

THE PROVINCE OF ALBERTA

PUBLIC UTILITIES BOARD ACT

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER OF
ATCO Gas and Pipelines Limited
Request to Withdraw the 1999
General Rate Application, and Assessment
Of the Need for a 2000 General Rate Application

UTILITY COST ORDER 2002 - 18

Application Number: 990208
Cost File Number: 8000- 990208 (01)

1. DECISION

On May 4, 2000 ATCO Gas and Pipelines Limited (formerly Canadian Western Natural Gas Company Limited) (ATCO Gas) requested a withdrawal of the 1999 General Rate Application (GRA). The Board established a written process with respect to the withdrawal request and on December 21, 2000 the Board issued Decision 2000-82.

The Board's authority to award costs is derived from section 60 (now 68) of the *Public Utilities Board Act*, which states in part:

- 60 (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 for a proceeding which concluded prior to August 1, 2001, the Board is guided by the principles and policies expressed in its *Scale of Costs* (as it was then). Not only does the *Scale of Costs* outline what fees and disbursements the Board will consider in a claim, it provides criteria for assessing a claim. The following excerpt from the *Scale of Costs* details those criteria:

Before exercising its statutory discretion to award costs, the Board will consider such questions as the effectiveness of the particular intervention, its relevancy to the issues, and whether the costs were reasonably and prudently incurred.

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.

Various participants submitted cost claims totaling \$616,040.52 including actual GST of \$31,853.54 with respect to the Proceeding.

As interested parties are aware, the Board recently reviewed its cost policies and procedures with regard to utility proceedings. One outcome of this review was the recognition by the Board of a need for greater overall scrutiny of costs submissions to ensure that those awarded fairly reflect the relative contributions of participants. More specifically, The Board stated that prior to awarding costs to participants, it would satisfy itself that the participant contributed to a better understanding of the issues before the Board and that the costs were reasonable and prudently incurred. The Board directed interveners with similar issues to make efforts to co-ordinate their interventions, and noted that duplication of effort would result in a reduction in costs awards.

The Board notes, however, that the costs relating to this proceeding were incurred prior to providing interested parties with the notice of the Board's intentions as expressed above. The Board is thus of the opinion that the costs of this proceeding should be subject to the same scrutiny as other proceedings conducted at the same time.

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".

In accordance with the Board's treatment of the GST on cost awards, ATCO Gas 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 \$12,834.75 as shown in column (d) of Schedule "A". The GST allowed by the Board may also be charged against ATCO Gas' 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 and Pipelines Limited shall pay interveners' costs in the amount of \$476,455.33 as set out in column (e) of Schedule "A";
- (2) ATCO Gas and Pipelines Limited's external costs in the amount of \$120,566.40 are hereby approved in full;
- (3) ATCO Gas and Pipelines Limited shall record in its hearing cost reserve account its external costs and the allowed interveners' costs in the amount of \$597,021.73 as outlined in column (e) of Schedule "A".

MADE at the City of Calgary, in the Province of Alberta, this 9th day of April, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

Original signed by Thomas McGee

Thomas McGee

Application No. 990208

Summary of Total Costs Claimed and Awarded

	Fees and Disbursements Claimed (excluding GST) (a)	Total GST Associated with Claimed Fees and Disbursements (b)	Total Fees, Disbursements and GST claimed (c)	Eligible GST (d)	Fees and Disbursements Allowed Including Eligible GST (e)
Applicant					
ATCO Gas & Pipelines Limited	\$120,566.40	\$0.00	\$120,566.40	\$0.00	\$120,566.40
Interveners					
Aboriginal Communities	\$11,575.00	\$810.75	\$12,385.75	\$0.00	\$11,575.00
Alberta Irrigation Projects Association	\$8,400.00	\$0.00	\$8,400.00	\$0.00	\$8,400.00
Consumers' Coalition of Alberta	\$4,375.75	\$306.22	\$4,681.97	\$306.22	\$4,681.97
City of Calgary	\$348,150.26	\$24,369.52	\$372,519.78	\$10,444.78	\$358,595.04
Federation of Alberta Gas Co-ops Ltd. and Gas Alberta Inc.	\$35,411.04	\$2,478.78	\$37,889.82	\$1,062.41	\$36,473.45
Municipal Interveners	\$34,204.52	\$2,382.98	\$36,587.50	\$1,021.35	\$35,225.87
Public Institutional Consumers of Alberta	\$21,504.01	\$1,505.29	\$23,009.30	\$0.00	\$21,504.01
Total Interveners' Costs	\$463,620.58	\$31,853.54	\$495,474.12	\$12,834.75	\$476,455.33
Total Costs	\$584,186.98	\$31,853.54	\$616,040.52	\$12,834.75	\$597,021.73