



# AUC

Alberta Utilities Commission

## **Rates Cost Decision**

**ATCO Pipelines**

**2015-2016 General Rate Application**

**Costs Award**

**April 19, 2016**



**Alberta Utilities Commission**

Decision 21212-D01-2016

ATCO Pipelines

2015-2016 General Rate Application

Costs Award

Proceeding 21212

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## 1 Introduction

1. In this decision the Alberta Utilities Commission considers applications by ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., (ATCO Pipelines) and the Consumers' Coalition of Alberta (CCA) for approval and payment of their costs of participation in Proceeding 3577 (the costs applications). The costs claimed and costs awarded are provided in the following table:

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
<b>ATCO Pipelines</b>								
<b>Bennett Jones LLP</b>	\$535,582.00	\$2,410.90	\$0.00	\$537,992.90	\$535,582.00	\$2,410.90	\$0.00	\$537,992.90
<b>AUS Consultants Inc.</b>	\$38,542.50	\$0.00	\$0.00	\$38,542.50	\$36,360.00	\$0.00	\$0.00	\$36,360.00
<b>Ernst &amp; Young LLP</b>	\$8,135.00	\$0.00	\$0.00	\$8,135.00	\$8,135.00	\$0.00	\$0.00	\$8,135.00
<b>Gowlings WLG International Limited</b>	\$21,140.50	\$0.00	\$0.00	\$21,140.50	\$0.00	\$0.00	\$0.00	\$0.00
<b>Mercer (Canada) Ltd.</b>	\$30,061.70	\$0.00	\$0.00	\$30,061.70	\$13,456.00	\$0.00	\$0.00	\$13,456.00
<b>ATCO Pipelines</b>	\$0.00	\$8,456.30	\$0.00	\$8,456.30	\$0.00	\$8,456.30	\$0.00	\$8,456.30
<b>Total</b>	\$633,461.70	\$10,867.20	\$0.00	\$644,328.90	\$593,533.00	\$10,867.20	\$0.00	\$604,400.20
<b>CCA</b>								
<b>Wachowich &amp; Company</b>	\$44,185.00	\$4,467.31	\$2,421.39	\$51,073.70	\$44,185.00	\$4,290.31	\$2,408.74	\$50,884.05
<b>Regulatory Services Inc.</b>	\$118,246.50	\$5,611.08	\$6,181.65	\$130,039.23	\$110,484.00	\$832.58	\$5,953.96	\$117,270.54
<b>Total</b>	\$162,431.50	\$10,078.39	\$8,603.04	\$181,112.93	\$154,669.00	\$5,122.89	\$8,362.70	\$168,154.59

2. The Commission has awarded reduced costs to ATCO Pipelines and the CCA for the reasons set out below.

3. Proceeding 3577 (the original proceeding) was convened by the Commission to consider ATCO Pipelines' 2015-2016 General Rate Application. The original proceeding included information requests (IRs) and responses to information requests, cross-examination, an oral hearing, argument and reply argument. The close of record for the original proceeding was December 10, 2015, and the Commission issued Decision 3577-D01-2016<sup>1</sup> in respect of the original proceeding on February 29, 2016.

<sup>1</sup> Decision 3577-D01-2016: ATCO Pipelines 2015-2016 General Rate Application, Proceeding 3577, Application 1611077-1, February 29, 2016.

4. The CCA submitted its costs claim application on December 23, 2015. The Commission assigned Proceeding 21212 and Application 21212-A001 to the costs claim application. ATCO Pipelines submitted its costs claim application on January 5, 2016. ATCO Pipelines' costs claim application was assigned Application 21212-A002 within Proceeding 21212. The application included redacted hourly amounts and total invoice amounts for legal counsel and external consultants. On April 13, 2016, ATCO Pipelines provided unredacted invoices to allow the Commission to assess the hourly rates and total amounts for costs claimed related to the original proceeding.

