



ATCO Gas and Pipelines Ltd.

**2014-2015 Capital Tracker Application and
2013 Refiling & True-Up Application**

Costs Award

July 3, 2015

Alberta Utilities Commission

Decision 20070-D01-2015: ATCO Gas and Pipelines Ltd.

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2013 Refiling & True-Up Application

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Proceeding 20070

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1 Introduction

1. On December 6, 2013, the Alberta Utilities Commission issued Decision [2013-435](#),¹ which dealt with the 2013 capital tracker applications for five Alberta distribution utilities, including ATCO Gas and Pipelines Ltd. (ATCO Gas) and set out the basis and requirements for future capital tracker applications. In Decision [2013-435](#), the Commission denied all of ATCO Gas' proposed projects or programs for capital tracker treatment, and directed ATCO Gas to file a capital tracker refiling and true-up application on or before May 15, 2014. The Commission also directed ATCO Gas to file on or before March 1, 2014, a single application for ATCO Gas' proposed capital trackers for 2014 and 2015.
2. On December 23, 2013, the Commission issued a letter granting ATCO Gas' request to defer the filing of its 2014 and 2015 proposed capital tracker application to the same filing date as the 2013 capital tracker refiling and true-up application.
3. On June 3, 2014, ATCO Gas filed an application with the Commission requesting approval of its 2014 and 2015 capital trackers, as well as its 2013 capital tracker refiling and true-up (2013-2015 capital tracker application). The Commission assigned Application 1610634 and Proceeding 3267 to deal with the 2013-2015 capital tracker application.
4. On June 3, 2014, the Commission issued a notice of the 2013-2015 capital tracker application and requested interested parties to submit a statement of intent to participate (SIP) by June 13, 2014. SIPs were received from FortisAlberta Inc., AltaGas Utilities Inc., ATCO Electric Ltd., the Consumers' Coalition of Alberta (CCA), the Office of the Utilities Consumer Advocate and the City of Calgary.
5. On June 24, 2014, ATCO Gas submitted an amendment to the 2013-2015 capital tracker application in compliance with certain directions given to ATCO Gas by the Commission in Decision [2014-155](#).²
6. On November 10, 2014, ATCO Gas submitted an errata to the 2013-2015 capital tracker application³ that included two attachments detailing corrections to certain sections of its evidence

¹ Decision 2013-435: Distribution Performance-Based Regulation 2013 Capital Tracker Applications, Proceeding 2131, Application 1608827, December 6, 2013.

² Decision 2014-155: ATCO Gas, a division of ATCO gas and Pipelines Ltd., Rural Pool Customer Connection Charge, Proceeding 2854, Application 1609962, June 5, 2014.

³ Exhibit 65.01, ATCO Gas application errata, November 10, 2014.

and K factor calculations. ATCO Gas proposed to deal with the corrections to its K factor in either the compliance filing or the capital tracker true-up process.

7. After a review of the 2013-2015 capital tracker application and the SIPs, the Commission determined that the application would be considered by way of a full process proceeding and set out a process schedule that involved Information Requests (IRs), IR responses, intervenor evidence, IRs and responses on intervenor evidence, rebuttal evidence, an oral hearing, and argument and reply argument. An oral hearing took place from November 17, 2014 to November 28, 2014.

8. The Commission considered the close of record for the 2013-2015 capital tracker application to be December 19, 2014, with receipt of reply argument.

9. On January 19, 2015, the CCA submitted its costs claim application with respect to costs incurred in the 2013-2015 capital tracker application proceeding. The Commission assigned Application 20070-A001 and Proceeding 20070 to deal with the costs claim application.

10. The Commission circulated a summary of the CCA's costs claim to interested parties on January 22, 2015, and requested comments regarding the figures listed in the summary, and on the merits of the costs claimed, by February 2, 2015. No comments were received with respect to the circulated summary of costs.

11. On March 19, 2015, the Commission issued Decision [3267-D01-2015](#)⁴ on the 2013-2015 capital tracker application.

12. On March 27, 2015, the Commission issued IRs to the CCA requesting additional information regarding services provided by Mr. Kyle Riley.⁵ The CCA submitted its responses on April 7, 2015.

13. The Commission considers the close of record for this costs proceeding to be April 7, 2015.

2 Commission's authority to award costs

14. When assessing costs claims pursuant to Section 21 of the *Alberta Utilities Commission Act*, SA 2007, c. A-37.2, the Commission applies AUC [Rule 022: Rules on Intervenor Costs in Utility Rate Proceedings](#) (AUC Rule 022). Appendix A of AUC Rule 022 also prescribes a *Scale of Costs* applicable to all costs claimed.

