



ATCO Gas and Pipelines Ltd. Asset Swap Application

Costs Award

February 28, 2013

The Alberta Utilities Commission

Decision 2013-069:

ATCO Gas and Pipelines Ltd.

Asset Swap Application

Costs Award

Application No. 1608770

Proceeding ID No. 2097

February 28, 2013

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1 Introduction

1. This application, designated as Proceeding ID No.2097, relates to a claim for costs made by ATCO Gas and Pipelines Ltd. (ATCO), under the trade name ATCO Pipelines, relating to ATCO's application to the Alberta Utilities Commission (AUC or Commission) on February 15, 2012. That application requested approval, pursuant to Section 26(2)(d) of the *Gas Utilities Act*, RSA 2000, c. G-5, to transfer certain assets to NOVA Gas Transmission Ltd. (NGTL) in exchange for assets stated to be of approximately equal net book value from NGTL, consistent with the terms of an integration agreement between ATCO and NGTL dated April 7, 2009. The purpose of the resulting asset integration was to combine the two utilities' physical assets in Alberta under a single rates and service structure and a single integrated system. The asset transfer was intended to exchange and realign facilities to align asset ownership with the each of the two utilities' respective operating area.

2. Seven parties filed statements of intent to participate in the asset swap application. The application was designated as Proceeding ID No.1723. Ultimately, only the Office of the Utilities Consumer Advocate actively participated in that proceeding and advanced several concerns which it argued should be made conditions of the approval sought. Based on the submissions received from parties, the Commission determined that a written proceeding was suitable. The Commission established a process schedule which entailed requirements for information requests and responses; the filing of evidence and exchange of argument and reply argument filed on July 19, 2012 and August 2, 2012 respectively.

3. An issue was also raised by Lacombe County regarding the novation of existing crossing agreements applicable to the pipeline assets in Lacombe County being exchanged, which also had to be addressed. A further process schedule was established to deal with and determine that issue.

4. On November 22, 2012, the Commission issued Decision 2012-310 in Proceeding ID No.1723 approving ATCO's asset transfer and related disposition subject to certain directions of the Commission in that decision.

5. On August 22, 2012, ATCO filed its claim for costs with the Commission relating to Proceeding ID No.1723. On September 11, 2012, the Commission circulated a summary of the costs being claimed to interested parties. Parties were informed that any comments regarding the figures listed in the summary or the merits of the total costs claimed were to be filed by September 25, 2012. The Commission did not receive any comments. On November 27, 2012 ATCO filed a supplemental submission for costs relating to the issue raised by Lacombe County. Accordingly, the Commission considers the cost process to have closed on November 27, 2012.

2 Authority to award costs

6. When assessing a cost claim pursuant to Section 21 of the *Alberta Utilities Commission Act*, the Commission applies AUC Rule 022, *Rules on Intervener Costs in Utility Rate Proceedings* (Rule 022). Rule 022 prescribes a *Scale of Costs* applicable to a costs claim.

7. In exercising its discretion to award costs, the Commission will, in accordance with Section 11 of Rule 022, consider whether an eligible participant acted responsibly and contributed to a better understanding of the issues before the Commission, and whether the costs claimed are reasonable and directly and necessarily related to the proceeding. The Commission considers these factors in light of the scope and nature of the issues in question.

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

3 Findings of the Commission

9. ATCO submitted a costs claim of \$66,651.24, inclusive of \$31.24 in disbursements and exclusive of GST, for the legal services rendered by its counsel with respect to Proceeding ID No.1723.

10. The Commission has considered the costs submitted by ATCO and reviewed the record of Proceeding ID No.1723 in this regard. The asset swap entailed a detailed description of a complicated major commercial transaction requiring the preparation of lengthy and often technical materials to explain it. The process was somewhat extensive and required ATCO to respond to several not inconsequential information requests, review and assess intervener evidence filed by the Office of the Utility Consumer Advocate and prepare and file its own evidence in reply, consider this intervener's and Lacombe County's submissions and prepare its own argument and reply arguments. All of these tasks reasonably required the assistance of knowledgeable and experienced legal counsel.

11. The Commission also concludes that while ATCO's application was not outright opposed by the intervener, the intervener did seek to have a number of conditions imposed to any approval which ATCO legitimately found to be problematic and so required appropriate response by ATCO. The Commission finds that the participation of ATCO through its counsel was effective and of assistance to the Commission in reviewing and deciding the application. The Commission notes the scope and complexity of the issues examined and dealt with in Decision 2012-310.

4 Assessment of Costs

12. The Commission finds that the claims for professional fees were in accordance with the *Scale of Costs*. The first two items on form U2 in ATCO's supplemental claim totaling \$1540.00 are unsupported by invoice and accordingly disallowed. The Commission finds that the balance of ATCO's claims for fees and disbursements in the total amount of \$65,061.24 is

reasonable and directly and necessarily related to ATCO's participation in Proceeding ID No.1723.

5 GST

13. No claim for GST is made in ATCO's costs claim in this proceeding. The Commission emphasizes that this decision in no way affects or relieves participants or their lawyers and consultants from their GST obligations pursuant to the *Excise Tax Act*, RSC 1985, c E-15.

6 Order

14. It is hereby ordered that ATCO's aforementioned external costs in the amount of \$65,061.24 are approved and ATCO shall record them in its hearing cost reserve account.

Dated on February 28, 2013.

The Alberta Utilities Commission

(original signed by)

Mark Kolesar
Vice-Chair

(original signed by)

Anne Michaud
Commission Member