



ATCO Gas South

Jumping Pound Meter Station Gas Measurement Adjustment

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2004-33: ATCO Gas South

Jumping Pound Meter Station Gas Measurement Adjustment

Application No.: 1314487

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**ATCO Gas South
Jumping Pound Meter Station
Gas Measurement Adjustment**

**Utility Cost Order 2004-33
Application No. 1314487
File No. 8000-1314487-01**

1 INTRODUCTION

The Alberta Energy and Utilities Board (Board / EUB) received an application (the Application) from ATCO Gas South (AGS), a division of ATCO Gas and Pipelines Ltd. (AGPL), dated September 19, 2003, for approval to include in its Deferred Gas Account (DGA) costs aggregating \$3.4 million relating to a gas measurement error that occurred at the ATCO Pipelines South (APS) Jumping Pound Meter Station (JP Meter Station). APS is also an operating division of AGPL. The Board published Notice of the Application in AGS' service areas on October 7, 2003.

The issues involved in the Application concerned whether or not the particular measurement error gave rise to costs that were properly chargeable to AGS's DGA. Implicit therein was the understanding that any adjustments to the DGA would be made in accordance with approved DGA procedures. The Application did not deal with the correctness of those procedures, which would ordinarily be included as a subject of a proceeding such as a general rate application.

The Board dealt with the Application by way of a written proceeding as none of the parties that registered as interveners¹ submitted any request for the Board to hold an oral hearing. The Board considers that the record for this proceeding closed on November 28, 2003.

The Panel assigned to consider this matter consisted of B.T. McManus, Q.C. (Presiding Member), M.J. Bruni, Q.C. (Acting Member), and C. Dahl Rees (Acting Member). On February 17, 2004 the Board issued [Decision 2004-013](#).

Various participants submitted cost claims totaling \$79,053.37 including actual GST of \$4,438.99 with respect to the Proceeding.

On January 26, 2003 a summary of the costs being claimed was circulated to interested parties. Parties were advised that any comments regarding the figures listed in the summary or the merits of the total costs claimed were to be submitted to the EUB by February 9, 2004. The EUB did not receive any comments and accordingly considers that the cost process for this proceeding closed on February 9, 2004.

¹ Registered parties included the Alberta Urban Municipalities (previously identified as MI) and PICA (together, AUMA/PICA), Calgary, the Consumers Coalition of Alberta, Coral Energy Canada Inc., Direct Energy Regulated Services, a business unit of Direct Energy Marketing Limited, the Alberta Federation of Alberta Gas Co-ops Ltd. and Gas Alberta Inc. (together, the FGA), ProMark Producers Marketing Ltd., Shell, and the Stoney Nakoda Nation.

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.

3 VIEWS OF THE BOARD - Assessment

3.1 City of Calgary (Calgary)

Calgary presented an intervention that was detailed and raised a number of important issues. However the Board is somewhat concerned that Calgary's participation was, in part, not in line with the scope and nature of the proceeding. This included concentrating on rate design issues and DGA procedures that were not within the scope of this proceeding or relevant to the issues before the Board. Calgary disputed DGA procedures previously approved by the Board, the reconsideration of which was not an appropriate issue for this proceeding.

Burnet, Duckworth & Palmer LLP (BDP)

The Board has reviewed BDP's portion of the cost claim that consists of legal fees in the amount of \$15,125.00, disbursements in the amount of \$15.25, and GST in the amount of \$1,073.45 for a total claim of \$16,213.70.

The Board notes that Mr. Bruce Brander and Ms. Patricia Quinton-Campbell, both senior counsel, incurred a similar amount of time with respect to preparation, specifically 17.3 hours and 18.3 hours respectively. For argument and reply, Mr. Brander incurred 16.7 hours and Ms. Quinton-Campbell 8.2 hours. The Board is also mindful that BDP retained the services of three different consulting firms to assist with this intervention. Given that this was a written proceeding, technical in nature, and included the collaboration of three consulting firms, two senior lawyers actively involved in the proceeding and incurring a similar amount of time for preparation appears somewhat excessive. The Board also finds it reasonable to conclude that there would be some duplication of work between the lawyers given that both were actively involved and have incurred similar amounts of time for the proceeding.

The Board expects counsel to take responsibility for the overall intervention to ensure that it does not take on an excessive nature with respect to preparation time, evidence, and argument and reply. In this particular proceeding, while the Board appreciates the expertise behind Calgary's intervention, the Board is somewhat concerned with the overall detail included in the evidence, argument, and reply given the issues before the Board, particularly in relation to the level of detail provided by Calgary regarding rate design and load balancing procedures.

Based on the foregoing the Board finds it appropriate to reduce BDP's overall legal fees by 10%. Accordingly, the Board approves legal fees in the amount of \$13,162.50 disbursements in the amount of \$15.25, and applicable GST in the amount of \$408.86 for a total award of \$14,036.61 as shown in [Appendix "A"](#) attached.

