

**THE PROVINCE OF ALBERTA**

***PUBLIC UTILITIES BOARD ACT***

**ALBERTA ENERGY AND UTILITIES BOARD**

IN THE MATTER of ATCO Gas North  
Westlock and Lloydminster Sales  
Disposition of Customer Proceeds  
Pursuant to Decisions 2001-46, 2001-65, and 2002-1

**UTILITY COST ORDER 2003-08**

Application Number: 1277150  
Cost File Number: 8000-1277150 (01)  
Board File Number: 6405-18-1

---

**1. DECISION**

The Board received a letter dated August 23, 2002 from ATCO Gas North (AGN), an operating division of ATCO Gas and Pipelines Ltd. AGN proposed a method of dealing with the amounts to be paid to customers as a result of Board Decision 2001-46, dated May 29, 2001, approving the sale of both the Westlock and Lloydminster producing properties, and Decision 2001-65, dated July 31, 2001, which set forth the reasons for approving the above noted sales.

In Decision 2001-65, the Board directed AGN to refile information (Compliance Filing) for the Westlock and Lloydminster producing properties.

By letter dated August 30, 2001 AGN submitted its Compliance Filing with respect to both properties. Subsequent to its review of the Compliance Filing and comments from interveners, the Board issued Decision 2002-1, dated January 3, 2002. In Decision 2002-1, the Board confirmed the amounts to be allocated between customers and shareholders, and rejected AGN's reduction of the proceeds to customers for income tax purposes.

On January 17, 2002, AGN filed a Review and Variance Application with respect to Decision 2002-1 (the R&V Application). In the covering letter to the R&V Application, AGN requested that the Board rescind the Order in Decision 2002-1 to combine the amounts to be distributed to customers from the Westlock and Lloydminster dispositions with the amounts from the sale of the Viking properties, until such time as the Board had considered the R&V Application.

On July 29, 2002, the Board dismissed the R&V Application (the R&V Decision).

The panel assigned to consider the disposition of customer proceeds consisted of B.T. McManus, Q.C. (Presiding Member), T.M. McGee (Member), and J.I. Douglas, FCA (Member).

On September 17, 2002, the Board issued Decision 2002-083.

The Board received two cost claims, one from AGN, and one on behalf of Federation of Alberta Gas Co-ops Ltd. and Gas Alberta Inc. (FGA) with respect to AGN's application for approval to suspend the payment of proceeds to customers as ordered in Decision 2002-1. The cost claims total \$6,661.88 including actual GST of \$282.96 with respect to the Proceeding.

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 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.

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 for AGN and FGA, bearing in mind the principles specified in the Board's *Scale of Costs*. The Board finds that the participation of the 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 participants to be reasonable as outlined in Schedule "A".

In accordance with the Board's treatment of the GST on cost awards, AGN 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 \$0.00 as shown in column (d) of Schedule "A".

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., 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 \$4,042.18, as set out in column (e) of Schedule "A".
- 2) ATCO Gas North's external costs in the amount of \$2,336.74, 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 \$6,378.92, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 20th day of March, 2003.

ALBERTA ENERGY AND UTILITIES BOARD  
*Original Signed by Thomas McGee*

---

Thomas McGee

ATCO Gas (North)  
Application No.: 1277150

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>					
Bennett Jones LLP	\$2,336.74	\$2,275.00	\$61.74	\$0.00	\$2,336.74
<b>Sub-Total</b>	<b>\$2,336.74</b>	<b>\$2,275.00</b>	<b>\$61.74</b>	<b>\$0.00</b>	<b>\$2,336.74</b>
<b>INTERVENERS</b>					
<b>Federation of Alberta Gas Co-ops Ltd. / Gas Alberta Inc.</b>					
Brownlee Fryett	\$2,233.82	\$2,075.00	\$12.68	\$0.00	\$2,087.68
Campbell Ryder Consulting Group Ltd.	\$2,091.32	\$1,950.00	\$4.50	\$0.00	\$1,954.50
<b>Sub-Total</b>	<b>\$4,325.14</b>	<b>\$4,025.00</b>	<b>\$17.18</b>	<b>\$0.00</b>	<b>\$4,042.18</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$4,325.14</b>	<b>\$4,025.00</b>	<b>\$17.18</b>	<b>\$0.00</b>	<b>\$4,042.18</b>
<b>TOTAL COSTS</b>	<b>\$6,661.88</b>	<b>\$6,300.00</b>	<b>\$78.92</b>	<b>\$0.00</b>	<b>\$6,378.92</b>