



ATCO Pipelines  
Application for Variance of Decision 22986-D01-2018 and  
Decision 23537-D01-2018 (Errata)

Costs Award

December 20, 2019

**Alberta Utilities Commission**

Decision 25008-D01-2019

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Proceeding 25008

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**Decision 25008-D01-2019  
Proceeding 25008**

**1 Introduction**

1. In this decision, the Alberta Utilities Commission considers the application by ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., for approval and payment of its costs of participation in Proceeding 23539,<sup>1</sup> Proceeding 23953,<sup>2</sup> and Proceeding 24176<sup>3</sup> (the original proceedings). The Commission also considers an application by the Consumers' Coalition of Alberta's (CCA) for approval and payment of its costs for participation in Proceeding 24176, being the application for variance of Decision 22986-D01-2018 and Decision 23537-D01-2018 (Errata) (the stage 2 proceeding). The CCA did not participate in either Proceeding 23539 or Proceeding 23953.

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
ATCO Pipelines								
Bennett Jones LLP	\$239,715.00	\$1,946.00	\$0.00	\$241,661.00	\$215,743.50	\$1,654.75	\$0.00	\$217,398.25
CCA								
Wachowich & Company LLP	\$6,195.00	\$0.00	\$309.75	\$6,504.75	\$6,195.00	\$0.00	\$309.75	\$6,504.75
Regulatory Services Inc.	\$28,971.00	\$52.30	\$1,451.17	\$30,474.47	\$28,498.50	\$52.30	\$1,427.55	\$29,978.35
Total	\$35,166.00	\$52.30	\$1,760.92	\$36,979.22	\$34,693.50	\$52.30	\$1,737.30	\$36,483.10
Total amount claimed by parties				\$278,640.22	Total amount awarded to parties			\$253,881.35

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

4. This costs claim proceeding was convened by the Commission to consider the merits of ATCO Pipelines' and the CCA's costs claims related to the original proceedings. Proceeding 23539 included process for argument and reply argument. The Commission in Proceeding 23953

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<sup>1</sup> Proceeding 23539: Application to Review and Vary Decision 22986-D01-2018, resulting in Decision 23539-D01-2018 ATCO Pipelines Office of the Utilities Consumer Advocate Decision on Preliminary Question Applications for Review of Decision 22986-D01-2018 Compliance Application to Decision 22011-D01-2017 ATCO Pipelines 2017-2018 General Rate Application Proceeding 23539, September 27, 2018.

<sup>2</sup> Proceeding 23953: ATCO Pipelines Application for R & V of Decision 23537-D01-2018, resulting in Decision 23953-D01-2018 ATCO Pipelines Decision on Preliminary Question Application for Review of Decision 23537-D01-2018 (Errata) Compliance Application to Decision 22986-D01-2018 Proceeding 23953, December 13, 2018.

<sup>3</sup> Proceeding 24176: ATCO Pipelines, Variance of Decision 22986-D01-2018 and Decision 23537-D01-2018 (Errata).

did not set a process schedule because there were no statements of intent to participate filed and the Commission did not require further information to test the application. The stage 2 proceeding consisted of supplemental submissions, supplemental evidence, information requests (IRs) and responses to IRs, motions, time extensions, argument and reply argument. The close of record for the stage 2 proceeding was September 20, 2019.

5. ATCO Pipelines and the CCA submitted their costs claim applications on October 21, 2019. Pursuant to Section 5.3 of Rule 022: *Rules on Costs in Utility Rate Proceedings*, a cost claim for a review and variance application may either be filed within 30 days after the Commission's determination of the review application or, where the Commission has granted a review application and held a hearing or other proceeding, within 30 days after the conclusion of that proceeding. Both cost claim applications were received within the timelines permitted by the Commission's rules. The Commission assigned Proceeding 25008 and application 25008-A001 to the CCA's cost claim application and 25008-A002 to ATCO Pipelines' cost claim application.

6. On November 4, 2019, ATCO Pipelines submitted an invoice that was inadvertently omitted from its costs claim application. No comments were filed on the costs claim applications. The Commission considers the close of record for the cost claim proceeding to be November 4, 2019.

