



AltaGas Utilities Inc.

**Review and Variance of Alberta Energy and Utilities Board
Utility Cost Order 2008-024**

October 7, 2008



ALBERTA UTILITIES COMMISSION

Decision 2008-097: AltaGas Utilities Inc.

Review and Variance: Utility Cost Order 2008-024

Application No. 1575516

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**ALTAGAS UTILITIES INC.
REVIEW AND VARIANCE OF
ALBERTA ENERGY AND UTILITIES BOARD
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1 INTRODUCTION

On April 30, 2008, the Alberta Energy and Utilities Board (EUB or Board), the predecessor to the Alberta Utilities Commission (AUC or Commission), released Utility Cost Order 2008-024 respecting cost awards for AltaGas Utilities Inc. (AUI or the Applicant) 2007 General Rate Application (GRA) Phase I.

On May 30, 2008, the Commission received an application for a review and variance of Utility Cost Order 2008-024 (R&V Application) from AUI with respect to the Board's decision to reject \$41,995.00 in consulting costs.

The Commission issued notice of the R&V Application on June 13, 2008 and established a deadline of June 27, 2008 for interested party submissions and July 11, 2008 for reply submission from AUI. No submissions were received by the Commission. Therefore, the Commission considers the record of this proceeding to have closed on July 11, 2008.

2 BACKGROUND AND UTILITY COST ORDER 2008-024

On December 29, 2006, AUI submitted a 2007 GRA Phase I with the Board. The Application was considered by way of an oral hearing. The hearing was held in Edmonton from August 8 to August 10, 2007. On December 11, 2007 the Board issued Decision 2007-094.

On October 29, 2007, a summary of the costs being claimed was circulated to interested parties. Parties were advised that any comments regarding costs claims were to be filed on November 5, 2007. The Board did not receive any comments. Accordingly, the Board considered, the cost process, for the purposes of Utility Cost Order 2008-024, to have closed on November 5, 2007.

2.1 AUI Budget Submission

On June 6, 2007, AUI submitted its budget for legal and consulting costs. AUI budgeted legal fees of \$261,375.00 for Stikeman Elliott LLP (Stikeman Elliot), consulting fees of \$174,550.00, transcripts and other incidental fees of \$2,750.00. In its Budget Submission, AUI named KPMG LLP (KPMG) and Gannett Fleming Consultants (Gannett Fleming) as AUI's general consultants. AUI's budgeted consulting fees were broken down into consultant costs incurred prior to the hearing (\$129,000.00) and costs during the hearing (\$45,550.00) for KPMG and Gannett Fleming. In its Budget Submission, AUI apportioned \$40,000.00 of its consultant costs during the hearing to KPMG and \$5,550.00 of its consultant costs during the hearing to Gannett Fleming. AUI did not provide a break down of consultant costs incurred prior to the hearing.

2.2 AUI Cost Submission

AUI submitted a cost claim totaling \$275,062.57. The claim was comprised of legal fees incurred by Stikeman Elliott in the amount of \$117,892.60, together with disbursements of \$1,779.60. AUI's cost claim was also comprised of consulting fees incurred by Chymko Consulting Ltd. (Chymko) in the amount of \$6,583.75, consulting fees incurred by Gannett Fleming in the amount of \$10,792.93 and consulting fees incurred by KPMG in the amount of \$121,995.00, together with disbursements of \$4,139.80. AUI also claimed disbursements of \$11,878.89.

2.3 Utility Cost Order 2008-024

In Utility Cost Order 2008-024, the Board denied AUI consulting costs in the amount of \$41,995.00. The Board's reasoning was two-fold.

First, the Board was of the view that AUI budgeted consulting fees of \$129,000.00 for Chymko, \$40,000.00 for KPMG, and \$5,550.00 for Gannett Fleming. Given that Chymko had not been identified in AUI's Budget Submission, the Board assumed that the \$129,000.00 for consulting costs prior to the hearing that had not been apportioned between KPMG and Gannett Fleming was for Chymko. As such, the Board found that the \$121,995.00 claimed for KPMG greatly exceeded AUI's budget.

Second, the Board found that the KPMG review was not a fully independent study, in terms of analyzing all salary and position information through KPMG's own review and assessment, but rather relied on information from AUI's management.¹

Given the foregoing, the Board found that a cost award of \$80,000.00 in consulting fees, plus disbursements, to be reasonable and commensurate with the value received from KPMG's evidence.

2.4 Grounds For Review and Remedy Sought

Relying on AUC Rule 016, the Applicant argued that the Board erred in rejecting \$41,995.00 in consulting costs. In particular, the grounds raised by the Applicant in the R&V Application were as follows:

1. AUI did not budget \$129,000.00 for Chymko Consulting Ltd. In the Budget Submission, AUI showed that \$129,000.00 of consultant costs were budgeted to be incurred prior to the hearing. In fact, the majority of these costs were related to the work performed by KPMG (approximately \$118,110.00) and the balance of the \$129,000.00 was related to Gannett Fleming (\$10,800.00).
2. AUI did not budget \$40,000 for KPMG LLP. In total, AUI's Budget Submission included \$158,100.00 for KPMG LLP, \$40,000 of which was expected to be incurred for the portion of the GRA process after the hearing commenced.

