

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER of ATCO Gas – South
2001/2002 General Rate Application
Compliance Filing

UTILITY COST ORDER 2002-75

Application Number: 1258189
Cost File Number: 8000-1258189 (01)
Board File Number: 1307-1-4

1. DECISION

On December 12, 2002, the Alberta Energy and Utilities Board (the Board) issued Decision 2001-96 regarding the 2001/2002 Phase I General Rate Application (GRA) of ATCO Gas South (AGS). In Decision 2001-96, the Board directed ATCO to re-file its 2001/2002 GRA to incorporate the Board's findings in the Decision and provide all of the supporting schedules necessary for the Board to make its final determination respecting the 2001/2002 revenue requirement.

On February 28, 2002, ATCO re-filed its 2001/2002 GRA (the Compliance Filing), reflecting the revisions to the Company's Rate Base and Revenue Requirement required to comply with the Board's directions in Decision 2001-96.

On March 1, 2002, the Board issued a letter requesting interested parties to review the Compliance Filing, and submit any comments to the Board no later than March 28, 2002. By letter dated March 27, 2002 the Board extended the deadline for submissions to April 3, 2002 in response to a request from the City of Calgary.

On April 22, 2002, ATCO filed its response to intervener comments, and provided an updated compliance filing (the Update), revised where considered necessary to address issues raised. The Board considers that the record for this proceeding closed on April 22, 2002.

The Panel assigned to this application consisted of B.T.McManus, Q.C. (Presiding Member), G.J. Miller (Board Member), and C. Dahl Rees (Acting Member). On May 30, 2002 the Board issued Decision 2002-050.

Various participants submitted cost claims totaling \$51,351.61 including actual GST of \$1,987.58 with respect to the Proceeding.

On May 24, 2002 and June 7, 2002 a summary of costs was circulated to interested parties advising that any comments regarding the figures in the summary or the merits of the total costs claimed were to be submitted to the Board by no later than June 21, 2002. The Board received comments from AGS. The Board notes that interested parties were copied with these comments and were advised by the Board on June 25, 2002 that any responses to the comments were to be submitted by no later than July 4, 2002.

Comments from Parties regarding Costs

In a letter dated June 21, 2002, AGS argued that the City of Calgary (Calgary) had submitted “consistently excessive cost claims” in a number of Board proceedings, and that the cost claims submitted by Calgary for the Compliance Filing and Mock GCRR Hearings represented two further examples of what AGS referred to as “Calgary’s pattern of excessive intervention.” AGS noted that Calgary’s cost claim for the Compliance Filing was ten times more than the average intervenor cost claim and in the Mock GCRR, Calgary’s cost claim was 21 times the average cost claim of the other intervenors.

In a letter dated July 4, 2002, Calgary argued that AGS’s comments on the Calgary Compliance Filing cost claim should be dismissed as AGS had failed to address the real issue, which was the reasonableness of the Calgary cost claim in the context of the Compliance Filing. Calgary noted that in the AGS 2001/2002 GRA, Calgary took a lead role in addressing virtually all GRA issues, and was the only intervenor to provide evidence in the hearing. Calgary argued that given its involvement in the GRA proceeding, its submission on the Compliance Filing included detailed comments on a number of significant issues.

Calgary further argued that AGS’s approach of “benchmarking” Calgary’s cost claims against those of other parties, was wrong in law and directly contravened the directions of the Court of Appeal in two cases: *Green, Michaels & Associates Ltd. et. al. v. Public Utilities Board*, [1979] 2 W.W.R. 481 at 495-496 (*Green, Michaels*), and *Consumers’ Assn. of Canada (Alberta) v. Alberta (Public Utilities Board)*, [1985] A.J. No. 160 (*Consumers’ Assn.*).

AGS subsequently sent the Board a letter dated July 12, 2002 in which AGS purported to respond to Calgary’s letter dated July 4, 2002. Calgary responded with a letter dated July 17, 2002, in which it stated that AGS’s July 12, 2002 letter was not in compliance with the Board’s *Rules of Practice* and should consequently be struck from the record of this cost proceeding.

Board Findings

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.
- ...
- (3) 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 finds that, except as discussed below, the participation of the applicant and interveners was, for the most part, effective and of assistance in reviewing the Compliance Filing and Update.

