



AUC

Alberta Utilities Commission

ATCO Gas and Pipelines Ltd. (South)

Southwest Edmonton Connector Pipeline

Costs Award

March 18, 2016

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Decision 21161-D01-2016: ATCO Gas and Pipelines Ltd. (South)

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Proceeding 21161

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1 Introduction

1. In this decision the Alberta Utilities Commission considers an application by the Chinatown Multi-level Care Foundation (the Foundation) for approval and payment of its costs of participation in Proceeding 20512 (the costs application). The Commission has awarded reduced costs to the Foundation for the reasons set out below.
2. Proceeding 20512 (the original proceeding) was convened by the Commission to consider two applications filed by ATCO Gas and Pipelines Ltd. (South) (ATCO) for the construction and operation of a new 21 kilometre long high-pressure pipeline in southwest Edmonton, referred to as the Southwest Edmonton Connector (SWEC). The original proceeding involved information requests (IRs) and IR responses, written evidence, including expert evidence on risk assessment, a two day oral hearing, argument and reply argument. The close of record for the original proceeding was November 18, 2015 and the Commission issued Decision 20512-D01-2016¹ on January 14, 2016.
3. The Foundation submitted its costs application on December 9, 2015. The Commission assigned Proceeding 21161 and Application 21161-A001 to the costs application.
4. On December 17, 2015, the Commission received comments from ATCO on the Foundation's costs claim. The Foundation submitted its reply to ATCO's submission on December 23, 2015. The Commission considers the close of record for this proceeding to be December 23, 2015.
5. In its comments, ATCO expressed concerns about the costs claimed on behalf of Mr. Peter Chung of Raimond Fung Architects Ltd. ATCO submitted that as a representative of the Foundation, Mr. Chung was eligible only for an attendance honorarium, plus reasonable expenses for disbursements. ATCO requested that the Commission take into account its concerns regarding the costs claimed on behalf of Mr. Chung when rendering its decision.
6. In its reply to ATCO, the Foundation submitted that Mr. Chung's "involvement, and resulting incurred fees were necessary for the Foundation's involvement, and were directly and necessarily related to the hearing."² The Foundation submitted that its costs were "reasonable, directly and necessarily related to the proceeding, and in line with the requirements of *AUC Rule*

¹ Decision 20512-D01-2016: ATCO Gas and Pipelines Ltd (South) Southwest Edmonton Connector Pipeline, January 14, 2016

² Exhibit 21161-X0008 Foundation's reply to the comments of ATCO, December 23, 2015, page 2.

009,”³ and that it “acted responsibly in the proceeding and contributed to a better understanding of the issues before the Commission.”⁴

2 Commission’s findings

7. The Commission’s authority to award costs for the participation of a local intervener in a hearing or other proceeding on an application to construct a gas utility pipeline under the *Gas Utilities Act* is found in sections 21 and 22 of the *Alberta Utilities Commission Act*. When considering a claim for costs for a facilities proceeding, the Commission is also guided by the factors set out in Section 7 of *AUC Rule 009: Rules on Local Intervener Costs* and the Scale of Costs found in Appendix A of Rule 009.

8. Section 22 of the *Alberta Utilities Commission Act* defines what a “local intervener” is and states:

22(1) For purposes of this section, “local intervener” means a person or group or association of persons who, in the opinion of the Commission,

- (a) has an interest in, and
- (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision or order of the Commission in or as a result of a hearing or other proceeding of the Commission on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, but unless otherwise authorized by the Commission does not include a person or group or association of persons whose business interest may include a hydro development, power plant or transmission line or a gas utility pipeline.

2.1 The Foundation is a local intervener

9. The Foundation is a registered non-profit organization incorporated under the *Societies Act*. It purchased land in 2012 adjacent to an existing transmission utility corridor (TUC) for development of a long-term care facility to provide housing and care for seniors (the Care Centre). The SWEC was proposed for construction within the TUC. The Foundation objected to ATCO’s applications on grounds of risk and safety.

