



ATCO Gas North and South

**Fee for Gas Management Services
Provided by ATCO Midstream**

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2004-03, ATCO Gas North and South
Fee for Gas Management Services Provided by ATCO Midstream
Application No.: 1311673

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**ATCO Gas North and South
Fee for Gas Management Services
Provided by ATCO Midstream**

**Utility Cost Order 2004-03
Application No. 1311673
File No. 8000-1311673-01**

1 INTRODUCTION

On July 30, 2002, the Alberta Energy and Utilities Board (the Board) issued Decision 2002-072 dealing with an application by ATCO Gas South, a sub-division within ATCO Gas and Pipelines Ltd. (ATCO or the Company) requesting approval of certain matters relating to the Carbon storage facilities, including a gas management services fee payable to ATCO Midstream Ltd. (Midstream), an unregulated affiliated company. In Decision 2002-072 the Board approved the fee of \$500,000 forecast by ATCO Gas South for gas management services provided by Midstream for 2001/2002, and directed ATCO Gas South, at the termination of the existing gas management services contract, to establish future agreements for services through use of a request for proposal process or by use of consultants to determine the fair market value of services provided by Midstream.

By letter dated June 17, 2003, ATCO indicated that, while the Company was prepared to address the Board's direction through a benchmarking process, the usefulness of such a process was questionable pending the outcome of the application to transfer the ATCO retail function to Direct Energy Marketing Limited (Retail Sale Application). ATCO indicated that if the Retail Sale Application was approved, the Company would no longer be procuring natural gas for recovery through the Gas Cost Recovery Rate (GCRR), and that the agreement with Midstream would be cancelled. ATCO considered that it did not appear to be cost effective to embark on a benchmarking study to deal with a service which would no longer be necessary if the Retail Sale Application was approved.

ATCO therefore requested relief from the direction in Decision 2002-072 pending the outcome of the Retail Sale Application. ATCO proposed that, if the Board approved the Retail Sale Application, the Company would include, in its 2003/2004 General Rate Application (GRA), the forecast costs under the Midstream gas management services agreement for 2003 (prorated to reflect the period during which ATCO had the responsibility for provision of natural gas), and remove the forecast costs under the agreement for 2004. On the other hand, in the event that the Board denied the Retail Sale Application, ATCO committed to proceeding with the benchmarking study.

On July 29, 2003, the Board advised ATCO that the request for relief was reasonable given that the process to deal with the Retail Sale Application was underway. The Board noted that, in the 2003/2004 GRA, ATCO had proposed that the test year forecasts for Midstream gas management services costs would be identified as placeholders in the revenue requirement, pending replacement by approved amounts after completion of the benchmarking study. The Board also noted that, since the record for the GRA was closed, ATCO was at risk for the 2003 forecast costs given that the amount had not been supported or tested in the GRA. Nevertheless,

the Board acknowledged that there was no longer a requirement to conduct the benchmarking study, unless the Retail Sale Application was rejected.

In a letter dated August 28, 2003, ATCO acknowledged the Board's comments, noting that the gas management fee included in the GRA was \$1,000,000 in each test year, split evenly between ATCO Gas North and South (AGN and AGS respectively). ATCO requested that the Board approve the 2003 forecast, on the understanding that the amount could be subsequently prorated based on the potential approval of the Retail Sale Application. ATCO considered that the cost of processing a benchmarking study for 2003 alone would not be in the best interests of customers. ATCO submitted that, should the Retail Sale Application be denied, the benchmarking study would be conducted for 2004 and beyond, but proposed that the fee for 2003 be approved as forecast.

By letter dated September 18, 2003, the Board requested that interested parties file submissions with respect to the options proposed in ATCO's August 28, 2003 letter no later than October 6, 2003 and that ATCO provide a response to those submissions by October 20, 2003.

