

**THE PROVINCE OF ALBERTA**

***PUBLIC UTILITIES BOARD ACT***

**ALBERTA ENERGY AND UTILITIES BOARD**

IN THE MATTER of ATCO Gas (South), a  
Division of ATCO Gas & Pipelines Ltd.  
Disposition of Customer Proceeds  
Calgary Stores Block

**UTILITY COST ORDER 2002-72**

Application Number: 1275517  
Cost File Number: 8000-1275517 (01)  
Board File Number: 6405-17-3

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**1. DECISION**

The Board received a letter from ATCO Gas, a division of ATCO Gas and Pipelines Ltd. (ATCO), dated July 23, 2002 (the Application) that proposed a process to deal with the customer portion of the proceeds from ATCO's sale of a rate base facility referred to as the Calgary Stores Block (Stores Block) to Calgary Co-Operative Association Limited (Co-Op) as directed by Decision 2002-037.

The Board received letters from the Municipal Intervenors (MI), dated August 1, 2002, the City of Calgary, dated August 6, 2002, and the Federation of Alberta Gas Co-ops and Gas Alberta Inc. (FGA), dated August 8 and 14, 2002. ATCO responded to MI and FGA on August 14, 2002. The Board considers the record to have closed for the proceeding on August 14, 2002.

The panel assigned to consider the Application consisted of G. Miller (Presiding Member), B.T. McManus, Q.C. (Member), and J.I. Douglas, FCA (Member). On August 27, 2002 the Board issued Decision 2002-080.

Various participants submitted cost claims totaling \$7,190.16 including actual GST of \$369.47 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.

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".

### **Treatment of Hearing Costs**

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 ATCO Gas South (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 should be taken with respect to the treatment of the participants' costs in this proceeding. As such, the Board directs that 74.83% of the costs approved shall be attributable to the distribution business and 25.17% shall be attributable to the transmission business. Further, 66.89% of the costs shall be born by customers of AGS and APS and 33.11% shall be born by the shareholders of AGS and APS. Accordingly, of the portion of the costs to be born by customers of AGS and APS, 74.83% of such costs will be assigned to the AGS hearing cost reserve account and 25.17% of such costs will be assigned to the APS hearing cost reserve account. Of the 33.11% of the costs to be borne by AGS and APS shareholders, which shall be recorded as a reduction against ATCO Gas (South) Shareholders' gain on sale with respect to the disposition of the Stores Block.

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 \$36.27 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) Interveners are awarded costs in the amount of \$5,313.65 as set out in column (e) of Schedule "A" attached;
- 2) ATCO Gas (South) is awarded external applicant costs in the amount of \$1,543.31, as set out in column (e) of Schedule "A" attached;
- 3) ATCO Gas (South) shall be responsible for 74.83% of total approved external applicant and intervener costs in the amount of \$5,131.06, as set out in column (f) of Schedule "A" attached;
- 4) ATCO Gas (South) shall record in its Hearing Cost Reserve Account 66.89% of the allowed external applicant and intervener costs allocated to AGS, in the amount of \$3,432.17, as set out in the table below. The Shareholders shall be responsible for the remaining 33.11% in the amount of \$1,698.89, as set out in the table below;
- 5) ATCO Pipelines (South) shall be responsible for 25.17% of the allowed external applicant and intervener costs in the amount of \$1,725.90 as set out in column (g) of Schedule "A" attached;
- 6) ATCO Pipelines (South) shall record in its Hearing Cost Reserve Account 66.89% of the allowed external applicant and intervener costs allocated to APS, in the amount of \$1,154.45, as set out in the table below. The Shareholders shall be responsible for the remaining 33.11% in the amount of \$571.45 which shall be recorded as a reduction against ATCO Gas (South) Shareholders' gain on sale with respect to the disposition.

