455.89	\$0.00	\$144,138.39	\$142,682.50	\$1,455.89	\$0.00	\$144,138.39
Sub-Total	\$142,682.50	\$2,199.59	\$0.00	\$144,882.09	\$142,682.50	\$2,199.59	\$0.00	\$144,882.09
INTERVENERS								
Aboriginal Communities								
Graves Engineering	\$1,282.50	\$0.00	\$0.00	\$1,282.50	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$1,282.50	\$0.00	\$0.00	\$1,282.50	\$0.00	\$0.00	\$0.00	\$0.00
Alberta Urban Municipalities Association								
Bryan & Company	\$36,287.50	\$280.17	\$2,559.73	\$39,127.40	\$36,287.50	\$280.17	\$2,559.73	\$39,127.40
Robert L. Bruggeman Regulatory Consulting Ltd.	\$1,312.50	\$1.08	\$91.96	\$1,405.54	\$1,312.50	\$1.08	\$91.96	\$1,405.54
Liddle Engineering Ltd.	\$24,000.00	\$0.00	\$1,680.00	\$25,680.00	\$24,000.00	\$0.00	\$1,680.00	\$25,680.00
Sub-Total	\$61,600.00	\$281.25	\$4,331.69	\$66,212.94	\$61,600.00	\$281.25	\$4,331.69	\$66,212.94
The City of Calgary								
Burnet, Duckworth & Palmer	\$213,459.50	\$5,739.82	\$15,010.32	\$234,209.64	\$211,434.50	\$5,739.82	\$6,515.66	\$223,689.98
Energy Group Inc.	\$47,428.13	\$0.00	\$2,645.95	\$50,074.08	\$47,428.13	\$0.00	\$1,422.94	\$48,851.07
Energy Objective	\$9,225.00	\$0.00	\$645.75	\$9,870.75	\$9,225.00	\$0.00	\$276.77	\$9,501.77
Sproule Associates Ltd.	\$16,679.79	\$3,604.64	\$0.00	\$20,284.43	\$16,679.79	\$268.68	\$0.00	\$16,948.47
Stephen Johnson	\$30,720.00	\$104.25	\$2,150.40	\$32,974.65	\$30,720.00	\$104.25	\$924.79	\$31,749.04
Sub-Total	\$317,512.42	\$9,448.71	\$20,452.42	\$347,413.55	\$315,487.42	\$6,112.75	\$9,140.16	\$330,740.33
TOTAL INTERVENER COSTS	\$380,394.92	\$9,729.96	\$24,784.11	\$414,908.99	\$377,087.42	\$6,394.00	\$13,471.85	\$396,953.27
TOTAL INTERVENER AND APPLICANT COSTS	\$523,077.42	\$11,929.55	\$24,784.11	\$559,791.08	\$519,769.92	\$8,593.59	\$13,471.85	\$541,835.36