



ATCO Gas North ATCO Gas South

2003 Gas Rate Unbundling

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD
Utility Cost Order 2004-22: ATCO Gas North and South
2003 Gas Rate Unbundling
Application No. 1303682

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Contents

1 INTRODUCTION..... 1

2 VIEWS OF THE BOARD – AUTHORITY TO AWARD COSTS..... 2

3 VIEWS OF THE BOARD - ASSESSMENT 2

3.1 Alberta Irrigation Projects Association (AIPA)..... 2

3.2 Aboriginal Communities (AC)..... 3

3.3 AltaGas Utilities Inc. (AUI)..... 4

3.4 St. Michael’s Long Term Care Society (St. Michael’s)..... 4

3.5 Remaining Participants 5

4 GST..... 5

5 ORDER 5

APPENDIX A – Summary of Costs Claimed and Awarded..... 7

APPENDIX B – Summary of Costs Claimed and Awarded 7

ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**ATCO Gas North
ATCO Gas South
2003 Gas Rate Unbundling**

**Utility Cost Order 2004-22
Application No. 1303682
File No. 8000-1303682-01**

1 INTRODUCTION

ATCO Gas, a division of ATCO Gas and Pipelines Ltd. (AGPL), filed an application (the Application) with the Alberta Energy and Utilities Board (the Board or EUB), by letter dated June 6, 2003, requesting approval of interim distribution rates as a result of the unbundling of existing distribution rates. ATCO Gas includes ATCO Gas South (AGS) and ATCO Gas North (AGN), each of which has its own service areas.

A Notice of Hearing dated June 16, 2003 was emailed to all interested parties registered in the ATCO Retail Sale Application (the Retail Sale) and published in the daily newspapers in ATCO Gas's service areas.

The public hearing was convened in Calgary on October 20, 2003 before Mr. B. T. McManus, Q.C. (Presiding Member), Mr. J. I. Douglas, FCA (Member), and Mr. W. K. Taylor (Acting Member). The hearing was completed on October 22, 2003. Registered interveners were required to file argument and reply by October 31, 2003 and November 7, 2003 respectively. Accordingly, the Board considers that the record for this proceeding closed on November 7, 2003.

By letter dated January 19, 2004 the EUB circulated a summary of the costs being claimed for each AGN and AGS to interested parties. Parties were advised that any comments regarding the figures listed in the attached summaries or the merits of the total costs claimed were to be submitted by February 2, 2004. The Board did not receive any comments.

By letter dated January 26, 2004, the EUB advised interested parties, as well as those parties who participated in AltaGas Utilities Inc.'s (AltaGas) most recent general rate application, of AltaGas' request that the costs it incurred with respect to the hearing, in the amount of \$13,813.01, be approved by the Board and allocated to the AltaGas hearing cost reserve account. Parties were invited to comment on AltaGas' proposal by February 9, 2004. The Board received comments from Bryan & Company on behalf of the Alberta Urban Municipalities Association (AUMA). Bryan & Company advised that AUMA did not object to AltaGas' proposal.

Accordingly, the Board considers that the cost process for this proceeding closed on February 9, 2004.

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 \$485,579.21 including actual GST of \$22,375.00 with respect to the Proceeding.

3 VIEWS OF THE BOARD - Assessment

3.1 Alberta Irrigation Projects Association (AIPA)

The Board has reviewed the cost claim submitted by AIPA, which includes the professional fees incurred by Henry Unryn in the amount of \$17,760.00 and disbursements in the amount of \$28.00 for a total claim of \$17,788.00. In reviewing Mr. Unryn's costs, the Board notes that 31.5 hours were incurred for preparation, 12.5 hours were incurred for attendance, and 52 hours were incurred for argument and reply.

In assessing the costs incurred by AIPA, the Board has considered the totality of the costs in relation to the contribution of a better understanding of the issues before the Board. Further, the Board is mindful of rule 55(2) (f) of the Board's *Rules of Practice* which states the following:

55(2) In determining the amount of costs to be awarded to a participant, the Board may consider whether the participant did one or more of the following:

... (f) submitted evidence and argument on issues that were not relevant to the proceeding.

