



AUC

Alberta Utilities Commission

ATCO Gas and Pipelines Ltd.

**2014 PBR Capital Tracker True-Up and
2016-2017 PBR Capital Tracker Forecast**

Costs Award

June 14, 2016

Alberta Utilities Commission

Decision 21387-D01-2016

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Proceeding 21387

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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 20604 (the costs claim application). 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	\$43,442.50	\$2,445.95	\$2,294.42	\$48,182.87	\$43,148.50	\$2,445.95	\$2,279.73	\$47,874.18
Regulatory Services Inc.	\$96,930.00	\$188.70	\$4,855.94	\$101,974.64	\$78,786.00	\$188.70	\$3,945.89	\$82,920.59
Total	\$140,372.50	\$2,634.65	\$7,150.36	\$150,157.51	\$121,934.50	\$2,634.65	\$6,225.62	\$130,794.77

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

3. Proceeding 20604 (the original proceeding) was convened by the Commission to consider ATCO Gas and Pipelines Ltd.'s request for approval of its 2014 capital tracker true-up and 2016-2017 capital tracker forecast application under performance-based regulation (the original application). The original proceeding included information requests (IRs) and IR responses, an oral hearing, argument and reply argument. The close of record for the original proceeding was January 15, 2016, and the Commission issued Decision 20604-D01-2016¹ on April 14, 2016.

4. The CCA submitted its costs claim application on March 2, 2016. The costs claim application was filed 17 days beyond the required 30 day timeline permitted by the Commission's rules, specifically Rule 022: *Rules on Costs in Utility Rate Proceedings* (Rule 022). Costs not received within the specified timeframe may be rejected without further process. The Commission used its discretion to accept the late filing but reminds the CCA that costs must be submitted by the 30 day timeline specified in Section 9 of Rule 022.

5. The Commission assigned Proceeding 21387 and Application 21387-A001 to the costs claim application (the costs claim proceeding). No comments were filed with respect to the costs claim application.

¹ Decision 20604-D01-2016: ATCO Gas and Pipelines Ltd. 2014 PBR Capital Tracker True-Up and 2016-2017 PBR Capital Tracker Forecast, Proceeding 20604, Application 20604-A001, April 14, 2016.

6. On March 22, 2016, the Commission issued an IR to the CCA requesting additional information regarding services provided by Ms. Gibbons and Mr. Riley. The CCA submitted its response to the Commission’s IR on March 31, 2016.

7. The Commission considers the close of record for the costs claim proceeding to be March 31, 2016.

2 Commission findings

8. 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 Rule 022. Appendix A of Rule 022 prescribes a Scale of Costs applicable to all costs claimed.

2.1 The Consumers’ Coalition of Alberta

9. The following table summarizes the CCA’s costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company	93.50	28.95	33.30	\$43,442.50	\$2,445.95	\$2,294.42	\$48,182.87
Regulatory Services Inc.	223.55	15.70	119.75	\$96,930.00	\$188.70	\$4,855.94	\$101,974.64
Total	317.05	44.65	153.05	\$140,372.50	\$2,634.65	\$7,150.36	\$150,157.51

10. 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.

Wachowich & Company

11. The CCA was represented by Wachowich & Company in the original proceeding.

12. The fees claimed by the CCA for the legal services provided by Mr. James Wachowich and Ms. Shauna Gibbons, student-at-law, relate to reviewing the application, drafting IRs, reviewing IR responses, drafting cross-examination questions, attending the oral hearing, and drafting argument and reply argument.

13. Regarding the oral hearing for this proceeding, Mr. Wachowich claimed costs associated with 18.45 hours of attendance and Ms. Gibbons claimed costs associated with 10.50 hours of attendance.

14. In an IR response,² the CCA referenced the hearing as providing training and a learning opportunity for Ms. Gibbons, and that she attended the hearing to support Mr. Wachowich with

² Exhibit 21387-X0007, CCA response to the Commission information request.

various activities. While the Commission recognizes and supports the development of articling students, the associated costs must, as is the case with all costs, conform with the requirements of Section 11 of Rule 022 to merit consideration in a costs award decision, which are ultimately paid by customers of the utility. Accordingly, training-related costs incurred by articling students must have some connection to services that are directly and necessarily related to the proceeding and contribute to a better understanding of the issues before the Commission. It appears that some of the costs claimed in respect of Ms. Gibbons related to training hours without a direct associated contribution to matters before the Commission in the original proceeding. For these reasons, the Commission finds that a reduction of 20 per cent of the costs claimed on behalf of Ms. Gibbons for attendance at the hearing is warranted.

15. In addition to legal fees, 23.25 hours were claimed for work performed by Mr. Kyle Riley 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 consultant. The hours claimed for Mr. Riley relate to researching for IRs preparation and argument, drafting IRs, and writing portions of the argument.

16. Other than the reductions for Ms. Gibbons, the Commission finds that that the remainder of 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 and disbursement for transcripts, 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 \$43,148.50, disbursements of \$2,445.95 and GST of \$2,279.73 for a total of \$47,874.18.

Regulatory Services Inc.

17. 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, reviewing IR responses, preparing cross-examination questions, attending the oral hearing, and drafting and reviewing argument and reply argument. The costs claimed by Regulatory Services are in accordance with the Scale of Costs.

18. The Commission finds that the services performed by Mr. Thygesen regarding issues related to debt 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 consulting fees of Mr. Thygesen in the amount of \$6,210.00, and GST of \$310.50 for a total of \$6,520.50.

19. The Commission finds that the services performed by Mr. Jodoin were directly and necessarily related to the CCA's participation in the original proceeding. While these services were related to the CCA's participation, the Commission finds that the fees claimed for Mr. Jodoin's services were unreasonable. Almost two-thirds of the total hours claimed, 219.30 hours, related to activities prior to the hearing and the Commission considers the hours reflected in the invoices for preparation to be excessive given the nature of the application and the activities described in the invoices. As part of the preparation hours claimed, some of the activities described in the invoices relate to the review of the application and other initial proceeding

documents. There are also costs claimed for Mr. Jodoin's communications with the CCA's counsel and other consultants. With respect to these activities included in the invoices, the number of hours for preparation are not commensurate with the activities described, or do not provide adequate description of why the amount of hours for individual activities were required.

20. The Commission reduces the costs claimed for Mr. Jodoin by 20 per cent, and approves fees for Mr. Jodoin of Regulatory Services Inc. in the amount of \$72,576.00 and GST of \$3,628.80.

21. The Commission finds Regulatory Services' disbursements claimed for parking and internal photocopying to be reasonable. However, the Commission finds that GST for disbursements has been claimed in excess of the actual amounts charged on the parking receipts. Therefore, the Commission reduces the eligible GST for parking by \$2.85 to reflect the actual receipts for parking.

22. Accordingly, the Commission approves the CCA's claim for consulting fees for Regulatory Services Inc. in the amount of \$78,786.00, disbursements of \$188.70 and GST of \$3,945.89 for a total of \$82,920.59.

3 Order

23. 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 \$130,794.77.

Dated on June 14, 2016.

Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair

(original signed by)

Mark Kolesar
Vice-Chair

(original signed by)

Bill Lyttle
Commission Member