

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of
ATCO Gas – North A Division
of ATCO Gas and Pipelines Ltd.
Sale of Certain Petroleum and
Natural Gas Rights, Production
and Gathering Assets, Storage
Assets and Inventory

UTILITY COST ORDER 2002-45

Application Numbers: 2001017, 2001020,
2001030, & 2001070
Cost File Number: 8000-2001017
Board File Numbers: 6405-14, 6405-15,
6405-16, & 5405-18

1. DECISION

By letters dated January 22, 2001, January 25, 2001, February 2, 2001, and March 6, 2001, respectively, ATCO Gas – North (AGN), a division of ATCO Gas and Pipelines Ltd. submitted applications (collectively, the Applications) to the Alberta Energy and Utilities Board (Board) pursuant to section 25.1 of the *Gas Utilities Act* for approval of the following:

- Application No. 2001017 - Sale of certain petroleum and natural gas rights and production and gathering assets in the Viking Kinsella Field to Burlington Resources Canada Energy Ltd. (Viking Application);
- Application No. 2001020 - Sale of certain petroleum and natural gas rights and production and gathering assets in the Westlock, Peace River Arch, Phoenix and other fields not operated by AGN to Trioco Resources Inc. (Westlock Application);
- Application No. 2001030 - Sale of certain petroleum and natural gas rights and production and gathering assets in the Beaverhill Lake and Fort Saskatchewan fields to NCE Petrofund Corp. and NCE Energy Corporation (Beaverhill Application); and

- Application No. 2001070 - Sale of certain petroleum and natural gas rights and production and gathering assets, storage assets and inventory in the Lloydminster field to AltaGas (Sask.) Inc. and AltaGas Services Inc. (Lloydminster Application).

On April 5, 2001 a hearing was held in Edmonton, Alberta which lasted six days. The Applications were heard before B. F. Bietz, Ph.D (Presiding Member), B. T. McManus, Q.C. (Board Member), and T. McGee (Board Member). On May 29, 2001 the Board issued Decision 2001-46 and on July 31, 2001 issued reasons for Decision 2001-46 in Decision 2001-65.

Various participants submitted cost claims totaling \$1,114,952.32 including actual GST of \$49,753.10 with respect to the Proceeding.

The Board's authority to award costs for hearings 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*), 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.

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.

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.

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.

The Board has reviewed the interveners' cost claims, bearing in mind the principles specified in the Board's *Scale of Costs*. The Board notes that the fees claimed by Mr. Harold Huber of Donahue Ernst & Young and the fees claimed by Ms. Phyllis Smith of Emery Jamieson are in excess of the hourly rate provided in the *Scale of Costs*, and given the nature and complexity of the issues before the Board, it does not find the increased rates to be justified. Accordingly, the Board has reduced Mr. Huber's hourly rate from \$250.00 to \$225.00, meaning a reduction to the overall fees claimed by Enron Canada Corp. to \$10,180.50. The Board has also reduced Ms. Smith's hourly rate from \$250.00 to \$225.00, reducing the overall fees claimed by the University of Alberta to \$8,327.00.

Similarly, the Board notes that Mr. Hugh Williamson of Borden Ladner Gervais has also charged his fees at an hourly rate in excess of the *Scale of Costs*. Given the nature and complexity of the issues before the Board, the Board does not find the increased rate to be justified and reduces Mr. Williamson's hourly rate from \$300.00 to \$225.00. As a result, the overall fees claimed by Epcor Energy Services are reduced to \$12,982.50.

Furthermore, the Board also notes that Mr. Michael Gorman of Brubaker Associates Inc. has charged an hourly rate in excess of the *Scale of Costs*, and given the nature and complexity of the issues before the Board, the Board finds that the increased rate is not justified. Accordingly, the Board has reduced the hourly rate for Mr. Gorman from \$236.42 per hour to \$225.00 per hour. The Board directs that the professional fees for Mr. Michael Gorman be approved in the amount of \$450.00 and the overall fees awarded to Brubaker Associates Inc. be approved in the amount of \$4,465.65.

The Board has reviewed the costs submitted by the remaining participants and finds them in accordance with 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. 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, AGN 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 \$11,771.52 as shown in

column (d) of Schedule "A". The GST allowed by the Board may also be charged against the AGN 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. 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 – North shall pay intervener costs in the amount of \$862,404.43, as set out in column (e) of Schedule "A".
- 2) ATCO Gas – North's external costs in the amount of \$208,653.51, as set out in column (e) of Schedule "A", are approved.
- 3) ATCO Gas – North shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$1,071,057.94, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 11th day of July, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee

ATCO Gas (North)