## 2 Commission findings

7. The Commission's authority to award costs for participation in a review proceeding dealing with a utility rates matter is found in Section 21 of the *Alberta Utilities Commission Act*. When considering an application for such costs by an eligible participant, the Commission is also guided by the provisions of Section 5 and Section 11 of Rule 022. Section 11 specifies certain factors for consideration by the Commission. These factors include whether the costs claimed are reasonable and directly and necessarily related to the review 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 ATCO Pipelines

8. The following table summarizes ATCO Pipelines' costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
ATCO Pipelines							
Bennett Jones LLP	488.00	0.00	262.00	\$239,715.00	\$1,946.00	\$0.00	\$241,661.00

9. The Commission finds that ATCO Pipelines generally acted responsibly in the original proceedings 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 for Bennett Jones LLP for the reasons set out below.

### 2.1.1 Bennett Jones LLP

10. ATCO Pipelines was represented by Bennett Jones in the original proceedings. Nick Gretener and Tim Myers were the lead counsel in Proceeding 23539 and Proceeding 23953. Marie Buchinski also advised on these two proceedings commencing in September 2018. In the stage 2 proceeding, Ms. Buchinski and Mr. Myers were the primary counsel and were assisted by Laurie Smith, Bruce Mellett, James Salsman and Leanne Desbarats and four junior associates or students-at-law. The fees claimed by ATCO Pipelines for the legal services provided by Mr. Gretener, Mr. Myers and Ms. Buchinski relate to assisting with preparation of the applications, supplemental evidence, responses to IRs and supplemental IRs, argument and reply argument. Counsel also advised on motions and procedural matters.

11. While the Commission finds that the majority of the services performed by Bennett Jones were directly and necessarily related to ATCO Pipelines' participation in the original proceedings, it finds that a portion of those fees is unreasonable. A detailed review of the statements of account shows extensive internal law firm discussions and emails<sup>4</sup> among Bennett Jones counsel and there is insufficient explanation as to why these costs were directly and necessarily related to the proceedings or contributed to a better understanding of the issues before the Commission. Further, a review of the statements of account indicates a degree of duplication between more than one counsel reviewing the application documents in the stage 2 proceeding and in preparing argument and reply argument, particularly among Ms. Buchinski, Mr. Myers and junior lawyers.<sup>5</sup> Accordingly, the Commission considers a 10 per cent disallowance of the legal fees is warranted and the fees are reduced by \$23,971.50.

12. The \$1,946.00 in disbursements claimed by ATCO Pipelines for Bennett Jones included internal photocopying (\$0.75), external printing (\$1,654.00), charges for Library computer search – Westlaw (\$272.25) and charges for Library computer search - Quicklaw (\$19.00). With respect to the claims for library computer and legal database searches, the Commission notes that there are free search services, such as CanLII, available to parties and that the onus is on the cost claimant to demonstrate the reasonableness of the disbursements claimed.<sup>6</sup> As the costs of a utility are generally passed on to customers, where a costs applicant chooses to use services that require an access fee, that costs applicant is expected to demonstrate why it was necessary to use that service. In this case, no justification was provided for the use of Westlaw and Quicklaw and therefore these disbursements totalling \$291.25 are disallowed. This finding is consistent with the Commission findings in several recent decisions, including Decisions 24559-D01-2019,<sup>7</sup> 24255-D01-2019<sup>8</sup> and 24475-D01-2019.<sup>9</sup>

<sup>4</sup> Exhibit 25008-X0004, ATCO Pipelines cost application, see for example, Invoice Nos. 1224223, 1236158, 126704, 1266106, and 1274844.

<sup>5</sup> Exhibit 25008-X0004, ATCO Pipelines cost application, see Invoice Nos. 126704, 1266106, 1294277 and 1297770.

<sup>6</sup> Rule 022, Appendix C – Cost Claims, Section 4.

<sup>7</sup> Decision 24559-D01-2019: ATCO Electric Ltd. 2018-2019 Transmission General Tariff Application Costs Award, Proceeding 24559, November 14, 2019.

<sup>8</sup> Decision 24255-D01-2019: The ATCO Utilities (ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd.) Information Technology Common Matters Proceeding Costs Award, Proceeding 24255, November 21, 2019.

<sup>9</sup> Decision 24475-D01-2019: ATCO Electric Ltd. Hanna Region Transmission Development Deferral Account Costs Award, Proceeding 24475, November 25, 2019.

13. The Commission has reviewed the remaining disbursements claimed by Bennett Jones for photocopying and printing, and finds they are claimed in accordance with the Scale of Costs, and are reasonable.

