

**THE PROVINCE OF ALBERTA**

***PUBLIC UTILITIES BOARD ACT***

**ALBERTA ENERGY AND UTILITIES BOARD**

IN THE MATTER of ATCO Gas South  
Request for Review and Variance of  
Board Decision 2002-096

**UTILITY COST ORDER 2003-36a**

Application Number: 1257271  
Cost File Number: 8000-1257271 (01)

---

WHEREAS the Alberta Energy and Utilities Board issued Utility Cost Order 2003-36 (UCO 2003-36) on May 8, 2002; and

WHEREAS the Municipal Intervenors did not receive GST on their approved fees and disbursements;

THEREFORE , the Alberta Energy and Utilities Board, hereby amends UCO 2003-36 as to the following particulars:

1. The fees, disbursements, and GST awarded to the Municipal Intervenors, as listed in column (e) of Schedule "A", are amended to read \$11,814.28, as outlined in the Amended Schedule "A" attached.
2. Paragraphs 1) and 3) on page three are amended to read as follows:
  - 1) ATCO Gas South shall pay intervener costs in the amount of \$17,619.73, as set out in column (e) of Schedule "A".
  - 3) ATCO Gas South shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$32,633.31, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 30th day of September, 2003.

**ALBERTA ENERGY  
AND UTILITIES BOARD**

*[Original signed by]*

---

**Thomas McGee  
Board Member**

ATCO Gas South  
Application No.: 1257271

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	\$8.86	\$0.00	\$8.86	\$0.00	\$8.86
Bennett Jones LLP	\$15,004.72	\$14,812.50	\$192.22	\$0.00	\$15,004.72
<b>Sub-Total</b>	<b>\$15,013.58</b>	<b>\$14,812.50</b>	<b>\$201.08</b>	<b>\$0.00</b>	<b>\$15,013.58</b>
<b>INTERVENERS</b>					
<b>Municipal Intervenors</b>					
Bryan & Company	\$9,446.90	\$8,800.00	\$28.88	\$618.02	\$9,446.90
Robert L. Bruggeman Regulatory Consulting Ltd.	\$2,367.37	\$2,212.50	\$0.00	\$154.88	\$2,367.38
<b>Sub-Total</b>	<b>\$11,814.27</b>	<b>\$11,012.50</b>	<b>\$28.88</b>	<b>\$772.90</b>	<b>\$11,814.28</b>
<b>City of Calgary</b>					
Burnet Duckworth & Palmer	\$5,517.30	\$5,129.00	\$27.35	\$154.70	\$5,311.05
Stephen Johnson	\$513.60	\$480.00	\$0.00	\$14.40	\$494.40
<b>Sub-Total</b>	<b>\$6,030.90</b>	<b>\$5,609.00</b>	<b>\$27.35</b>	<b>\$169.10</b>	<b>\$5,805.45</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$17,845.17</b>	<b>\$16,621.50</b>	<b>\$56.23</b>	<b>\$942.00</b>	<b>\$17,619.73</b>
<b>TOTAL COSTS</b>	<b>\$32,858.75</b>	<b>\$31,434.00</b>	<b>\$257.31</b>	<b>\$942.00</b>	<b>\$32,633.31</b>

**+THE PROVINCE OF ALBERTA**

***PUBLIC UTILITIES BOARD ACT***

**ALBERTA ENERGY AND UTILITIES BOARD**

IN THE MATTER of ATCO Gas South  
Request for Review and Variance of  
Board Decision 2002-096

**UTILITY COST ORDER 2003-36**

Application Number: 1257271  
Cost File Number: 8000-1257271 (01)

---

**1. DECISION**

By letter dated December 6, 2000, ATCO Gas filed Phase I of its 2001/2002 General Rate Application (GRA) for ATCO Gas South (AGS). On December 12, 2001, the Board issued Decision 2001-096 dealing with Phase 1 of the AGS 2001/2002 GRA. This decision considered issues relating to rate base, necessary working capital, fair return on rate base, utility revenue requirement and utility revenues.

On January 31, 2002, AGS filed with the Board a request to review and vary portions of Board Decision 2001-96 pursuant to Rule 46 of the Board's *Rules of Practice*, AR 101/2001. The review and variance (R&V) request challenged the Board's decision regarding certain gas cost forecast issues, short term debt rate, affiliate issues relating to operating and maintenance expense adjustment and 2000 actual capital expenditures. On March 5, 2003, MI/PICA filed comments regarding the R&V request. On March 6, 2002, the City of Calgary filed comments regarding the R&V request. A reply to these comments was filed by AGS on March 22, 2002.

In its letter of July 22, 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*.

Various participants submitted cost claims totaling \$32,858.75 including actual GST of \$1,167.44 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 guided by Part 5 of its *Rules of Practice* and 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.

In the Board's view, the responsibility to positively contribute to the process is inherent in the choice to intervene in a proceeding. The Board 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 has reviewed the costs submitted by the participants, bearing in mind the principles specified in the Board's *Scale of Costs*, as set out in Appendix D of Guide 31B. 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".

## **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 \$169.10 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-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 \$16,846.83, as set out in column (e) of Schedule "A".
- 2) ATCO Gas South's external costs in the amount of \$15,013.58, 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 \$31,860.41, 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*

---

Thomas McGee

ATCO Gas South  
Application No.: 1257271

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	\$8.86	\$0.00	\$8.86	\$0.00	\$8.86
Bennett Jones LLP	\$15,004.72	\$14,812.50	\$192.22	\$0.00	\$15,004.72
<b>Sub-Total</b>	<b>\$15,013.58</b>	<b>\$14,812.50</b>	<b>\$201.08</b>	<b>\$0.00</b>	<b>\$15,013.58</b>
<b>INTERVENERS</b>					
<b>Municipal Intervenors</b>					
Bryan & Company	\$9,446.90	\$8,800.00	\$28.88	\$0.00	\$8,828.88
Robert L. Bruggeman Regulatory Consulting Ltd.	\$2,367.37	\$2,212.50	\$0.00	\$0.00	\$2,212.50
<b>Sub-Total</b>	<b>\$11,814.27</b>	<b>\$11,012.50</b>	<b>\$28.88</b>	<b>\$0.00</b>	<b>\$11,041.38</b>
<b>City of Calgary</b>					
Burnet Duckworth & Palmer	\$5,517.30	\$5,129.00	\$27.35	\$154.70	\$5,311.05
Stephen Johnson	\$513.60	\$480.00	\$0.00	\$14.40	\$494.40
<b>Sub-Total</b>	<b>\$6,030.90</b>	<b>\$5,609.00</b>	<b>\$27.35</b>	<b>\$169.10</b>	<b>\$5,805.45</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$17,845.17</b>	<b>\$16,621.50</b>	<b>\$56.23</b>	<b>\$169.10</b>	<b>\$16,846.83</b>
<b>TOTAL COSTS</b>	<b>\$32,858.75</b>	<b>\$31,434.00</b>	<b>\$257.31</b>	<b>\$169.10</b>	<b>\$31,860.41</b>