



ATCO Gas North ATCO Gas South

Code of Conduct Exemption

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Utility Cost Order 2004-47: ATCO Gas North and South

Code of Conduct Exemption

Application No. 1317782

Published by

Alberta Energy and Utilities Board

640 – 5 Avenue SW

Calgary, Alberta

T2P 3G4

Telephone: (403) 297-8311

Fax: (403) 297-7040

Web site: www.eub.gov.ab.ca

Contents

1 INTRODUCTION..... 1

2 VIEWS OF THE BOARD – AUTHORITY TO AWARD COSTS..... 1

3 VIEWS OF THE BOARD - ASSESSMENT 2

4 GST..... 2

5 ORDER 3

ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

ATCO Gas North
ATCO Gas South
Code of Conduct Exemption

Utility Cost Order 2004-47
Application Nos. 1317782
File No. 8000-1317782-01

1 INTRODUCTION

ATCO Gas (AG), a Division of ATCO Gas and Pipelines Ltd. (AGPL), by letter dated October 22, 2003, filed an application with the Alberta Energy and Utilities Board (EUB/Board) for approval of a general exemption for each of its business units, ATCO Gas North (AGN) and ATCO Gas South (AGS), pursuant to Section 2.6 of the ATCO Group Inter-Affiliate Code of Conduct (the Code).

The Board published Notice of the Application in AG's service areas on November 13, 2003. No objections to the Application were received by the due date, November 21, 2003. The Board dealt with the Application by way of a written proceeding. The Board issued correspondence on February 5, 2004 seeking further comments, if any, from the parties. The Applicant responded on February 13, 2004. No comments were received from the interested parties by February 20, 2004, the due date for their submissions. The Board therefore considers February 20, 2004 to be the date for close of record for this proceeding.

The Panel assigned to consider this proceeding consisted of T. McGee (Presiding Member), B. T. McManus, Q.C. (Member), and M. J. Bruni, Q.C (Acting Member). On May 11, 2004 the Board issued [Decision 2004-039](#).

On March 24, 2004, a summary of the costs being claimed was circulated to interested parties. Parties were advised that any comments regarding the figures listed, or the merits of the total costs claimed were to be submitted to the Board by April 8, 2004. The Board did not receive any comments, and therefore considers that the cost process for this proceeding closed on April 8, 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.

3 VIEWS OF THE BOARD - Assessment

The Board received one cost claim with respect to this proceeding from AG. The claim included AG's internal expenses of \$5,989.00 and legal fees incurred by Bennett Jones in the amount of \$14,836.00 plus disbursements of \$65.55. AG's cost claim totals \$20,890.55, which AG allocated equally to AGN and AGS.

The Board has reviewed the costs submitted by AG, 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 Applicant 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 to be reasonable.

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 \$0.00.

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's external costs in the amount of \$10,445.28 are approved.
2. ATCO Gas North shall record in its Hearing Cost Reserve Account the allowed external applicant costs in the amount of \$10,445.28.
3. ATCO Gas South's external costs in the amount of \$10,445.27 are approved.
4. ATCO Gas South shall record in its Hearing Cost Reserve Account the allowed external applicant costs in the amount of \$10,445.27.

Dated in Calgary, Alberta on this 5th day of July, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

Thomas McGee
Board Member