

**THE PROVINCE OF ALBERTA**

***PUBLIC UTILITIES BOARD ACT***

**ALBERTA ENERGY AND UTILITIES BOARD**

IN THE MATTER of ATCO Gas North and South  
Winter Storage Agreements

**UTILITY COST ORDER 2003-05**

Application Numbers: 2001095 and 1246174  
Cost File Number: 8000-1246174 (01)

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**1. DECISION**

By letter dated March 15, 2001, ATCO Gas North (AGN) filed an application with the Alberta Energy and Utilities Board, (the Board), for approval of a proposed storage procurement process for its 2001/2002 storage year (April 1, 2001 to April 1, 2002). No objections were received from any parties with respect to the proposed procurement process.

The panel assigned to this proceeding consisted of B.T. McManus, Q.C. (Presiding Member) and B.F. Bietz, Ph.D (Board Member). On March 27, 2001 the Board issued Decision 2001-43.

By letter dated October 12, 2001, ATCO Gas South (AGS) filed an application with the Board for approval of a proposed 2001/2002 Winter Storage Agreement (November 1, 2001 to March 31, 2002). Interested parties acknowledged their approval of the proposed Agreement.

Various participants submitted cost claims totaling \$75,131.34 including actual GST of \$3,726.37 with respect to the Proceeding.

The Board's authority to award costs for hearings which concluded prior to August 1, 2001 is derived from section 60 (*now 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.
- (2) 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 60 (*now 68*), the Board is guided by the principles and policies expressed in its *Scale of Costs*. Not only does the *Scale of Costs* outline what fees and disbursements the Board will consider in a claim, it provides criteria for assessing a claim. The following excerpt from the *Scale of Costs* details those criteria:

Before exercising its statutory discretion to award costs, the Board will consider such questions as the effectiveness of the particular intervention, its relevancy to the issues, and whether the costs were reasonably and prudently incurred.

As interested parties are aware, the Board recently reviewed its cost policies and procedures with regard to utility proceedings. One outcome of this review was the recognition by the Board of a need for greater overall scrutiny of costs submissions to ensure that those awarded fairly reflect the relative contributions of participants. More specifically, the Board stated that prior to awarding costs to participants, it would satisfy itself that the participant contributed to a better understanding of the issues before the Board and that the costs claimed were reasonable, and prudently incurred.

The Board notes, however, that the costs relating to this proceeding were incurred prior to providing interested parties with the notice of the Board's intentions as expressed above. The Board is thus of the opinion that the costs of this proceeding should be subject to the same scrutiny as other proceedings conducted at the same time.

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 July 18, 2002, the Board received correspondence from ATCO Gas with respect to the City of Calgary's (Calgary) claim for costs. While the ATCO Gas letter provided no specific comments on the costs for this proceeding, ATCO Gas mentioned its ongoing concerns with respect to the Quantum of Calgary's costs and provided an updated costs comparison table for the Board's review.

By letter dated July 23, 2003, the Calgary provided a response to ATCO Gas's comments. Calgary pointed out that ATCO Gas made no specific comments with respect to the claims for the proceeding. Calgary emphasized the significant role it played in the hearing and pointed out that ATCO Gas adopted an optionality model for the 2002/2003 storage year that was originally proposed by Calgary in the Proceeding. Calgary argued that ATCO Gas's comments were irrelevant and should be disregarded by the Board.

The Board considered the comments of both ATCO Gas and Calgary and has determined that, subject to exceptions below, the costs claimed by Calgary are reasonable given the scope and nature of its participation, and were directly and necessarily related to the proceeding.

### **City of Calgary**

Upon review of the claim submitted by Calgary, the Board notes that Ms. Patricia Quinton-Campbell of Burnet Duckworth & Palmer claimed for 4 hours at \$250.00 per hour. Given Ms. Quinton-Campbell's years of experience this amount is in excess of the Board's *Scale of Costs*. The maximum hourly rate allowed for Ms. Quinton-Campbell is \$220.00. The Board notes that Ms. Quinton-Campbell did provide justification for the increased rate, however the Board finds that the justification provided was general in nature and did not provide a persuasive argument relating specifically to the scope and nature of this proceeding. As such, the Board does not find that the increased rate is warranted in this circumstance. Accordingly, the Board approved professional fees for Ms. Quinton-Campbell in the amount of \$880.00 as shown below.

$$4 \text{ hrs} \times \$220.00 = \$880.00$$

The total professional fees awarded to Burnet Duckworth & Palmer is \$9,105.00. The Board has reviewed the disbursements being claimed in the amount of \$53.11 and finds that they have been reasonably incurred under Guide 31B and are therefore approved in full.

The Board has reviewed the remaining fees and disbursements claimed by Calgary and finds that they are within the *Scale of Costs* and reasonable under Guide 31B and are therefore approved in full. The total amount of fees, disbursements, and applicable GST approved for Calgary is \$38,517.86 as shown in column (e) of Schedule "A" attached.

The Board has reviewed the remaining 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 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 Schedule "A".