15. In exercising its discretion to award costs, the Commission will, in accordance with Section 11 of AUC Rule 022, consider whether an eligible participant's costs are reasonable and directly and necessarily related to the proceeding; and whether the eligible participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the

⁴ Decision 3267-D01-2015: ATCO Gas and Pipelines Ltd. 2013 PBR Capital Tracker Refiling and True-up and 2014-2015 PBR Capital Tracker Forecast, Proceeding 3267, Application 1610634-1, March 19, 2015.

⁵ Exhibit 20024-X0005.

Commission. The Commission will be mindful of a participant's willingness to co-operate with the Commission and other participants to promote an efficient and cost-effective proceeding.

16. As the costs of a utility proceeding are generally passed on to customers, it is the Commission's duty to ensure that the customers receive fair value for a party's contribution. The Commission only approves those costs that are reasonable and directly and necessarily related to the party's participation in the proceeding.

3 Commission findings

3.1 Consumers' Coalition of Alberta

17. The CCA submitted a costs claim for recovery of costs paid in the total amount of \$198,407.74. The costs claim requested approval of the following legal and consulting fees:

- \$59,809.37 for Wachowich & Company, composed of legal fees of \$50,330.00, consulting fees of \$3,038.70, disbursements of \$3,592.60 and GST of \$2,848.07; and
- \$138,598.37 for Regulatory Services Inc., composed of consulting fees of \$131,575.50, disbursements of \$422.95 and GST of \$6,599.92.

Wachowich & Company

18. The claim for Wachowich & Company relates to 187.21 hours of legal services provided. Of this amount, 143.80 hours of legal services were performed by Mr. James Wachowich at a rate of \$350.00 per hour exclusive of GST. The claim for recovery of costs paid to Wachowich & Company also includes amounts related to 43.41 hours of work performed by Mr. Kyle Riley, at a rate of \$70.00 per hour exclusive of GST. The hours claimed with respect to Mr. Wachowich include 86.65 hours for review of the application, drafting and review of IRs and IR responses, preparation and filing of intervener evidence; 37 hours for attendance at the oral hearing; and 20.15 hours for preparation of argument and reply argument. The remainder of the claim related to 43.41 hours of consulting services provided by Mr. Riley with respect to attendance at the oral hearing, research work, and assistance in the preparation of evidence, argument, and reply argument.

19. The Commission has assessed the costs claim for legal fees for Mr. Wachowich and finds that the hours incurred are reasonable given the tasks described in the costs application and also finds that the costs incurred are in accordance with the *Scale of Costs*. The Commission also approves the CCA's claim for disbursements in the amount of \$3,592.60 for transcripts.

20. The Commission has reviewed the CCA's IR responses⁶ with respect to the nature of services provided by Mr. Riley, his qualifications and experience, and the extent to which his work product was incorporated into the CCA's submissions. The Commission considers that the CCA should be entitled to recovery of a portion of the fees paid for Mr. Riley's services given the nature of the work performed and the relevant professional experience he possesses.

⁶ Exhibit 20070-X0006 and 20070-X0007

21. The Commission notes that Mr. Riley had less than one year of experience as a research assistant at the time he provided consulting services to Wachowich & Company with respect to Proceeding 3267. The *Scale of Costs* does not contemplate recovery for fees charged by consultants with less than one year of experience. However, for the purposes of this application, the Commission will exercise its general discretionary authority with respect to costs incurred incidental to proceedings⁷ to permit the CCA to recover fees paid to Wachowich & Company for services provided by Mr. Riley at a rate of \$60 per hour. This hourly rate equates to 50 per cent of the maximum rate prescribed by the *Scale of Costs* as recoverable in respect of services rendered by consultants having between one and four years of experience which the Commission finds reasonable in the circumstances.

22. Accordingly, the Commission approves recovery of costs for Wachowich & Company in the total amount of \$59,353.56 which is composed of \$50,330.00 in legal fees, \$2,604.60 in consulting fees, disbursements of \$3,592.60 and GST of \$2,826.36.

Regulatory Services Inc.

23. The claim for Regulatory Services Inc. relates to 495.90 hours for consulting services performed by Mr. Jeff Jodoin and Mr. Jan Thygesen at rates of \$270.00 and \$255.00 per hour, respectively, exclusive of GST. The costs claim also included recovery of costs paid to Mr. Chad Frederick at a rate of \$255.00 per hour exclusive of GST. The hours claimed for Mr. Jodoin and Mr. Thygesen included 311.80 hours for review of the application, preparation of IRs, review of IR responses, preparation of intervenor evidence and hearing preparation; 71.55 hours for attendance at the oral hearing; and 99.05 hours for preparation of argument and reply argument. The costs claim for Mr. Chad Frederick included 13.50 hours for hearing assistance and preparation of aids-to-cross. The CCA's claim in respect of consulting services provided by Regulatory Services Inc. also included paid disbursements in parking fees and photocopying in the amount of \$422.95.

