



## **ATCO Gas South, a Division of ATCO Gas and Pipelines Ltd.**

**Application for a Revised Franchise  
Rider and a New Linear Tax Rider in the  
Town of Bow Island**

**Review of Proposed Standard Natural  
Gas Franchise Agreement with  
ATCO Gas South, a Division of  
ATCO Gas and Pipelines Ltd.**

**Cost Awards**

**ALBERTA ENERGY AND UTILITIES BOARD**

Utility Cost Order 2004-07: ATCO Gas South, a Division of ATCO Gas and Pipelines Ltd.  
Application for a Revised Franchise Rider and a New Linear Tax Rider in the  
Town of Bow Island

Review of Proposed Standard Natural Gas Franchise Agreement with  
ATCO Gas South, a Division of ATCO Gas and Pipelines Ltd.  
Application Nos. 1287533 and 1281638

Published by

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# **ALBERTA ENERGY AND UTILITIES BOARD**

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**Calgary, Alberta**

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ATCO Gas and Pipelines Ltd.**

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**Utility Cost Order 2004-07  
Application Nos. 1287533 and 1281638  
File No.:8000-1281638-01**

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## **1 INTRODUCTION**

By letter dated October 16, 2002 the Town of Bow Island (the Town) and ATCO Gas South, a Division of ATCO Gas & Pipelines Limited (AGS) filed an application with the Alberta Energy and Utilities Board (the Board) for approval to renew their gas franchise agreement for a period of 10 years in accordance with the terms and conditions of a gas distribution agreement (the Agreement).

A Notice of Objections was published in the Bow Island Commentator and all major newspapers in Alberta on April 8, 2003 in respect of Application No. 1281638 and AGS' application for a resulting change in its Rider "A" for the Town. Notice was also directly served on interested parties. The Board received two responses to the notice, one from the Consumers' Coalition of Alberta (CCA) and the other from the Alberta Urban Municipalities Association (AUMA). The Board scheduled a hearing of the applications and a Notice of Hearing was served on all interested parties on May 23, 2003.

A hearing was convened on June 9, 2003, in the Board's Edmonton offices, before Gordon J. Miller, Presiding Member, T. M. McGee, Member, and J. Gilmour, Acting Member, sitting as the Board Panel.

Written argument was received by June 11, 2003 and written responses to argument were filed by June 13, 2003. The Board considers that the record for this proceeding closed on June 13, 2003. On September 9, 2003 the Board issued [Decision 2003-065](#).

By letter dated December 16, 2002 (the Application), AGS applied to the Alberta Energy and Utilities Board (the Board) for revisions to its franchise fee rider, to be applied in the Town of Bow Island (the Town).

In the same application AGS also applied for Rider "C" which would allow for the collection of linear taxes in the Town of Bow Island.

A Notice of Objections was published in the Bow Island Commentator and all major newspapers in Alberta on April 8, 2003 in respect of Application No. 287533 and the Town's Application for renewal of its gas distribution agreement (the Franchise Agreement) with AGS. Notice was also directly served on interested parties. The Board received one objection in response to this notice. After receipt of this objection the Board scheduled a hearing of the applications and a Notice of Hearing was served on all interested parties on May 23, 2003.

A hearing was convened on June 9, 2003, in the Board's Edmonton offices, before Gordon J. Miller, Presiding Member, T. M. McGee, Member, and J. Gilmour, Acting Member, sitting as the Board Panel.

Written argument was received by June 11, 2003 and written responses to argument were filed by June 13, 2003. The Board considers that the record for this proceeding closed on June 13, 2003. On September 9, 2003 the Board issued [Decision 2003-66](#).

## 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.

In the case of applications based upon a negotiated settlement (NSP), the Board does not directly participate in the process. Rather, the Board reviews the nature of the process itself and its results to ensure that they were fair, reasonable, and in the public interest. Without the direct opportunity to review the effectiveness of participants, the Board will take into account other considerations to ensure that the costs of participation in a NSP, which are ultimately passed on to all customers, are indeed reasonable and represent fair value.

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

Various participants submitted cost claims totaling \$69,695.55 including actual GST of \$2,642.63 with respect to the Proceeding.

The Board has reviewed the costs submitted by the 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 Appendix "A" " to this Order in the total amount of \$69,695.55.

### **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 \$2,642.63 as shown in column (d) 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**

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 South shall pay intervener costs in the amount of \$40,394.66, as set out in column (e) of Appendix "A".
2. ATCO Gas South's external costs in the amount of \$29,300.89, as set out in column (e) 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 \$69,695.55, as set out in column (e) of Appendix "A".

Dated in Calgary, Alberta on this 23rd day of January, 2004.

**ALBERTA ENERGY AND UTILITIES BOARD**

*(Original signed by)*

Thomas McGee  
Board Member



## APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



"UCO 2004-07  
Appendix A (AGPL an

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

ATCO Gas South  
(1281638 1287533)

Summary of Total Costs Awarded

	Total Amount Claimed (a)	Total Fees Awarded (b)	Total Disbursements Awarded (c)	Total GST Awarded (d)	Total Amount Awarded (e)
<b>APPLICANT</b>					
<b>ATCO Gas South</b>					
ATCO Gas South	\$6,946.36	\$0.00	\$6,946.36	\$0.00	\$6,946.36
Bennett Jones LLP	\$22,354.53	\$21,050.00	\$1,304.53	\$0.00	\$22,354.53
<b>Sub-total</b>	<b>\$29,300.89</b>	<b>\$21,050.00</b>	<b>\$8,250.89</b>	<b>\$0.00</b>	<b>\$29,300.89</b>
<b>INTERVENERS</b>					
<b>Consumers Coalition of Alberta</b>					
Wachowich & Company	\$3,878.48	\$2,945.50	\$679.25	\$253.73	\$3,878.48
<b>Sub-total</b>	<b>\$3,878.48</b>	<b>\$2,945.50</b>	<b>\$679.25</b>	<b>\$253.73</b>	<b>\$3,878.48</b>
<b>Alberta Urban Municipalities Association</b>					
Reynolds, Mirth, Richards & Farmer LLP	\$36,051.68	\$32,454.63	\$1,238.53	\$2,358.52	\$36,051.68
Town of Bow Island - Mr. Terry Schneider	\$464.50	\$0.00	\$434.12	\$30.38	\$464.50
<b>Sub-total</b>	<b>\$36,516.18</b>	<b>\$32,454.63</b>	<b>\$1,672.65</b>	<b>\$2,388.90</b>	<b>\$36,516.18</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$40,394.66</b>	<b>\$35,400.13</b>	<b>\$2,351.90</b>	<b>\$2,642.63</b>	<b>\$40,394.66</b>
<b>TOTAL COSTS</b>	<b>\$69,695.55</b>	<b>\$56,450.13</b>	<b>\$10,602.79</b>	<b>\$2,642.63</b>	<b>\$69,695.55</b>