



ATCO Gas North ATCO Gas South

**Request for Exemption from Certain
Provisions of the *Gas Utilities Act Code of
Conduct Regulation***

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2004-31: ATCO Gas North and ATCO Gas South
Request for Exemption from Certain Provisions of the *Gas Utilities Act*
Code of Conduct Regulation
Application No. 1314506

Published by

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

ATCO Gas North
ATCO Gas South
Request for Exemption from Certain
Provisions of the *Gas Utilities Act*
Code of Conduct Regulation

Utility Cost Order 2004-31
Application No. 1314506
File No. 8000-1314506-01

1 INTRODUCTION

ATCO Gas filed an application (the Application) with the Alberta Energy and Utilities Board (the Board or EUB) on September 30, 2003 for an exemption from certain provisions of the *Code of Conduct Regulation*¹ (*Gas Code Regulation*) under the *Gas Utilities Act* (GUA). ATCO Gas filed the Application pursuant to section 41(1)(a) of the *Gas Code Regulation*. The same application was also filed with the Market Surveillance Administrator (MSA) on behalf of ATCO Electric Ltd. (ATCO Electric) under section 43(1)(a) of the *Code of Conduct Regulation*² (*Electric Code Regulation*) under the *Electric Utilities Act* (EUA) for a similar exemption. The application pursuant to the *Electric Code Regulation* will be referred to as the Electric Application. It and the Application will be jointly referred to as the Applications. Where necessary, ATCO Gas and ATCO Electric are referred to jointly in this Decision as ATCO.

Due to the related nature of the two Applications filed with the Board and the MSA, each regulator determined that it was appropriate to subject the Applications to a joint process. To that end, a joint public notice of the Application and the Electric Application was published on October 10, 2003 (Notice). The Notice set out the process and schedule to be followed in reviewing the Applications. Because the request for disclosure of information was divided into two Phases in the Applications, the Notice invited parties to object to either or both Phases. The Notice emphasized that while “information will be shared between the EUB and the MSA, the review and consideration of this information, and the decision in relation to each Application, will be conducted independently.”

The Board and the MSA received several objections to the Applications, including some objections to both Phases. Parties then had the opportunity to ask information requests of ATCO and to provide written submissions respecting the Applications. In accordance with the schedule, the Board received a reply submission from ATCO on November 7, 2003. Accordingly, for purposes of this Decision, the Board considers the record to have closed on November 7, 2003.

The Panel assigned to consider this matter consisted of B.T. McManus, Q.C. (Presiding Member), J.I. Douglas, FCA (Member), and W.K. Taylor (Acting Member). On November 25, 2003 the Board issued [Decision 2003-093](#). Also on November 25, 2003, the MSA issued a separate decision respecting the Electric Application (MSA Decision 2003-0101).

¹ AR 183/2003

² AR 160/2003

On January 15, 2004 summaries of the costs being claimed in relation to the Application were 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 to the Board by no later than January 30, 2004. The Board did not receive any comments. Accordingly, the Board considers the cost process for this particular proceeding to have closed on January 30, 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 \$39,837.35, including actual GST of \$1,933.38, with respect to the Application, as shown in Appendices "A", "B", and "C" attached.

3 VIEWS OF THE BOARD – Assessment

3.1 Costs Relating to ATCO Electric and the Electric Application

The cost claims received by the Board related to ATCO Gas North, ATCO Gas South, and ATCO Electric, as shown in Appendices "A", "B" and "C". The Application before the Board, however, related only to ATCO Gas North and South, pursuant to the *Gas Code Regulation*. The

Electric Application, respecting ATCO Electric, was considered and decided by the MSA pursuant to its powers under the *Electric Code Regulation*. Although the information gathering process was conducted jointly with the MSA, the Electric Application was not a proceeding before the Board and the Board had no jurisdiction respecting ATCO Electric in relation to that Application. Therefore, the Board has no jurisdiction to award costs to any parties, including ATCO Electric, in relation to the Electric Application.

Accordingly, the Board disallows the costs being claimed in relation to ATCO Electric by the Alberta Association of Municipal Districts & Counties in the amount of \$3,094.93, the Alberta Federation of REAs Ltd. in the amount of \$4,480.87, the Alberta Urban Municipalities Association / City of Edmonton in the amount of \$1,828.35, and the City of Calgary in the amount of \$7,331.94, all as shown in Appendix “C” attached.

The Board further disallows the costs incurred by ATCO Electric directly in the amount of \$5,378.26, also as shown in Appendix “C” attached.

3.2 Costs Relating to ATCO Gas

The Board has reviewed the remaining costs submitted by the participants in respect of the Application by ATCO Gas North and ATCO Gas South, 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” attached to this Order in the total amount of \$17,448.91.

4 GST

In accordance with the Board's treatment of the GST on cost awards, each Applicant 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 \$239.22 as shown in Appendix “A”, \$325.19 as shown in Appendix “B”, and \$0.00 as shown in Appendix “C”. 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 \$3,656.70, as set out in column (e) of Appendix “A”.