24. The Commission finds that the total hours claimed by Regulatory Services Inc. are excessive given its participation in the proceeding. Particularly, the Commission notes that the CCA's submissions on the issue of project grouping incentives, which could result in a higher K factor, were of limited assistance to the Commission in contributing to a better understanding of the issues before the Commission in the 2013-2015 capital tracker application as required by Section 11.1(b) of Rule 022.

25. In Decision 3267-D01-2015, the Commission agreed with the CCA that project grouping incentives are a concern with the use of capital trackers in a performance-based regulation regime, but noted that it had already recognized this issue in Decision 2013-435.⁸ The Commission noted that ATCO Gas' groupings largely reflect similar historical capital project categories and found no basis for a claim that ATCO Gas might have manipulated the groupings in the capital tracker application. Accordingly, the Commission found that the CCA's concerns

⁷ See *Alberta Utilities Commission Act*, S.A. 2007, c.A-37.2, s. 21.

⁸ Decision 3267-D01-2015: ATCO Gas and Pipelines Ltd., 2013 PBR Capital Tracker Refiling and True-Up and 2014-2015 PBR Capital Tracker Forecast, Proceeding 3267, Application 1610634-1, March 19, 2015, at paragraph 87.

that the incentive to manipulate groupings had resulted in a higher K factor and higher costs to ATCO Gas customers were not supported by evidence.⁹

26. Further, the Commission found that the CCA's proposal that ATCO Gas' project groupings be done at the level 1 categories from the 2011-2012 General Rate Application was of little assistance because it would result in an approach similar to the aggregate investment shortfall approach previously rejected by the Commission. The Commission stated:

Regarding the CCA's proposal that ATCO Gas' project groupings should be done at the level 1 categories from the 2011-12 GRA, the Commission has reviewed the evidence of parties on this matter and determines the level 3 groupings, as proposed by ATCO Gas, to be reasonable for the purposes of this Decision. The Commission agrees with ATCO Gas that an aggregation at the level 1 categories closely resembles the aggregate investment shortfall approach rejected by the Commission in Decision 2013-435. The Commission notes that under this approach, ATCO Gas would be left with two capital tracker programs representing approximately 90 per cent of ATCO Gas's capital projects in 2014. This would not be consistent with the Commission's intention to avoid testing all of a utility's capital programs annually within the capital tracker applications...¹⁰

27. Based on the above observations, the Commission considers that a reduction of ten per cent is warranted with respect to consulting fees claimed for Regulatory Services Inc.

28. The Commission has reviewed the disbursements claimed for Regulatory Services Inc. and finds that they are in accordance with the *Scale of Costs*. Therefore, the Commission approves the CCA's claim for disbursements incurred by Regulatory Services Inc. in the amount of \$422.95 for photocopying and parking, and GST of \$21.15.

29. Given the Commission's reduction, costs for Regulatory Services Inc. are approved in the total amount of \$124,782.95, which is composed of \$118,417.95 in consulting fees, \$422.95 in disbursements, and GST of \$5,942.05.

30. The Commission, therefore, approves recovery of costs claimed for the CCA in the total amount of \$184,136.51, which is composed of \$52,934.60 in legal and consulting fees with respect to work provided by Wachowich & Company, \$118,417.95 in consulting fees provided by Regulatory Services Inc., disbursements of \$4,015.55 and GST of \$8,768.41.

4 GST

31. In accordance with the Commission's treatment of GST on cost awards, ATCO Gas is required to pay only that portion of GST paid by interveners that may not be recoverable through the GST credit mechanism. Accordingly, the Commission approves the eligible GST in the amount of \$8,768.41.

⁹ *Ibid* at paragraph 97.

¹⁰ *Ibid* at paragraph 99.

32. The Commission emphasizes that its treatment of the GST claimed in no way relieves participants or their consultants from their GST obligations pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15.

5 Order

33. It is hereby ordered that:

- 1) ATCO Gas and Pipelines Ltd. shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$184,136.51.

Dated on July 3, 2015.

Alberta Utilities Commission

(Original signed by)

Mark Kolesar
(Vice-Chair)

(Original signed by)

Neil Jamieson
Commission Member

(Original signed by)

Henry van Egteren
Commission member