

**THE PROVINCE OF ALBERTA**

***PUBLIC UTILITIES BOARD ACT***

**ALBERTA ENERGY AND UTILITIES BOARD**

IN THE MATTER of ATCO Gas Limited (South)  
Disposition of Calgary Stores Block and  
Distribution of Net Proceeds – Parts I and II

**UTILITY COST ORDER 2002-55**

Application Numbers: 1243019 and 1247130  
Cost File Number: 8000-1243019 (01)  
Board File Number: 6405-17-1, 6405-17-2

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**1. DECISION**

By letter dated August 28, 2001, ATCO Gas Limited (South) (AGS), a division of ATCO Gas and Pipelines Ltd., filed an application (the Application) with the Alberta Energy and Utilities Board (the Board) for approval of the sale of the AGS properties located in the City of Calgary, known as the Calgary Stores Block. The Application also requested that the Board approve the disposition of the proceeds of the sale.

The Board approved the Sale in Decision 2001-78 dated October 24, 2001 (Part I) pursuant to section 25.1 of the GU Act. In approving the sale in advance of the consideration of the remainder of the Application, the Board stipulated that it was not making a finding with respect to the specific impact on future operating costs, including the proposed lease arrangement being entered into by the Company. The Board also established a written proceeding wherein parties were provided the opportunity to argue as to the appropriate allocation of the proceeds from the disposition of the Stores Block, and any other relevant issues related to the sale. The written process (Part I) was completed on December 21, 2001.

The Board considers that the record for Part II of this proceeding closed on December 21, 2001. The Board determined the distribution of the net proceeds from the disposition in Decision 2002-37, dated March 21, 2002.

Members of the Board assigned to consider the Application were B. T. McManus Q.C., Presiding Member, T. McGee, Board Member, and G. J. Miller, Board Member.

Various participants submitted cost claims totaling \$157,781.68 including actual GST of \$6,458.23 with respect to the Proceeding.

A summary of costs claimed with respect to Parts I and II was circulated to interested parties on April 3, 2002 and parties were advised at that time that any comments to the summary were to be submitted to the Board by no later than April 15, 2002. The Board did not receive any comments to the summary.

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.

The Board reviewed the costs submitted by all participants, bearing in mind the principles specified in the Board's *Scale of Costs*. The Board found 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, subject to the specific comment below, that the claims for professional fees and other claims were in accordance with the *Scale of Costs*.

### **The City of Calgary**

The Board notes that the hourly rate charged by Patricia Quinton-Campbell of Burnet, Duckworth, & Palmer is in excess of the Board's *Scale of Costs*. It is noted however, that the excess rate only appears in one of the two claims submitted. The Board has reviewed the Affidavit and Submission of Justification with respect to Ms. Quinton-Campbell's rate and finds

that the nature, scope, and complexity of the proceedings do not justify charging in excess of the *Scale of Costs*. As such, the Board has reduced Ms. Quinton-Campbell's hourly rate of \$250.00 per hour to \$220.00 per hour for 21.2 hours of work thereby reducing her overall claim from \$14,525.00 to \$13,889.00.

The Board considers the claims for fees and disbursements for all participants to be reasonable as outlined in Schedule "A".

### **Treatment of Hearing Costs**

The Board has considered the submissions of the Municipal Interveners, Federation of Alberta Gas Co-ops Ltd. and Gas Alberta Inc., the City of Calgary and ATCO Gas and Pipelines made in respect of the appropriate allocation of the costs of this proceeding submitted pursuant to the Board's request of May 31, 2002.

In Decision 2002-37, the Board determined that 74.83% of the proceeds were from the sale of distribution assets and the remainder 25.17% of the proceeds were from the sale of transmission assets. Furthermore, the Board determined that approximately 66.89% of the proceeds would be shared by the Customers of AGS and ATCO Pipelines (South) (APS) and approximately 33.11% of the proceeds would be shared by the Shareholders of AGS and APS. In the Board's view a similar approach must be taken with respect to the treatment of the hearing costs. As such, the Board directs that 74.83% of the costs approved shall be borne by AGS, of which approximately 66.89% of the costs will be assigned to the AGS hearing cost reserve account and approximately 33.11% of the costs shall be borne by AGS Shareholders. The Board directs that 25.17% of the costs approved shall be borne by APS, of which approximately 66.89% of the costs will be assigned to the APS hearing cost reserve account and approximately 33.11% of the costs shall be borne by APS Shareholders.

### **Goods and Services Tax**

In accordance with the Board's treatment of the GST on cost awards, AGS and APS 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 \$1,771.26 as shown in column (d) of Schedule "A". The GST allowed by the Board may also be charged against the Hearing Cost Reserve Account for AGS and APS as outlined below.