2. ATCO Gas North's external costs in the amount of \$2,453.00, 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 \$6,109.70, as set out in column (e) of Appendix "A".
4. ATCO Gas South shall pay intervener costs in the amount of \$9,886.21, as set out in column (e) of Appendix "B".
5. ATCO Gas South's external costs in the amount of \$2,453.00, 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 \$11,339.21, as set out in column (e) of Appendix "B".
7. The intervener costs claimed against ATCO Electric Ltd. in the amount of \$16,736.09 are denied as shown in Appendix "C" attached.
8. The external applicant costs claimed by ATCO Electric Ltd. in the amount of \$5,378.26 are denied as shown in Appendix "C" attached.

Dated in Calgary, Alberta on this 19th day of April, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

Thomas McGee
Board Member

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



"UCO 2004-31
Appendix A (Exempti

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



"UCO 2004-31
Appendix B (Exempti

APPENDIX C – SUMMARY OF COSTS CLAIMED AND AWARDED (AE)



"UCO 2004-31
Appendix C (Exempti

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**ATCO Gas North
Request for Exemption from Provisions of GUA Code of Conduct
(1314506)**

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					
Bennett Jones LLP	\$2,453.00	\$2,453.00	\$0.00	\$0.00	\$2,453.00
Sub-Total	\$2,453.00	\$2,453.00	\$0.00	\$0.00	\$2,453.00
INTERVENERS					
Alberta Urban Municipalities Association / City of Edmonton					
Reynolds, Mirth, Richards & Farmer LLP	\$1,530.08	\$1,325.00	\$104.98	\$100.10	\$1,530.08
Barry Shymanski Regulatory Consulting Ltd.	\$2,126.63	\$1,987.50	\$0.00	\$139.13	\$2,126.63
Sub-Total	\$3,656.71	\$3,312.50	\$104.98	\$239.22	\$3,656.70
TOTAL INTERVENER COSTS					
TOTAL INTERVENER AND APPLICANT COSTS					
	\$3,656.71	\$3,312.50	\$104.98	\$239.22	\$3,656.70
	\$6,109.71	\$5,765.50	\$104.98	\$239.22	\$6,109.70

**ATCO Gas South
Request for Exemption from Provisions of GUA Code of Conduct
(1314506)**

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					
Bennett Jones LLP	\$2,453.00	\$2,453.00	\$0.00	\$0.00	\$2,453.00
Sub-Total	\$2,453.00	\$2,453.00	\$0.00	\$0.00	\$2,453.00
INTERVENERS					
Alberta Urban Municipalities Association / City of Edmonton					
Reynolds, Mirth, Richards & FarmerLLP	\$765.04	\$662.50	\$52.49	\$50.05	\$765.04
Barry Shymanski Regulatory Consulting Ltd.	\$1,063.31	\$993.75	\$0.00	\$69.56	\$1,063.31
Sub-Total	\$1,828.35	\$1,656.25	\$52.49	\$119.61	\$1,828.35
City of Calgary					
D'Arcy & Deacon	\$3,760.81	\$3,344.00	\$170.78	\$105.45	\$3,620.23
Stephen Johnson	\$3,571.13	\$3,337.50	\$0.00	\$100.13	\$3,437.63
Sub-Total	\$7,331.94	\$6,681.50	\$170.78	\$205.58	\$7,057.86
TOTAL INTERVENER COSTS					
	\$9,160.29	\$8,337.75	\$223.27	\$325.19	\$8,886.21
TOTAL INTERVENER AND APPLICANT COSTS					
	\$11,613.29	\$10,790.75	\$223.27	\$325.19	\$11,339.21

**ATCO Electric Ltd.
Request for Exemption from Provisions of GUA Code of Conduct
(1314506)**

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 Electric Ltd.					
Bennett Jones LLP	\$5,378.26	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$5,378.26	\$0.00	\$0.00	\$0.00	\$0.00
INTERVENERS					
Alberta Association of Municipal Districts & Counties					
Brownlee Fryett	\$1,951.10	\$0.00	\$0.00	\$0.00	\$0.00
Collins Barrow	\$1,143.83	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$3,094.93	\$0.00	\$0.00	\$0.00	\$0.00
Alberta Federation of REAs Ltd.					
Sisson Warren Sinclair	\$3,337.04	\$0.00	\$0.00	\$0.00	\$0.00
Collins Barrow	\$1,143.83	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$4,480.87	\$0.00	\$0.00	\$0.00	\$0.00
Alberta Urban Municipalities Association / City of Edmonton					
Reynolds, Mirth, Richards & Farmer LLP	\$765.04	\$0.00	\$0.00	\$0.00	\$0.00
Barry Shymanski Regulatory Consulting Ltd.	\$1,063.31	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$1,828.35	\$0.00	\$0.00	\$0.00	\$0.00
City of Calgary					
D'Arcy & Deacon	\$3,760.81	\$0.00	\$0.00	\$0.00	\$0.00
Stephen Johnson	\$3,571.13	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$7,331.94	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL INTERVENER CSOTS					
	\$16,736.09	\$0.00	\$0.00	\$0.00	\$0.00
TOTAL INTERVENER AND APPLICANT COSTS					
	\$22,114.35	\$0.00	\$0.00	\$0.00	\$0.00