

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

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

UTILITY COST ORDER 2002-74

Application Number: 1258020
Cost File Number: 8000-1258020 (01)
Board File Number: 1306-3-1

1. DECISION

On December 12, 2002, the Alberta Energy and Utilities Board (the Board) issued Decision 2001-97 regarding the 2001/2002 General Rate Application (GRA) Phases I and II of ATCO Pipelines South (APS), a division of ATCO Gas and Pipelines Ltd. (AGPL). In Decision 2001-97, the Board directed APS to refile 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 22, 2002, APS re-filed its 2001/2002 GRA (the Compliance Filing). By letters dated April 2, 2002 and April 16, 2002, the Board requested that APS respond to the comments and questions of interested parties by April 17, 2002, and provide an updated compliance filing, revised as considered appropriate, based on the issues raised. On April 17, 2002, APS 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 17, 2002.

The panel assigned to this proceeding 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 2002-049.

Various participants submitted cost claims totaling \$34,739.58 including actual GST of \$2,363.17 with respect to the Proceeding.

Comments from Parties Regarding Costs

In a letter dated June 21, 2002, APS referred the Board to the themes in its November 23, 2001 correspondence (which related to costs in the APS 2001/2002 General Rate Application). APS stated that it objected to the magnitude of the cost claims submitted by the City of Calgary (Calgary) for the Compliance Filing, and noted that the fees claimed by Calgary were more than seven times as high as the average amount claimed by other interveners. APS also suggested that Mr. Vander Veen's claim for fees on the Compliance Filing be reduced as, APS argued, there were no comments in Calgary's Compliance Filing relating to the areas Mr. Vander Veen focused on.

In a letter dated July 10, 2002, Calgary responded to APS's comments. First, Calgary argued that APS's comments on Calgary's cost claim should be dismissed as APS failed to address the real issue, which was the reasonableness of the Calgary cost claim, and that APS had made submissions which were not substantiated by the record. Calgary stated that its cost claim in the Compliance Filing was reasonable given that this was the Compliance Filing related to a Phase I GRA which also involved Phase II issues through the Class Cost of Service Study, and where a new methodology was being applied. Calgary noted that its submission in the Compliance Filing dealt with the areas of rate base, accumulated depreciation, necessary working capital, return, operating and maintenance expense, depreciation, income tax, deferred tax, and the class cost of service study. With respect to Mr. Vander Veen's cost claim, Calgary suggested that APS had selectively quoted from Calgary's May 22, 2002 cost claim letter. In that letter, Calgary indicated that Mr. Vander Veen reviewed the Compliance Filing in the context of the areas which he had addressed in the original hearing and provided input to counsel on the preparation of the submission to the Board.

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

The Board has reviewed the letters from APS dated June 21, 2002 and from Calgary dated July 10, 2002. The Board agrees with Calgary that the real issue in this cost proceeding is the reasonableness of Calgary's cost claim in light of the nature and scope of Calgary's intervention in the Compliance Filing. The Board finds that in general, Calgary's submissions on the Compliance Filing were helpful. For example, Calgary provided a comprehensive review of the adjustments with respect to property, plant and equipment, and identified a number of errors in this area. Calgary also provided a comprehensive review of income tax issues.

However, Calgary pursued issues in the Compliance Filing which more properly should have been pursued in the APS 2001/2002 GRA. First of all, in the case of Necessary Working Capital (NWC), Calgary argued that the mid-year calculation of the NWC balance was misstated to the extent that the balance had not been adjusted to reflect actual amounts for 2000. In Decision 2002-049 the Board rejected this argument, noting that no direction was provided in Decision 2001-97 to adjust the mid-year balance of 2001 deferred income taxes to reflect year 2000 actual amounts, and that the GRA was the appropriate forum to deal with these issues.¹ Secondly, regarding deferred tax, Calgary argued that the deferred income tax balances for the year 2000 and the test years were not sufficient to deal with the deferred pension balances. However, in Decision 2002-49, the Board noted that the deferred income tax balances were unchanged since the GRA and that therefore this should not be an issue in the compliance filing.

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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, 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. Calgary's approach on the two issues described in the previous paragraph 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 by BDP by \$1,000.00.

The Board also notes that Patricia Quinton-Campbell of BDP claimed 13 hours of preparation at \$250.00 per hour. This hourly rate is in excess of the Board's *Scale of Costs*. Although Ms. Quinton-Campbell did submit justification for claiming an hourly rate in excess of the Scale, the Board finds that this proceeding was not overly complex in nature and therefore the proposed increase is not warranted. As such, the Board finds it reasonable to reduce Ms. Quinton-Campbell's hourly rate from \$250.00 per hour to \$220.00 per hour based on her years of experience. The total amount of fees approved for Ms. Quinton-Campbell is \$2,860.00 as outlined below.

$$13 \text{ hours} \times \$220.00 = \$2,860.00$$

The total amount of legal fees approved for BDP is \$7,260.00 as calculated below.