The City of Calgary (Calgary)

The Board has reviewed the letters from AGS dated June 24, 2002 and from Calgary dated July 4, 2002. The Board has reached its conclusions in this Order without referring to the arguments set out by AGS in its July 12, 2002 letter. The Board agrees with Calgary that the real issue in this cost proceeding is the reasonableness of the Calgary cost claim in light of the nature and scope of Calgary's intervention in the Compliance Filing. On a number of issues in the Compliance Filing, Calgary's comments provided useful assistance to the Board in its analysis.

However, on some issues, the Board considers that Calgary's comments addressed issues that the Board had already determined in the AGS 2001-02 GRA. For example, in the Compliance

Filing, Calgary suggested that the balance of natural gas stored in the Necessary Working Capital (NWC) calculation appeared to be inconsistent with information filed in the GRA. The Board noted in Decision 2002-050¹ that the balance of natural gas stored was unchanged from the GRA, and that this was not an issue to be dealt with in the Compliance Filing. Similarly, Calgary argued in the Compliance Filing that the format of the Statement of Earnings filed by AGS was misleading. However, the Board noted in Decision 2002-050² that the format of the Statement of Earnings in the Compliance Filing was consistent with the format used by AGS in the GRA, and that the format was not challenged during the GRA process, which would have been the appropriate forum for Calgary to raise these issues.

Under section 55 of the Board’s *Rules of Practice*, the Board, in awarding costs, may consider, among other things, whether a participant submitted evidence and argument on issues that were not relevant to the proceeding, and whether a participant engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs. The Board considers that in the two examples examined in the previous paragraph, and on other issues, Calgary raised matters that were not relevant to the Compliance Filing as nothing had changed on these issues since the GRA. The purpose of the Compliance Filing was for AGS to comply with the matters requiring further filings from AGS as directed by the Board in Decision 2001-96, and for interveners to comment on those matters. The purpose of the Compliance Filing was not to provide an opportunity to reargue matters on which the Board made a final determination in the GRA. The Board considers that Calgary’s approach on the two issues discussed in the previous paragraph and on other issues thus resulted in unnecessary costs. As Burnet Duckworth & Palmer (BDP) coordinated Calgary’s position on the Compliance Filing process, the Board will reduce the fees claimed of BDP by \$4,000.00.

The Board also notes that Patricia Quinton-Campbell of BDP has charged an hourly rate in excess of the Board’s *Scale of Costs*. Based on the years of experience of Ms. Quinton-Campbell, the *Scale of Costs* allows for a maximum hourly rate of \$220.00. Although Ms. Quinton-Campbell provided an explanation for the increased rate of \$250.00 per hour the Board finds that it is not justified given the nature and scope of this proceeding and accordingly awards Ms. Quinton-Campbell \$7,612.00 in legal fees (34.6 hrs. x \$220.00 = \$7,612.00).

The total amount of legal fees approved for BDP is \$8,962.00 as shown below:

Bruce Brander	\$5,350.00
Patricia Quinton-Campbell	+ \$7,612.00
Less \$4,000.00	- <u>\$4,000.00</u>
Sub-Total	\$8,962.00

The Board has reviewed the disbursements claimed by BDP in the amount of \$97.80 and finds that they have been reasonably incurred under Guide 31B and are therefore approved in full. Applicable GST with respect to legal fees and disbursements has been approved in the amount of \$271.81 as outlined in column (d) of Schedule “A”.

¹ At page 11.

² At page 19.

In Calgary's cost claim dated May 22, 2002, Calgary noted that Mr. H. Johnson of Stephen Johnson reviewed the Compliance Filing in the context of "revenue requirement matters, in particular, return, capital structure, income tax, debt and revenue," and provided comments to counsel. The Board considers that it is reasonable to assume that Hugh Johnson would have contributed to the work on the issues which resulted in unnecessary costs, as described above. Accordingly, the Board will reduce the fees claimed by the firm of Stephen Johnson by \$1,000.00.

Based on the above, the Board approves professional fees for Stephen Johnson in the amount \$6,440.00 as shown below. Applicable GST has been approved in the amount of \$193.21.