5. No comments were filed with respect to the cost applications and the Commission considers the close of record for this proceeding to be January 22, 2016, the deadline for filing comments.

## 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 a claim for costs for a utility rates proceeding, the Commission is also guided by the factors set out in Section 11 of AUC Rule 022. Appendix A of AUC Rule 022 prescribes a Scale of Costs applicable to all costs claimed.

### 2.1 ATCO Pipelines

7. The following table summarizes ATCO Pipelines' cost claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
ATCO Pipelines							
Bennett Jones LLP	1,315.00	109.90	192.30	\$535,582.00	\$2,410.90	\$0.00	\$537,992.90
AUS Consultants Inc.	144.00	0.00	0.00	\$38,542.50	\$0.00	\$0.00	\$38,542.50
Ernst & Young LLP	32.50	0.00	0.00	\$8,135.00	\$0.00	\$0.00	\$8,135.00
Gowlings WLG International Limited	85.55	0.00	0.00	\$21,140.50	\$0.00	\$0.00	\$21,140.50
Mercer (Canada) Ltd.	160.05	15.00	3.33	\$30,061.70	\$0.00	\$0.00	\$30,061.70
ATCO Pipelines	0.00	0.00	0.00	\$0.00	\$8,456.30	\$0.00	\$8,456.30
Total	1,737.10	124.90	195.63	\$633,461.70	\$10,867.20	\$0.00	\$644,328.90

8. The Commission finds that ATCO Pipelines 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 AUS Consultants Inc., Gowlings WLG International Limited, and Mercer (Canada) Ltd. for the reasons set out below.

#### 2.1.1 Bennett Jones LLP

9. ATCO Pipelines was represented by Bennett Jones LLP in the original proceeding. The fees claimed by ATCO Pipelines for the legal services provided by Mr. Nicholas Gretener, Mr. Timothy Myers and Mr. Sébastien Gittens relate to: preparing the original application, ATCO Pipelines' IR responses, IRs on intervener evidence, rebuttal evidence, argument and reply argument. Other legal counsel activities included: reviewing intervener evidence, preparing witnesses for the oral hearing, attending the oral hearing, and conducting cross-examination.

10. The Commission finds that the services performed by Mr. Gretener, Mr. Myers and Mr. Gittens were directly and necessarily related to ATCO Pipelines' participation in the original proceeding, and that the fees and disbursements were claimed in accordance with the Scale of Costs. Accordingly, the Commission approves ATCO Pipelines' claim for legal fees for Bennett Jones in the amount of \$535,582.00 and disbursements for photocopying and printing in the amount of \$2,410.90, for a total of \$537,992.90.

#### **2.1.2 AUS Consultants Inc.**

11. AUS Consultants Inc. was retained by ATCO Pipelines to perform consulting services in the original proceeding. The fees claimed by ATCO Pipelines for the consulting services were provided primarily by Mr. Earl Robinson and an additional hour was claimed by Mr. David Sheffer for verifying depreciation calculations. Mr. Robinson prepared the ATCO Pipelines' depreciation study update, and performed additional tasks related to preparing responses to IRs and drafting argument. An additional 1.50 hours was claimed for administrative services.

12. While the Commission finds that that the services performed by AUS were directly and necessarily related to the ATCO Pipelines' participation in the original proceeding, it finds that the fees claimed for these services were excessive because the hourly rate claimed for Mr. Robinson was \$270.00 per hour while the hourly rate reflected in the invoices was \$255.00 per hour. The hourly rate claimed for Mr. Sheffer was \$270.00 per hour while the hourly rate reflected in the invoices was \$210.00 per hour. Neither the invoices nor the costs application specify whether the amounts claimed were in United States or Canadian dollars. The Commission has reduced the costs claimed to the actual amounts invoiced by AUS.

