



**Generic Proceeding to Review Rate Treatment of
Distribution System Acquisition Costs Under
Performance-Based Regulation**

Costs Award

December 17, 2019

Alberta Utilities Commission

Decision 24938-D01-2019

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Appendix A – Allocation of the CCA's Costs

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers an application by the Consumers' Coalition of Alberta (CCA) for approval and payment of its costs of participation in Proceeding 24405¹ (the original proceeding).

2. The following table sets out the costs claimed and the amounts awarded:

Claimant	Total Fees Claimed	Total Disbursements Claimed	Total GST Claimed	Total Amount Claimed	Total Fees Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
CCA								
Wachowich & Company LLP	\$6,247.50	\$0.00	\$312.38	\$6,559.88	\$6,247.50	\$0.00	\$312.38	\$6,559.88
Regulatory Services Inc.	\$13,108.50	\$0.00	\$655.43	\$13,763.93	\$10,098.00	\$0.00	\$504.90	\$10,602.90
Total	\$19,356.00	\$0.00	\$967.81	\$20,323.81	\$16,345.50	\$0.00	\$817.28	\$17,162.78
Total amount claimed				\$20,323.81	Total amount awarded			\$17,162.78

3. The Commission has awarded reduced costs to the applicant for the reasons set out below.

4. The original proceeding was initiated by the Commission to consider and clarify the rate treatment of amounts paid by a distribution utility in Alberta for the acquisition of rural electrification associations (REAs), gas co-operatives and municipally owned electric distribution systems under the 2018-2022 PBR plan and the treatment of such costs for municipally owned electric distribution systems under the 2013-2017 performance-based regulation (PBR) plan.² The Commission pre-registered the six distribution utilities under PBR, as well as the Consumers' Coalition of Alberta (CCA) and the Office of the Utilities Consumer Advocate (UCA). The proceeding consisted of evidence, information requests (IRs) and responses to IRs, rebuttal evidence, and written argument and reply argument. In addition, two parties filed sur-reply argument. The close of record for the original proceeding was August 27, 2019, the date sur-reply arguments were received, and the Commission issued Decision 24405-D01-2019,³ on September 6, 2019.

¹ Proceeding 24405: Generic Proceeding to Review Rate Treatment of Distribution System Acquisition Costs Under Performance-Based Regulation.

² Bulletin 2019-03: Generic proceeding to review rate treatment of distribution system acquisition costs under performance-based regulation, March 12, 2019.

³ Decision 24405-D01-2019: Generic Proceeding to Review Rate Treatment of Distribution System Acquisition Costs Under Performance-Based Regulation, Proceeding 24405, September 6, 2019.

5. The CCA submitted its costs claim application on September 26, 2019, within the 30-day timeline permitted by the Commission's rules. The Commission assigned Proceeding 24938 and Application 24938-A001 to the costs claim application. No comments were filed on the costs claim application, and the Commission considers the close of record for this proceeding to be October 7, 2019, the deadline for filing comments.⁴

2 Commission findings

6. The Commission's authority to award costs for participation in a utility rates proceeding is found in Section 21 of the *Alberta Utilities Commission Act*. When considering an application by an eligible participant for approval and payment of costs incurred in connection with a utility rates proceeding, the Commission is also guided by the factors set out in Section 11 of Rule 022: *Rules on Costs in Utility Rate Proceedings*. These factors include whether the costs claimed are reasonable and directly and necessarily related to the original proceeding, and whether the participants acted responsibly and contributed to a better understanding of the issues before the Commission. Appendix A of Rule 022 prescribes a Scale of Costs applicable to all costs claimed.

2.1 Consumers' Coalition of Alberta

7. The following table summarizes the CCA's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company LLP	13.70	0.00	4.15	\$6,247.50	\$0.00	\$312.38	\$6,559.88
Regulatory Services Inc.	23.85	0.00	24.70	\$13,108.50	\$0.00	\$655.43	\$13,763.93
Total	37.55	0.00	28.85	\$19,356.00	\$0.00	\$967.81	\$20,323.81

8. The Commission finds that the CCA generally acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues. However, the Commission is unable to approve the full amount of the costs claimed in respect of the services performed by Regulatory Services Inc. for the reasons set out below.

2.1.1 Wachowich & Company LLP

9. The CCA was represented by Wachowich & Company in the original proceeding. The fees claimed by the CCA for the legal services provided by James Wachowich Q.C. relate to reviewing the application, communicating with the CCA's consultant, reviewing evidence, reviewing draft IRs, reviewing responses to IRs, and reviewing argument, reply argument and the CCA's motion regarding sur-reply.

10. The Commission finds that the services performed by Wachowich & Company were directly and necessarily related to the CCA's participation in the original proceeding and that the fees, which were claimed in accordance with the Scale of Costs for those services, are reasonable. Accordingly, the Commission approves the CCA's claim for legal fees for

⁴ Exhibit 24938-X0003.

Wachowich & Company in the amount of \$6,247.50 and GST of \$312.38 for a total of \$6,559.88.

