



ATCO Electric and ATCO Pipelines

**Application for ATCO Electric 2015-2017 and
ATCO Pipelines 2015-2016 License Fees**

Costs Award

August 17, 2016

Alberta Utilities Commission

Decision 21571-D01-2016

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1 Introduction

1. In this decision the Alberta Utilities Commission considers applications by ATCO Electric Ltd. - transmission (AET), ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., (AP) and the Consumers' Coalition of Alberta (CCA) for approval and payment of their costs of participation in Proceeding 21029 (the costs claim applications). 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
AET								
Bennett Jones	\$43,039.00	\$211.00	\$0.00	\$43,250.00	\$43,039.00	\$211.00	\$0.00	\$43,250.00
Ernst & Young	\$12,445.00	\$0.00	\$0.00	\$12,445.00	\$12,445.00	\$0.00	\$0.00	\$12,445.00
Gowlings	\$65,724.00	\$1,011.00	\$0.00	\$66,735.00	\$42,720.60	\$505.50	\$0.00	\$43,226.10
AET	\$0.00	\$1,573.64	\$0.00	\$1,573.64	\$0.00	\$1,573.64	\$0.00	\$1,573.64
Total	\$121,208.00	\$2,795.64	\$0.00	\$124,003.64	\$98,204.60	\$2,290.14	\$0.00	\$100,494.74
AP								
Bennett Jones	\$43,039.00	\$211.00	\$0.00	\$43,250.00	\$43,039.00	\$211.00	\$0.00	\$43,250.00
Ernst & Young	\$8,170.00	\$0.00	\$0.00	\$8,170.00	\$8,170.00	\$0.00	\$0.00	\$8,170.00
Gowlings	\$65,724.00	\$1,011.00	\$0.00	\$66,735.00	\$42,720.60	\$505.50	\$0.00	\$43,226.10
AP	\$0.00	\$976.25	\$0.00	\$976.25	\$0.00	\$976.25	\$0.00	\$976.25
Total	\$116,933.00	\$2,198.25	\$0.00	\$119,131.25	\$93,929.60	\$1,692.75	\$0.00	\$95,622.35
CCA								
Wachowich & Company	\$25,742.50	\$2,703.97	\$1,422.32	\$29,868.79	\$25,742.50	\$2,588.02	\$1,402.73	\$29,733.25
Regulatory Services Inc.	\$56,295.00	\$0.00	\$2,814.75	\$59,109.75	\$47,850.75	\$0.00	\$2,392.54	\$50,243.29
Total	\$82,037.50	\$2,703.97	\$4,237.07	\$88,978.54	\$82,037.97	\$2,588.02	\$3,795.27	\$79,976.54
Total of all amounts claimed and awarded				\$332,113.43				\$276,093.63

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

3. Proceeding 21029 (the original proceeding) was convened by the Commission to consider an application by AET and AP to include in revenue requirement amounts corresponding to licence fees they are required to pay to ATCO Ltd. for the use of intangibles and associated benefits that they receive from ATCO Ltd. AET requested recovery of license fees for the 2015-2017 period and AP requested recovery of license fees for the 2015-2016 period. The original proceeding included information requests (IRs) and responses, an oral

hearing, argument and reply argument. The close of record for the original proceeding was April 1, 2016, and the Commission issued Decision 21029-D01-2016¹ on June 30, 2016.

4. The CCA submitted its costs claim application on April 29, 2016, within the 30 day timeline permitted by the Commission's rules. The Commission assigned Proceeding 21571 and Application 21571-A001 to the costs claim application.

5. AP submitted its costs claim application on May 2, 2016, within the 30 day timeline permitted by the Commission's rules. AP's application was assigned Application 21571-A002 within Proceeding 21571. AET originally filed its costs claim application on the record of Proceeding 21029 on May 2, 2016. AET's costs application was subsequently transferred to Proceeding 21571 on May 4, 2016 and assigned Application 21571-A003. The Commission considers that the AET costs claim was filed within 30 days following the close of record of Proceeding 21029 for the purposes of establishing compliance with AUC Rule 022: *Rules on Costs in Utility Rate Proceedings* (AUC Rule 022).

