

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of ATCO Gas Limited (North), formerly
Canadian utilities Limited,
Northwestern Utilities Limited, and
Canadian Western Natural Gas Company Limited
Application for Approval of the Reorganization of Northwestern
Utilities Limited and Canadian Western Natural Gas Company Ltd.

UTILITY COST ORDER 2002-12

Application Number: 980415
Cost File Number: 8000-990587
Board File Number: 6601-1

1. DECISION

On August 14, 1998, ATCO Gas Limited (North), formerly Canadian Utilities Limited (CUL), Northwestern Utilities Limited (Northwestern), and Canadian Western Natural Gas Company Limited (Canadian Western), collectively (the Applicants), applied for an Order or Orders of the Alberta Energy and Utilities Board (the Board) in respect of certain transactions amongst the Applicants that would result in the reorganization of most of the operations of Northwestern and Canadian Western.

A hearing was held from February 23 to February 25, 1999 before B.T. McManus, Q.C, J.P. Prince, Ph.D., and Gordon J. Miller. On November 1, 1999 the Board issued Decision U99102.

On November 15, 1999, the Applicants applied for a Variance of Decision U99102, which would provide clarification of the transactions the Board approved in Decision U99102. On November 22, 1999 the Board issued Decision U99114.

The Board received one cost claim from the Aboriginal Communities. On February 11, 2002 a summary of costs was circulated to interested parties for comments and requested that any outstanding claims be submitted by no later than February 28, 2002. No further claims were received.

The Board's authority to award costs for hearings prior to August 1, 2001 is derived from section 60 (*now 68*) of the *Public Utilities Board Act*, 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.
- (2) 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 60 (*now 68*) for proceedings that concluded prior to August 1, 2001, the Board is guided by the principles and policies expressed in its *Scale of Costs*. Not only does the *Scale of Costs* outline what fees and disbursements the Board will consider in a claim, it provides criteria for assessing a claim. The following excerpt from the *Scale of Costs* details those criteria:

Before exercising its statutory discretion to award costs, the Board will consider such questions as the effectiveness of the particular intervention, its relevancy to the issues, and whether the costs were reasonably and prudently incurred.

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.

As interested parties are aware, the Board recently reviewed its cost policies and procedures with regard to utility proceedings. One outcome of this review was the recognition by the Board of a need for greater overall scrutiny of costs submissions to ensure that those awarded fairly reflect the relative contributions of participants. More specifically, The Board stated that prior to awarding costs to participants, it would satisfy itself that the participant contributed to a better understanding of the issues before the Board and that the costs claimed were reasonable, and prudently incurred.

The Board notes, however, that the costs relating to this proceeding were incurred prior to providing interested parties with the notice of the Board's intentions as expressed above. The Board is thus of the opinion that the costs of this proceeding should be subject to the same scrutiny as other proceedings conducted at the same time.

The Board has reviewed the costs submitted by 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, AGL 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 \$0.00 as shown in column (d) of Schedule "A".

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. 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 Limited shall pay intervener costs in the amount of \$93,810.75 as set out in column (e) of Schedule "A".
- 2) ATCO Gas Limited shall record in its Hearing Cost Reserve Account the allowed intervener costs in the amount of \$93,810.75, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 21st day of March, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee

ATCO Gas Limited (North)
(formerly Northwestern Utilities Ltd.)

ApplicationNo.: 990587

Summary of Total Costs Claimed

	Total Amount Claimed (a)	Total Fees Awarded (b)	Total Disbursements Awarded (c)	Total GST Awarded (d)	Total Amount Awarded (e)
Applicant					
ATCO Gas Limited (Formerly Northwestern Utilities Ltd.)	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Interveners					
Aboriginal Communities					
Graves Engineering Corp.	\$63,004.50	\$62,437.50	\$567.00	\$0.00	\$63,004.50
Consilium Enterprises Inc.	\$5,606.25	\$5,606.25	\$0.00	\$0.00	\$5,606.25
Ackroyd, Piasta, Roth & Day	\$25,200.00	\$25,200.00	\$0.00	\$0.00	\$25,200.00
Sub-Total	\$93,810.75	\$93,243.75	\$567.00	\$0.00	\$93,810.75
Total Intervener Costs	\$93,810.75	\$93,243.75	\$567.00	\$0.00	\$93,810.75
Total Costs	\$93,810.75	\$93,243.75	\$567.00	\$0.00	\$93,810.75