2.1.2 Regulatory Services Inc.

11. Regulatory Services was retained by the CCA to perform consulting services in the original proceeding. The fees claimed by the CCA for the consulting services provided by Jan Thygesen relate to reviewing the application, drafting evidence, drafting IRs, assessing responses to IRs, preparing responses to IRs, formulating recommended positions, drafting argument and reply argument and drafting a motion regarding sur-reply.

12. While the Commission finds that the services performed by Regulatory Services were directly and necessarily related to the CCA's participation in the original proceeding, it finds that the fees claimed for these services were excessive for the following reasons.

13. Regulatory Services claimed a total of 9.75 hours⁵ for responding to information requests in the original proceeding. The information requests consisted of four questions from the Commission, of which the CCA responded to questions three and four.⁶ Question three from the Commission sought clarification on the CCA's evidence, which it found to be contradictory. In one portion of the evidence, the CCA stated that there should be no reason to change the method of providing incremental funding for distribution system acquisitions. In another section of the evidence, the CCA stated that no incremental funding is required.⁷ While the explanation provided by the CCA was satisfactory in explaining the contradiction, the Commission considers that had the evidence been presented more clearly, this IR would not have been required. Nor would the Commission have spent time trying to understand the evidence.

14. Similar to question three, question four also was a clarification question where the Commission asked the CCA to substantiate its statement that there was "clear evidence that utilities in the marketplace freely negotiate purchase prices."⁸ Again, the Commission considers that had the statement been substantiated, this IR would not have been required.

15. For these reasons, the Commission imposes a 50 per cent reduction to the time claimed for responding to IRs.

16. A total of 12.55 hours⁹ were claimed by Regulatory Services in relation to a motion¹⁰ to strike portions of FortisAlberta Inc.'s reply argument. The motion argued that Fortis had

⁵ 9.75 hours are calculated based on summing the following hours from "Times and tasks for Jan Thygesen" in Exhibit 24938-X0001, PDF page 18: 3.25 hours from 28-May, 1.8 hours from 29-May, 0.3 hours from 06-Jun, 3.5 hours from 07-Jun and 0.9 hours from 10-Jun.

⁶ The CCA stated that it had reviewed the UCA's draft response to questions one and two, which it supported, and in the interest of regulatory efficiency the CCA was not responding.

⁷ Exhibit 24405-X0059, CCA-AUC-2019Jun10-003.

⁸ Exhibit 24405-X0059, CCA-AUC-2019Jun10-004.

⁹ 12.55 hours are calculated based on summing the following hours from "Times and tasks for Jan Thygesen" in Exhibit 24938-X0001, PDF pages 18 and 19: 0.35 hours from 10-Aug, 4 hours from 13-Aug, 3 hours from 14-Aug, 1.1 hours from 17-Aug, 3.2 hours from 18-Aug, 0.7 hours from 19-Aug and 0.2 hours from 23-Aug.

¹⁰ Exhibit 24405-X0117, Exhibit 24405-X0120.

breached the rules of natural justice and procedural fairness, which had unfairly prejudiced the CCA's position.¹¹

17. The Commission considers that 12.55 hours is an excessive amount of time spent in relation to the motion. The Commission suggests that more input from legal counsel on a motion relating to matters of a legal nature may have resulted in considerable time efficiencies for the preparation of the motion. The Commission notes that Wachowich and Company spent a total of 1.55 hours in relation to the motion. Accordingly, the Commission reduces the claim for time spent in relation to the motion incurred by Regulatory Services by 50 per cent. As a result of this reduction, and the reduction in paragraph 15, the Commission approves a total of 37.4 hours¹² for Mr. Thygesen. The Commission approves the CCA's claim for consulting fees for Regulatory Services in the amount of \$10,098.00 and GST of \$504.90 for a total of \$10,602.90.

2.1.3 Total awarded to the CCA

18. For the reasons provided above, the Commission approves the CCA's claim for recovery of costs in the total amount of \$17,162.78. This amount is composed of legal fees of \$6,247.50, consulting fees of \$10,098.00 and GST of \$817.28.

3 Allocation of the CCA's costs

19. The CCA did not propose a method for allocating its costs. The Commission considers that the allocation of the CCA's costs in generic proceedings should be applied consistently. Consistent with past decisions of the Commission involving multiple utilities, but subject to the modifications discussed below, 25 per cent of the CCA's allowed costs will be allocated on an equal basis to each utility that actively participated in the original proceeding and 75 per cent will be allocated on a proportional basis, using amounts reported by each such distribution utility for 2018 in their respective filings under Rule 005: *Annual Reporting Requirements of Financial and Operational Results*.¹³ This allocation methodology was approved previously by the Commission in performance-based regulation costs decisions and generic cost of capital costs decisions, such as Decision 22082-D01-2017,¹⁴ Decision 23245-D01-2018,¹⁵ Decision 23628-D01-2018¹⁶ and Decision 23818-D01-2018.¹⁷

20. The Commission previously allocated intervenor costs based on approved revenue requirements as reflected in Rule 005 filings. This allocation methodology has been modified for

¹¹ Exhibit 24405-X0117, paragraph 1.

