

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 Ltd.
Recovery of Deferred Gas Account
Balances as at March 31, 2002

UTILITY COST ORDER 2003-15

Application Number: 1272111
Cost File Number: 8000-1272111 (01)
Board File Number: 5626-54

1. DECISION

By letter dated June 13, 2002, ATCO Gas (South) (AGS), a Division of ATCO Gas and Pipelines Ltd. (AGPL), filed an application (the Application) with the Alberta Energy and Utilities Board (the Board) for approval to recover the cumulative under-recoveries of approximately \$11.5 million in its deferred gas account (DGA) balances as at March 31, 2002.

By e-mail letter dated June 28, 2002, the Board issued notice of the Application to interested parties registered on AGS's GCRR mailing list. Parties were invited to provide comments on the Application by July 10, 2002.

As a result of the notice, the Board received objections from the City of Calgary (Calgary), the Municipal Intervenor (MI), and the Public Institutional Consumers of Alberta (PICA). The Board also received a letter in support of the Application from Shell Canada Limited. By letter dated July 12, 2002, AGS provided a response to the objections.

The panel assigned to consider the Application consisted of B.T. McManus, Q.C (Presiding Member), G.J. Miller (Board Member), and C. Dahl Rees (Acting Board Member). On July 23, 2002, the Board issued Decision 2002-066. For purposes of Decision 2002-066 the Board considers the record to have closed on July 12, 2002.

Various participants submitted cost claims totaling \$30,597.58 including actual GST of \$1,751.03 with respect to the Proceeding. On September 10, 2002 a summary of costs being claimed was circulated to interested parties. Parties were advised that any comments regarding the figures listed in the summary or the merits of the total costs claimed were to be submitted to the Board by no later than September 24, 2002. On September 19, 2002, the Board received

comments regarding the Calgary's cost claim from AGS. A response to AGS' comments was submitted on October 8, 2002 by Burnet, Duckworth & Palmer, on behalf of Calgary.

Comments of the Parties

ATCO Gas (South) (AGS)

AGS expressed its concern regarding the "costs of excessive intervention on the part of Calgary". AGS noted that Calgary's claim for \$25,120.59 in total costs represented 81% of the combined costs of all claims in this proceeding.

City of Calgary (Calgary)

In response, Calgary argued that AGS' concern was based solely upon a comparison of its claim to the claims of other interveners and did not address Calgary's costs in the context of the issues it raised and addressed.

In support of its claim, Calgary argued that during the negotiation process it was the primary party that pursued the measurement adjustment issue with respect to the cause of the error, its quantification and impact. Calgary argued that it made significant efforts to obtain data to confirm the adjustments and to obtain explanations as to why the cost should be borne by sales customers.

Calgary also argued that its submissions to the Board quantified the issues, discussed the efforts to obtain information to resolve the issues and identified the provisions of the AGS/APS Transportation Service Agreement that it believed were relevant to the issues. Further, Calgary suggested a process to allow interim recovery of costs not in dispute and a further process to deal with the amounts in dispute.

Views of the Board

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 agrees with Calgary that the real issue in this cost proceeding is the reasonableness of the Calgary cost claim in light of the nature and scope of Calgary's intervention in the proceeding. On some issues, Calgary's participation as an intervener was effective and of assistance in reviewing the Application. However, the Board considers that Calgary raised concerns regarding the error at the Jumping Pound meter station that were not relevant to this Application. For example, Calgary raised concerns regarding the methodology used to calculate the adjustment for the Jumping Pound error and regarding the treatment of AGS as the residual shipper on the APS system in light of the Transportation Service Agreement. Under section 55 of the Board's *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.

Under section 55(1) of the Board's *Rules of Practice*, the Board may consider whether costs are reasonable. The Board considers that Calgary's total fees of \$23,404.64 are somewhat unreasonable given the nature and extent of the issues to be decided in this Application, and given that Calgary's written submission relating to the Application was fairly brief (four pages in length).

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 20%. The total professional fees for BDP are approved in the amount of \$11,116.00, as shown below. GST for this party has been adjusted accordingly as outlined in Schedule "A" attached.

$\$13,895.00 \times 20\% = \$2,779.00$, being a reduction of 20% to professional fees
 $\$13,895.00 - \$2,779.00 = \$11,116.00$, being the professional fees approved

The Board notes that H. VanderVeen, of Energy Group Inc., charged 26 hours at \$160.00 (US) per hour for a total amount of \$4,160.00 (US). This claim was converted to Canadian dollars for a total amount of \$6,629.64 (CDN). This amount exceeds the *Scale of Costs*. Given his years of experience, the maximum hourly rate allowed for Mr. VanderVeen is \$250.00 (CDN) per hour. The Board's *Scale of Costs* states that the Board may award an amount greater than that stated in the *Scale of Costs* in "unique circumstances" where a party can advance persuasive argument that the amounts in the *Scale of Costs* are inadequate given the complexity of the case. Although

justification for the increased rate was provided, the Board does not consider that the scope or complexity of the issues in this proceeding merit an award of fees in excess of the *Scale of Costs*.