10. The Care Centre is a multi-phase development consisting of Phases 1 and 2. The completed facility is expected to be composed of two buildings, one constructed per phase, and a multi-use building constructed during Phase 2 to connect the two main buildings. The Foundation estimates that the centre of the SWEC pipeline will be located approximately 55 metres from the Phase 1 building, approximately 27 metres from the Phase 2 building, and approximately 39 metres from the multi-use building.⁵ At the closest point, the Foundation’s land

³ Exhibit 21161-X0008 Foundation’s reply to the comments of ATCO, December 23, 2015, page 3.

⁴ Exhibit 21161-X0008 Foundation’s reply to the comments of ATCO, December 23, 2015, page 3.

⁵ Proceeding 20512 Transcript, Volume 1, pages 145-146.

is approximately 12 metres from the SWEC pipeline right-of-way and approximately 17 metres from the SWEC pipeline.⁶

11. The Commission finds that the Foundation is a local intervener as that term is defined in Section 22 of the *Alberta Utilities Commission Act* and is therefore eligible to recover those costs determined by the Commission to be reasonable and directly and necessarily related to its participation in the original proceeding.

2.2 The Foundation's costs claim

12. The Foundation submitted a costs claim for recovery of costs paid in the total amount of \$67,175.38. The costs claim requested approval for recovery of the following legal and consulting costs:

Claimant	Fees/Honoraria	Disbursements	GST	Total
Chinatown Multi-level Care Foundation				
Ackroyd LLP	\$26,022.5	\$1,704.00	\$1,386.33	\$29,112.83
Zelt Professional Services Inc.	\$11,905.00	\$322.00	\$595.25	\$12,822.25
Raimond Fung Architect Ltd.	\$23,850.00	\$67.41	\$1,195.87	\$25,113.28
Benny Leung	\$100.00	\$25.74	\$1.28	\$127.02
Total	\$61,877.50	\$2,119.15	\$3,178.73	\$67,175.38

2.3 Findings

13. The Commission finds that the Foundation 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 Raimond Fung Architects Ltd. for the reasons set out below.

2.3.1 Ackroyd LLP

14. The claim of \$29,112.83 for Ackroyd LLP relates to 94.90 hours of legal services performed by Richard Secord, Yuk-Sing Cheng, and Joseph Wadden. The hours claimed consisted of 75.20 hours for review of the application, analysing the client's concerns, and preparation of evidence and information requests, 12.60 hours for attendance at the oral hearing, and 7.10 hours for preparation of argument. Included in the work performed by Ackroyd LLP was the preparation of its expert witness and cross-examination of ATCO's expert witness on the topic of risk assessment and pipeline safety.

15. The Commission finds that the services performed by Ackroyd LLP were directly and necessarily related to the Foundation's participation in the original proceeding, and that the fees and disbursements claimed for those services complied with the Scale of Costs and were reasonable. Accordingly, the Commission approves the Foundation's claim for legal fees for Ackroyd LLP in the amount of \$26,022.50, disbursements of \$1,704.00 and GST of \$1,386.33 for a total of \$29,112.83.

⁶ Exhibit 20152-X0093, Submission of Chinatown Multi-Level Care Foundation, October 13, 2015, PDF page 5

2.3.2 Zelt Professional Services Inc.

16. The claim of \$12,822.25 for Zelt Professional Services Inc. relates to 73.00 hours of consulting services performed by Dr. Brian Zelt. The hours claimed were 65.00 hours for review of the application, preparation of an expert report, review of and responses to information requests, preparation for the oral hearing, travel and eight hours attendance at the oral hearing.

17. The Commission finds that the services performed by Zelt Professional Services Inc. were directly and necessarily related to the Foundation's participation in the original proceeding, and that the fees and disbursements claimed for those services complied with the Scale of Costs and were reasonable. Accordingly, the Commission approves the Foundation's claim for professional fees for Zelt Professional Services Inc. in the amount of \$11,905.00, disbursements of \$322.00 and GST of \$595.25 for a total of \$12,822.25.

2.3.3 Benny Leung

18. The claim for Mr. Leung relates to two half-day attendance honoraria of \$50.00 for attendance and oral testimony at the hearing on November 17, 2015, totalling \$100.00. Mr. Leung attended the morning and afternoon sessions on that day.

19. The costs for attendance honoraria claimed by Mr. Leung have been assessed and appear to be reasonable, directly and necessarily related to the proceeding and in accordance with the Scale of Costs. Additionally, the disbursements claimed for meal and parking costs are reasonable and in accordance with the Scale of Costs.

