

**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 2003-64**

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

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**1. DECISION**

**1.1 Background**

In February 2002, ATCO Gas - North, ATCO Gas - South and AltaGas Utilities Inc. filed applications requesting approval of the mechanisms used to derive proposed gas cost recovery rates and approval of delivery rates on an interim refundable basis effective April 1, 2002. 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 31, 2002, the Board issued Decision 2002-035.

The participants in this proceeding submitted cost claims totaling \$98,202.25 including actual GST of \$5,531.65. On April 21, 2003, the Board issued Utility Cost Order 2003-20 ("UCO 2003-20") approving the cost claims of all the participants in this proceeding with the exception of the cost claim submitted by the City of Calgary ("Calgary"). In UCO 2003-20 the Board indicated that, given the magnitude by which Calgary's claim exceeded all others, it could not assess the reasonableness of Calgary's cost claim without additional information about the scope and nature of its involvement. The Board also indicated that it would consider Calgary's cost claim without prejudice if Calgary provided more evidence to justify the level of its cost claim. The Board received more evidence justifying the level of Calgary's cost claim on May 21, 2003.

**1.2 Calgary's Submission dated May 21, 2003**

Calgary provided more evidence justifying the level of its cost claim in its written submission dated May 21, 2003. Calgary provides a detailed review of the record that illustrates the scope of the issues addressed and the level of analysis conducted by Calgary. Calgary indicates that it

addressed significantly more issues than the other parties combined and carried out an in depth analysis in support of its positions and questions to ATCO Gas – South on those issues. Calgary notes that it was the only party to follow up in March 2002 with respect to the ATCO Gas – South response to the questions and concerns that had been raised. As well, Calgary notes that it was the only party to review ATCO Gas – South’s revised Delivery Rate Schedules and GCRR, COPRR and COSRR schedules for compliance when Decision 2002-034 was issued.

In its written submission, Calgary also raised concerns regarding benchmarking of parties’ cost claims by the Board and the Board’s comments with respect to costs associated with a negotiated settlement process (“NSP”).

Calgary interprets certain of the Board’s statements in UCO 2003-20 [namely, “costs claimed by Calgary are very high in comparison to the costs claimed by other participants” and “the magnitude by which the Calgary claim exceeds all others”] as an indication that the Board is benchmarking parties’ cost claims. Calgary states that benchmarking the cost claims of parties is not an appropriate activity for the Board in assessing the costs claimed by any particular party. Further, Calgary states that if the Board is going to benchmark parties’ cost claims, a review of the issues addressed and parties involved in Decisions 2003-034 (ATCO Gas – South) and 2003-035 (ATCO Gas – North) is necessary before meaningful cost comparisons can be made. In other words, given the virtually identical nature of the ATCO Gas – South and ATCO Gas – North applications, any cost comparisons should reflect the totality of the cost claims in the two proceedings.

Calgary raises concerns with the Board’s comments about NSPs in UCO 2003-20. Calgary states that its understanding is that one reason for Board staff participation in NSPs is to generally advise the Board as to the level of participation and involvement of the parties when cost claims are assessed. Calgary considers that the Board has wrongly shifted the onus to Calgary with respect to the NSP by requiring it to provide “sufficient justification for this discrepancy”. Further, Calgary considers that the Board has placed it in an unfair position by requiring Calgary to provide specific comparisons to the participation of others when Calgary does not have the details of participation by other parties.

### **1.3 Views of the Board**

The Board agrees with Calgary that benchmarking the cost claims of parties is not an appropriate approach for assessing the costs claimed by any particular party. The Board notes that it did not use benchmarking to assess the cost claims of any party in this case. Rather, the Board noted an unusually large discrepancy between Calgary’s cost claim and the other parties’ cost claims (even if the cost claims made for the ATCO Gas - North application were considered). The Board noted that Calgary did provide some evidence justifying its cost claim in its section 4.2 justification submitted on June 13, 2002 and in its comments submitted on July 5, 2002. However, in the circumstances, the Board considered that it could not assess the reasonableness of Calgary’s cost claim without additional evidence.

In seeking additional evidence, the Board did not expect Calgary to provide a direct comparison of its efforts with the efforts of all other participants. Rather, the Board sought evidence that

Calgary's contribution was commensurate with its cost claim. The Board understands that different parties assume different roles in particular proceedings and that, as a result, the costs incurred by parties may vary greatly. However, prior to approving the cost claim of any particular party, the Board must be satisfied that the cost claim is reasonable in light of the contribution made by that particular party.

In its written submission, Calgary also raised concerns regarding the Board's comments with respect to costs associated with a negotiated settlement process ("NSP"). The role of Board staff who attend NSPs is primarily to report to the Board as to whether the negotiations were fair, reasonable, and in the public interest. The Board is generally not in a position to evaluate the effectiveness of participants in NSPs. As such, the section 4.2 justification submitted by the parties with their cost claim can provide important information allowing the Board to assess the reasonableness of the parties' cost claims.