Bruce Brander	\$5,400.00
Patricia Quinton-Campbell	+\$2,860.00
Less \$1,000.00	- <u>\$1,000.00</u>
Sub-Total	\$7,260.00

The Board has reviewed BDP's claim for disbursements of \$51.93 and finds they are reasonable pursuant to Guide 31B and directs that they be approved in full. Applicable GST has been approved for legal fees and disbursements in the amount of \$219.37 as outlined in column (d) of Schedule "A".

Calgary's Cost Claim dated May 22, 2002 indicates that Hugh Johnson reviewed the Compliance Filing in the context of the areas he had addressed in the GRA hearing, which included income tax, and provided comments to counsel on the preparation of the submission to the Board. The Board considers that the two areas described above for which unnecessary costs were incurred are income tax issues on which it is reasonable to assume that Hugh Johnson had input. Accordingly, the Board will reduce the fees claimed by the firm of Stephen Johnson by \$1,000.00.

The total amount of professional fees approved for Stephen Johnson is \$6,680.00 as shown below. Applicable GST has been approved in the amount of \$200.41.

$$\$7,680.00 - \$1,000.00 = \$6,680.00$$

With respect to Mr. Vander Veen's claim for fees, the Board accepts as reasonable Calgary's submission that Mr. Vander Veen reviewed the Compliance Filing in the context of the areas which he had addressed in the original hearing and provided input to counsel on the preparation of the submissions to the Board. It appears that the two issues identified above for which unnecessary costs were incurred did not fall within Mr. Vander Veen's areas of responsibility. However, the Board notes that Mr. Vander Veen charged 32 hours at \$160.00 (US) per hour, \$5,120.00 (US). This claim was converted to Canadian dollars for a total amount of \$8,179.58. Based on the *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 \$8,000.00 (CDN) in accordance with the *Scale of Costs* as shown below.

$$32 \text{ hours} \times \$250.00 = \$8,000.00 \text{ CDN}$$

Applicable GST has been approved for the Energy Group, Inc. in the amount of \$240.02.

The total amount of fees, disbursements, and GST awarded to Calgary is \$22,651.73 as outlined in Schedule "A" attached.

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, APS 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 \$858.43 as shown in column (d) of Schedule "A". The GST allowed by the Board may also be charged against APS's 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 Pipelines South shall pay intervener costs in the amount of \$33,153.24, as set out in column (e) of Schedule "A".
- 2) ATCO Pipelines South shall record in its Hearing Cost Reserve Account the allowed intervener costs in the amount of \$33,153.24, 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.: 1258020

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 Pipelines - South					
ATCO Pipelines - South	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
INTERVENERS					
Municipal Intervenors					
Bryan & Company	\$1,070.00	\$1,000.00	\$0.00	\$70.00	\$1,070.00
Robert L. Bruggeman Regulatory Consulting Ltd.	\$1,966.12	\$1,837.50	\$0.00	\$128.63	\$1,966.13
Sub-Total	\$3,036.12	\$2,837.50	\$0.00	\$198.63	\$3,036.13
Alberta Irrigation Projects Association					
Unryn & Associates Ltd.	\$1,105.00	\$1,105.00	\$0.00	\$0.00	\$1,105.00
Sub-Total	\$1,105.00	\$1,105.00	\$0.00	\$0.00	\$1,105.00
Federation of Alberta Gas Co-Ops Ltd.					
Brownlee Fryett	\$752.09	\$700.00	\$2.88	\$0.00	\$702.88
Campbell Ryder Consulting Group Ltd.	\$6,053.53	\$5,587.50	\$70.00	\$0.00	\$5,657.50
Sub-Total	\$6,805.62	\$6,287.50	\$72.88	\$0.00	\$6,360.38
City of Calgary					
Burnet Duckworth & Palmer	\$9,311.07	\$7,260.00	\$51.93	\$219.37	\$7,531.30
Stephen Johnson	\$8,217.60	\$6,680.00	\$0.00	\$200.41	\$6,880.41
Energy Group, Inc.	\$8,752.15	\$8,000.00	\$0.00	\$240.02	\$8,240.02
Sub-Total	\$26,280.82	\$21,940.00	\$51.93	\$659.80	\$22,651.73
TOTAL INTERVENER COSTS	\$37,227.56	\$32,170.00	\$124.81	\$858.43	\$33,153.24
TOTAL COSTS	\$37,227.56	\$32,170.00	\$124.81	\$858.43	\$33,153.24