¹² The total number of hours claimed by Regulatory Services was 48.55. Applying a reduction of 50 per cent to 9.75 hours and to 12.55 hours results in a total reduction of 11.15 hours ($9.75 \times 0.5 + 12.55 \times 0.5$), which in turn results in a total number of awarded hours of 37.4 hours ($48.55 - 11.15$).

¹³ The 2018 Rule 005 reports for Alberta gas and electric distribution utilities are found on the Commission's website at: http://www.auc.ab.ca/regulatory_documents/Pages/finance_and_operations.aspx under the "Finance and Operations."

¹⁴ Decision 22082-D01-2017: 2018-2022 Performance-Based Regulation Plans for Alberta Electric and Gas Distribution Utilities Costs Award, Proceeding 22082, February 6, 2017.

¹⁵ Decision 23245-D01-2018: Rebasing for the 2018-2020 PBR Plans for Alberta Electric and Gas Distribution Utilities, First Compliance Proceeding Costs Award, Proceeding 23245, April 27, 2018.

¹⁶ Decision 23628-D01-2018 (Errata): Errata to Decision 23628-D01-2018, 2018 Generic Cost of Capital Costs Award, Proceeding 23628, December 20, 2018.

¹⁷ Decision 23818-D01-2018: Rebasing for the 2018-2022 PBR Plans for Alberta Electric and Gas Distribution Utilities Second Compliance Proceeding Costs Award, Proceeding 23818, October 1, 2018.

purposes of this decision because the distribution utilities, unlike transmission utilities, do not have an approved revenue requirement under performance-based regulation. Therefore, in determining the allocations for the CCA's approved costs, the Commission has used the 2018 Rule 005 reported revenue amounts rather than revenue requirement. Further, the Commission has adjusted the 2018 Rule 005 reported revenue amounts to exclude transmission access charges, to ensure consistency among the reported revenue of the distribution utilities. This adjustment was required to recognize that some utilities such as ATCO Electric Ltd. (distribution) include transmission access charges in their Rule 005 reported revenue, while other utilities such as FortisAlberta Inc., exclude these charges. Using revenue amounts from Rule 005, adjusted to account for transmission access charges, will ensure that the calculation of reported revenue amounts for the distribution utilities is made on a comparable and proportionate basis for purposes of allocating intervenor costs.

21. Although all of the distribution utilities were registered in the proceeding, the only utilities to participate by filing evidence and argument were the ATCO distribution utilities¹⁸ and Fortis. Accordingly, the CCA's costs will be allocated and recovered from the following utilities:

- ATCO Electric (distribution)
- ATCO Gas, a division of ATCO Gas and Pipelines Ltd.
- FortisAlberta

22. The resulting cost allocations are attached in Appendix A to this decision and provide the derivation of the amounts to be paid by each utility.

4 Order

23. It is hereby ordered that:

- (1) ATCO Electric Ltd. (distribution) shall pay intervenor costs to the Consumers' Coalition of Alberta in the amount of \$4,628.08.
- (2) ATCO Electric Ltd. (distribution) shall record in its Intervenor Hearing Costs account, intervenor costs in the amount of \$4,628.08.
- (3) ATCO Gas, a division of ATCO Gas and Pipelines Ltd., shall pay intervenor costs to the Consumers' Coalition of Alberta in the amount of \$7,062.40.
- (4) ATCO Gas, a division of ATCO Gas and Pipelines Ltd., shall record in its Deferred AUC and Intervenor Costs account, intervenor costs in the amount of \$7,062.40.

¹⁸ The ATCO distribution utilities include ATCO Electric Ltd. (distribution) and ATCO Gas, a division of ATCO Gas and Pipelines Ltd.

- (5) FortisAlberta Inc. shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$5,472.30.
- (6) FortisAlberta Inc. shall record in its Hearing Cost Reserve Account, intervener costs in the amount of \$5,472.30.

Dated on December 17, 2019.

Alberta Utilities Commission

(original signed by)

Henry van Egteren
Vice-Chair

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Allocation of the CCA's Costs

	ATCO Electric Ltd. (distribution) (a)	ATCO Gas (b)	FortisAlberta Inc. (c)	Total
2018 Reported Revenue Amounts (\$000s)	\$850,822.00	\$949,387.00	\$551,482.00	\$2,351,691.00
Transmission Access Payments/Flow Through Expenses 2018 Rule 005 (\$000s)	\$414,522.00	\$180,958.00		\$595,480.00
Total Revenue (\$000s)	\$436,300.00	\$768,429.00	\$551,482.00	\$1,756,211.00
% of Reported Revenue Amounts*	24.84%	43.75%	31.40%	100.00%
Consumers' Coalition of Alberta 75% Costs Allocation	\$3,197.85	\$5,632.17	\$4,042.07	\$12,872.09
Consumers' Coalition of Alberta 25% Costs Allocation	\$1,430.23	\$1,430.23	\$1,430.23	\$4,290.70
Sum of Amounts Allocated	\$4,628.08	\$7,062.40	\$5,472.30	\$17,162.78
TOTAL PAYABLE	\$4,628.08	\$7,062.40	\$5,472.30	\$17,162.78

*percentages have been rounded