

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of ATCO Gas South
GCRR Methodology and Gas Rate Unbundling
Compliance Filing

UTILITY COST ORDER 2003-20

Application Numbers: 1257245 and 1257515
Cost File Number: 8000-1257245 (01)
Board File Numbers: 5626-52 and 5626-53

1. DECISION

On October 30, 2001, the Alberta Energy and Utilities Board (the Board) issued Decision 2001-75 setting out its findings with respect to the methodology for managing utility gas supply portfolios and determining gas cost recovery rates (GCRR).

On February 15, 2002, ATCO Gas – North (AGN), ATCO Gas – South (AGS), and AltaGas Utilities Inc. (AltaGas) filed a mock GCRR Application for the February 2002 period requesting Board approval of the mechanisms used to derive proposed GCRR rates. On February 21, 2002 AGS and AGN each filed an application (the Delivery Rate Application) for delivery rates on an interim refundable basis effective April 1, 2002. In the Delivery Rate Application AGS and AGN also requested approval of proposed exit notice provisions.

The panel assigned to consider these applications consisted of B.T. McManus, Q.C. (Presiding Member), G.J. Miller (Board Member), and T. McGee (Board Member).

On March 8, 2002, AGS filed its final response to the concerns expressed by interested parties. Accordingly, the Board considers this date to be the close of record. On March 31, 2002 the Board issued Decision 2002-035.

Various participants submitted cost claims totaling \$98,202.25 including actual GST of \$5,531.65 with respect to the Proceeding.

On June 14, 2002, a summary of costs was circulated to interested parties advising that any comments regarding the figures in the summary or the merit of the total costs claimed were to be submitted to the Board no later than June 21, 2002. The Board received comments from AGS

dated June 21, 2002. The Board notes that interested parties were copied with these comments and were advised by the Board on June 25, 2002, that any responses to the comments were to be submitted no later than July 5, 2002.

Comments from Parties Regarding Costs

In a letter dated June 21, 2002, AGS argued that the City of Calgary (Calgary) had submitted “consistently excessive cost claims” in a number of Board proceedings, and that the cost claims submitted by Calgary for the Mock GCRR represented one further example of what AGS referred to as “Calgary’s pattern of excessive intervention.” AGS noted that Calgary’s cost claim in the Mock GCRR was 21 times the average cost claim of the other interveners.

In a letter dated July 4, 2002, Calgary argued that AGS’ comments on Calgary’s cost claim should be dismissed as AGS failed to address the real issue, which was the reasonableness of the Calgary cost claim in the context of the Mock GCRR. Calgary noted that Calgary’s submissions in the Mock GCRR provided detailed comments on the issues of: fuel and imbalance price indices COP Rate Rider, COS Rate Rider, Royalty Costs, basis for Schedule M-1, Daily vs. Monthly gas purchases, use of Carbon for 2002/2003 and appropriate revenue credits, Weighted Average Cost of Capital, Direct Asset Expense, and the use of mixture of 1998 and 2001/2002 data in rate calculations. Calgary noted that the COS Rate Rider was, in particular, a complex matter, and also that the Mock GCRR dealt with the first significant change in GCRR methodology in 15 years.

Calgary argued further that AGS’ approach of “benchmarking” Calgary’s cost claims against those of other parties, was wrong in law and directly contravened the directions of the Court of Appeal in two cases: *Green, Michaels & Associates Ltd. et. al. v. Public Utilities Board*, [1979] 2 W.W.R. 481 at 495-496, and *Consumers’ Assn. Of Canada (Alberta) (Public Utilities Board)*, [1985] A.J. No. 160.

AGS subsequently sent the Board a letter dated July 12, 2002 in which AGS purported to respond to Calgary’ letter dated July 4, 2002. Calgary responded with a letter dated July 17, 2002, in which it stated that AGS’ July 12, 2002 letter was not in compliance with the Board’s *Rules of Practice* and should consequently be struck from the record of this cost proceeding.

Board Findings

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.

The Board finds that, except as discussed below, the participation of the Applicant and interveners was, for the most part, effective and of assistance in reviewing the Mock GCRR.

City of Calgary (Calgary)

The Board has reviewed the letters from AGS dated June 24, 2002 and from Calgary dated July 4, 2002. The Board has not referred to the arguments set out by AGS in its July 12, 2002 letter. 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 Mock GCRR.

However, the Board notes that costs claimed by Calgary are very high in comparison to the costs claimed by the other participants. Calgary's cost claim of \$80,085.10 constitutes 81% of the total costs claimed by all participants (\$98,202.25). The cost claims of the other participants range from \$1,720.00 to \$5,859.24.

