



NOVA Gas Transmission Ltd.

Application for a Pipeline Licence
Neerlandia/Corbett Fields

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2007-005: NOVA Gas Transmission Ltd.

Application for a Pipeline Licence

Neerlandia/Corbett Fields

Application No. 1480230

Cost Application No. 1508451

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Calgary, Alberta

**NOVA Gas Transmission Ltd.
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1 INTRODUCTION

NOVA Gas Transmission Ltd. (NGTL) submitted an application to the Alberta Energy and Utilities Board (EUB or Board), in accordance with Part 4 of the *Pipeline Act*, for approval to construct and operate a pipeline for the purpose of transporting natural gas with a hydrogen sulphide content of 0.00 moles per kilomole. The pipeline was proposed to be approximately 26.5 kilometres (km) in length with a maximum outside diameter of 404.6 millimetres. The proposed pipeline was to be located approximately 6 km southwest of Fort Assiniboine.

On February 27, 2007, NGTL notified the EUB that it was withdrawing Application No. 1480230. On March 13, 2007, pursuant to Section 20 of the *Alberta Energy and Utilities Board Rules of Practice*, the Board issued Decision [2007-020](#) accepting the withdrawal of the application, and cancelling the public hearing scheduled for May 28, 2007.

Prior to NGTL withdrawing the application, the Board received interventions from ATCO Pipelines and AltaGas Ltd. In addition, the Board received intentions to intervene from Alberta Urban Municipalities Association, BP Canada Energy Company, City of Edmonton, Gas Alberta Inc., Industrial Gas Consumers Association of Alberta, Nova Chemicals Corporation, Office of the Utilities Consumer Advocate, and Chuck Hambling.

The Board received one cost claim from ATCO Pipelines totaling \$12,836.10. On April 18, 2007 the EUB invited interested parties to comment on the cost claim by April 25, 2007, and to file responses by May 2, 2007. The Board received comments from NGTL, but did not receive any responses. For the purposes this Cost Order, the Board considers the cost process to have closed on May 2, 2007.

2 VIEWS OF THE BOARD – Authority to Award Costs

In considering an energy cost claim, the Board is guided by its enabling legislation. In particular, by section 28 of the *Energy Resources Conservation Act* (ERCA) which reads as follows:

- 28(1) In this section, “local intervener” means a person or a group or association of persons who, in the opinion of the Board,
- (a) has an interest in, or
 - (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

It is the Board's position that a person claiming local intervenor costs must establish the requisite interest in land and provide reasonable grounds for believing that such an interest may be directly and adversely affected by the Board's decision on the project in question.

For this application, the Board provided the following guidance regarding costs to parties in the Notice of Hearing dated February 16, 2007:

As this hearing may also raise issues related to utility rate issues, the Board will also consider cost applications pursuant to its utility costs rules. Parties that do not qualify as local intervenors under the energy costs rules may apply for costs pursuant to Directive 31B, Guidelines for Utility Cost Claims. Parties intending to claim costs under the utility costs rules must include in their submission a statement describing the party's eligibility for cost recovery in light of the "business interest" rule contained in Section 55(2) (h.1) of the *Alberta Energy and Utilities Board Rules of Practice*.

In the circumstance of a utility cost claim, the Board's authority to award costs is derived from section 68 of the *Public Utilities Board Act*, R.S.A. 2000, c. P-45, 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, either energy or utilities, the Board will have reference to Part 5 of the *Rules of Practice* and to its *Scale of Costs*.

Section 55(1) of the *Rules of Practice* reads as follows:

- Section 55(1) The Board may award costs in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:
- (a) the costs are reasonable and directly and necessarily related to the proceeding and;
 - (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

3 VIEWS OF THE PARTIES

3.1 ATCO Pipelines (AP)

On March 30, 2007, AP filed a cost claim for legal costs pursuant to Directive 031B. In accordance with the requirements of Directive 031B, AP submitted a Statement of Justification detailing the role and responsibilities of its legal counsel, Bennett Jones LLP; what measures AP took to avoid duplication; what measures AP took to ensure that the costs incurred were reasonable; and lastly, provided discussion on the business interest rule.

With respect to the business interest rule, AP submits the following.

AP would normally not participate in another utility's facilities proceeding, but in this case the Application and related proceeding included a consideration of matters of interest to AP, specifically: (i) the duplication of facilities; and (ii) the orderly and rational development of resources in the province. AP did not participate in this proceeding " . . . for the sole purpose of protecting. . ." AP's business interests. Rather, AP participated in the proceeding to prudently manage the use of its facilities to the benefit of all AP customers.