**ATCO Gas (South)**

| Total Amount of External Applicant and Intervener Costs Payable by ATCO Gas South (74.83%) | Hearing Cost Reserve Account             | Shareholders                             |
|--|--|--|
| \$5,131.06   | $\$5,131.06 \times 66.89\% = \$3,432.17$ | $\$5,131.06 \times 33.11\% = \$1,698.89$ |

**ATCO Pipelines (South)**

| Total Amount of External Applicant and Intervener Costs Payable by ATCO Pipelines South (25.17%) | Hearing Cost Reserve Account             | Shareholders  |
|--|--|---|
| \$1,725.90   | $\$1,725.90 \times 66.89\% = \$1,154.45$ | $\$1,725.90 \times 33.11\% = \$571.45$<br>To be recorded as a reduction against ATCO Gas (South) Shareholders' Gain on Sale |

MADE at the City of Calgary, in the Province of Alberta, this 29th day of October, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

*Original Signed by Thomas McGee*

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Thomas McGee

ATCO Gas (South)  
Application No.: 1275517

Summary of Total Costs Claimed and Awarded

|  | Total Amount Claimed<br>(a) | Total Fees Awarded<br>(b) | Total Disbursements Awarded<br>(c) | Total GST Awarded<br>(d) | Total Fees, Disbursements, and GST Awarded<br>(e) | Total Amount Payable by ATCO Gas South (74.83%)<br>(f) | Total Amount Payable by ATCO Pipelines South (25.17%)<br>(g) |
|--|-----------------------------|---------------------------|------------------------------------|--------------------------|---|--|--|
| <b>APPLICANT</b>   |                             |                           |                                    |                          |   |  |  |
| <b>ATCO Gas (South)</b>                                      |                             |                           |                                    |                          |   |  |  |
| ATCO Gas (South)   | \$7.10                      | \$0.00                    | \$7.10                             | \$0.00                   | \$7.10  | \$5.31   | \$1.79   |
| Bennett Jones LLP  | \$1,536.21                  | \$1,522.00                | \$14.21                            | \$0.00                   | \$1,536.21  | \$1,149.55   | \$386.66   |
| <b>Sub-Total</b>   | <b>\$1,543.31</b>           | <b>\$1,522.00</b>         | <b>\$21.31</b>                     | <b>\$0.00</b>            | <b>\$1,543.31</b>                                 | <b>\$1,154.86</b>                                      | <b>\$388.45</b>  |
| <b>INTERVENERS</b>   |                             |                           |                                    |                          |   |  |  |
| <b>The City of Calgary</b>                                   |                             |                           |                                    |                          |   |  |  |
| Burnet, Duckworth & Palmer                                   | \$1,293.63                  | \$1,209.00                | \$0.00                             | \$36.27                  | \$1,245.27  | \$931.84   | \$313.44   |
| <b>Sub-Total</b>   | <b>\$1,293.63</b>           | <b>\$1,209.00</b>         | <b>\$0.00</b>                      | <b>\$36.27</b>           | <b>\$1,245.27</b>                                 | <b>\$931.84</b>  | <b>\$313.44</b>  |
| <b>Alberta Federation of Gas Co-ops<br/>Gas Alberta Inc.</b> |                             |                           |                                    |                          |   |  |  |
| Brownlee Fryett  | \$1,238.88                  | \$1,152.50                | \$5.28                             | \$0.00                   | \$1,157.78  | \$866.37   | \$291.41   |
| Campbell Ryder Consulting Group                              | \$3,114.34                  | \$2,887.50                | \$23.10                            | \$0.00                   | \$2,910.60  | \$2,178.00   | \$732.60   |
| <b>Sub-Total</b>   | <b>\$4,353.22</b>           | <b>\$4,040.00</b>         | <b>\$28.38</b>                     | <b>\$0.00</b>            | <b>\$4,068.38</b>                                 | <b>\$3,044.37</b>                                      | <b>\$1,024.01</b>  |
| <b>TOTAL INTERVENER COSTS</b>                                | <b>\$5,646.85</b>           | <b>\$5,249.00</b>         | <b>\$28.38</b>                     | <b>\$36.27</b>           | <b>\$5,313.65</b>                                 | <b>\$3,976.21</b>                                      | <b>\$1,337.45</b>  |
| <b>TOTAL COSTS</b>   | <b>\$7,190.16</b>           | <b>\$6,771.00</b>         | <b>\$49.69</b>                     | <b>\$36.27</b>           | <b>\$6,856.96</b>                                 | <b>\$5,131.06</b>                                      | <b>\$1,725.90</b>  |