

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of ATCO Gas South
Review and Variance of Decision 2001-110

UTILITY COST ORDER 2003 - 18

Application Number: 1268568
Cost File Number: 8000-1268568 (01)

1. DECISION

In Decision 2001-110, the Board considered outstanding matters as they pertained to the 2000 summer period and 2000/2001 winter period DGA balances of ATCO Gas North (AGN) and ATCO Gas South (AGS). This review examined the prudence of strategies used by the companies in the use of COP and Carbon storage, and determined any resulting GCRR adjustments.

On April 17, 2002, AGS filed with the Board a request to review and vary Board Decision 2002-110 pursuant to s. 64 of the *Public Utilities Board Act*, R.S.A. 2000, c. P-45 and ss. 59 and 60 of the *Gas Utilities Act*, R.S.A. 2000, c. G-5. The review and variance (R&V) request challenged the Board's finding of imprudence in its use of the Carbon storage facility and the resulting direction that \$4 million be refunded to consumers. On May 3, 2002, the City of Calgary and PICA/MI each filed comments regarding the application. A reply to these comments was filed by AGS on May 17, 2002.

In its letter of December 10, 2002 the Board advised interested parties, for reasons set out therein, that the request for an R&V was dismissed after consideration of the preliminary question set out in section 46(4) of its *Rules of Practice*. The Board considers the record for this proceeding to be closed on May 17, 2002.

Various participants submitted cost claims totaling \$38,354.30 including actual GST of \$794.58 with respect to the Proceeding.

Who Should Bear the Costs of 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 AGS 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 AGS's Hearing Cost Reserve Account, subject to the Board's review of individual cost claims to ensure that the costs were reasonably incurred.

Assessment of Individual 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.

ATCO Gas South

Under section 55(1) of the Board's *Rules of Practice*, the Board may consider whether costs are reasonable. The Board considers that AGS's legal fees of \$26,026.50 are somewhat unreasonable given the nature and extent of the issues to be decided in the R&V request. The R&V request primarily involved consideration of the preliminary question of whether the matter should be reviewed and whether there is reason to believe that the order, decision or direction should be rescinded or varied. Further, the underlying issues upon which the R&V request was based were not unusually complex.

The Board also considers that the materials filed in support of the R&V request do not justify the costs incurred. The cost claim filed by AGS indicates that 165.95 hours, equivalent to about 20 eight hour days, were spent on this R&V request. In light of the nature and extent of issues to be decided in the R&V request, the Board does not consider this to be a reasonable amount of time to spend. The Board also has concerns that there was duplication of effort in the preparation of the R&V request given that two senior lawyers and three junior lawyers worked on the R&V request.

For the foregoing reasons, the Boards considers it appropriate to reduce the amount of the legal fees claimed by AGS. Since most of the time spent on the R&V request was incurred by the three junior lawyers, the Board considers that the legal fees claimed by AGS should be reduced by one-third as follows:

K. Illsey:	113.70 hours x 2/3 = 75.8 hours @ \$140.00
L. Goldbach:	18.40 hours x. 2/3 = 12.3 hours @ \$140.00
L. Blumes:	11.00 hours x. 2/3 = 7.3 hours @ \$140.00
Sub-Total	95.4 hours x \$140.00 = \$13,356.00

The total professional fees for Bennett Jones are approved in the amount of \$19,068.50.

Taking all the foregoing into consideration, the total amount approved for AGS, including fees and disbursements is \$19,250.60, as shown in column (e) of Schedule "A" attached.

Other Participants

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 the interveners was, for the most part, effective and of assistance in reviewing the request for R&V. 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".

GST

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 \$458.84 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 \$11,809.96, as set out in column (e) of Schedule "A";
- 2) ATCO Gas South's external costs in the amount of \$19,250.60, 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 \$31,060.56, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 4th day of April, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee

ATCO Gas South
Application No.: 1268568

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	\$182.10	\$0.00	\$182.10	\$0.00	\$182.10
Bennett Jones	\$26,026.50	\$19,068.50	\$0.00	\$0.00	\$19,068.50
Sub-Total	\$26,208.60	\$19,068.50	\$182.10	\$0.00	\$19,250.60
INTERVENERS					
City of Calgary					
Burnet, Duckworth & Palmer	\$7,921.61	\$7,370.50	\$32.87	\$222.12	\$7,625.49
Energy Group, Inc.	\$1,059.97	\$990.63	\$0.00	\$29.72	\$1,020.35
Sub-Total	\$8,981.58	\$8,361.13	\$32.87	\$251.84	\$8,645.84
Municipal Intervenors					
Bryan & Company	\$2,201.12	\$2,025.00	\$32.12	\$144.00	\$2,201.12
Robert L. Bruggeman, Regulatory Consulting Inc.	\$963.00	\$900.00	\$0.00	\$63.00	\$963.00
Sub-Total	\$3,164.12	\$2,925.00	\$32.12	\$207.00	\$3,164.12
TOTAL INTERVENER COSTS	\$12,145.70	\$11,286.13	\$64.99	\$458.84	\$11,809.96
TOTAL COSTS	\$38,354.30	\$30,354.63	\$247.09	\$458.84	\$31,060.56