13. Accordingly, the Commission approves ATCO Pipelines' claim for consulting fees for AUS in the amount of \$36,360.00.

#### **2.1.3 Ernst & Young LLP**

14. Ernst & Young LLP was retained by ATCO Pipelines to perform consulting services in the original proceeding. The fees claimed by ATCO Pipelines for the consulting services provided by Mr. Brian Allard and Mr. Robin Chen relate to preparing a report on the relative cost of funding for ATCO Pipelines on a stand-alone basis, preparing responses to IRs on matters addressed in the report, and reviewing intervenor evidence.

15. The Commission finds that that the services performed by Mr. Allard and Mr. Chen were directly and necessarily related to ATCO Pipelines' 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 ATCO Pipelines' claim for consulting fees for Ernst & Young in the amount of \$8,135.00.

#### **2.1.4 Gowlings WLG International Limited**

16. Gowlings WLG International Limited was retained by ATCO Pipelines to perform consulting services in the original proceeding. The fees claimed for the consulting services provided by Mr. Dale Hill, Mr. Jamal Hejazi, Mr. James Wilson, Mr. Mark Kirkey and Mr. Pierre Alary relate to: preparing a licence fee report, assisting with ATCO Pipelines' responses to IRs on matters addressed in the report, reviewing intervenor evidence, and preparing the Gowlings' rebuttal evidence. ATCO Pipelines submitted that the assistance of Mr. Hill was

required for ATCO Pipelines to participate effectively in the General Rate Application, up to the point where license fee issues were moved to Proceeding 21029.<sup>2</sup>

17. The Commission finds that an assessment of the costs for activities performed by Gowlings is premature. The licensing fee evidence prepared by Gowlings was transferred to Proceeding 21029 and is being considered in that proceeding. The assessment of the costs should occur in one costs application after the record of Proceeding 21029 has closed.

18. Accordingly, the Commission denies ATCO Pipelines' claim for consulting fees for Gowlings in the amount of \$21,140.50. ATCO Pipelines may resubmit the \$21,140.50 in costs<sup>3</sup> related to the preparation of: the license fee evidence, information responses on matters addressed in Gowlings' evidence, and rebuttal evidence, as part of its cost application related to Proceeding 21029. In resubmitting the invoices for Gowlings in Proceeding 21029, ATCO Pipelines is directed to provide a summary of the work performed by the consultants named in the invoices, whose costs are claimed for recovery, and the curricula vitae for each of the consultants. Invoices filed as part of that proceeding must be unredacted. For the above reasons, in this decision, the Commission denies the costs submitted related to work performed by Gowlings.

#### **2.1.5 Mercer (Canada) Ltd.**

19. Mercer (Canada) Ltd. was retained by ATCO Pipelines to perform consulting services in the original proceeding. The fees claimed by ATCO Pipelines for the consulting services provided by Mr. Kenneth Yung, Mr. Brian Barron, Mr. Christian Coppola, Mr. Arron Dobson, Mr. Thomas Murphy, Mr. Matthew Wong, Mr. Tyler Brady, Ms. Michele Buhr, Mr. Paul Irwin, Mr. Braydon Lietz, and Mr. Dave Pysko relate to preparing evidence on non-union salary increases and total remuneration review. Other activities included preparation of IR responses, review of intervener evidence, attendance at the oral hearing and preparation of argument. An additional 1.68 hours were claimed for administrative services.

20. While the Commission finds that the services performed by Mercer were directly and necessarily related to ATCO Pipelines' participation in the original proceeding, it finds that the fees claimed for these services were unreasonable for the following reasons. ATCO Pipelines did not provide support for the number of consultants employed to provide a report on non-salary increases and total remuneration review. Mercer billed for 11 consultants and one administrative assistant. No explanation was provided in the application on the need for eleven consultants and no particulars were provided on the qualifications or expertise to support the need for the 11 consultants. Only Mr. Yung's activities were described in the application for the recovery of Mercer's costs. The report generated by Mercer reflects fees which were primarily included in an invoice dated October 2014. However, the October 2014 invoice did not include an itemized description of the activities performed in preparing Mercer's evidence. Without further information on each consultant's expertise and the work performed for each of the consultants in October 2014, the Commission is unable to assess whether the activities were reasonable and

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<sup>2</sup> ATCO Electric Transmission 2015-2017 and ATCO Pipelines 2015-2016 License Fee Application, Application 21029-A001, Proceeding 21029.