6. No comments were filed with respect to the costs applications.

7. On May 19, 2016, AET and AP submitted revised costs claims, noting that they had inadvertently included invoices that had previously been approved in Decision 21212-D01-2016, as well as duplicate invoices. The Commission considers the close of record for this proceeding to be May 19, 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 AUC Rule 022. Appendix A of AUC Rule 022 prescribes a Scale of Costs applicable to all costs claimed.

2.1 Costs claimed by ATCO Electric Ltd.-transmission and ATCO Pipelines

9. The following table summarizes AET's and AP's respective costs claims:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
AET							
Bennett Jones LLP	94.15	30.23	18.90	\$43,039.00	\$211.00	\$0.00	\$43,250.00
Ernst & Young	50.50	0.00	0.00	\$12,445.00	\$0.00	\$0.00	\$12,445.00
Gowlings	266.90	7.75	0.00	\$65,724.00	\$1,011.00	\$0.00	\$66,735.00
AET	0.00	0.00	0.00	\$0.00	\$1,573.64	\$0.00	\$1,573.64
Total	410.65	37.98	18.90	\$121,208.00	\$2,795.64	\$0.00	\$124,003.64

¹ Decision 21029-D01-2016: ATCO Electric Transmission and ATCO Pipelines Application for ATCO Electric Transmission 2015-2017 and ATCO Pipelines 2015-2016 License Fees, Proceeding 21029, Application 21029-A001, June 30, 2016.

AP							
Bennett Jones LLP	94.15	30.23	18.90	\$43,039.00	\$211.00	\$0.00	\$43,250.00
Ernst & Young	31.00	0.00	0.00	\$8,170.00	\$0.00	\$0.00	\$8,170.00
Gowlings	266.90	7.75	0.00	\$65,724.00	\$1,011.00	\$0.00	\$66,735.00
AP	0.00	0.00	0.00	\$0.00	\$976.25	\$0.00	\$976.25
Total	392.05	37.98	18.90	\$116,933.00	\$2,198.25	\$0.00	\$119,131.25

10. In their costs claims, AET and AP allocate the costs of Bennett Jones LLP and Gowling Lafleur Henderson LLP (now Gowlings WLG) (Gowlings) on an equal basis between AET and AP because the services performed related equally to each company. The costs claimed for Ernst & Young Canada LLP (Ernst & Young) were allocated on the basis of work invoiced to each company. The Commission accepts the proposed allocation method.

11. The Commission finds that, overall, AET and AP 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 Gowlings for the reasons set out below.

Bennett Jones LLP

12. AET and AP were represented by Bennett Jones LLP in the original proceeding. The fees claimed by AET and AP for the legal services provided by Mr. Loyola Keough, Mr. Sébastien Gittens and Mr. Timothy Myers relate to assisting in the preparation of the application, reviewing IRs, reviewing draft IR responses, reviewing draft IRs to interveners, reviewing intervener evidence, preparing for and attending the oral hearing, preparing draft argument, and drafting reply argument.

13. The Commission finds that the services performed by Mr. Keough, Mr. Gittens and Mr. Myers were directly and necessarily related to AET's and AP's participation in the original proceeding, and that the fees and disbursements, which were claimed in accordance with the Scale of Costs for those services, are reasonable. Accordingly, the Commission approves AET's claim for legal fees for Bennett Jones in the amount of \$43,039.00 and disbursements for photocopying and printing of \$211.00 for a total of \$43,250.00. Similarly, the Commission approves AP's claim for legal fees for Bennett Jones in the amount of \$43,039.00 and disbursements for photocopying and printing of \$211.00 for a total of \$43,250.00.

Ernst & Young Canada LLP

14. Ernst & Young was retained by AET and AP to perform consulting services in the original proceeding. The fees claimed by AET and AP for the consulting services provided by Mr. Robin Chen and Mr. Brian Allard relate to reviewing the application, reviewing IRs, and drafting IR responses. Mr. Allard also participated in the oral hearing as a witness.

15. The Commission finds that the services performed by Mr. Chen and Mr. Allard were directly and necessarily related to AET's and AP'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 AET's claim for consulting fees for Ernst &

Young in the total amount of \$12,445.00, and AP's claim for consulting fees in the total amount of \$8,170.00.