In accordance with the Board's treatment of the GST on cost awards, The Applicants are 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 \$1,639.47 with respect to ATCO Gas – South and \$321.75 with respect to ATCO Gas –North, as shown in column (d) of Schedules "A" and "B" respectively. 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. 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 \$61,626.34, as set out in column (e) of Schedule "A".
- 2) ATCO Gas – South’s external costs in the amount of \$8,463.18, 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 \$70,089.52, as set out in column (e) of Schedule "A".
- 4) ATCO Gas – North shall pay intervener costs in the amount of \$4,918.22, as set out in column (e) of Schedule “B”;
- 5) ATCO Gas – North shall record in its Hearing Cost Reserve Account the allowed intervener costs in the amount of \$4,918.22, as set out in column (e) of Schedule “B”.

MADE at the City of Calgary, in the Province of Alberta, this 26th day of March, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

*Original Signed by Thomas McGee*

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Thomas McGee

**ATCO Gas -South  
Application No.: 1246174**

**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)
<b>Applicant</b>					
<b>ATCO Gas -South</b>					
ATCO Gas - South	\$12.03	\$0.00	\$12.03	\$0.00	\$12.03
Bennett Jones	\$8,451.15	\$8,038.50	\$412.65	\$0.00	\$8,451.15
<b>Sub-Total</b>	<b>\$8,463.18</b>	<b>\$8,038.50</b>	<b>\$424.68</b>	<b>\$0.00</b>	<b>\$8,463.18</b>
<b>Intervenors</b>					
<b>City of Calgary</b>					
Burnet, Duckworth & Palmer	\$9,927.58	\$9,105.00	\$53.11	\$274.76	\$9,432.87
Stephen Johnson	\$13,709.70	\$12,800.00	\$12.80	\$384.41	\$13,197.21
Energy ERA	\$16,504.75	\$15,425.00	\$0.00	\$462.78	\$15,887.78
<b>Sub-Total</b>	<b>\$40,142.03</b>	<b>\$37,330.00</b>	<b>\$65.91</b>	<b>\$1,121.95</b>	<b>\$38,517.86</b>
<b>Consumers' Coalition of Alberta</b>					
Wachowich & Company	\$2,584.05	\$2,415.00	\$0.00	\$169.05	\$2,584.05
Professional Regulatory Services, Inc.	\$2,334.17	\$2,160.00	\$21.47	\$152.70	\$2,334.17
<b>Sub-Total</b>	<b>\$4,918.22</b>	<b>\$4,575.00</b>	<b>\$21.47</b>	<b>\$321.75</b>	<b>\$4,918.22</b>
<b>Aboriginal Communities</b>					
Ackroyd, Piasta, Roth & Day	\$3,800.00	\$3,800.00	\$0.00	\$0.00	\$3,800.00
Graves Engineering Corporation	\$6,719.00	\$6,450.00	\$269.00	\$0.00	\$6,719.00
<b>Sub-Total</b>	<b>\$10,519.00</b>	<b>\$10,250.00</b>	<b>\$269.00</b>	<b>\$0.00</b>	<b>\$10,519.00</b>
<b>Alberta Irrigation Projects Association</b>					
Unryn & Associates Ltd.	\$950.49	\$935.00	\$15.49	\$0.00	\$950.49
<b>Sub-Total</b>	<b>\$950.49</b>	<b>\$935.00</b>	<b>\$15.49</b>	<b>\$0.00</b>	<b>\$950.49</b>

**ATCO Gas -South**  
**Application No.: 1246174**

**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)
<b>Municipal Intervenors</b>					
Robert L. Bruggeman Regulatory Consulting Ltd.	\$6,981.75	\$6,525.00	\$0.00	\$195.76	\$6,720.76
<b>Sub-Total</b>	<b>\$6,981.75</b>	<b>\$6,525.00</b>	<b>\$0.00</b>	<b>\$195.76</b>	<b>\$6,720.76</b>
<b>Total Intervener Costs</b>	<b>\$63,511.49</b>	<b>\$59,615.00</b>	<b>\$371.87</b>	<b>\$1,639.47</b>	<b>\$61,626.34</b>
<b>Total Costs</b>	<b>\$71,974.67</b>	<b>\$67,653.50</b>	<b>\$796.55</b>	<b>\$1,639.47</b>	<b>\$70,089.52</b>

**ATCO Gas - North**  
**Application No.: 2001095**  
**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)
<b>Applicant</b>					
<b>ATCO Gas - North</b>					
ATCO Gas - North	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Sub-Total</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>
<b>Interveners</b>					
<b>Consumers' Coalition of Alberta</b>					
Wachowich & Company	\$2,584.05	\$2,415.00	\$0.00	\$169.05	\$2,584.05
Professional Regulatory Services, Inc.	\$2,334.17	\$2,160.00	\$21.47	\$152.70	\$2,334.17
<b>Sub-Total</b>	<b>\$4,918.22</b>	<b>\$4,575.00</b>	<b>\$21.47</b>	<b>\$321.75</b>	<b>\$4,918.22</b>
<b>Total Intervener Costs</b>	<b>\$4,918.22</b>	<b>\$4,575.00</b>	<b>\$21.47</b>	<b>\$321.75</b>	<b>\$4,918.22</b>
<b>Total Costs</b>	<b>\$4,918.22</b>	<b>\$4,575.00</b>	<b>\$21.47</b>	<b>\$321.75</b>	<b>\$4,918.22</b>