

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of ATCO Gas North
Compliance Filing from Approval of the
Westlock and Lloydminster Sales
Review and Variance of Decision 2002-01

UTILITY COST ORDER 2003-02

Application Number: 1259858
Cost File Number: 8000-1259858 (01)

1. DECISION

In Decisions 2001-46 and 2001-65, the Board approved the sale of the Westlock et al. and Lloydminster natural gas producing properties (the Properties) by ATCO Gas North (AGN) to various buyers. The Board directed that certain information would need to be filed to finalize the allocation of the proceeds from the sale of the Properties. The final values for the information could not be determined until the sale closings had been completed. The actual amounts to be allocated depended upon the final values for costs of disposition, Net Book Values (NBV) and closing price adjustments. In accordance with Decision 2001-65, AGN filed with the Board its Compliance Filing with respect to the Properties on August 30, 2001.

In Decision 2002-01, the Board approved various adjustments proposed by AGN for sale of the Properties, such as changes to the NBV, statements of adjustments, and disposition costs. However, the Board did not allow AGN to deduct income tax arising from the sales to be deducted from proceeds payable to customers.

On January 17, 2002, AGN filed with the Board a request to review and vary Board Decision 2002-01 pursuant to s. 64 of the *Public Utilities Act* and s. 59 and 60 of the *Gas Utilities Act*. The review and variance (R&V) request from AGN challenged the Board's refusal to deduct the income tax payable on the sale of the Properties from proceeds payable to customers. On February 8, 2002 the North Core Customer Group filed comments regarding the application and on February 21, 2002 AGN filed a reply to the comments.

In its letter of July 29, 2002 the Board advised interested parties, for reasons set out therein, that the request for an R&V was dismissed after consideration of the preliminary question set out in section 46(4) of its *Rules of Practice*. The Board considers the record closed on July 29, 2002 and therefore any claims for intervener costs were to be submitted by no later than August 29, 2002. The Board notes that all of the intervener cost claims were submitted past the 30-day filing deadline. The Board further notes that justification was provided for each late filing.

Various participants submitted cost claims totaling \$21,942.28 including actual GST of \$926.65 with respect to the Proceeding.

Who Should Bear the Costs of the Proceeding

The Board's authority to award costs is derived from section 68 of the *Public Utilities Board Act*, 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 directed by Part 5 of its *Rules of Practice* and is guided by the principles and policies expressed in Guide 31B, Guidelines for Utility Cost Claims. Proposed amendments to Guide 31B to address appropriate treatment of costs with respect to review requests are set out in General Bulletin, GB 2002-15 which was issued on October 8, 2002.

As outlined in GB 2002-15, while the Board will continue to assess each cost claim associated with an R&V request upon its own merits, it is proposed that the additional guidelines will be applied unless interested parties can demonstrate that the application of the guidelines would be inappropriate in the circumstances. It is the Board's position that utility customers should not be required to bear the costs associated with a failed R&V request initiated by a utility as there is little, if any, customer benefit associated with this proceeding. Rather, the costs incurred by the utility and the interveners in such a proceeding should be borne by the shareholders of the utility and should not be included in any way into forecasts used to apply for rate increases.

Since the R&V request by AGN predates GB 2002-15, the Board considers that it would be inappropriate to apply the proposed principles outlined in GB 2002-15 in this case. Accordingly, the costs of this proceeding may be recorded in AGN's Hearing Cost Reserve Account, subject to the Board's review of individual cost claims to ensure that the costs were reasonably incurred.

Assessment of Individual Cost Claims

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.

It is the EUB's position that the responsibility to positively contribute to the process is inherent in the choice to intervene in a proceeding. The EUB 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.

As the costs of a proceeding are generally passed on to customers, it is the Board's duty to ensure that customers receive fair value for their 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.

The Board has reviewed the costs submitted by participants, bearing in mind the principles specified in the Board's *Scale of Costs*. The Board finds that the participation of the interveners was, for the most part, effective and of assistance in reviewing the request for R&V. 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 Schedule "A".

In accordance with the Board's treatment of the GST on cost awards, ATCO Gas North is required to pay only that portion of the GST paid by interveners that may not be recoverable through the GST credit mechanism. Eligible GST approved by the Board amounts to \$295.48 as shown in column (d) of Schedule "A". The GST allowed by the Board may also be charged against the ATCO Gas North 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. E-13.

2. ORDER

THEREFORE, for the reasons provided above, the Alberta Energy and Utilities Board, pursuant to the provisions of the *Public Utilities Board Act* and regulations hereunder, hereby orders as follows:

- 1) ATCO Gas North shall pay intervener costs in the amount of \$13,598.94, as set out in column (e) of Schedule "A".
- 2) ATCO Gas North's external costs in the amount of \$7,712.17, as set out in column (e) of Schedule "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 \$21,311.11, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 27th day of February, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee

ATCO Gas North
Application No.: 1259858

Summary of Total Costs Claimed and Awarded

	Total Amount Claimed (a)	Total Fees Awarded (b)	Total Disbursements Awarded (c)	Total GST Awarded (d)	Total Fees, Disbursements, and GST Awarded (e)
APPLICANT					
ATCO Gas North					
Bennett Jones	\$7,712.17	\$7,634.00	\$78.17	\$0.00	\$7,712.17
Sub-Total	\$7,712.17	\$7,634.00	\$78.17	\$0.00	\$7,712.17
INTERVENERS					
Federation of Alberta Gas Co-ops / Gas Alberta Inc.					
Brownlee Fryett	\$5,235.09	\$4,875.00	\$17.61	\$0.00	\$4,892.61
Campbell Ryder Consulting Group Ltd.	\$3,780.35	\$3,225.00	\$308.04	\$0.00	\$3,533.04
Sroule Associates Limited	\$698.00	\$656.62	\$0.00	\$0.00	\$656.62
Sub-Total	\$9,713.44	\$8,756.62	\$325.65	\$0.00	\$9,082.27
Alberta Urban Municipalities Association					
Bryan & Company	\$4,516.67	\$4,175.00	\$46.19	\$295.48	\$4,516.67
Sub-Total	\$4,516.67	\$4,175.00	\$46.19	\$295.48	\$4,516.67
TOTAL INTERVENER COSTS	\$14,230.11	\$12,931.62	\$371.84	\$295.48	\$13,598.94
TOTAL COSTS	\$21,942.28	\$20,565.62	\$450.01	\$295.48	\$21,311.11

CONTACT LIST
(Application No.: 1259858)

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Alberta Urban Municipalities Association

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Federation of Alberta Gas Co-ops Ltd. / Gas Alberta Inc.

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