The submissions of AIPA did not contribute significantly to the Board's understanding of the issues concerning the Customer Information System (CIS) and the allocation of overhead and indirect costs. As such, the time taken to understand and deal with AIPA's views could have been reduced. Also, AIPA failed to demonstrate sufficiently that a reduction to ATCO Gas' rates was required in order to offset the rates of Direct Energy Regulated Services. In this instance, the Board finds it appropriate to reduce Mr. Unryn's fees by \$5,000.00.

Based on the foregoing the Board approves professional fees for Mr. Unryn in the amount of \$12,760.00 and disbursements in the amount of \$28.00 for a total award of \$12,788.00 as shown in Appendix "B" attached.

3.2 Aboriginal Communities (AC)

The Board has reviewed the cost claim submitted by AC which includes the legal fees incurred by Mr. A.O. Ackroyd, Q.C. in the amount of \$4,595.00. The Board notes that 10.75 hours were incurred for preparation and 7 hours were incurred for argument and reply. The AC claim also included the professional fees for Mr. Jim Graves in the amount of \$935.00 as well as disbursements in the amount of \$1,133.25. The Board notes that 10 hours were incurred for preparation and 1 hour was incurred for argument and reply.

Counsel for the Aboriginal Communities did not indicate either by IRs or Argument what issues were of concern nor what solutions, if any, were recommended. . In this instance the Board finds that counsel for AC did not provide any direct assistance with respect to the issues before the Board and accordingly finds it appropriate to reduce Mr. Ackroyd's legal fees by \$2,000.00.

In reviewing Mr. Graves claim, the Board finds that the hours incurred in relation to the contribution in the proceeding are reasonable in this instance and are therefore approved in full. The Board has also considered Mr. Graves' expenses and finds that they have also been reasonably incurred and are therefore approved in full.

Based on the foregoing, the Board approves Mr. Ackroyd's legal fees in the amount of \$2,595.00, Mr. Graves' professional fees in the amount of \$935.00, and disbursements in the amount of \$1,133.25 for a total award for AC in the amount of \$4,663.25 as shown in Appendix "A" attached.

3.3 AltaGas Utilities Inc. (AUI)

The Board has reviewed the cost claim submitted by AUI that totals \$11,360.19. The Board has determined that the totality of the costs is commensurate with the contribution and value of the intervention brought forward by AUI and as such approves the claim in full.

By letter dated December 5, 2003 counsel for AUI, Ranji Jeerakathil of Ackroyd, Piasta, Roth & Day, advised the Board that it was AUI's position that since AUI's unbundling process is for the benefit of its customers, it would be appropriate to approve the costs awarded to AUI's hearing cost reserve account. By letter dated January 26, 2004 the EUB provided interested parties with the opportunity to respond to AUI's request by February 9, 2004. The Board did not receive any objections to AUI's request.

As AUI will be required to unbundle their own rates shortly, it is the Board's view that AUI's participation in the ATCO proceeding was to monitor and learn from ATCO's precedent, which should reduce AUI's costs of unbundling and therefore benefit AUI's customers.

Based on the foregoing the Board approves AltaGas' costs to its own hearing cost reserve account.

3.4 St. Michael's Long Term Care Society (St. Michael's)

The Board has reviewed St. Michael's claim which includes the legal fees of Mr. A.O. Ackroyd, Q.C., in the amount of \$4,437.50, Mr. James Ackroyd, CMA in the amount of \$157.50, and Carlin Energy Resources Management Ltd. in the amount of \$4,200.00. The total amount being claimed by St. Michael's is \$9,410.65, including GST of \$615.65. The Board notes that Mr. A.O. Ackroyd spent 10.75 hours on preparation and 17.75 hours on argument and reply.

Upon review of the statement of account provided by Mr. A.O. Ackroyd, the Board notes that the role of James Ackroyd was that of a secretarial nature. Guide 31B states the following:

Legal fees are deemed to include and cover all overhead charges implicit in the normal operation of a law firm. The Board will not consider fees for secretarial work.

Based on the foregoing, the Board does not find that special circumstances exist in this instance such that it should allow additional charges for secretarial support. Accordingly, the Board disallows the fees of \$157.50 incurred by James Ackroyd.

The issues specific to St. Michael's were not made clear and it is of note that the contribution of counsel did not appear to be equal, given that counsel for PICA submitted all correspondence for IRs on behalf of PICA, and Argument and Reply Argument for both PICA and St. Michael's. In this instance, the Board finds it appropriate to reduce Mr. Ackroyd's legal fees by \$1,500.00. The Board has reviewed the remaining portion of St. Michael's claim and finds it to be reasonable.