Gowlings

16. Gowlings WLG was retained by AET and AP to perform consulting services in the original proceeding in connection with transfer pricing and income tax advice. The fees claimed by AET and AP for the consulting services provided by Mr. James Wilson, Mr. Jamal Hejazi, Mr. Pierre Alary, Mr. Dale Hill and Mr. Mark Kirkey relate to reviewing the application, drafting IR responses, drafting evidence, reviewing intervenor evidence, preparing for and attending the oral hearing, and drafting argument. The report filed by Gowlings indicated that companies that provide benefits similar to the intangible benefits received by AET and AP from ATCO Ltd. levied a range of charges from one per cent to 10 per cent of operating profit. Mr. Hill participated as a witness in the oral hearing.

17. While the Commission finds that that the majority of services performed by Gowlings were directly and necessarily related to AET's and AP's participation in the original proceeding, it finds that the fees claimed for these services were unreasonable for the following reasons.

18. Section 5.1.2. of Decision 21029-D01-2016² describes the Commission's assessment of the evidence prepared and presented by Gowlings. In this part of the decision, the hearing panel identified specific concerns related to the general valuation methodology of intangibles employed by Gowlings.³ At paragraph 103 of the decision, the hearing panel found that "Gowlings has not adequately explained how the intangibles offered by companies in its study are truly comparable to those allegedly provided to ATCO Electric and ATCO Pipelines by ATCO Ltd." It expressed a further concern that the selection criteria utilized by Gowlings "lacked the transparency generally required to test the conclusions of the report."⁴ The hearing panel also found that Mr. Hill demonstrated a lack of familiarity with the Gowlings evidence⁵, and that the summary form in which the Gowlings evidence was presented precluded the Commission's critical assessment of it.⁶ Many of the hearing panel's concerns in this regard extended to the treatment given in the evidence of value determinations (or lack thereof) that occurred between ATCO Ltd. and its subsidiaries⁷ and the valuation of "Group Economies," in particular.⁸ The hearing panel concluded that it was "unable to assign more than minimal weight to the Gowlings evidence in its assessment of the reasonableness of the licence fee amount."⁹ The hearing panel concluded its assessment of the Gowlings evidence at paragraph 110:

Based on this evidence, the overall lack of transparency, the lack of explanation of the relevance of the intangibles, and Mr. Hill's admitted unfamiliarity with the selection criteria, the Commission is not persuaded that the methodology used by Gowlings in the determination of the licence fee amount is adequate to support the utilities' position that these amounts represent prudently-incurred costs warranting recovery through rates.

² *Supra* note 1.

³ *Ibid* at paragraphs 103 and 104.

⁴ *Ibid* at paragraph 104.

⁵ *Ibid* at paragraph 105.

⁶ *Ibid* at paragraphs 106 and 107.

⁷ *Ibid* at paragraphs 111 to 113.

⁸ *Ibid* at paragraph 115.

⁹ *Ibid* at paragraph 107.

19. Upon reviewing the costs claims of AET and AP, the Commission also finds that the amount of professional time billed in connection with the preparation of this evidence and contributions to the completion of other application-related tasks is generally excessive when compared to the product produced, in terms of the number of individuals who participated, the seniority of the individuals engaged, and the total number of hours spent.

20. The Commission considers that its concerns regarding the nature of the evidence prepared by Gowlings, the manner of its presentation at the oral hearing, and the amount of professional hours consumed in its preparation warrant an overall reduction of 35 per cent in the total amount claimed in respect of professional fees charged by this service provider.

21. The Commission has reviewed the disbursement claimed for Gowlings and finds that the amount claimed is not in accordance with the Scale of Costs. The claim for airfare for Mr. Hill is non-compliant with the Scale of Costs because it does not represent an economy class fare, but rather an “Air Canada Latitude” fare.¹⁰ The Commission’s review of Air Canada pricing of economy return fare flights from Ottawa to Calgary with one week’s lead time indicates that they are, on average, 50 per cent less than Air Canada Latitude fares. The Commission has therefore adjusted this amount accordingly by applying a 50 per cent reduction to the amounts claimed by each of AET and AP.

22. The Commission approves AET’s claim for consulting fees for Gowlings in the amount of \$42,720.60 and disbursements of \$505.50 for a total of \$43,226.10. Similarly, the Commission approves AP’s claim for consulting fees for Gowlings in the amount of \$42,720.60 and disbursements of \$505.50 for a total of \$43,226.10.