¹ Alberta Energy and Utilities Board Decision 2007-094, page 63.

3. AUI did not budget \$5,550.00 for Gannett Fleming. In total, AUI's Budget Submission included \$16,450.00 of costs related to Gannett Fleming.²

In its R&V Application, AUI's submits that of the total \$174,550.00 budget consultant costs, \$158,100.00 was apportioned to KPMG LLP, not \$40,000.00.

3 RESPONSES FROM INTERESTED PARTIES

On June 13, 2008, the Commission notified interested parties of the R&V Application and provided them with an opportunity to comment, before June 27, 2008, prior to the Commission determining the preliminary question of whether Utility Cost Order 2008-024 should be reviewed. No submissions were received.

3.1 Reply by Applicants

The Applicant was provided with an opportunity to file a reply submission on July 11, 2008 to any comments received by interested parties. As no comments were received, the Applicant did not file a reply submission.

4 DECISION

4.1 Grounds for Review

The Commission has considered AUI's application for review and variance of Utility Cost Order 2008-024. On an application for review and variance, the Commission must decide the preliminary question of whether the decision made by it should be reviewed as requested in the application for review and variance. In making its decision on the preliminary question, the Commission has applied the test set out in section 12(a)(i) of AUC Rule 016, *Review and Variance of Commission Decisions* which states:

- 12 The Commission shall grant an application for review,
 - (a) with respect to a review of a decision, other than review under section 4(1), if the Commission determines that;
 - (i) in the case where the applicant has alleged an error of law or jurisdiction or an error of fact, in the Commission's opinion, the applicant has raised a substantial doubt as to the correctness of the decision

Therefore, the Commission has scrutinized Utility Cost Order 2008-024 and has reviewed the budget and cost submissions of AUI to determine whether AUI has raised a substantial doubt as to the correctness of Utility Cost Order 2008-024.

² AltaGas Utilities Inc. Review and Variance Application May 30, 2008, page 1.

4.2 Findings of the Commission

In its Application, AUI asserts that the Board “relied, at least in part, on the mistake of fact that actual consultant costs greatly exceeded AUI’s budget in determining that costs should be disallowed.”³ AUI claims that its budget submission indicates a consultant budget of \$174,550 and of that, \$158,100 was budgeted for KPMG. While it is true that AUI had total budgeted consultant costs of \$174,550, AUI’s budget submission did not indicate that \$158,100 had been allotted for KPMG. In fact, AUI only provided a breakdown of hearing costs in its Budget Submission, indicating \$40,000.00 budgeted for KPMG and \$5,500.00 for Gannett Fleming. AUI did not provide a breakdown of pre hearing consultant costs in its Budget Submission. Given the limited information with respect to the breakdown of consultant costs prior to the hearing the Board determined that only \$40,000 was budgeted for KPMG.

The Board also disallowed certain consulting fees because it found that KPMG’s study relied on information from AUI’s management rather than being a fully independent study. At page 53 of Decision 2007-094, the Board states:

While it is acceptable to rely on basic data from management of AUI, the Board notes the comments of MGCI in argument that KPMG should not have accepted the duplicative strategy services in both the direct executive charges and the fiduciary executive charges, rather KPMG should have assessed timesheets themselves on an independent basis. The Board agrees and considers that any future reports of this nature should clearly differentiate services and ensure there is no duplication.⁴

As noted on page 1 of Utility Cost Order 2008-024, such a finding is crucial to a determination to award costs:

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.⁵

In its Application, AUI makes certain representations regarding its consultant costs that were not present in its Budget Submission but fails to explain why this information was not originally made available to the Board. AUI also fails to address the Board’s view that KPMG’s study was duplicative and reliant on information from AUI’s management thereby reducing AUI’s consultant costs by \$41,995.00.

The Commission finds the Board’s decision to reject \$41,995.00 in consulting costs to be reasonable due to the incomplete information provided by AUI in its Budget Submission, as well as due to the limited value of KPMG’s evidence.

As such, the Commission finds that AUI has failed to raise a substantial doubt as to the correctness of Utility Cost Order 2008-024.

³ *Ibid* at page 2.

⁴ *Supra* note 4 at page 53.

⁵ Alberta Energy and Utilities Board, Utility Cost Order 2008-024 at page 1

5 ORDER

Based on the above, the Commission denies AUI's application for review and variance of Utility Cost Order 2008-024.

Dated in Calgary, Alberta on October 7, 2008.

ALBERTA UTILITIES COMMISSION

(original signed by)

Tudor Beattie, Q.C.
Commissioner

(original signed by)

N. Allen Maydonik, Q.C.
Commissioner

(original signed by)

Thomas McGee
Commissioner