Application Nos.: 2001017, 2001020, 2001030, 2001070

Summary of Total Costs Claimed and Awarded

	Total Fees, Disbursements and GST claimed (a)	Total Fees Awarded (b)	Total Disbursements Awarded (c)	Total GST Awarded (d)	Total Fees, Disbursements, and GST Awarded (e)
Applicant					
ATCO Gas Limited (North)					
ATCO Gas Limited (North)	\$23,484.50	\$0.00	\$23,484.50	\$0.00	\$23,484.50
Bennett Jones	\$174,638.89	\$163,084.25	\$11,554.64	\$0.00	\$174,638.89
Confer Consulting Ltd.	\$10,530.12	\$10,150.00	\$380.12	\$0.00	\$10,530.12
Sub-Total	\$208,653.51	\$173,234.25	\$35,419.26	\$0.00	\$208,653.51
Participants					
Federation of Alberta Gas Co-ops and Gas Alberta Inc.					
Campbell Ryder Consulting Group Ltd.	\$123,524.15	\$112,650.00	\$2,793.13	\$0.00	\$115,443.13
Brownlee Fryett	\$23,858.18	\$18,830.50	\$3,466.86	\$0.00	\$22,297.36
Sub-Total	\$147,382.33	\$131,480.50	\$6,259.99	\$0.00	\$137,740.49
Municipal Intervenors					
Bryan & Company	\$147,279.48	\$128,281.00	\$9,363.37	\$4,129.61	\$141,773.98
Robert L. Bruggeman Regulatory Consulting Inc.	\$35,155.58	\$7,837.50	\$25,031.92	\$986.15	\$33,855.57
Sub-Total	\$182,435.06	\$136,118.50	\$34,395.29	\$5,115.75	\$175,629.54
Public Institutional Consumers of Alberta					
Energy Management & Regulatory Consulting Ltd.	\$3,520.00	\$3,520.00	\$0.00	\$0.00	\$3,520.00
Liddle Engineering	\$1,312.50	\$1,312.50	\$0.00	\$0.00	\$1,312.50
Sub-Total	\$4,832.50	\$4,832.50	\$0.00	\$0.00	\$4,832.50

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Aboriginal Communities and Saddle Lake First Nation					
Ackroyd, Piasta, Roth & Day LLP	\$19,217.43	\$19,181.00	\$36.43	\$0.00	\$19,217.43
Brubaker & Associates Inc.	\$4,549.36	\$4,465.65	\$60.91	\$0.00	\$4,526.56
Graves Engineering	\$13,650.00	\$13,050.00	\$600.00	\$0.00	\$13,650.00
Sub-Total	\$37,416.79	\$36,696.65	\$697.34	\$0.00	\$37,393.99
North Core Committee					
Liddle Engineering	\$65,980.37	\$59,762.50	\$1,905.43	\$0.00	\$61,667.93
Sproule Associates Limited	\$85,690.32	\$77,265.58	\$2,821.03	\$0.00	\$80,086.61
Calgary Energy Consultants, Ltd.	\$57,078.22	\$51,975.00	\$1,295.74	\$0.00	\$53,270.74
Sayer Securities Limited	\$58,380.93	\$53,167.50	\$1,396.73	\$0.00	\$54,564.23
Sub-Total	\$267,129.84	\$242,170.58	\$7,418.93	\$0.00	\$249,589.51
EPCOR Energy Services					
G.D. Newcombe	\$969.69	\$906.25	\$0.00	\$27.19	\$933.44
Borden Ladner Gervais	\$24,186.64	\$12,982.50	\$5,294.34	\$548.34	\$18,825.18
Sub-Total	\$25,156.33	\$13,888.75	\$5,294.34	\$575.53	\$19,758.62
City of Calgary					
Wachowich & Company	\$14,403.91	\$13,440.00	\$21.60	\$403.87	\$13,865.47
Stephen Johnson Chartered Accountants	\$19,464.23	\$15,900.00	\$2,997.27	\$566.96	\$19,464.23
Sub-Total	\$33,868.14	\$29,340.00	\$3,018.87	\$970.83	\$33,329.70
Consumers' Coalition of Alberta					
Wachowich & Company	\$18,748.01	\$14,490.00	\$3,031.50	\$1,226.51	\$18,748.01
Professional Regulatory Services, Inc.	\$43,128.68	\$39,840.00	\$467.18	\$2,821.50	\$43,128.68
Sub-Total	\$61,876.69	\$54,330.00	\$3,498.68	\$4,048.01	\$61,876.69

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University of Alberta					
Emery Jamieson LLP	\$13,015.72	\$8,327.00	\$3,112.22	\$264.25	\$11,703.47
Sub-Total	\$13,015.72	\$8,327.00	\$3,112.22	\$264.25	\$11,703.47
Canadian Forest Products Ltd.					
Lewis L. Manning	\$67,194.14	\$61,500.00	\$5,694.14	\$0.00	\$67,194.14
Liddle Engineering Ltd.	\$2,011.63	\$1,881.25	\$130.38	\$0.00	\$2,011.63
Trisuvan Services Ltd.	\$23,164.71	\$20,625.00	\$2,539.71	\$0.00	\$23,164.71
Sub-Total	\$92,370.48	\$84,006.25	\$8,364.23	\$0.00	\$92,370.48
City of Edmonton					
Marta Sherk	\$20,190.90	\$18,870.00	\$0.00	\$566.14	\$19,436.14
Bill Follett	\$8,239.00	\$7,700.00	\$0.00	\$231.02	\$7,931.02
Sub-Total	\$28,429.90	\$26,570.00	\$0.00	\$797.15	\$27,367.15
ENRON Canada Corp.					
Donahue Ernst & Young	\$12,385.03	\$10,180.50	\$631.79	\$0.00	\$10,812.29
Sub-Total	\$12,385.03	\$10,180.50	\$631.79	\$0.00	\$10,812.29
TOTAL INTERVENER COSTS	\$906,298.81	\$777,941.23	\$72,691.68	\$11,771.52	\$862,404.43
TOTAL COSTS	\$1,114,952.32	\$951,175.48	\$108,110.94	\$11,771.52	\$1,071,057.94