Total fees claimed	\$7,440.00
Less reduction	- <u>\$1,000.00</u>
Sub-Total	\$6,440.00

The Board further notes that Mr. H. Vander Veen, of Energy Group, Inc., charged 42 hours at \$160.00 (US) per hour, \$6,720.00 (US). This claim was converted to Canadian dollars for a total amount of \$10,667.43. Based on the Board's *Scale of Costs*, the maximum hourly rate allowed for Mr. Vander Veen given his years of experience is \$250.00 (CDN) per hour. Again, Calgary provided an explanation for the increased rate. However, given the nature and scope of this proceeding, the Board does not find an increased hourly rate to be justified. The Board finds it appropriate to award Mr. Vander Veen \$10,500.00 (CDN) as shown below. Applicable GST has been approved in the amount of \$315.02.

$$42 \text{ hours} \times \$250.00 \text{ (CDN)} = \$10,500.00$$

The total amount approved for Calgary is \$26,779.85 as outlined in column (e) of Schedule "A".

Other Participants

The Board has reviewed the costs submitted by the remaining 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, AGS 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 \$879.10 as shown in column (d) of Schedule "A". The GST allowed by the Board may also be charged against the AGS 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. 1985, 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 – South shall pay intervener costs in the amount of \$42,675.11, as set out in column (e) of Schedule "A".
2. ATCO Gas – South's external costs in the amount of \$1,362.59, as set out in column (e) of Schedule "A", are approved.
3. ATCO Gas - South shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$44,037.70, as set out in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 15th day of November, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee

Application No.: 1258189

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)
APPLICANT					
ATCO Gas - South					
ATCO Gas - South	\$212.59	\$0.00	\$212.59	\$0.00	\$212.59
Bennett Jones	\$1,150.00	\$1,150.00	\$0.00	\$0.00	\$1,150.00
Sub-Total	\$1,362.59	\$1,150.00	\$212.59	\$0.00	\$1,362.59
INTERVENERS					
Public Institutional Consumers of Alberta					
Energy Management & Regulatory Consulting Ltd.	\$1,040.00	\$1,040.00	\$0.00	\$0.00	\$1,040.00
Sub-Total	\$1,040.00	\$1,040.00	\$0.00	\$0.00	\$1,040.00
Municipal Intervenors					
Bryan & Company	\$1,085.03	\$1,000.00	\$14.05	\$30.42	\$1,044.47
Robert L. Bruggeman Regulatory Consulting Ltd.	\$2,447.62	\$2,287.50	\$0.00	\$68.63	\$2,356.13
Sub-Total	\$3,532.65	\$3,287.50	\$14.05	\$99.05	\$3,400.60
Alberta Irrigation Projects Association					
Unryn & Associates Ltd.	\$1,530.00	\$1,530.00	\$0.00	\$0.00	\$1,530.00
Sub-Total	\$1,530.00	\$1,530.00	\$0.00	\$0.00	\$1,530.00
Coral Energy Canada Inc.					
Optimum Energy Management Inc.	\$3,870.00	\$3,870.00	\$0.00	\$0.00	\$3,870.00
France Financial Consulting	\$2,500.00	\$2,500.00	\$0.00	\$0.00	\$2,500.00
Sub-Total	\$6,370.00	\$6,370.00	\$0.00	\$0.00	\$6,370.00
Federation of Alberta Gas Co-Ops Ltd.					
Campbell Ryder Consulting Group Ltd.	\$3,803.49	\$3,525.00	\$29.66	\$0.00	\$3,554.66
Sub-Total	\$3,803.49	\$3,525.00	\$29.66	\$0.00	\$3,554.66

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City of Calgary					
Burnet Duckworth & Palmer	\$15,084.65	\$8,962.00	\$97.80	\$271.81	\$9,331.61
Stephen Johnson	\$7,960.80	\$6,440.00	\$0.00	\$193.21	\$6,633.21
Energy Group, Inc.	\$10,667.43	\$10,500.00	\$0.00	\$315.02	\$10,815.02
Sub-Total	\$33,712.88	\$25,902.00	\$97.80	\$780.05	\$26,779.85
TOTAL INTERVENER COSTS	\$49,989.02	\$41,654.50	\$141.51	\$879.10	\$42,675.11
TOTAL COSTS	\$51,351.61	\$42,804.50	\$354.10	\$879.10	\$44,037.70