



**ATCO Gas
(A Division of ATCO Gas and Pipelines Ltd.)**

Review and Variance of Decision 2011-450

Costs Award

April 29, 2013

The Alberta Utilities Commission

Decision 2013-158: ATCO Gas (A Division of ATCO Gas and Pipelines Ltd.)

Review and Variance of Decision 2011-450

Costs Award

Application Nos. 1609186, 1609249

Proceeding ID No. 2346

April 29, 2013

Published by

Alberta Utilities Commission

Fifth Avenue Place, 4th Floor, 425 - First Street SW

Calgary, Alberta

T2P 3L8

Telephone: (403) 592-8845

Fax: (403) 592-4406

Web site: www.auc.ab.ca

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1 Introduction

1. On February 3, 2012, ATCO Gas, a division of ATCO Gas and Pipelines Ltd., filed a review and variance application regarding Decision [2011-450](#)¹ (Proceeding ID No. 1698).

2. On June 8, 2012, the Commission released Decision [2012-156](#)², in which the Commission granted ATCO Gas's request to review Decision 2011-450 on certain issues, specifically:

- (a) Customer Information System enhancement program costs for 2011 and 2012
- (b) Oracle Human Resource Management System costs for 2011 and 2012
- (c) inclusion of \$300,000 forecast costs for legal fees related to participation in National Energy Board hearings for 2011 and 2012 regarding NOVA Gas Transmission Ltd.
- (d) recovery of the costs associated with the settlement regarding the late payment penalty
- (e) Calgary office lease

3. The Commission issued a notice of review dated June 8, 2012 with respect to Proceeding ID No. 1698. The Commission dealt with the Application by way of a written proceeding. On February 22, 2013, the Commission issued Decision [2013-057](#)³ with respect to Proceeding ID No. 1698.

4. On February 12, 2013, a summary of the costs being claimed was circulated to interested parties. Parties were advised that any comments regarding the figures listed in the summary or the merits of the total costs claimed were to be filed by February 26, 2013. The Commission did not receive any comments. Accordingly, the Commission considers the cost process to have closed on February 26, 2013.

¹ Decision 2011-450: ATCO Gas (a Division of ATCO Gas and Pipelines Ltd.), 2011-2012 General Rate Application Phase I, Application No. 1606822, Proceeding ID No. 969, December 5, 2011.

² Decision 2012-156: ATCO Gas (a Division of ATCO Gas and Pipelines Ltd.), Decision on Request for Review and Variance of AUC Decision 2011-450, Application No. 1608121, Proceeding ID No. 1698, June 8, 2012.

³ Decision 2013-057: ATCO Gas (a Division of ATCO Gas and Pipelines Ltd.), Phase II Review and Variance Decision on Decision 2011-450, Proceeding ID No. 1698, February 22, 2013.

2 Views of the Commission – Authority to Award Costs

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

6. 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.

7. In the Commission's view, the responsibility to contribute positively to the process is inherent in the choice to intervene in a proceeding. The Commission expects that those who choose to participate will prepare and present a position that is reasonable in light of the issues arising in the proceeding and necessary for the determination of those issues. To the extent reasonably possible, the Commission will be mindful of participants' willingness to co-operate with the Commission and other participants to promote an efficient and cost-effective proceeding.

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. The Commission only approves those costs that are reasonable and directly and necessarily related to the party's participation in the proceeding.

3 Views of the Commission – Assessment

9. Two participants, ATCO Gas and Consumers' Coalition of Alberta (CCA), submitted cost claims totaling \$191,506.29 including actual GST of \$537.67.

3.1 ATCO Gas

10. ATCO Gas submitted a cost claim totaling \$180,215.32. The claim is comprised of legal fees incurred by Bennett Jones LLP in the amount of \$177,481.00 together with disbursements of \$2,734.32.

11. The Commission has considered the costs submitted by ATCO Gas. The Commission finds that the participation of ATCO Gas as the applicant was effective and of assistance in reviewing the Application, which included filing information requests, responding to information requests, rebuttal evidence, argument and reply argument. The Commission notes the scope and complexity of the issues before it and the extent of the examination thereof. The cost claim includes costs from both the first and second stage process in an R&V Application both of which included numerous issues for ATCO Gas, as the applicant, to address. In the first stage process of the R&V Application, ATCO Gas raised nine grounds for review with respect to Decision 2011-450, of which the Commission granted five, thereby leaving ATCO Gas with five issues to address in the second stage process. These individual issues were complex and each one was different; therefore the Commission accepts the reliance on various counsel within Bennett Jones LLP with different expertise to address these issues.

12. The Commission also notes that the claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission considers ATCO Gas's claims for fees, disbursements in the total amount of \$180,215.32 to be reasonable. The amounts approved in this Decision may be included as a Y factor adjustment in the company's September annual PBR rate adjustment filing as indicated in paragraph 985 of AUC Decision [2012-237](#)⁴.

3.2 Consumers' Coalition of Alberta

13. The CCA submitted a cost claim totaling \$11,290.97. The claim is comprised of legal fees incurred by Wachowich & Company in the amount of \$7,350.00 and GST of \$367.50; consulting fees incurred by Regulatory Services Inc. in the amount of \$3,375.00, GST of \$170.17 and disbursements of \$28.30.

14. The Commission has considered the costs submitted by the CCA. The Commission finds that the participation of the CCA on the issue of the late payment penalty was effective and of assistance in reviewing the Application, which included filing information requests and argument and reply argument. The Commission notes the scope and complexity of the late payment penalty issue. The Commission also notes that the claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission considers the CCA's claims for fees, disbursements and applicable GST in the total amount of \$11,290.97 to be reasonable. The amounts approved in this Decision may be included as a Y factor adjustment in the company's September annual PBR rate adjustment filing as indicated in paragraph 673 of AUC Decision [2012-237](#).

4 GST

15. In accordance with the Commission's treatment of the GST on cost awards, ATCO Gas is required to pay only that portion of the GST paid by interveners that may not be recoverable through the GST credit mechanism. Accordingly where parties are eligible for a GST credit the Commission has reduced this particular portion of their claim. Eligible GST approved by the Commission amounts to \$537.67. The GST allowed by the Commission may also be charged against ATCO Gas's Hearing Cost Reserve Account.

16. The Commission emphasizes that its treatment of the GST claimed in no way relieves participants or their lawyers and consultants from their GST obligations pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15.

5 Order

It is hereby ordered that:

1. ATCO Gas shall pay intervener costs in the amount of \$11,290.97.
2. ATCO Gas shall pay external costs in the amount of \$180,215.32.

⁴ Decision 2012-237: Rate Regulation Initiative, Distribution Performance-Based Regulation, Application No. 1606029, Proceeding ID No. 566, September 12, 2012.

Dated on April 29, 2013.

The Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair

(original signed by)

Tudor Beattie, QC
Commission Member

(original signed by)

Anne Michaud
Commission Member