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 (South) shall pay 74.83% of intervener costs in the amount of \$70,068.86 as set out in column (f) of Schedule "A".
- 2) ATCO Gas Limited's (South) external costs in the amount of \$58,821.32, as set out in column (e) of Schedule "A", are approved;
- 3) ATCO Gas Limited (south) shall be responsible for 74.83% of its external costs in the amount of \$44,015.99;
- 4) ATCO Gas Limited (South) shall record in its Hearing Cost Reserve Account 66.89% of the allowed external applicant and intervener costs in the amount of \$76,311.36. The shareholders will be responsible for the remaining 33.11% in the amount of \$37,773.49;
- 5) ATCO Pipelines (South) shall pay 25.17% of intervener costs in the amount of \$23,568.53 as set out in column (g) of Schedule "A";
- 6) ATCO Pipelines (South) shall pay 25.17% of ATCO Gas Limited's (South) external costs in the amount of \$14,805.33, as set out in column (g) of Schedule "A";
- 7) ATCO Pipelines (South) shall record in its Hearing Cost Reserve Account 66.89% of the allowed external applicant and intervener cost in the amount of \$25,668.27. The shareholders will be responsible for the remaining 33.11% in the amount of \$12,705.59.

MADE at the City of Calgary, in the Province of Alberta, this 28 day of August, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

*Original Signed by Thomas McGee*

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Thomas McGee

**ATCO GAS SOUTH**  
**Application Nos.: 1247130 and 1243019**

**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)	Total Amount Payable by ATCO Gas South (74.83%) (f)	Total Amount Payable by ATCO Pipelines South (25.17%) (g)
<b>Applicant</b>							
<b>ATCO Gas South</b>							
Bennett Jones, LLP	\$52,287.72	\$50,864.00	\$1,423.72	\$0.00	\$52,287.72	\$39,126.90	\$13,160.82
ATCO Gas South	\$6,533.60	\$0.00	\$6,533.60	\$0.00	\$6,533.60	\$4,889.09	\$1,644.51
<b>Sub-Total</b>	<b>\$58,821.32</b>	<b>\$50,864.00</b>	<b>\$7,957.32</b>	<b>\$0.00</b>	<b>\$58,821.32</b>	<b>\$44,015.99</b>	<b>\$14,805.33</b>
<b>Interveners</b>							
<b>Federation of Alberta Gas Co-ops Ltd. &amp; Gas Alberta Inc.</b>							
Campbell Ryder Consulting Group	\$27,492.21	\$25,612.50	\$81.15	\$0.00	\$25,693.65	\$19,226.56	\$6,467.09
Brownlee Fryett	\$13,548.12	\$12,278.19	\$399.42	\$0.00	\$12,677.61	\$9,486.66	\$3,190.95
<b>Sub-Total</b>	<b>\$41,040.33</b>	<b>\$37,890.69</b>	<b>\$480.57</b>	<b>\$0.00</b>	<b>\$38,371.26</b>	<b>\$28,713.21</b>	<b>\$9,658.05</b>
<b>The City of Calgary</b>							
Burnet, Duckworth & Palmer	\$26,247.39	\$23,170.00	\$724.27	\$716.88	\$24,611.15	\$18,416.52	\$6,194.63
Stephen Johnson	\$10,379.00	\$9,700.00	\$0.00	\$291.02	\$9,991.02	\$7,476.28	\$2,514.74
<b>Sub-Total</b>	<b>\$36,626.39</b>	<b>\$32,870.00</b>	<b>\$724.27</b>	<b>\$1,007.90</b>	<b>\$34,602.17</b>	<b>\$25,892.80</b>	<b>\$8,709.37</b>
<b>Consumers' Coalition of Alberta</b>							
Wachowich & Company	\$2,696.40	\$2,520.00	\$0.00	\$176.40	\$2,696.40	\$2,017.72	\$678.68
Professional Regulatory Services, Inc.	\$1,752.53	\$1,600.00	\$37.88	\$114.65	\$1,752.53	\$1,311.42	\$441.11
<b>Sub-Total</b>	<b>\$4,448.93</b>	<b>\$4,120.00</b>	<b>\$37.88</b>	<b>\$291.05</b>	<b>\$4,448.93</b>	<b>\$3,329.14</b>	<b>\$1,119.80</b>
<b>Municipal Interveners</b>							
Bryan & Company	\$15,802.26	\$14,222.50	\$545.97	\$443.08	\$15,211.55	\$11,382.81	\$3,828.75
Gordon Roberts	\$801.70	\$749.25	\$0.00	\$22.48	\$771.73	\$577.48	\$194.24
Lawrence Kryzanowski	\$240.75	\$225.00	\$0.00	\$6.75	\$231.75	\$173.42	\$58.33
<b>Sub-Total</b>	<b>\$16,844.71</b>	<b>\$15,196.75</b>	<b>\$545.97</b>	<b>\$472.31</b>	<b>\$16,215.03</b>	<b>\$12,133.71</b>	<b>\$4,081.32</b>
<b>Total Intervener Costs</b>	<b>\$98,960.36</b>	<b>\$90,077.44</b>	<b>\$1,788.69</b>	<b>\$1,771.26</b>	<b>\$93,637.39</b>	<b>\$70,068.86</b>	<b>\$23,568.53</b>
<b>Total Costs</b>	<b>\$157,781.68</b>	<b>\$140,941.44</b>	<b>\$9,746.01</b>	<b>\$1,771.26</b>	<b>\$152,458.71</b>	<b>\$114,084.85</b>	<b>\$38,373.86</b>