In Decision 2006-010, the Board placed significant weight on the position of AP's core customers (represented by the Customer Group or "CG") in declining to make changes to NGTL's rates. Those changes had been proposed by AP in an effort to ensure rates on a competing system, such as NTGL, are more cost based. In Decision 2006-010, the Board summarized the CG's position as follows (at p. 5):

While ATCO maintained, as it has in past proceedings, that the FT-A rate should properly include transmission charges, the CG, which represents end-use customers on the ATCO system, supported the status quo, and specifically the zero transmission charge in the FT-A rate. The CG supported the status quo mainly due to the belief that the competing regulating pipelines (ATCO and NGTL) would be encouraged to rationalize facilities, as demonstrated by the East Edmonton TBO. The CG proposed that a broadly based facilities solution, supported by a Least Cost Alternative (LCA) policy, was a better solution than an increase in the FT-A toll.

Clearly, AP's customers expect AP to "rationalize" facilities. AP itself has long followed a facilities rationalization, or least cost alternative, policy. Efforts to rationalize facilities or follow a least cost alternative policy are not pursued by AP for purposes of protecting its business interests. Rather, such efforts are pursued in order to prudently manage the utilization of AP's facilities. Indeed, were AP not to take such efforts, its customers may well allege AP is not acting prudently.

AP submitted that its motivation for participating in this proceeding which was driven by an attempt to rationalize facilities qualifies it for cost recovery.

3.2 NOVA Gas Transmission Ltd. (NGTL)

On April 25, 2007 NGTL submitted comments concerning AP's cost claim. NGTL suggested that the applicable directive for this matter is Directive 031A, under which AP would not qualify for cost recovery as a local intervener. NGTL references section 28 of the ERCA which specifically excludes, unless otherwise authorized by the Board, "a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource".

If the Board determines that it is appropriate for AP to make the claim pursuant to Directive 031B, NGTL questioned whether AP is eligible for cost recovery under the business interest rule. NGTL references Utility Cost Order 2006-026, wherein the Board denied AP cost recovery on the basis of the business interest rule.

NGTL also submitted that the Board should take into account that NGTL withdrew the application approximately one week after the issuance of the Notice of Hearing. NGTL provided the following discussion.

The costs claimed by ATCO Pipelines are almost entirely in connection with an exchange of correspondence between NGTL and ATCO Pipelines/AltaGas regarding potential commercial arrangements that might represent an alternative to the Thunder Extension prior to the issuance of the Notice of Hearing. *Directive 31A* states that “[t]he EUB's usual practice (there are exceptions) is to acknowledge only those costs incurred after the EUB has issued a notice of hearing.” ATCO Pipelines has not suggested any exceptional circumstances which warrant departure from the Board’s usual practice.

4 VIEWS OF THE BOARD

Based on the guidance provided by the Board with regard to applicability of Directives 031A and 031B, discussed above in Section 2, the Board finds it appropriate to consider AP’s cost claim in accordance with Directive 031B.

With respect to the business interest rule, Section 55(2) (h.1) of the *Rules of Practice* states the following.

55(2) In determining the amount of costs, in accordance with the scale of costs, to a participant, the Board may consider whether the participant did one or more of the following.

...

(h.1) in utility proceedings, the participant took part in the proceedings for the sole purpose of protecting the participant’s business interest.

In Utility Cost Order 2006-036, the Board provided the following views regarding the application of the business interest rule.

In establishing the business interest rule the Board determined that participants whose submissions are motivated by a desire to advance or protect their commercial interests should expect to bear the cost of their participation. In advancing such interests with respect to an application the participant is expected to weigh the potential benefits of participation against the anticipated costs. In exceptional circumstances the Board may find it appropriate to relax the application of the business interest rule, however, in order to preserve the integrity of the rule the Board believes that a substantial onus rests with the cost applicant to satisfy the Board that the rule should not be applied.

The Board has reviewed the arguments advanced by AP in respect of eligibility for funding pursuant to the business interest rule. The Board is not persuaded that the reasons advanced are sufficient to warrant an exception to the business interest rule and accordingly, the Board finds it appropriate to apply the business interest rule and disallow AP’s cost claim.

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) The cost claim filed by ATCO Pipelines is denied.

Dated in Calgary, Alberta on this 3rd day of July, 2007.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member