



## **ATCO Gas, a division of ATCO Gas and Pipelines**

### **Disposition of North Yard Service Centre**

**Costs Award**

**July 15, 2013**



**The Alberta Utilities Commission**

Decision 2013-263: ATCO Gas, a division of ATCO Gas and Pipelines Ltd.

Disposition of the North Yard Service Centre

Costs Award

Application No. 1609432

Proceeding ID No. 2526

June 15, 2013

Published by

The Alberta Utilities Commission

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## 1 Introduction

1. ATCO Gas, a division of ATCO Gas and Pipelines Ltd., filed an application with the Alberta Utilities Commission (AUC or the Commission) on December 13, 2012, requesting approval to dispose of the North Yard Service Centre. The application was made under Section 26(2)(d) of the Gas Utilities Act, RSA 2000, c. G-5 which requires the owner of a gas utility to seek Commission approval to dispose of property outside the ordinary course of business.

2. The AUC issued notice of the application on December 17, 2012. In response to the notice the Office of the Utilities Consumer Advocate, AltaLink Management Ltd., AltaGas Utilities Inc. and The City of Calgary filed statements of intent to participate.

3. The Commission determined that the application should be considered by way of a written process and set a process schedule for the proceeding.

4. On June 17, 2013 the Commission issued Decision [2013-225<sup>1</sup>](#) approving ATCO Gas' application.

5. On March 27, 2013 the Commission received a costs claim from ATCO Gas. ATCO Gas's cost claim included a claim for services provided by Bennett Jones LLP that were in excess of the Commission's Scale of Costs. ATCO Gas argued that it is entitled to recover all prudently incurred regulatory costs including costs for legal assistance from Bennett Jones.

6. On April 9, 2013, the Commission circulated a summary of the costs being claimed to interested parties. Parties were advised that any comments regarding figures listed in the summary, or the merits of the total costs claimed, were to be filed by April 23, 2013. No comments were received from parties regarding the summary of costs.

7. The Commission considers the close of record for this costs proceeding (Proceeding ID No. 2526) to be April 23, 2013.

## 2 Assessment of Costs Claims

8. When assessing costs claims 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 also prescribes a *Scale of Costs* applicable to all costs claimed.

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<sup>1</sup> Decision 2013-225: ATCO Gas, Disposition of the North Yard Service Centre, Application No. 1609115, Proceeding ID No. 2299, June 17, 2013.

9. In exercising its discretion to award costs, the Commission will in accordance with Section 11 of Rule 022, consider whether an eligible participant's costs are reasonable and directly and necessarily related to the proceeding; and whether the eligible participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Commission. To the extent reasonably possible, the Commission will be mindful of a participant's willingness to co-operate with the Commission and other participants to promote an efficient and cost-effective proceeding.

10. As the costs of a utility proceeding are generally passed on to customers, it is the Commission's duty to ensure that the 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 Commission findings

11. ATCO Gas submitted a costs claim totalling \$13,859.75. The claim is comprised of legal fees for Bennett Jones in the amount of \$13,775.00, and legal disbursements in the amount of \$84.75 for printing. Bennett Jones provided legal services for 21.3 hours; these hours included time used for assisting with the draft and revisions of the disposition application and correspondence.

12. The Commission has considered the costs claim submitted by ATCO Gas bearing in mind the principles specified in the Commission's Scale of Costs, as set out in Appendix A to Rule 022. The Commission finds that the hours incurred are reasonable for the tasks described in the costs claim. ATCO Gas claimed for 2.2 hours at \$520.00, 10 hours at \$575.00, 1 hour at \$725.00, and 8.1 hours at \$760.00. The claim for legal fees is in excess of the *Scale of Costs*.

13. The Commission recently considered the issue of the recovery of costs in excess of its Scale of Costs in Decision 2013-051 which addressed cost claims for the Distribution Performance Based Regulation proceeding (PBR proceeding) and found as follows:

63. The Commission has exercised its authority to make costs-related rules, determine eligibility for costs and to award or deny costs incurred by participants in proceedings before since the Commission's inception. The Commission's jurisdiction over the costs of proceedings is consistent with the authority granted to and exercised by its predecessor tribunals. Given the separate statutory authority provided to the Commission that it may order by whom and to whom costs of proceedings before it are to be paid, the Commission considers that its jurisdiction to determine costs awards in respect of its proceedings is in addition to, and distinct from, its jurisdiction to determine other costs and expenses to be recovered through just and reasonable rates for gas and electric utilities. Accordingly, the Commission will apply Rule 022, including the *Scale of Costs*, to all costs claims filed in the present proceeding.

64. Rule 022 provides that the Commission may award costs in excess of the *Scale of Costs* where an applicant "can advance persuasive argument that the scale is inadequate given the complexity of the case" in order "to address such unique circumstances."...

14. The Commission determined that the issues addressed by the participants in the PBR proceeding were unique and complex and that awards in excess of the scale of the costs were warranted in that circumstance.

15. In the Commission's view, a cost award in excess of the Commission's Scale of Costs is not warranted for this proceeding. The Commission observes in this respect that the application was for a disposition of assets pursuant to section 26(2)(d) of the *Gas Utilities Act*, an issue considered many times by the Commission and the courts. The issues raised by the application were neither unique nor complex. The Commission concludes that the costs provided through its *Scale of Costs* are reasonable in the circumstances. Accordingly, the Commission has reduced the costs claimed for legal fees in accordance with the hourly rates under the *Scale of Costs* to 12.2 hours at \$320 per hour, and 9.1 hours at \$350 per hour. Accordingly, the Commission approves costs in the amount of \$7,173.75.

#### 4 Order

16. It is hereby ordered that:

- (1) ATCO Gas shall pay external costs in the amount of \$7,173.75.
- (2) ATCO Gas shall record the approved costs in its Hearing Costs Reserve Account in the amount of \$7,173.75.

Dated on July 15, 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