Based on the foregoing the Board approves legal fees for Mr. A.O. Ackroyd in the amount of \$2,937.50 and professional fees for Carlin Energy Resources Management Ltd. in the amount of \$4,200.00. The Board has adjusted GST to \$499.63 for a total award for St. Michael's in the amount of \$7,637.13 as shown in Appendix "A" attached.

3.5 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 in the total amount of \$465,910.20.

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, 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 \$3,772.93 as shown in column (d) of Appendix "A" and \$7,590.56 as shown in column (d) of Appendix "B". The GST allowed by the Board shall be charged against the AGN and AGS 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, excluding AltaGas Utilities Inc., in the amount of \$132,425.54, as set out in column (e) of Appendix "A".
2. ATCO Gas North's external costs in the amount of \$49,974.60, 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, excluding AltaGas Utilities Inc., in the amount of \$182,400.14, as set out in column (e) of Appendix "A".
4. AltaGas Utilities Inc.'s costs in the amount of \$12,909.35 are approved and shall be recorded in AltaGas Utilities Inc.'s Hearing Cost Reserve Account.

5. ATCO Gas South shall pay intervener costs in the amount of \$220,626.11, as set out in column (e) of Appendix "B".
6. ATCO Gas South's external costs in the amount of \$49,974.60, as set out in column (e) of Appendix "B", are approved.
7. ATCO Gas South shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$270,600.71, as set out in column (e) of Appendix "B".

Dated in Calgary, Alberta on this 24th day of March, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



"UCO 2004-22
Appendix A (AGN Gas

APPENDIX B – SUMMARY OF COSTS CLAIMED AND AWARDED



"UCO 2004-22
Appendix B (AGS Gas

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

**ATCO Gas North
Unbundling Application
(1303682)**

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)
APPLICANT					
ATCO Gas North					
ATCO Gas North	\$12,038.35	\$0.00	\$12,038.35	\$0.00	\$12,038.35
Bennett Jones	\$37,936.25	\$37,720.50	\$215.75	\$0.00	\$37,936.25
Sub-Total	\$49,974.60	\$37,720.50	\$12,254.10	\$0.00	\$49,974.60
INTERVENERS					
Aboriginal Communities					
A.O. Ackroyd, Q.C	\$4,595.00	\$2,595.00	\$0.00	\$0.00	\$2,595.00
Graves Engineering Corporation	\$2,068.25	\$935.00	\$1,133.25	\$0.00	\$2,068.25
Sub-Total	\$6,663.25	\$3,530.00	\$1,133.25	\$0.00	\$4,663.25
Alberta Urban Municipalities Association					
Reynolds, Mirth, Richards & Farmer LLP	\$9,148.89	\$7,537.50	\$1,012.86	\$598.53	\$9,148.89
Robert L. Bruggeman Regulatory Consulting Ltd.	\$16,020.52	\$14,720.00	\$252.45	\$1,048.07	\$16,020.52
Sub-Total	\$25,169.41	\$22,257.50	\$1,265.31	\$1,646.60	\$25,169.41
AltaGas Utilities Inc.					
Ackroyd, Piasta, Roth & Day LLP	\$12,277.02	\$10,617.00	\$856.85	\$0.00	\$11,473.85
AltaGas Utilities Inc.	\$1,535.99	\$0.00	\$1,435.50	\$0.00	\$1,435.50
Sub-Total	\$13,813.01	\$10,617.00	\$2,292.35	\$0.00	\$12,909.35