The Board does not consider that it has wrongly shifted the onus to Calgary with respect to the NSP by requiring it to provide "sufficient justification for this discrepancy". As section 4.2 of *Guide 31B, Guidelines for Utility Cost Claims* requires parties to provide sufficient justification for their cost claims, the onus is already with the parties claiming costs. The information provided by the section 4.2 justification assists the Board in assessing the reasonableness of parties' cost claims.

The Board does not consider that it has required Calgary to provide specific comparisons to the participation of others thereby placing Calgary in an unfair position. As discussed above, the Board did not expect Calgary to provide a direct comparison of its efforts with the efforts of all other participants. Rather, the Board sought evidence that Calgary's contribution was commensurate with its cost claim.

#### **1.4 Assessment of Calgary's Cost Claim**

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*, AR 101/2001 and 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.

In the Board's view, the responsibility to contribute positively 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.

In light of Calgary's written submission dated May 21, 2003, the Board now has sufficient evidence to assess the reasonableness of Calgary's claim. It is apparent that Calgary was fully involved on a large number of issues and that the issues raised by Calgary contributed to a full examination of the matters before the Board. The Board has no reason to conclude that the participation of Calgary in the NSP was anything other than helpful and effective. The Board considers Calgary's claim for fees and disbursements to be reasonable, and directs that Calgary's cost claim be paid in full subject to the adjustments discussed below.

#### **1.4.1 Claims in Excess of Scale**

With respect to the City of Calgary and its claim against AGS, the Board notes that Patricia Quinton-Campbell and Mr. H. Vander Veen have both charged an hourly rate in excess of the Board's *Scale of Costs*.

Given Ms. Quinton-Campbell's years of experience, and pursuant to Guide 31B, the maximum hourly rate allowed is \$220.00. The Board notes that justification for this increased rate was submitted, however, does not find that this proceeding was overly complex in nature or scope and therefore directs the professional fees for Ms. Quinton-Campbell be reduced to conform to Guide 31B. The Board finds it reasonable to approve professional fees for Ms. Quinton-Campbell in the amount of \$7,568.00 (34.4 hours x \$220.00).

Justification was also submitted on behalf of Mr. H. Vander Veen with respect to his increased rate. The Board notes again, that this proceeding was not overly complex in nature or scope and therefore directs that Mr. Vander Veen be awarded professional fees within the scale of Guide 31B. The Board finds it reasonable to approve fees based on \$250.00 per hour and therefore awards fees in the amount of \$32,250.00 (129 hours x \$250.00).

#### **1.4.2 Clerical Error Made by the City of Calgary**

In its May 21, 2003 submission, Calgary notes that its cost claims includes approximately \$4,200.00 of legal and expert costs related to calls from ATCO Gas dealing with use of storage in 2002/2003, as well as a review of the May GCRR filing and ATCO filings related to DGA reconciliation. Calgary states that these are costs that should have been primarily shifted to the second quarter 2002 GCRR costs filing.

The Board directs that Calgary's cost claim be reduced by \$4,200.00. The Board will accept a late cost claim filing in the amount of \$4,200.00 for the quarterly GCRR process within 30 days of this Cost Order.

### 1.4.3 Total Amount Approved for Calgary

Taking all the foregoing into consideration, the total amount of professional fees, disbursements, and applicable GST awarded to Calgary is \$75,303.63 as outlined in Schedule "A" attached.

### 1.5 GST

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 \$2,193.45 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 \$75,303.63, as set out in column (e) of Schedule "A".
- 2) ATCO Gas – South shall record in its Hearing Cost Reserve Account the allowed external costs and intervener costs in the amount of \$75,303.63, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 15th day of August, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

*Original Signed by Thomas McGee*

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Thomas McGee  
Board Member

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)
<b>INTERVENER</b>					
<b>The City of Calgary</b>					
Burnet, Duckworth & Palmer	\$26,586.48	\$23,741.00	\$74.18	\$714.50	\$24,529.68
Stephen Johnson	\$3,980.40	\$3,720.00	\$0.00	\$111.61	\$3,831.61
Energy Group Inc.	\$35,260.47	\$32,250.00	\$0.00	\$967.56	\$33,217.56
Peter J. Milne & Associates Inc.	\$13,669.25	\$12,775.00	\$0.00	\$383.28	\$13,158.28
Energy Objective	\$588.50	\$550.00	\$0.00	\$16.50	\$566.50
<b>Sub-Total</b>	<b>\$80,085.10</b>	<b>\$73,036.00</b>	<b>\$74.18</b>	<b>\$2,193.45</b>	<b>\$75,303.63</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$80,085.10</b>	<b>\$73,036.00</b>	<b>\$74.18</b>	<b>\$2,193.45</b>	<b>\$75,303.63</b>