



## **ATCO Gas South**

**Removal of Carbon Related Assets from Utility Service**

**Cost Awards**



**ALBERTA UTILITIES COMMISSION**

Decision 2010-620: ATCO Gas South

Removal of Carbon Related Assets from Utility Service

Application No. 1579086

Cost Proceeding ID. 842

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## **1 INTRODUCTION**

1. The Alberta Utilities Commission (AUC or Commission) received an application on July 11, 2008 (Application) from ATCO Gas South (ATCO or AGS), a division of ATCO Gas and Pipelines Ltd., requesting that the Commission to set aside Order [U2005-133](#)<sup>1</sup>, and Decisions [2005-063](#)<sup>2</sup> and [2007-005](#)<sup>3</sup> of the Alberta Energy and Utilities Board (EUB or Board). ATCO requested the Commission grant a new order implementing the findings of the Alberta Court of Appeal in a Decision issued May 27, 2008 (Carbon Appeal Decision). The Carbon Appeal Decision dealt with the Carbon natural gas storage facility and associated gas producing properties (collectively, Carbon) owned and operated by ATCO that had been included within the regulated rate base of ATCO.

2. SIPs were received from the Office of Utilities Consumer Advocate (UCA), BP Canada Energy Company (BP Canada), The City of Calgary (Calgary) and the Public Institutional Consumers of Alberta (PICA).

3. The first decision in this proceeding (Proceeding), Decision [2009-004](#)<sup>4</sup>, was issued on January 9, 2009, it dealt with the scoping of the proceeding and established the Final Issues List.

4. On June 26, 2009, the Commission issued its second decision in this Proceeding, Decision [2009-067](#)<sup>5</sup>, which dealt with certain preliminary questions requiring consideration.

5. Utility Cost Order [2009-047](#)<sup>6</sup> (UCO 2009-047) was issued on November 6, 2009, and an Errata to that Cost Order was issued on November 30, 2009. UCO 2009-047 and UCO2009-047 (Errata) related to all costs incurred in connection with the Application up to and including Decision 2009-067.

6. The Commission received a request from ATCO on July 3, 2009 for approval to enter into a negotiated settlement with respect to the outstanding matters related to the Application. On

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<sup>1</sup> Order U2005-133: ATCO Gas South, 2005/2006 Carbon Storage Plan Interim Order (Application No. 1357130) (Released: March 23, 2005).

<sup>2</sup> Decision 2005-063: ATCO Gas South, 2005/2006 Carbon Storage Plan – Preliminary Questions (Application No. 1357130) (Released: June 15, 2005).

<sup>3</sup> Decision 2007-005: ATCO Gas South, Carbon Facilities – Part 1 Module – Jurisdiction (2005/2006 Carbon Storage Plan) (Application No. 1357130) (Released: February 5, 2007).

<sup>4</sup> Decision 2009-004: ATCO Gas South, Removal of Carbon Related Assets from Utility Service Pre-hearing Conference Scoping Decision (Application No. 1579086, Proceeding ID. 87) (Released: January 9, 2009).

<sup>5</sup> Decision 2009-067: ATCO Gas South, Removal of Carbon Related Assets from Utility Service, Preliminary Questions (Application No. 1579086, Proceeding ID. 87) (Released: June 26, 2009).

<sup>6</sup> UCO 2009-047(Errata): ATCO Gas South, Removal of Carbon Related Assets from Utility Service Pre-hearing Conference Scoping Decision (Application No. 1579086, Proceeding ID. 87) (Released: November 30, 2009).

September 21, 2009, ATCO advised the Commission that the negotiated settlement process had been terminated as the likelihood of reaching a settlement was very low.

7. Utility Cost Order [2010-015](#)<sup>7</sup> (UCO 2010-015) was issued on March 3, 2010 which included all costs incurred after Decision 2009-067 was issued on June 26, 2009 and up to and including the termination of settlement negotiations on September 21, 2009.

8. The Commission held an oral hearing on June 28, 2010 in Edmonton, Alberta before W. Grieve (Chair), Commissioners Dr. M. A. Yahya, and T. Beattie Q.C.

