

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of ATCO Gas South,
a Division of ATCO Gas and Pipelines Limited
2002/2003 Winter Storage Plan

UTILITY COST ORDER 2003-03

Application Number: 1272527
Cost File Number: 8000-1272527 (01)
Board File Number: 5626-55

1. DECISION

By letter dated June 19, 2002, ATCO Gas South (AGS), a division of ATCO Gas and Pipelines Ltd., filed an application with the Alberta Energy & Utilities Board (the Board) for approval of its natural gas storage plan for the 2002/2003 winter season at the Carbon Natural Gas Storage Facility (the Application).

On July 4, 2002 the EUB issued a Notice of Written Proceeding, which was also published in the Calgary Herald and Calgary Sun on or about July 10, 2002, and requested interested parties to register by July 18, 2002. The Notice advised parties that Written Reply Argument would be due September 26, 2002. Accordingly, the Board considers the close of proceeding to be September 26, 2002.

The panel assigned to consider this matter consisted of T. McGee (Presiding Member), G.J. Miller (Member), and J.I. Douglas, FCA (Member). The Board participated by way of a written proceeding. On October 29, 2002 the Board issued Decision 2002-092.

Various participants submitted cost claims totaling \$122,590.85 including actual GST of \$6,824.19 with respect to 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. 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.

On October 29, 2002 a summary of costs being claimed was circulated to interested parties. Parties were advised that any comments to the summary were to be submitted to the Board by no later than November 12, 2002. The Board received the following comments and responses:

November 12, 2002 – Comments received from AGS

November 27, 2002 – Response received from Burnet Duckworth & Palmer representing the City of Calgary (Calgary)

December 4, 2002 – Comments received from AGS

December 4, 2002 – Response received from Burnet Duckworth & Palmer representing Calgary

Role of Calgary

The Board notes that Calgary played a prominent role in this proceeding on behalf of parties intervening in the Application. The familiarity of Calgary with the issues before the Board in this proceeding and its considered approach demonstrated value to the Board. Calgary's contribution in this lead role, and the degree of cooperation and lack of duplication among interveners is acknowledged and appreciated by the Board.

Confidentiality Process

While acknowledging the valued contribution by Calgary, the Board however, is concerned with the aggregate level of fees of approximately \$91,400.00 submitted by Calgary in this written proceeding. The Board is also concerned with the aggregate fees submitted by AGS of approximately \$14,000.00. After having reviewed the submissions of ATCO and Calgary with

respect to fees in this proceeding, the Board is of the view that the fees were higher for both Calgary and AGS, than what would have been the case had not a concern been raised by AGS, and then pursued by Calgary, with respect to the confidentiality of certain information requested by Calgary in Information Request CAL-AGS.13(b)(i). This IR requested AGS to provide copies of studies, analyses, and other work products provided by ATCO Midstream to AGS on withdrawal strategies relating to the Carbon Storage Facilities. AGS indicated that the requested information was confidential and AGS requested a ruling from the Board under Rule 12 of the Board's Rules of Practice. Calgary gained access to the requested information by executing confidentiality undertakings but continued to maintain that the information should not be considered to be confidential and reserved the right to use this information in Information Responses, Argument, and Reply Argument. As a result of these developments, the request for a ruling from the Board on the Rule 12 application was affirmed. The Board granted the request for confidential treatment of the information (Confidential Information), on August 29, 2002.

Although Calgary did not make use of the Confidential Information in Information Responses, Argument, or Reply Argument, the Board does not necessarily view this as evidence that Calgary did not require the Confidential Information. The Board would be far more concerned had Calgary used the Confidential Information in a manner that was irrelevant to the issues in the proceeding, simply to be able to justify gaining access to such Confidential Information. The Board also notes Calgary's submission that it could not determine the usefulness of the Confidential Information until it had the opportunity to review it. Nonetheless, as emphasized in the Decision at page 7:

Given that neither party privy to the Confidential Information made use of it during the proceeding, the Board is led to the conclusion that the Confidential Information, after due consideration by the parties, was either considered not relevant or was immaterial to their respective positions. This result re-emphasizes that concern of the Board that its confidential processes not be used except where there is both a valid and strong reason both to maintain confidential treatment of information and a valid and strong need to receive access to such information.

The Board also notes Calgary's submission that it was only logical that information relating to the withdrawal deliverability of the facility would be necessary and relevant to an application that was proposing a monthly withdrawal strategy. Calgary contended that except for the Confidential Information, AGS had not provided any information on the ability of the Carbon Storage Facilities to meet the monthly withdrawal strategy being proposed. Therefore, in Calgary's view, it did have a "valid and strong reason" to access the information. Calgary further claimed that there was a reasonable chance that the information would have been useful to its argument on how AGS should optimize the use of the portion of the storage capacity available to the utility to maximize the benefits for customers

Although Calgary did appear to have some merit in pursuing the Confidential Information, the Board is not convinced that the need for the Confidential Information, which related to the withdrawal capacity of the Carbon Storage Facilities as a whole, was necessary in the context of this Application. It also appears to the Board that publicly available information combined with past actual experiences of AGS in utilizing the Carbon Storage Facilities on behalf of AGS

customers may have been sufficient in the context of the Application. Nevertheless, AGS could have been more responsive to the informational needs of Calgary earlier in the process, perhaps providing some assistance to Calgary in their quest to try and understand the capabilities of the Carbon Storage Facility to perform in accordance with the proposed withdrawal strategy.

