

**THE PROVINCE OF ALBERTA**

***PUBLIC UTILITIES BOARD ACT***

**ALBERTA ENERGY AND UTILITIES BOARD**

IN THE MATTER of ATCO Gas South  
Determination of the Fair Market Value of  
Uncontracted Carbon Storage

**UTILITY COST ORDER 2003-33**

Application Number: 1286912  
Cost File Number: 8000-1286912 (01)  
Board File Number: 5626-57

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**1. DECISION**

By letter dated December 17, 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) requesting approval pursuant to section 26(2)(d) of the *Gas Utilities Act*, R.S.A. 2000, c. G-5 (GUA), section 101(2)(d) of the *Public Utilities Board Act*, R.S.A. 2000, c. P-45 (PUB Act) and section 15(3) of the *Alberta Energy and Utilities Board Act*, R.S.A. 2000, c. A-17, to tender the uncontracted capacity of the Carbon storage facility (Carbon) for the 2003/2004 natural gas storage year. The Application was also presented pursuant to the Board's Direction in Decision 2002-072, dated July 30, 2002, that dealt with an application by AGS for the transfer of Carbon to an affiliated company, ATCO Midstream Ltd. (Midstream).

More particularly, AGS requested the Board's approval to determine the fair market value (FMV) of the uncontracted storage capacity at Carbon for the 2003/2004 natural gas storage year by the use of a Request for Bids (RFB) process.

By letter dated January 13, 2003, the Board advised all interested parties registered on the distribution list for the Transfer of the Carbon Storage Facilities Application, which led to Decision 2002-072, that it proposed to hold a written proceeding to deal with the Application and invited comments from these parties on the merits of the Application. Any party wishing to make a submission was required to do so by January 24, 2003. AGS was permitted until January 31, 2003 to reply to any submissions made by interested parties.

The Board received six submissions from interested parties, namely BP Canada Energy Company (BP), the City of Calgary (Calgary), the Consumers' Coalition of Alberta (CCA), the Consumer Group (CG), CrossAlta Gas Storage & Services Ltd. (CrossAlta), and EnCana Gas Storage (EnCana).

The Board considers the record for this proceeding to have closed on January 21, 2003.

The Panel assigned to consider this matter consisted of B. T. McManus, Q.C (Presiding Member), C. Dahl Rees (Acting Member), and Michael J. Bruni, Q.C. (Acting Member). On March 11, 2003 the Board issued Decision 2003-021.

Various participants submitted cost claims totaling \$67,276.25 including actual GST of \$2,552.76 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.

**Alberta Urban Municipalities Association (AUMA)**

The Board has reviewed the cost claim submitted by AUMA and notes that legal services provided by Bryan & Company are claimed dating back to June 6, 2002. However, the application for this proceeding was not registered with the Board until December 18, 2002.

Section 55(1) of the Boards *Rules of Practice* reads as follows:

- (1) The Board may award costs to a participant if the Board is of the opinion that
  - (a) the costs are reasonable and directly and necessarily related to the proceeding and
  - (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

The Board finds that the work performed prior to December 18, 2002 is not directly and necessarily related to this proceeding. As such the Board has reduced Bryan & Company's legal fees by \$6,575.00 (26.3 hrs x \$250.00).

Based on the above, the Board approves professional fees for Bryan & Company in the amount of \$6,459.00.

The Board has reviewed the disbursements of \$62.74 and finds that they have been reasonably incurred and are within Guide 31B, accordingly, the Board approves the claim of \$62.74 in full.

The total amount awarded to AUMA is outlined in Schedule "A" attached.

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, except as noted above, 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, 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 \$1,572.58 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., 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 \$36,615.42, as set out in column (e) of Schedule "A".
- 2) ATCO Gas South's external costs in the amount of \$23,105.65, 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 \$59,721.07, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 8th day of May, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

*Original Signed by Thomas McGee*

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Thomas McGee

ATCO Gas South  
Application No.: 1286912

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>					
Bennett Jones	\$23,105.65	\$23,075.00	\$30.65	\$0.00	\$23,105.65
<b>Sub-Total</b>	<b>\$23,105.65</b>	<b>\$23,075.00</b>	<b>\$30.65</b>	<b>\$0.00</b>	<b>\$23,105.65</b>
<b>INTERVENERS</b>					
<b>Aboriginal Communities</b>					
A.O. Ackroyd, Q.C.	\$2,000.00	\$2,000.00	\$0.00	\$0.00	\$2,000.00
Graves Engineering Corporation	\$3,150.00	\$3,150.00	\$0.00	\$0.00	\$3,150.00
<b>Sub-Total</b>	<b>\$5,150.00</b>	<b>\$5,150.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$5,150.00</b>
<b>Alberta Urban Municipalities Association</b>					
Bryan & Company	\$14,013.51	\$6,459.00	\$62.74	\$456.52	\$6,978.26
Liddle Engineering Ltd.	\$4,387.00	\$4,100.00	\$0.00	\$287.00	\$4,387.00
<b>Sub-Total</b>	<b>\$18,400.51</b>	<b>\$10,559.00</b>	<b>\$62.74</b>	<b>\$743.52</b>	<b>\$11,365.26</b>
<b>City of Calgary</b>					
Burnet, Duckworth & Palmer	\$5,605.28	\$5,185.00	\$53.58	\$157.17	\$5,395.75
Stephen Johnson	\$1,927.61	\$1,800.00	\$1.50	\$54.05	\$1,855.55
Energy Group, Inc.	\$2,095.65	\$1,958.55	\$0.00	\$58.76	\$2,017.31
Energy Objective	\$4,280.00	\$4,000.00	\$0.00	\$120.01	\$4,120.01
<b>Sub-Total</b>	<b>\$13,908.54</b>	<b>\$12,943.55</b>	<b>\$55.08</b>	<b>\$389.98</b>	<b>\$13,388.61</b>

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<b>Consumers Coalition of Alberta</b>					
Wachowich & Company	\$1,322.79	\$1,236.25	\$0.00	\$86.54	\$1,322.79
Professional Regulatory Services, Inc.	\$5,388.76	\$4,960.00	\$76.22	\$352.54	\$5,388.76
<b>Sub-Total</b>	<b>\$6,711.55</b>	<b>\$6,196.25</b>	<b>\$76.22</b>	<b>\$439.07</b>	<b>\$6,711.54</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$44,170.60</b>	<b>\$34,848.80</b>	<b>\$194.04</b>	<b>\$1,572.58</b>	<b>\$36,615.42</b>
<b>TOTAL COSTS</b>	<b>\$67,276.25</b>	<b>\$57,923.80</b>	<b>\$224.69</b>	<b>\$1,572.58</b>	<b>\$59,721.07</b>