Submissions were received on October 6, 2003 from the City of Calgary (Calgary) and on October 7, 2003 from the Alberta Urban Municipalities Association (AUMA) and the City of Edmonton (AUMA/EDM). ATCO filed its reply to the submissions of interested parties by October 21, 2003. Accordingly, the Board considers that October 21, 2003 was the close of the record for this proceeding.

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 and directly and necessarily related to the party's participation in the proceeding.

Various participants submitted cost claims totaling \$5,840.24 including actual GST of \$365.39 with respect to the Proceeding. On December 11, 2003 a summary of the costs being claimed for each of AGN and AGS was circulated to interested parties. Parties were advised that any comments regarding the figures listed in the summaries or the merits of the total costs claimed were to be submitted by December 31, 2003. The Board did not receive any comments and accordingly considers the cost process for this proceeding to have closed on December 31, 2003.

3 VIEWS OF THE BOARD – Assessment

3.1 City of Calgary (Calgary)

The Board has reviewed the cost claim submitted by Calgary which consists of the legal fees of Burnet, Duckworth & Palmer in the amount of \$3,000.00, disbursements in the amount of \$15.25, and GST of \$211.07. Calgary's claim also included the fees of its consultant, Energy Group, Inc., in the amount of \$428.34 plus GST of \$29.98. Calgary's total cost claim amounts to \$3,684.64.

Calgary took the position that interveners and the Board had been placed in a position as a result of actions taken by the Company, where it was no longer economically feasible to properly test and address the costs being charged to ATCO by its affiliate, Midstream¹.

Calgary provided the Board and interested parties with three alternative recommendations to the issue at hand. ATCO in turn argued that Calgary's recommendations did not help the issues before the Board; did not answer the question of whether or not a further benchmarking study was required at this time, and did not address the need to do the study but rather who would have to pay for it.

In Decision 2003-078, page 4, the Board concluded the following:

With respect to Calgary's recommendations for resolving the matter, it appears to the Board that, in presenting its options, Calgary has not focused on the question of whether or not a benchmarking study is required at this time.

Section 55(1) of the Board's *Rules of Practice* states the following:

- 55(1) The Board may award costs, in accordance, with the scale of costs, to a participant if the Board is of the opinion that
- (a) the costs are reasonable and directly and necessarily related to the proceeding, and
 - (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

¹ EUB Decision 2003-078, page 2, 2.1 Views of Calgary

While the Board appreciates Calgary's efforts in developing an alternative approach, it finds that Calgary would have provided greater assistance by focusing on the benchmarking study. In this instance the Board finds that Calgary's contribution did not directly and necessarily assist the Board or contribute to a better understanding of the issues before it, as noted above. Accordingly, the Board finds it reasonable to reduce the professional fees incurred by Burnet Duckworth & Palmer and Energy Group, Inc. by 25%.

Based on the foregoing the Board approves legal fees for Burnet, Duckworth & Palmer in the amount of \$2,250.00, disbursements in the amount of \$15.25, and applicable GST in the amount of \$67.96, for a total award of \$2,333.21, as outlined in Appendix "B" attached.

The Board also approves professional fees for Energy Group, Inc. in the amount of \$321.26 and applicable GST in the amount of \$9.64, for a total award of \$330.89, as outlined in Appendix "B" attached.

3.2 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 D 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 and disbursements for all participants to be reasonable as outlined in Appendices "A" and "B" to this Order.

4 GST

In accordance with the Board's treatment of the GST on cost awards, AGN and AGS are required to pay only that portion of the GST paid by interveners that may not be recoverable through the GST credit mechanism. Eligible GST approved by the Board amounts to \$62.17 with respect to AGN and \$139.77 with respect to AGS, as shown in column (d) of Appendices "A" and "B" respectively. The GST allowed by the Board may also be charged against each Applicant's respective 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

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. ATCO Gas North shall pay intervener costs in the amount of \$950.27, as set out in column (e) of Appendix "A".