**ATCO Gas North
Unbundling Application
(1303682)**

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)
Consumers Coalition of Alberta					
Wachowich & Company	\$6,877.05	\$5,643.75	\$783.40	\$449.90	\$6,877.05
Professional Regulatory Services, Inc.	\$17,988.35	\$16,620.00	\$191.54	\$1,176.81	\$17,988.35
Sub-Total	\$24,865.40	\$22,263.75	\$974.94	\$1,626.71	\$24,865.40
Federation of Alberta Gas Co-ops / Gas Alberta Inc.					
Brownlee Fryett	\$28,133.31	\$23,996.50	\$2,296.31	\$0.00	\$26,292.81
Campbell Ryder Consulting Group	\$36,605.16	\$33,118.75	\$1,091.68	\$0.00	\$34,210.43
Sub-Total	\$64,738.47	\$57,115.25	\$3,387.99	\$0.00	\$60,503.24
Public Institutional Consumers of Alberta					
Nancy J. McKenzie	\$4,607.03	\$4,595.63	\$11.40	\$0.00	\$4,607.03
Energy Management & Regulatory Consulting Ltd.	\$4,980.09	\$4,243.75	\$736.34	\$0.00	\$4,980.09
Sub-Total	\$9,587.12	\$8,839.38	\$747.74	\$0.00	\$9,587.12
St. Michael's Long Term Care Centre Society					
A.O. Ackroyd, Q.C	\$4,748.13	\$2,937.50	\$0.00	\$205.63	\$3,143.13
James Ackroyd, CMA	\$168.53	\$0.00	\$0.00	\$0.00	\$0.00
Carlin energy Resources Management Ltd.	\$4,494.00	\$4,200.00	\$0.00	\$294.00	\$4,494.00
Sub-Total	\$9,410.66	\$7,137.50	\$0.00	\$499.63	\$7,637.13
TOTAL INTERVENER COSTS	\$154,247.32	\$131,760.38	\$9,801.58	\$3,772.93	\$145,334.89
Less AltaGas Award					-\$12,909.35
Sub-Total					\$132,425.54
TOTAL INTERVENER AND APPLICANT COSTS	\$204,221.92	\$169,480.88	\$22,055.68	\$3,772.93	\$182,400.14

Unbundling Application
(1303682)

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)
APPLICANT					
ATCO Gas South					
ATCO Gas South	\$12,038.35	\$0.00	\$12,038.35	\$0.00	\$12,038.35
Bennett Jones	\$37,936.25	\$37,720.50	\$215.75	\$0.00	\$37,936.25
Sub-Total	\$49,974.60	\$37,720.50	\$12,254.10	\$0.00	\$49,974.60
INTERVENERS					
Alberta Irrigation Projects Association					
Unryn & Associates Ltd.	\$17,788.00	\$12,760.00	\$28.00	\$0.00	\$12,788.00
Sub-Total	\$17,788.00	\$12,760.00	\$28.00	\$0.00	\$12,788.00
Alberta Urban Municipalities Association					
Reynolds, Mirth, Richards & Farmer LLP	\$9,148.89	\$7,537.50	\$1,012.86	\$598.53	\$9,148.89
Robert L. Bruggeman Regulatory Consulting Ltd.	\$16,020.52	\$14,720.00	\$252.45	\$1,048.07	\$16,020.52
Sub-Total	\$25,169.41	\$22,257.50	\$1,265.31	\$1,646.60	\$25,169.41
City of Calgary					
D'Arcy & Deacon	\$63,498.91	\$57,407.00	\$1,936.92	\$1,780.44	\$61,124.36
Stephen Johnson	\$29,495.28	\$25,710.00	\$1,855.68	\$827.03	\$28,392.71
Energy Group, Inc.	\$53,890.90	\$50,039.90	\$325.43	\$1,511.06	\$51,876.39
Stephens Consulting Ltd.	\$7,087.68	\$6,624.00	\$0.00	\$198.73	\$6,822.73
Sub-Total	\$153,972.77	\$139,780.90	\$4,118.03	\$4,317.26	\$148,216.19

Unbundling Application
(1303682)

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)
Consumers Coalition of Alberta					
Wachowich & Company	\$6,877.05	\$5,643.75	\$783.40	\$449.90	\$6,877.05
Professional Regulatory Services, Inc.	\$17,988.35	\$16,620.00	\$191.54	\$1,176.81	\$17,988.35
Sub-Total	\$24,865.40	\$22,263.75	\$974.94	\$1,626.71	\$24,865.40
Public Institutional Consumers of Alberta					
Nancy J. McKenzie	\$4,607.02	\$4,595.62	\$11.40	\$0.00	\$4,607.02
Energy Management & Regulatory Consulting Ltd.	\$4,980.10	\$4,243.75	\$736.35	\$0.00	\$4,980.10
Sub-Total	\$9,587.12	\$8,839.37	\$747.75	\$0.00	\$9,587.12
TOTAL INTERVENER COSTS	\$231,382.70	\$205,901.52	\$7,134.03	\$7,590.56	\$220,626.11
TOTAL INTERVENER AND APPLICANT COSTS	\$281,357.30	\$243,622.02	\$19,388.13	\$7,590.56	\$270,600.71