20. Accordingly, the Commission approves the claim from Mr. Leung in the total amount of \$127.02, comprising attendance honoraria of \$100.00, disbursements of \$25.74 and GST of \$1.28.

2.3.4 Raimond Fung Architects Ltd.

21. The claim of \$25,113.28 for Raimond Fung Architects Ltd. relates to 147 hours of professional fees for services provided by Mr. Chung, and 12 hours for Mr. Chung's attendance at the oral hearing. The Foundation's costs claim states:

Peter Chung is the Project Manager in charge of the Foundation's MacTaggart Seniors Care Centre development. Mr. Chung was the primary contact and agent for the Foundation throughout this matter regarding ATCO and the AUC proceeding.⁷

22. The Foundation claims fees on behalf of Mr. Chung as a general consultant for activities he conducted on the Foundation's behalf. However, the Commission understands that Mr. Chung was not hired by the Foundation to act as general consultant with respect to its intervention in ATCO's application. Rather, Mr. Chung was hired as the project manager for the Care Centre project and, as a part of that role, he acted as the Foundation's initial contact for the ATCO applications.

23. In the Commission's view, neither the services performed by Mr. Chung nor the evidence he provided are akin to the services or evidence provided by a general consultant. For example, Mr. Chung's evidence at the hearing related to the construction and development phases

⁷ Exhibit 21161-X0001 Cost Claim of Chinatown Multi-Level Care Foundation, December 09, 2015, page 4.

proposed for the Care Centre, and the master site plan for the Care Centre; his evidence was not predicated on his professional expertise as an architect, nor was it opinion evidence relating to a technical issue. Mr. Chung's evidence was helpful to the Commission in the sense that he explained the potential impacts of the SWEC project on the Care Centre. However, in the Commission's view, this was evidence that any representative of the Foundation, including Mr. Leung, could have provided. While it contributed to the Commission's understanding of the issues raised, the evidence was not premised upon Mr. Chung's professional expertise as an architect or his expertise as a project manager or general contractor.

24. Ackroyd LLP was retained on September 8, 2015 to represent the Foundation. Prior to the Foundation's retention of Ackroyd LLP, Mr. Chung performed a function similar to that of an organizer of an intervener group. He acted as the Foundation's initial contact with ATCO, he filed the Foundation's SIP, and he sought information from the Commission on its process.

25. The Commission recognizes that the Foundation is a non-profit organization with a board of directors comprised of volunteers and that it required a point person to act on its behalf in the initial stages of the proceeding until Ackroyd LLP was retained. However, in the Commission's view, Mr. Chung took on this role as part of his ongoing engagement as the project manager for the Care Center and not as a general contractor expressly hired to coordinate the Foundation's intervention. The Commission finds that the role played by Mr. Chung was similar to that of a landowner or the owner or employee of a business. Accordingly, the Commission is not prepared to award the Foundation \$23,850.00 in professional fees claimed on Mr. Chung's behalf. Given these unique circumstances, however, the Commission is prepared to use its discretion to grant Mr. Chung an honorarium of \$2,000.00.

26. In addition, the Commission awards Mr. Chung attendance honoraria of \$150.00 for his attendance at both days of the hearing. The Commission finds that the disbursements claimed for meals, parking, and photocopying on behalf of Mr. Chung are reasonable and in accordance with the Scale of Costs and approves those disbursements.

27. Accordingly, the Commission awards the Foundation honoraria and disbursements for Raimond Fung Architects in the total amount of \$2,220.77, comprised of honoraria of \$2,150.00, disbursements of \$67.40, and GST of \$3.37.

3 Order

28. It is hereby ordered that:

- 1) ATCO Gas and Pipelines Ltd. (South) shall pay intervener costs to the Chinatown Multi-level Care Foundation in the amount of \$44,282.87. Payment shall be made to Ackroyd LLP, attention: Mr. Yuk-Sing Cheng at 1500 First Edmonton Place, 10665 Jasper Avenue, Edmonton, Alberta, T5J 3S9.

Dated on March 18, 2016.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

(original signed by)

Patrick Brennan
Acting Commission Member

(original signed by)

Clifford Goerz
Acting Commission Member