9. On October 19, 2010, the Commission issued the last decision in this Proceeding, Decision [2010-496](#)<sup>8</sup>.

10. This Cost Decision includes all costs incurred after the termination of settlement negotiations on September 21, 2009 up to and including the release of Decision 2010-496 on October 19, 2010.

11. On September 15, 2010 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 September 29, 2010. The Commission did not receive any comments. Accordingly, the Commission considers the cost process to have closed on September 29, 2010.

## **2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS**

12. In assessing a cost claim pursuant to section 21 of the *Alberta Utilities Commission Act* (AUC Act), the Commission applies Rule 022, *Rules on Intervener Costs* (Rule 022). Rule 022 as amended effective October 1, 2008 but the amendments do not apply to applications like the present one that were filed prior to that date. The Commission has assessed the costs claimed in respect of the Application in accordance with Rule 022 and the *Scale of Costs* in place at the time of this Application.

13. In exercising its discretion to award costs, the Commission will, in accordance with section 11 of Rule 022, consider whether an eligible participant acted responsibly and contributed to a better understanding of the issues before the Commission, and whether the costs claimed are reasonable and directly and necessarily related to the proceeding. The Commission considers these factors in light of the scope and nature of the issues in question.

14. In the Commission's view, the responsibility to contribute positively to the process is inherent in the choice to intervene in a proceeding. The Commission 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. To the extent reasonably possible, the Commission will be mindful of participants' willingness to co-operate

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<sup>7</sup> UCO 2010-015: ATCO Gas South, Removal of Carbon Related Assets from Utility Service Negotiated Settlement Process (Application No. 1579086, Proceeding ID. 87) (Released: March 3, 2010).

<sup>8</sup> Decision 2010-496: ATCO Gas South, Removal of Carbon Related Assets from Utility Service (Application No. 1579086, Proceeding ID. 87) (Released: October 19, 2010).

with the Commission and other participants to promote an efficient and cost-effective proceeding.

15. As the costs of a utility proceeding are generally passed on to customers, it is the Commission's duty to ensure that customers receive fair value for a party's contribution. As such, the Commission only approves those costs that are reasonable and directly and necessarily related to the party's participation in the proceeding.

### **3 VIEWS OF THE COMMISSION – ASSESSMENT**

16. Various participants submitted cost claims totaling \$185,383.11 with respect to the Proceeding.

#### **3.1 ATCO Gas South**

17. ATCO Submitted a cost claim totaling \$61,448.46. The claim is comprised of legal fees incurred by Bennett Jones LLP in the amount of \$54,167.00, together with disbursements of \$1,170.82; consulting fees incurred by Richard G. DeWolf Consulting Limited in the amount of \$4,250.00; and internal costs in the amount of \$1,860.64 for Transcripts.

18. The Commission has considered the costs submitted by ATCO. The Commission finds that the participation of ATCO was effective and of assistance in reviewing the Application. The Commission notes the scope and complexity of the issues before it and the extent of the examination thereof. The Commission also notes that the claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission considers ATCO's claims for fees and disbursements in the total amount of \$61,448.46 to be reasonable.

#### **3.2 The City of Calgary**

19. Calgary submitted a cost claim totaling \$111,075.15. The claim is comprised of legal fees incurred by Burnet, Duckworth & Palmer in the amount of \$76,462.50, together with disbursements of \$2,860.94; and consulting fees incurred by Stephen Johnson in the amount of \$31,125.00, together with disbursements of \$626.71.

20. The Commission notes that Calgary claimed in excess of the Commission's *Scale of Costs* for an articling student from Burnet, Duckworth & Palmer. Scott Tallman claimed 68.5 hours at the hourly rate of \$140.00 (\$9,590.00). The applicable *Scale of Costs* allows for articling students to claim a maximum of \$90, which for 68.5 hours results in a total of \$6,165.00.

21. The Statement of Justification submitted with the cost claim did not provide a sufficient basis to justify a rate above the *Scale of Costs*. The Commission considers the claim for Burnet, Duckworth & Palmer, reduced in accordance with Rule 22 and the applicable *Scale of Costs*, and approves the reduced amount of \$75,898.44.

22. Taking the foregoing into account, the Commission approves Calgary's cost claim, including \$3,487.65 in disbursements in the total amount of \$107,650.15.