<sup>3</sup> The invoices submitted were: Invoice 18266947 and Invoice 18266948, dated August 17, 2015; Invoice 1824426, dated September 16, 2015; Invoice 18311467, dated October 23, 2015; Invoice 18335409, dated November 20, 2015; and Invoice 18335409, dated November 30, 2015.



directly and necessarily related to the proceeding. For these reasons, the Commission denies the costs included in the October 2014 invoice.

21. The Commission approves the consultant costs reflected in the remaining invoices as related to Mercer’s evidence and other activities in the proceeding. In future applications, itemized invoices should be provided for all consultants and a summary of the consultant’s experience or curricula vitae for each consultant should be provided. Accordingly, the Commission approves ATCO Pipelines’ claim for consulting fees for Mercer for the hours shown in the itemized invoices in the amount of \$13,456.00.

**2.1.6 ATCO Pipelines**

22. The costs claim requested recovery of ATCO Pipelines’ disbursements for hotel fees, postage, photocopying, USB purchases, and transcript costs. The Commission finds that the disbursements claimed are reasonable because they are directly and necessarily related to the proceeding and ATCO Pipelines’ staff attendance at the oral hearing. The disbursements claimed are in accordance with the Scale of Costs. Accordingly, the Commission approves ATCO Pipelines’ claim for disbursements in the amount of \$8,456.30.

**2.1.7 Total costs awarded**

23. Accordingly, the Commission approves ATCO Pipelines’ claim for recovery of costs in the total amount of \$604,400.20, which is composed of legal fees of \$535,582.00, consulting fees of \$57,951.00, and disbursements of \$10,867.20.

**2.2 The Consumers’ Coalition of Alberta**

24. The following table summarizes the CCA’s cost claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
<b>Wachowich &amp; Company</b>	101.70	17.00	21.60	\$44,185.00	\$4,467.31	\$2,421.39	\$51,073.70
<b>Regulatory Services Inc.</b>	330.90	17.50	89.55	\$118,246.50	\$5,611.08	\$6,181.65	\$130,039.23
Total	432.60	34.50	111.15	\$162,431.50	\$10,078.39	\$8,603.04	\$181,112.93

25. The Commission finds that the CCA 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 Wachowich & Company and Regulatory Services Inc. for the reasons set out below.

**2.2.1 Wachowich & Company**

26. The CCA was represented by Wachowich & Company in the original proceeding. The fees claimed by the CCA for the legal services provided by Mr. James Wachowich and Ms. Shauna Gibbons relate to reviewing the application, reviewing draft IRs and IR responses, reviewing evidence, attendance at the oral hearing, and reviewing the argument and reply argument.

27. Of the 140.30 hours claimed by the CCA, 15.00 hours were claimed for work performed by Mr. Kyle Riley, a research associate who provided direct assistance to the CCA, at a rate of

\$120.00 per hour exclusive of GST. In its costs claim, the CCA identified Mr. Riley as having one year of experience as a research associate. The hours claimed by Mr. Riley relate to reviewing the original applications, drafting IRs, and preparation and research for the CCA's argument.

28. The Commission finds that the services performed by Mr. Wachowich, Ms. Gibbons, and Mr. Riley 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.

29. The Commission has reviewed the disbursements claimed for Wachowich & Company and not all the amounts claimed for disbursements are in accordance with the Scale of Costs. The claims made for accommodation by Mr. Wachowich were not in accordance with the rates permitted by the Scale of Costs. The Commission has therefore determined that a reduction in the daily rate for accommodation is warranted from the claimed rate of \$199.00, to \$140.00 for three days.

