

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of ATCO Gas Limited (North)
Application for Review and Variance of
Decisions 2001-46 and 2001-65

UTILITY COST ORDER 2002-51

Application Number: 1244045
Cost File Number: 8000-1244045
Board File Number: 6405-14-1

1. DECISION

By letter dated September 14, 2001, ATCO Gas – North (AGN), a division of ATCO Gas and Pipelines Ltd. (AGPL), submitted an application to the Alberta Energy and Utilities Board (Board) requesting that Decisions 2001-46 and 2001-65 (Decisions) be reviewed and varied (R&V Application).

In Decision 2001-46, dated May 29, 2001, the Board, among other things, denied AGN's application for the sale of certain petroleum and natural gas rights and production and gathering assets in the Viking Kinsella Field (Viking Assets; Viking Application) to Burlington Resources Canada Energy Ltd. (Burlington). Subsequently, in Decision 2001-65, dated July 31, 2001, the Board set out its reasons for denying the Viking Application and established a no-harm threshold in the amount of \$460,339,000.00 for the Viking Assets. The no-harm threshold was the amount that the Board determined was necessary for AGN's customers to receive in order to hold them harmless if the sale was to be approved. The Board held that the proceeds that would be available for distribution to customers under the terms of the Viking Application would be insufficient to meet the no-harm threshold determined by the Board.

On November 14, 2001, AGN and the North Core Committee (NCC) filed opening statements reflecting a joint recommendation regarding disposition of the R&V application (the Joint Recommendation). In light of the Joint Recommendation, the Board decided to consider the R&V application without holding an oral hearing.

The Board reviewed the submissions from ENRON Direct Canada Corp. (ENRON) and Burlington Resources Ltd. (Burlington) supporting the Joint Recommendation of AGN and NCC.

The Board considers that the record for this proceeding closed on December 10, 2001.

On December 11, 2001 the Panel, B.T. McManus, QC (Presiding Member), T.M. McGee (Board Member), and J.I. Douglas (Acting Member) issued Decision 2001-104.

Various participants submitted cost claims totaling \$332,189.33 including actual GST of \$12,270.94 with respect to the Proceeding.

The Board's authority to award costs is derived from section 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 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.

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 costs submitted by participants. In this case, no oral hearing was held due to the filing of the Joint Recommendation less than 24 hours before the oral hearing was to commence. Accordingly, the Board has not had the opportunity to review the work done by most of the participants in this proceeding. However, in these circumstances, the Board reviews the nature of the process itself and its results to ensure that they were fair, reasonable, and in the public interest.

The Board noted in Decision 2001-104 that it was satisfied that all the members of the NCC had the opportunity to review and comment on the Joint Recommendation, and that the members of the NCC unanimously ratified the Joint Recommendation. The Board considers that the cost claims filed represent fair and reasonable amounts given the significance of the issues involved. 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, 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 \$4,295.22 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 \$226,223.64, as set out in column (e) of Schedule "A".
- 2) ATCO Gas – North's external costs in the amount of \$97,449.97, 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 \$323,673.61, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 23rd day of July, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee

Schedule "A"
ATCO Gas North
Application No.: 1244045
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 -North					
ATCO Gas Limited (North)	\$291.67	\$0.00	\$291.67	\$0.00	\$291.67
Bennett Jones	\$97,158.30	\$94,055.25	\$3,103.05	\$0.00	\$97,158.30
Sub-Total	\$97,449.97	\$94,055.25	\$3,394.72	\$0.00	\$97,449.97
Interveners					
Municipal Interveners					
Bryan & Company	\$53,442.71	\$48,633.00	\$1,313.46	\$1,498.49	\$51,444.95
Robert L. Bruggeman Regulatory Consulting Ltd.	\$1,203.75	\$1,125.00	\$0.00	\$33.75	\$1,158.75
Sub-Total	\$54,646.46	\$49,758.00	\$1,313.46	\$1,532.25	\$52,603.71
Federation of Alberta Gas Co-ops Ltd. / Gas Alberta Inc.					
Campbell Ryder Consulting Group	\$31,419.45	\$29,212.50	\$151.47	\$0.00	\$29,363.97
Brownlee Fryett	\$25,680.07	\$23,711.25	\$288.80	\$0.00	\$24,000.05
Sub-Total	\$57,099.52	\$52,923.75	\$440.27	\$0.00	\$53,364.02
North Core Committee					
Liddle Engineering Ltd.	\$21,379.06	\$19,950.00	\$162.00	\$0.00	\$20,112.00
Sproule Associates Limited	\$15,758.09	\$14,498.70	\$325.47	\$0.00	\$14,824.17
Sub-Total	\$37,137.15	\$34,448.70	\$487.47	\$0.00	\$34,936.17
City of Edmonton					
The City of Edmonton	\$4,550.00	\$4,550.00	\$0.00	\$136.51	\$4,686.51
Sub-Total	\$4,550.00	\$4,550.00	\$0.00	\$136.51	\$4,686.51
The Consumers' Coalition of Alberta					
Wachowich & Company	\$7,639.80	\$7,140.00	\$0.00	\$499.80	\$7,639.80
Professional Regulatory Services Inc.	\$32,507.53	\$30,240.00	\$140.87	\$2,126.66	\$32,507.53
Sub-Total	\$40,147.33	\$37,380.00	\$140.87	\$2,626.46	\$40,147.33

Schedule "A"
ATCO Gas North
Application No.: 1244045
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)
Canadian Forest Products Ltd.					
Trisuvan Services Ltd.	\$3,814.40	\$3,800.00	\$14.40	\$0.00	\$3,814.40
Lewis Manning, Barrister & Solicitor	\$17,790.00	\$17,250.00	\$0.00	\$0.00	\$17,250.00
Sub-Total	\$21,604.40	\$21,050.00	\$14.40	\$0.00	\$21,064.40
Public Institutional Consumers of Alberta					
Nancy McKenzie	\$2,033.00	\$1,900.00	\$0.00	\$0.00	\$1,900.00
Energy Management & Regulatory Consulting Ltd.	\$2,960.00	\$2,960.00	\$0.00	\$0.00	\$2,960.00
Sub-Total	\$4,993.00	\$4,860.00	\$0.00	\$0.00	\$4,860.00
Aboriginal Communities					
Ackroyd, Piasta, Roth & Day	\$4,400.00	\$4,400.00	\$0.00	\$0.00	\$4,400.00
Graves Engineering Corporation	\$9,786.50	\$9,487.50	\$299.00	\$0.00	\$9,786.50
Consilium Enterprises Inc.	\$375.00	\$375.00	\$0.00	\$0.00	\$375.00
Sub-Total	\$14,561.50	\$14,262.50	\$299.00	\$0.00	\$14,561.50
TOTAL INTERVENER COSTS	\$234,739.36	\$219,232.95	\$2,695.47	\$4,295.22	\$226,223.64
TOTAL COSTS	\$332,189.33	\$313,288.20	\$6,090.19	\$4,295.22	\$323,673.61