When determining what costs should be passed on to consumers in relation to a litigated process, the Board's assessment is based on a review of the materials filed and its observation of the hearing process. In the case of applications based upon the negotiated settlement process (NSP), the Board does not directly participate in the process. Rather, the Board reviews the nature of the process itself, and its results, to ensure fairness and reasonableness in the public interest. Without the direct opportunity to review the effectiveness of participants, the Board will take into account other considerations to ensure that the costs of participation in an NSP, which are ultimately passed on to all customers, are indeed reasonable and represent "fair value."

The Board recognizes that inherent in a successful NSP is a direct benefit to consumers. Generally, the costs associated with an NSP are less than would have been incurred had the

process been fully litigated. This is one of the factors that allows the Board to approve NSP costs in the absence of direct observation of the process and individual assessment of the participants' contribution.

When a NSP fails, however, it is more difficult for the Board to assess the benefit to customers and to justify the inclusion of the associated costs in consumer rates. In the Board's view, this concern is amplified when, as in this case, the costs claimed by one party vastly exceed the costs claimed by all other parties and sufficient justification for the discrepancy is not provided. This concern is further exacerbated when the Board receives comments from other participants that highlight similar concerns.

Given the magnitude by which Calgary's claim exceeds all others, it is the Board's view that it cannot assess the reasonableness of its claim without additional information about the scope and nature of its involvement. While the Board appreciates that Calgary addressed a number of issues in the proceeding, the Board is not convinced, based on the materials provided, that consumers should bear the entirety of this claim. As such, the Board has determined that it cannot make a decision with respect to Calgary's cost claim at this time. If Calgary determines it appropriate to provide more evidence to justify the level of its cost claim, the Board will consider Calgary's cost claim without prejudice. Should Calgary pursue this further, its additional evidence must be filed with the Board within 30 days of the date of this Cost Order.

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 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 \$292.44 as shown in column (d) of Schedule "A". The GST allowed by the Board may also be charged against 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-15.

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 \$16,384.41, as set out in column (e) of Schedule "A".
- 2) ATCO Gas – South’s external costs in the amount of \$1,732.74, 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 costs and intervener costs in the amount of \$18,117.15, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 21st day of April, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee

ATCO Gas - South
Application Numbers: 1257245 and 1257515

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	\$145.24	\$0.00	\$145.24	\$0.00	\$145.24
Bennett Jones	\$1,587.50	\$1,587.50	\$0.00	\$0.00	\$1,587.50
Sub-Total	\$1,732.74	\$1,587.50	\$145.24	\$0.00	\$1,732.74
INTERVENERS					
ENMAX Energy Corporation					
Donahue Ernst & Young	\$1,250.04	\$1,198.00	\$52.04	\$0.00	\$1,250.04
Altitude Energy Services Inc.	\$4,609.20	\$4,590.00	\$19.20	\$0.00	\$4,609.20
Sub-Total	\$5,859.24	\$5,788.00	\$71.24	\$0.00	\$5,859.24
Public Institutional Consumers of Alberta					
Energy Management & Regulatory Consulting Ltd.	\$1,720.00	\$1,720.00	\$0.00	\$0.00	\$1,720.00
Sub-Total	\$1,720.00	\$1,720.00	\$0.00	\$0.00	\$1,720.00
Municipal Interveners					
Robert L. Bruggeman Regulatory Consulting Ltd.	\$1,785.56	\$1,668.75	\$0.00	\$116.81	\$1,785.56
Sub-Total	\$1,785.56	\$1,668.75	\$0.00	\$116.81	\$1,785.56
Alberta Irrigation Projects Association					
Unryn & Associates Ltd.	\$4,335.00	\$4,335.00	\$0.00	\$0.00	\$4,335.00
Sub-Total	\$4,335.00	\$4,335.00	\$0.00	\$0.00	\$4,335.00

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The City of Calgary					
Burnet, Duckworth & Palmer	\$26,586.48	\$0.00	\$0.00	\$0.00	\$0.00
Stephen Johnson	\$3,980.40	\$0.00	\$0.00	\$0.00	\$0.00
Energy Group Inc.	\$35,260.47	\$0.00	\$0.00	\$0.00	\$0.00
Peter J. Milne & Associates Inc.	\$13,669.25	\$0.00	\$0.00	\$0.00	\$0.00
Energy Objective	\$588.50	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$80,085.10	\$0.00	\$0.00	\$0.00	\$0.00
Consumers Coalition of Alberta					
Wachowich & Company	\$2,078.48	\$1,942.50	\$0.00	\$135.98	\$2,078.48
Professional Regulatory Services Inc.	\$606.13	\$560.00	\$6.48	\$39.65	\$606.13
Sub-Total	\$2,684.61	\$2,502.50	\$6.48	\$175.63	\$2,684.61
TOTAL INTERVENER COSTS	\$96,469.51	\$16,014.25	\$77.72	\$292.44	\$16,384.41
TOTAL COSTS	\$98,202.25	\$17,601.75	\$222.96	\$292.44	\$18,117.15