Energy Group, Inc. (EG)

The Board has reviewed EG's portion of the cost claim that consists of professional fees in the amount of \$23,701.51, disbursements in the amount of \$5.70, and GST in the amount of \$1,659.50 for a total claim of \$25,366.71. The Board notes that 68.6 hours were incurred for preparation and 31 hours were incurred for argument and reply for a total of 99.6 hours. As mentioned above, the Board considers that Calgary's intervention was somewhat too detailed in respect of rate design and DGA procedures, and that this was not the appropriate proceeding to argue such issues. The Board believes that incurring 99.6 hours for this written process was somewhat excessive.

Based on the foregoing the Board finds it appropriate to reduce EG's professional fees by 10%. Accordingly, the Board approves professional fees for EG in the amount of \$21,331.36, disbursements in the amount of \$5.70, and applicable GST in the amount of \$640.15 for a total award of \$21,977.21 as shown in [Appendix "A"](#) attached.

The Board has reviewed the remaining costs claimed by Calgary and finds them to be reasonable and are approved as shown in [Appendix "A"](#) 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 [Appendix "A"](#) to this Order in the total amount of \$72,758.62.

4 GST

In accordance with the Board's treatment of the GST on cost awards, ATCO Gas South 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 \$2,026.89 as shown in column (g) of [Appendix "A"](#). The GST allowed by the Board may be charged against ATCO Gas South's 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 \$61,363.63, as set out in column (h) of [Appendix "A"](#).
2. ATCO Gas South's external costs in the amount of \$11,394.99, as set out in column (h) 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 \$72,758.62, as set out in column (h) of [Appendix "A"](#).

Dated in Calgary, Alberta on this 7th day of May, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

[Original signed by]

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



"UCO 2004-33
Appendix A (AGS Jun

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**ATCO Gas South
Jumping Pound Measurement Adjustment
(1314487)**

Summary of Total Costs Claimed and Awarded

	Fees Claimed (a)	Total Expenses Claimed (b)	Total GST Claimed (c)	Total Amount Claimed (d)	Total Fees Awarded (e)	Total Expenses Awarded (f)	Total GST Awarded (g)	Total Amount Awarded (h)
APPLICANT								
ATCO Gas South								
ATCO Gas South	\$0.00	\$3,507.45	\$0.00	\$3,507.45	\$0.00	\$3,507.45	\$0.00	\$3,507.45
Bennett Jones LLP	\$7,840.00	\$47.54	\$0.00	\$7,887.54	\$7,840.00	\$47.54	\$0.00	\$7,887.54
Sub-Total	\$7,840.00	\$3,554.99	\$0.00	\$11,394.99	\$7,840.00	\$3,554.99	\$0.00	\$11,394.99
INTERVENERS								
Alberta Urban Municipalities Association / PICA								
Bryan & Company	\$2,575.00	\$26.73	\$182.12	\$2,783.85	\$2,575.00	\$26.73	\$182.12	\$2,783.85
Robert L. Bruggeman Regulatory Consulting Ltd.	\$2,400.00	\$0.00	\$168.00	\$2,568.00	\$2,400.00	\$0.00	\$168.00	\$2,568.00
Liddle Engineering	\$7,200.00	\$0.00	\$504.00	\$7,704.00	\$7,200.00	\$0.00	\$504.00	\$7,704.00
Sub-Total	\$12,175.00	\$26.73	\$854.12	\$13,055.85	\$12,175.00	\$26.73	\$854.12	\$13,055.85
City of Calgary								
Burnet, Duckworth & Palmer	\$15,125.00	\$15.25	\$1,073.45	\$16,213.70	\$13,612.50	\$15.25	\$408.86	\$14,036.61
Energy Group, Inc.	\$23,701.51	\$5.70	\$1,659.50	\$25,366.71	\$21,331.36	\$5.70	\$640.15	\$21,977.21
Peter J. Milne & Associates Inc.	\$525.00	\$0.00	\$36.75	\$561.75	\$525.00	\$0.00	\$15.75	\$540.75
Stephen Johnson	\$3,600.00	\$0.00	\$252.00	\$3,852.00	\$3,600.00	\$0.00	\$108.01	\$3,708.01
Sub-Total	\$42,951.51	\$20.95	\$3,021.70	\$45,994.16	\$39,068.86	\$20.95	\$1,172.77	\$40,262.58
Federation of Alberta Gas Co-ops / Gas Alberta Inc.								
Campbell Ryder Consulting Group	\$5,075.00	\$47.80	\$358.60	\$5,481.40	\$5,075.00	\$47.80	\$0.00	\$5,122.80
Brownlee Fryett	\$2,887.50	\$34.90	\$204.57	\$3,126.97	\$2,887.50	\$34.90	\$0.00	\$2,922.40
Sub-Total	\$7,962.50	\$82.70	\$563.17	\$8,608.37	\$7,962.50	\$82.70	\$0.00	\$8,045.20
TOTAL INTERVENER COSTS	\$63,089.01	\$130.38	\$4,438.99	\$67,658.38	\$59,206.36	\$130.38	\$2,026.89	\$61,363.63
TOTAL INTERVENER AND APPLICANT COSTS	\$70,929.01	\$3,685.37	\$4,438.99	\$79,053.37	\$67,046.36	\$3,685.37	\$2,026.89	\$72,758.62