30. The Commission approves the remaining claims for disbursements for mileage, parking and transcript costs in the amount of \$3,827.80. Consequently, the Commission approves total disbursements for Wachowich & Company in the amount of \$4,290.31, inclusive of the accommodation costs approved.

31. Accordingly, the Commission approves the CCA's claim for legal fees for Wachowich & Company in the amount of \$44,185.00, disbursements of \$4,290.31, and GST of \$2,408.74 for a total of \$50,884.05.

### **2.2.2 Regulatory Services Inc.**

32. Regulatory Services Inc. 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 Mr. Jeffrey Jodoin and Mr. Jan Thygesen relate to: reviewing the application, drafting IRs to ATCO Pipelines and reviewing IR responses, drafting evidence, drafting IR responses, preparing cross-examination questions, attending the oral hearing, and drafting the CCA's argument and reply argument.

33. The Commission finds that that the services performed by Mr. Jodoin 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.

34. While the Commission finds that the services performed by Mr. Thygesen were directly and necessarily related to the CCA's participation in the original proceeding, Mr. Thygesen's evidence primarily related to the licensing fee issue that is currently before the Commission in Proceeding 21029. The Commission therefore finds that an assessment of the costs for preparation of evidence and IRs on licensing fee issues by Mr. Thygesen is premature. Mr. Thygesen's evidence on license fees was transferred to Proceeding 21029. An assessment of the costs should occur in one costs application after the record of Proceeding 21029 has closed.

35. However, the Commission recognizes that some of Mr. Thygesen's evidence related to long term debt issues, which were decided in the original proceeding. The Commission therefore

approves recovery of 66.50 hours for Mr. Thygesen in this decision. The remaining 28.75 hours<sup>4</sup> may be claimed for recovery in the CCA's cost application following the close of record in Proceeding 21029.

36. For these reasons, the Commission approves the CCA's claim for consulting fees for Regulatory Services in the amount of \$17,955.00 for Mr. Thygesen and \$92,529.00 for Mr. Jodoin.

37. The Commission has reviewed the disbursements claimed for Regulatory Services and not all the claims for recovery of disbursements are in accordance with the Scale of Costs. The claims made for accommodation by Mr. Jodoin were not in accordance with the rates permitted by the Scale of Costs. The Commission has therefore determined that a reduction in the daily rate for accommodation is warranted from the claimed rate of \$189.00, to \$140.00 for three days. The meal costs of Mr. Jodoin of \$135.00 were not supported by itemized receipts, as required under the Scale of Costs, and are denied.

38. The Commission approves the remaining claims for disbursements for mileage and parking in the amount of \$372.20. The Commission approves total disbursement for Regulatory Services in the amount of \$832.58, inclusive of accommodation.

39. Accordingly, the Commission approves the CCA's claim for consulting fees for Regulatory Services in the amount of \$110,484.00, disbursements of \$832.58, and GST of \$5,953.96 for a total of \$117,270.54.

### **2.2.3 Total costs awarded**

40. Accordingly, the Commission approves the CCA's claim for recovery of costs in the total amount of \$168,154.59 which is composed of legal fees of \$44,185.00, consulting fees of \$110,484.00, disbursements of \$5,122.89, and GST of \$8,362.70.

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<sup>4</sup> The amounts excluded from the costs award were incurred between April 2, 2015 and October 2, 2015.

**3 Order**

41. It is hereby ordered that:

- 1) ATCO Gas & Pipelines Ltd. shall pay external costs in the amount of \$604,400.20.
- 2) ATCO Gas & Pipelines Ltd. shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$168,154.59.
- 3) ATCO Gas & Pipelines Ltd. shall record in its hearing cost reserve account the amount of \$772,554.79.

Dated on April 19, 2016.

**Alberta Utilities Commission**

*(original signed by)*

Neil Jamieson  
Panel Chair

*(original signed by)*

Bill Lyttle  
Commission Member