Accordingly, the Board has determined that both Calgary and AGS could have avoided certain of the procedural delays and inefficiencies surrounding the Rule 12 Application and could have assisted the Board to a greater extent in streamlining the issues surrounding the withdrawal capabilities of the Carbon Storage Facilities. The Board finds it appropriate to reduce the fees claimed by Calgary in the amount of \$10,000.00 together with applicable GST of \$300.02 for a total reduction of \$10,300.02. The Board also finds it appropriate to reduce the fees claimed by AGS by \$3,000.00.

Based on the above, the Board approves aggregate fees in the amount of \$81,485.50 for Calgary and an aggregate amount of \$11,028.00 for AGS, as shown in column (b) of Schedule "A" attached.

The Board has reviewed Calgary's and AGS' disbursements in the amount of \$930.33 and \$2,250.32 respectively, and finds that they have been reasonably incurred under Guide 31B and are therefore approved in full, as shown in Schedule "A" attached.

The total amount of professional fees, disbursements, and applicable GST approved for Calgary is \$84,888.47, as shown in column (e) of Schedule "A" attached.

The total amount of professional fees and disbursements approved for AGS is \$13,278.32, as shown in column (e) of Schedule "A" attached.

The Board has reviewed the costs submitted by the remaining participants, bearing in mind the principles specified in the Board's *Scale of Costs*. The Board finds that the participation of these parties 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 other participants to be reasonable as outlined in Schedule "A".

In accordance with the Board's treatment of the GST on cost awards, AGS 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 \$2,827.72 as shown in column (d) of Schedule "A". The GST allowed by the Board may also be charged against the AGS 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 South shall pay intervener costs in the amount of \$92,316.06, as set out in column (e) of Schedule "A".
- 2) ATCO Gas South's external costs in the amount of \$13,278.32 as set out in column (e) of Schedule "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 \$105,594.38, 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

Application No. 1272527

Summary of Total Costs Claimed and Awarded

	Total Amount Claimed (Fees, Disbursements, and GST) (a)	Total Fees Awarded (b)	Total Disbursements Awarded (c)	Total GST Awarded (d)	Total Fees, Disbursements, and GST Awarded (e)
APPLICANT					
ATCO Gas South					
ATCO Gas South	\$2,012.68	\$0.00	\$2,012.68	\$0.00	\$2,012.68
Bennett Jones	\$12,015.64	\$11,778.00	\$237.64	\$0.00	\$12,015.64
Risk Advisory	\$2,250.00	\$2,250.00	\$0.00	\$0.00	\$2,250.00
Less Aggregate Amount of \$3,000.00		-\$3,000.00			-\$3,000.00
Sub-total	\$16,278.32	\$11,028.00	\$2,250.32	\$0.00	\$13,278.32
INTERVENERS					
Alberta Urban Municipalities Association					
Bryan & Company	\$1,917.99	\$1,775.00	\$17.51	\$125.48	\$1,917.99
Robert L. Bruggeman Regulatory Consulting Ltd.	\$3,509.60	\$3,280.00	\$0.00	\$229.60	\$3,509.60
Sub-total	\$5,427.59	\$5,055.00	\$17.51	\$355.08	\$5,427.59
City of Calgary					
Burnet, Duckworth & Palmer	\$52,155.04	\$47,815.50	\$927.53	\$1,462.39	\$50,205.42
Stephen Johnson	\$3,341.40	\$3,120.00	\$2.80	\$93.69	\$3,216.49
Energy Group, Inc.	\$31,404.50	\$29,350.00	\$0.00	\$880.56	\$30,230.56
Energy Objective	\$11,984.00	\$11,200.00	\$0.00	\$336.02	\$11,536.02
Less Aggregate Amount of \$10,000.00		-\$10,000.00		-\$300.02	-\$10,300.02
Sub-total	\$98,884.94	\$81,485.50	\$930.33	\$2,472.64	\$84,888.47
Public Institutional Consumers of Alberta					
Liddle Engineering Ltd.	\$2,000.00	\$2,000.00	\$0.00	\$0.00	\$2,000.00
Sub-total	\$2,000.00	\$2,000.00	\$0.00	\$0.00	\$2,000.00
TOTAL INTERVENER COSTS	\$106,312.53	\$88,540.50	\$947.84	\$2,827.72	\$92,316.06
TOTAL COSTS	\$122,590.85	\$99,568.50	\$3,198.16	\$2,827.72	\$105,594.38

CONTACT LIST
(Application No.: 1272527)

ATCO Gas

10035 – 105th Street
Edmonton, Alberta
T5J 2V6

Attention: Lorraine Motowylo
Telephone: 780-420-7745
Fax: 780-420-4155
E-Mail: lorraine.motowylo@atcogas.com

Alberta Urban Municipalities Association

Bryan & Company
Barristers and Solicitors
2600, 10180 – 101st Street
Edmonton, Alberta T5J 3Y2

Attention: J. Alan Bryan, Q.C.
Telephone: (780-423-5730)
Fax: (780-428-6324)
E-Mail: jabryan@bryanco.com

City of Calgary

Burnet Duckworth & Palmer LLP
Law Firm
1400, 350 - 7th Avenue S.W.
Calgary, Alberta, T2P 3N9

Attention: Bruce Brander
Telephone: (403-260-0165)
Fax: (403) 260-5744
E-Mail: rbb@bdplaw.com

Public Institutional Consumers of Alberta

Nancy J. McKenzie
Barrister & Solicitor
11603 – 102nd Street
Edmonton, Alberta T5G 2E9

Telephone: (780-474-3592)
Fax: (780-474-3593)
E-Mail: njmcken@telusplanet.net