### 2.1.2 Total awarded to ATCO Pipelines

14. For the reasons provided above, the Commission approves ATCO Pipelines' claim for recovery of costs in the total amount of \$217,398.25. This amount is composed of legal fees of \$215,743.50 and disbursements of \$1,654.75.

## 2.2 Consumers' Coalition of Alberta

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

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company LLP	13.20	0.00	4.50	\$6,195.00	\$0.00	\$309.75	\$6,504.75
Regulatory Services Inc.	58.80	0.00	48.50	\$28,971.00	\$52.30	\$1,451.17	\$30,474.47
Total	72.00	0.00	53.00	\$35,166.00	\$52.30	\$1,760.92	\$36,979.22

16. The Commission finds that the CCA generally acted responsibly in the stage 2 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.

### 2.2.1 Wachowich & Company LLP

17. The CCA was represented by Wachowich & Company in the stage 2 proceeding. The fees claimed by the CCA for the legal services provided by James Wachowich Q.C. relate to reviewing the application, addressing procedural matters and revising draft submissions, IRs, motions, argument and reply argument.

18. The Commission finds that the services performed by Wachowich & Company were directly and necessarily related to the CCA's participation in the stage 2 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 Wachowich & Company in the amount of \$6,195.00 and GST of \$309.75 for a total of \$6,504.75.

### 2.2.2 Regulatory Services Inc.

19. Regulatory Services was retained by the CCA to perform consulting services in the stage 2 proceeding. The fees claimed by the CCA for the consulting services provided by Jeffrey Jodoin and Don Popowich relate to reviewing the application, conducting research, drafting IRs, reviewing responses to IRs and drafting argument and reply argument.

20. While the Commission finds that the services performed by Regulatory Services were generally directly and necessarily related to the CCA's participation in the stage 2 proceeding, it finds that a portion of the fees claimed for these services is unreasonable. The CCA claimed 1.75

hours<sup>10</sup> for Mr. Popowich to “conduct [a] search for [an] external witness.”<sup>11</sup> However, in its August 16, 2019 letter<sup>12</sup> in the stage 2 proceeding, the CCA noted it “had been looking for an expert” but that it was unable to “obtain further expert advice.” Since an expert was not ultimately retained nor was intervenor evidence filed in the stage 2 proceeding, the Commission finds the time incurred in attempting to retain an expert did not contribute to a better understanding of the issues before the Commission. As a result, the Commission reduces Regulatory Services’ fees by \$472.50 (which is based on 1.75 hours at the rate of \$270.00 per hour), and the corresponding GST of \$23.62.

21. The CCA also claimed disbursements for Regulatory Services for photocopying (\$52.30). The Commission finds the claim to be reasonable. Accordingly, the Commission approves the CCA’s claim for consulting fees for Regulatory Services in the amount of \$28,498.50, disbursements of \$52.30 and GST of \$1,427.55 for a total of \$29,978.35.

### **2.2.3 Total awarded to the CCA**

22. For the reasons provided above, the Commission approves the CCA’s claim for recovery of costs in the total amount of \$36,483.10. This amount is composed of legal fees of \$6,195.00, consulting fees of \$28,498.50, disbursements of \$52.30 and GST of \$1,737.30.

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<sup>10</sup> Exhibit 25008-X0001, CCA’s costs claim application, PDF page 17: On 2019-09-03, 0.05 hours were claimed for “Correspondence with RSI re: consulting firm to engage,” and on 2019-09-04, 1.25 hours were claimed for “Telecon Consulting firm; Telecon RSI.”

<sup>11</sup> Exhibit 25008-X0001, CCA’s costs claim application, PDF page 2.

<sup>12</sup> Exhibit 24176-X0058, CCA correspondence re: process dated August 16, 2019 and filed with the Commission on August 18, 2019.



### **3 Order**

23. It is hereby ordered that:

- (1) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall pay external costs in the total amount of \$217,398.25.
- (2) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall record in its Hearing Costs Reserve account approved external costs in the amount of \$217,398.25.
- (3) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall pay intervener costs to the Consumers' Coalition of Alberta in the total amount of \$36,483.10.
- (4) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall record in its Hearing Costs Reserve account approved intervener costs in the amount of \$36,483.10.

Dated on December 20, 2019.

**Alberta Utilities Commission**

*(original signed by)*

Mark Kolesar  
Chair