ATCO Electric Ltd.- transmission disbursements

23. AET’s costs claim requested recovery of AET’s disbursements for transcript costs, airfare, accommodation, meals and taxi costs. The Commission finds that the disbursements claimed are reasonable because they are directly and necessarily related to the proceeding and were claimed in accordance with the Scale of Costs. Accordingly, the Commission approves AET’s claim for disbursements in the amount of \$1,573.64.

ATCO Pipelines disbursements

24. AP’s costs claim requested recovery of AP’s disbursement for transcript costs. The Commission finds that the disbursements claimed are reasonable because they are directly and necessarily related to the proceeding and were claimed in accordance with the Scale of Costs. Accordingly, the Commission approves AP’s claim for disbursements in the amount of \$976.25.

¹⁰ Supporting documentation filed by both ATCO Pipelines and ATCO Electric-Transmission indicates that it was an “Air Canada Latitude” fare.

2.2 The Consumers' Coalition of Alberta

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

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company	44.50	15.25	18.00	\$25,742.50	\$2,703.97	\$1,422.32	\$29,868.79
Regulatory Services Inc.	148.00	17.25	43.25	\$56,295.00	\$0.00	\$2,814.75	\$59,109.75
Total	192.50	32.50	61.25	\$82,037.50	\$2,703.97	\$4,237.07	\$88,978.54

26. 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

27. 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, preparing for and attending the oral hearing, reviewing draft argument and reply argument, and reviewing argument from AET and AP.

28. The Commission finds that the services performed by Mr. Wachowich and Ms. Gibbons 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 are not in accordance with the rates permitted by the Scale of Costs. The Commission has reduced the daily rate for accommodation from the claimed rate of \$179.00 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 \$2,129.80. Consequently, the Commission approves total disbursements for Wachowich & Company in the amount of \$2,588.02 inclusive of the approved accommodation amount.

31. Further, the Commission has noted that the CCA claimed GST associated with their claim for mileage. Appendix A of Rule 022 states that the Commission's mileage rate for automobile travel is 46 cents per km including GST. The GST of \$13.80 claimed for mileage has been disallowed.

32. Accordingly, the Commission approves the CCA's claim for legal fees for Wachowich & Company in the amount of \$25,742.50, disbursements of \$2,588.02 and GST of \$1,402.73 for a total of \$29,733.25.

Regulatory Services Inc.

33. 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. Jan Thygesen relate to reviewing the application, drafting IRs, reviewing IR response, drafting evidence, drafting cross-examination questions, preparing for and attending the oral hearing, and drafting argument and reply argument.

34. In Decision 21212-D01-2016¹¹, the Commission stated:

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 is 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 may be claimed for recovery in the CCA's cost application following the close of record in Proceeding 21029.

35. While the Commission finds that that the majority of the services performed by Mr. Thygesen were directly and necessarily related to the CCA's participation in the original proceeding, it finds that the fees claimed for these services were excessive given the overall level of sophistication of the evidence provided and the fact that Mr. Thygesen admitted under cross-examination that he had limited expertise in either Canadian income tax law or transfer pricing.¹² The Commission considers that both of these areas of inquiry were central to its inquiry in the original proceeding. Overall, the Commission finds that the combination of these factors warrants a 15 per cent reduction in the total amount fees sought to be recovered in this case. Accordingly, the Commission approves the CCA's claim for consulting fees for Regulatory Services in the amount of \$47,850.75 and GST of \$2,392.54 for a total of \$50,243.29.

¹¹ Decision 21212-D01-2016: ATCO Pipelines 2015-2016 General Rate Application Costs Award, Proceeding 21212, Application 21212-D01-2016, April 19, 2016.

¹² Transcript vol. 2, pages 431 to 438.

3 Order

36. It is hereby ordered that:

- 1) ATCO Electric Ltd.-transmission shall pay external costs in the amount of \$100,494.74.
- 2) ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. shall pay external costs in the amount of \$95,622.35.
- 3) ATCO Electric Ltd.-transmission shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$39,988.27.
- 4) ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$39,988.27.
- 5) ATCO Electric Ltd.-transmission shall record intervener and external costs in the amount of \$140,483.01 in its Hearing Costs Reserve Account.
- 6) ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. shall record intervener and external costs in the amount of \$135,610.62 in its Hearing Costs Reserve Account.

Dated on August 17, 2016.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

(original signed by)

Henry van Egteren
Commission Member

(original signed by)

Neil Jamieson
Commission Member