Calgary's cost claim indicates that Mr. VanderVeen reviewed the filings, identified and reviewed issues related to the DGA balance, participated in the settlement discussions prior to the Application being filed, and provided assistance to counsel for the settlement discussions and the written proceedings. The Board considers it is reasonable to assume that Mr. VanderVeen would have contributed to the work on the issues which resulted in unnecessary costs, as described above, and must bear some 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%, after the fees have been reduced down to the *Scale of Costs* as indicated above, to the fees claimed by Mr. VanderVeen is appropriate. The professional fees for Mr. VanderVeen are calculated as follows:

$\$250.00 \times 26 \text{ hrs} = \$6,500.00$, being fees adjusted to the *Scale of Costs*
 $\$6,500 \times 10\% = \650.00 , being a reduction of 10% of professional fees,
 $\$6,500.00 - \$650.00 = \$5,850.00$, being the professional fees approved

The total professional fees for Mr. VanderVeen are approved in the amount of \$5,850.00. GST for this party has been adjusted accordingly as outlined in Schedule "A" attached.

Calgary's cost claim indicates that Hugh W. Johnson, of Stephen Johnson, reviewed the filings and the issues surrounding the DGA balance, and participated in the settlement discussions and the written proceedings. The Board considers it is reasonable to assume that Mr. Johnson would have contributed to the work on the issues which resulted in unnecessary costs, as described above, and must bear some 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. Johnson is appropriate. The professional fees for Mr. Johnson are calculated as follows:

$\$2,880.00 \times 10\% = \288.00 , being a reduction of 10% of professional fees
 $\$2,880.00 - \$288.00 = \$2,592.00$, being the professional fees approved

The total professional fees for Mr. Johnson are approved in the amount of \$2,592.00. GST for this party has been adjusted accordingly as outlined in Schedule "A" attached.

The Board has also reviewed the disbursements being claimed by Calgary in the amount of \$72.54 and has found them to be reasonably incurred and within Guide 31B, as such the claim for disbursements is approved in full.

Taking all the foregoing into consideration, the total amount approved for Calgary is \$20,219.50, including fees, disbursements and GST as outlined in Column (e) of Schedule "A".

Other Parties

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, except as outlined above, 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, except as outlined above, 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 \$696.59 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, a Division of ATCO Gas and Pipelines Ltd. shall pay intervener costs in the amount of \$25,644.63, as set out in column (e) of Schedule "A".
- 2) ATCO Gas South's, a Division of ATCO Gas and Pipelines Ltd., external costs in the amount of \$51.87, as set out in column (e) of Schedule "A", are approved.
- 3) ATCO Gas South, a Division of ATCO Gas and Pipelines Ltd. shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$25,696.50, 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 (South)

Application No.: 1272111

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 (South)					
ATCO Gas (South)	\$51.87	\$0.00	\$51.87	\$0.00	\$51.87
Sub-Total	\$51.87	\$0.00	\$51.87	\$0.00	\$51.87
INTERVENERS					
City of Calgary					
Burnet, Duckworth & Palmer	\$14,945.27	\$11,116.00	\$72.54	\$335.68	\$11,524.22
Stephen Johnson	\$3,081.60	\$2,592.00	\$0.00	\$77.77	\$2,669.77
Energy Group Inc.	\$7,093.72	\$5,850.00	\$0.00	\$175.51	\$6,025.51
Sub-Total	\$25,120.59	\$19,558.00	\$72.54	\$588.96	\$20,219.50
Public Institutional Consumers of Alberta					
Energy Management & Regulatory Consulting Ltd.	\$1,080.00	\$1,080.00	\$0.00	\$0.00	\$1,080.00
Sub-Total	\$1,080.00	\$1,080.00	\$0.00	\$0.00	\$1,080.00
Aboriginal Communities					
A.O. Ackroyd, Q.C.	\$1,200.00	\$1,200.00	\$0.00	\$0.00	\$1,200.00
Graves Engineering Corporation	\$1,500.00	\$1,500.00	\$0.00	\$0.00	\$1,500.00
Sub-Total	\$2,700.00	\$2,700.00	\$0.00	\$0.00	\$2,700.00
Alberta Urban Municipalities Association / Municipal Intervenors					
Robert L. Bruggeman Regulatory Consulting Ltd.	\$1,645.12	\$1,537.50	\$0.00	\$107.63	\$1,645.13
Sub-Total	\$1,645.12	\$1,537.50	\$0.00	\$107.63	\$1,645.13
TOTAL INTERVENER COSTS	\$30,545.71	\$24,875.50	\$72.54	\$696.59	\$25,644.63
TOTAL COSTS	\$30,597.58	\$24,875.50	\$124.41	\$696.59	\$25,696.50