2. ATCO Gas North's external costs in the amount of \$127.53, as set out in column (e) of Appendix "A", are approved.
3. ATCO Gas North shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$1,077.80, as set out in column (e) of Appendix "A".
4. ATCO Gas South shall pay intervener costs in the amount of \$3,614.38, as set out in column (e) of Appendix "B".
5. ATCO Gas South's external costs in the amount of \$127.53, as set out in column (e) of Appendix "B", are approved.
6. ATCO Gas South shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$3,741.91, as set out in column (e) of Appendix "B".

Dated in Calgary, Alberta on this 14 day of January, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(Originally signed by)

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED (AGN)



"UCO 2004-03
Appendix A (ATCO Gi

APPENDIX B – SUMMARY OF COSTS CLAIMED AND AWARDED (AGS)



"UCO 2004-03
Appendix B (ATCO Gi

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**ATCO Gas North
 Fee for Gas Management Services Provided by ATCO Midstream
 (1311673)**

Summary of Total Costs Awarded

	Total Amount Claimed (a)	Total Fees Awarded (b)	Total Disbursements Awarded (c)	Total GST Awarded (d)
APPLICANT				
ATCO Gas North				
Bennett Jones LLP	\$127.53	\$125.00	\$2.53	\$0.00
Sub-Total	\$127.53	\$125.00	\$2.53	\$0.00
INTERVENERS				
Alberta Urban Municipalities Association / City of Edmonton				
Bryan & Company	\$736.27	\$687.50	\$0.60	\$48.17
Robert L. Bruggeman Regulatory Consulting Ltd.	\$214.00	\$200.00	\$0.00	\$14.00
Sub-Total	\$950.27	\$887.50	\$0.60	\$62.17
TOTAL INTERVENER COSTS	\$950.27	\$887.50	\$0.60	\$62.17
TOTAL INTERVENER AND APPLICANT COSTS	\$1,077.80	\$1,012.50	\$3.13	\$62.17

ATCO Gas North
Fee for Gas Management Services Provided by ATCO Midstream
(1311673)

Summary of Total Costs Awarded

Total Amount Awarded (e)
\$127.53
\$127.53
\$736.27
\$214.00
\$950.27
\$950.27
\$1,077.80

**ATCO Gas South
 Fee for Gas Management Services Provided by ATCO Midstream
 (1311673)**

Summary of Total Costs Awarded

	Total Amount Claimed (a)	Total Fees Awarded (b)	Total Disbursements Awarded (c)	Total GST Awarded (d)
APPLICANT				
ATCO Gas South				
Bennett Jones LLP	\$127.53	\$125.00	\$2.53	\$0.00
Sub-Total	\$127.53	\$125.00	\$2.53	\$0.00
INTERVENERS				
Alberta Urban Municipalities Association / City of Edmonton				
Bryan & Company	\$736.27	\$687.50	\$0.60	\$48.17
Robert L. Bruggeman Regulatory Consulting Ltd.	\$214.00	\$200.00	\$0.00	\$14.00
Sub-Total	\$950.27	\$887.50	\$0.60	\$62.17
The City of Calgary				
Burnet, Duckworth & Palmer	\$3,226.32	\$2,250.00	\$15.25	\$67.96
Energy Group, Inc.	\$458.32	\$321.26	\$0.00	\$9.64
Sub-Total	\$3,684.64	\$2,571.26	\$15.25	\$77.60
TOTAL INTERVENER COSTS	\$4,634.91	\$3,458.76	\$15.85	\$139.77
TOTAL INTERVENER AND APPLICANT COSTS	\$4,762.44	\$3,583.76	\$18.38	\$139.77

ATCO Gas South
Fee for Gas Management Services Provided by ATCO Midstream
(1311673)

Summary of Total Costs Awarded

Total Amount Awarded (e)
\$127.53
\$127.53
\$736.27
\$214.00
\$950.27
\$2,333.21
\$330.89
\$2,664.11
\$3,614.38
\$3,741.91