### 3.3 Public Institutional Consumers of Alberta

23. PICA submitted a cost claim totaling \$12,859.50. The claim is comprised of consulting fees incurred by Energy Management & Regulatory Consulting Ltd. in the amount of \$11,700.00, together with disbursements of \$1,159.50.

24. The Commission has considered the cost submitted by PICA. The Commission finds that the participation of PICA was effective and of assistance in reviewing the Application. The notes that the claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission considers PICA's claims for fees and disbursements in the total amount of \$12,859.50 to be reasonable.

## 4 GST

25. In accordance with the Commission's treatment of the GST on cost awards, ATCO 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 Commission has reduced this particular portion of their claim. Eligible GST approved by the Commission amounts to \$0.00.

26. The Commission 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 \$120,509.65, as set out in column (h) of [Appendix A](#).
2. ATCO Gas South external costs in the amount of \$61,448.46, 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 \$181,958.11, as set out in column (h) of [Appendix A](#).

Dated on December 23, 2010.

**ALBERTA UTILITIES COMMISSION**

*(Original signed by)*

Willie Grieve  
Chair



*(Original signed by)*

Tudor Beattie Q.C.  
Commissioner

*(Original signed by)*

Moin A. Yahya  
Commissioner

## APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A.xls

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ATCO Gas South  
Cost Proceeding ID. 842

Removal of Carbon Assets from Utility Service  
(1579086)

Total Costs Claimed

	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	\$54,167.00	\$1,170.82	\$0.00	\$55,337.82	\$54,167.00	\$1,170.82	\$0.00	\$55,337.82
Richard G. DeWolf Consulting Limited	\$4,250.00	\$0.00	\$0.00	\$4,250.00	\$4,250.00	\$0.00	\$0.00	\$4,250.00
ATCO Gas	\$0.00	\$1,860.64	\$0.00	\$1,860.64	\$0.00	\$1,860.64	\$0.00	\$1,860.64
<b>Sub-Total</b>	<b>\$58,417.00</b>	<b>\$3,031.46</b>	<b>\$0.00</b>	<b>\$61,448.46</b>	<b>\$58,417.00</b>	<b>\$3,031.46</b>	<b>\$0.00</b>	<b>\$61,448.46</b>
<b>INTERVENERS</b>								
<b>The City of Calgary</b>								
Burnet, Duckworth & Palmer	\$76,462.50	\$2,860.94	\$0.00	\$79,323.44	\$73,037.50	\$2,860.94	\$0.00	\$75,898.44
Stephen Johnson	\$31,125.00	\$626.71	\$0.00	\$31,751.71	\$31,125.00	\$626.71	\$0.00	\$31,751.71
<b>Sub-Total</b>	<b>\$107,587.50</b>	<b>\$3,487.65</b>	<b>\$0.00</b>	<b>\$111,075.15</b>	<b>\$104,162.50</b>	<b>\$3,487.65</b>	<b>\$0.00</b>	<b>\$107,650.15</b>
<b>Public Institutional Consumers of Alberta</b>								
Energy Management & Regulatory Consulting Ltd.	\$11,700.00	\$1,159.50	\$0.00	\$12,859.50	\$11,700.00	\$1,159.50	\$0.00	\$12,859.50
<b>Sub-Total</b>	<b>\$11,700.00</b>	<b>\$1,159.50</b>	<b>\$0.00</b>	<b>\$12,859.50</b>	<b>\$11,700.00</b>	<b>\$1,159.50</b>	<b>\$0.00</b>	<b>\$12,859.50</b>
<b>TOTAL INTERVENER COSTS</b>								
	<b>\$119,287.50</b>	<b>\$4,647.15</b>	<b>\$0.00</b>	<b>\$123,934.65</b>	<b>\$115,862.50</b>	<b>\$4,647.15</b>	<b>\$0.00</b>	<b>\$120,509.65</b>
<b>TOTAL INTERVENER AND APPLICANT COSTS</b>								
	<b>\$177,704.50</b>	<b>\$7,678.61</b>	<b>\$0.00</b>	<b>\$185,383.11</b>	<b>\$174,279.50</b>	<b>\$7,678.61</b>	<b>\$0.00</b>	<b>\$181,958.11</b>