

**THE PROVINCE OF ALBERTA**

***PUBLIC UTILITIES BOARD ACT***

**ALBERTA ENERGY AND UTILITIES BOARD**

IN THE MATTER of ATCO Gas (South)  
Rider D Adjustment Resulting from Revisions to  
Rates for Unaccounted for Gas (UFG)

**UTILITY COST ORDER 2003-14**

Application Number: 1272241  
Cost File Number: 8000-1272241 (01)  
Board File Number: 1306-3-2

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**1. DECISION**

On June 14, 2002, ATCO Gas (South) (AGS) filed with the Alberta Energy and Utilities Board (the Board) an application (the Application) requesting approval of its proposal for collection of the adjustment to the Deferred Gas Account (DGA).

By letter dated July 3, 2002, the Board invited interested parties to provide comments on the Application by July 12, 2002. The Municipal Intervenors (MI) and the City of Calgary (Calgary) filed letters dated July 12, 2002 and July 13, 2002, respectively in response to the Board's request for comments.

The Board agreed that the issues raised by these parties could be best addressed in a written process and, by letter dated July 17, 2002, requested AGS and interested parties to file related submissions having final reply argument due on August 16, 2002. Accordingly, the Board considers that the record of these proceedings closed on August 16, 2002.

The panel assigned to consider the Application consisted of B.T. McManus, Q.C. (Presiding Member), G.J. Miller (Member), and C. Dahl Rees (Acting Member). On August 26, 2002 the Board issued Decision 2002-078.

Various participants submitted cost claims totaling \$16,716.38 including actual GST of \$992.53 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. 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.

### **City of Calgary (Calgary)**

The Board considers that the Application resulted directly from the Board's direction in Decision 2001-97 and, effectively, represented a filing to ensure full compliance with the directions in that Decision. The Board finds that Calgary's request for additional information and support for the Application provided useful assistance to the Board in its analysis.

However, the Board considers that Calgary raised concerns regarding errors and imbalance issues that were not relevant to the Application. For example, Calgary raised the specifics of the error at Jumping Pound highlighted by AGS in a DGA application filed on June 13, 2002, and a separate measurement error at Carbon which had been brought to light on March 12, 2002 during the ATCO Carbon Transfer Proceeding. Calgary expressed concern that these two measurement errors could have a material impact on the allocation of UFG to AGS customers in the current application and in all future applications. However, the Board was not persuaded that the measurement errors had any impact on the allocation of UFG as determined in Decision 2001-97. Under section 55 of its Rules of Practice, the Board, in awarding costs, may consider, among other things, whether a participant submitted evidence and argument on issues that were not relevant to the proceeding. The Board considers that, as discussed above, Calgary raised matters that were not relevant to the Application resulting in unnecessary costs.

Calgary's cost claim indicates that Burnet, Duckworth & Palmer (BDP) coordinated Calgary's position on the Application. As such, the Board considers that BDP is partially responsible for costs incurred in dealing with matters described above that were not relevant to this Application. Accordingly, the Board will reduce the fees claimed by BDP by 10%. The total professional fees for BDP are approved in the amount of \$5,022.90, as shown below. GST for this party has been adjusted accordingly as outlined in Schedule "A" attached.

$\$5,581.00 \times 10\% = \$558.10$ , representing 10% reduction  
 $\$5,581.00 - \$558.10 = \$5,022.90$ , representing approved fees

Calgary's cost claim indicates that Peter J. Milne reviewed the AGS materials and provided comments to counsel on the preparation of submissions to the Board. Therefore, the Board considers it reasonable to assume that Mr. Milne contributed to the work on the issues which resulted in unnecessary costs, as described above, and must bear some of the responsibility for some of the issues raised by Calgary that were not relevant to the Application. Accordingly, the Board finds that a reduction of 10% to the fees claimed by Mr. Milne is appropriate. The total professional fees for Mr. Milne are approved in the amount of \$2,520.00, as shown below. GST for this party has been adjusted accordingly as outlined in Schedule "A" attached.

$\$2,800.00 \times 10\% = \$280.00$ , representing 10% reduction  
 $\$2,800.00 - \$280.00 = \$2,520.00$ , representing approved fees

Calgary's cost claim also indicates that H. VanderVeen reviewed the AGS materials and provided comments to counsel on the preparation of submissions to the Board. Therefore, the Board considers it reasonable to assume that Mr. VanderVeen also contributed to the work on the issues which resulted in unnecessary costs, as described above, and must bear some of the responsibility for some of the issues raised by Calgary that were not relevant to the Application. Accordingly, the Board finds that a reduction of 10% to the fees claimed by Mr. VanderVeen is appropriate. The total professional fees for Mr. VanderVeen are approved in the amount of \$3,555.00, as shown below. GST for this party has been adjusted accordingly as outlined in Schedule "A" attached.

$\$3,950.00 \times 10\% = \$395.00$ , representing 10% reduction  
 $\$3,950.00 - \$395.00 = \$3,555.00$ , representing approved fees

Taking all the foregoing into consideration, the total amount approved for Calgary is \$11,474.84, including fees, disbursements and GST as outlined in Column (e) of Schedule "A".

### **Other Parties**

The Board has reviewed the costs submitted by the participants, bearing in mind the principles specified in the Board's *Scale of Costs*. Subject to the comments made above, the Board finds that the participation of the interveners was generally 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, 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 \$460.61 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. 1985, 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 \$13,406.49, as set out in column (e) of Schedule "A".
- 2) ATCO Gas (South) external costs in the amount of \$1,544.87, 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 \$14,951.36, 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*

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Thomas McGee

ATCO Gas (South)

Application No.: 1272241

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)	\$15.14	\$0.00	\$15.14	\$0.00	\$15.14
Bennett Jones	\$1,529.73	\$1,517.50	\$12.23	\$0.00	\$1,529.73
<b>Sub-Total</b>	<b>\$1,544.87</b>	<b>\$1,517.50</b>	<b>\$27.37</b>	<b>\$0.00</b>	<b>\$1,544.87</b>
<b>INTERVENERS</b>					
<b>City of Calgary</b>					
Burnet, Duckworth & Palmer	\$6,017.36	\$5,022.90	\$42.70	\$151.98	\$5,217.58
Peter J. Milne & Associates Inc.	\$2,996.00	\$2,520.00	\$0.00	\$75.61	\$2,595.61
Energy Group Inc.	\$4,226.50	\$3,555.00	\$0.00	\$106.66	\$3,661.66
<b>Sub-Total</b>	<b>\$13,239.86</b>	<b>\$11,097.90</b>	<b>\$42.70</b>	<b>\$334.24</b>	<b>\$11,474.84</b>
<b>Alberta Urban Municipalities Association</b>					
Bryan & Company	\$727.90	\$675.00	\$5.28	\$47.62	\$727.90
Robert L. Bruggeman Regulatory Consulting Ltd.	\$1,203.75	\$1,125.00	\$0.00	\$78.75	\$1,203.75
<b>Sub-Total</b>	<b>\$1,931.65</b>	<b>\$1,800.00</b>	<b>\$5.28</b>	<b>\$126.37</b>	<b>\$1,931.65</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$15,171.51</b>	<b>\$12,897.90</b>	<b>\$47.98</b>	<b>\$460.61</b>	<b>\$13,406.49</b>
<b>TOTAL COSTS</b>	<b>\$16,716.38</b>	<b>\$14,415.40</b>	<b>\$75.35</b>	<b>\$460.61</b>	<b>\$14,951.36</b>