



ATCO Gas South

Commission Initiated Review and Variance of
Decision 2009-004 and Decision 2009-067

Cost Awards



ALBERTA UTILITIES COMMISSION

Utility Cost Order 2010-018: ATCO Gas South

Review and Variance Proceeding of Decision 2009-004 and Decision 2009-067
(Removal of Carbon Related Assets from Utility Service)

Application No. 1605365

Cost Application No. 1605701

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ALBERTA UTILITIES COMMISSION

Calgary, Alberta

**ATCO Gas South
Review and Variance Proceeding of
Decision 2009-004 and Decision 2009-067**

**Utility Cost Order 2010-018
Application No. 1605365
Cost Application No. 1605701**

1 INTRODUCTION

1. On August 6, 2009, the Alberta Utilities Commission (AUC or Commission) issued a letter advising all parties registered in the proceedings that lead up to the release of Decisions [2009-004](#)¹ and [2009-067](#)² that the Commission was initiating a Review and Variance proceeding (R&V Proceeding) of certain aspects of these two decisions in accordance with section 10 of the *Alberta Utilities Commission Act* (AUC Act) and section 2 of [Rule 016 – Review and Variance of Commission Decisions](#).

2. The Commission dealt with this Application by way of a written proceeding. The Division of the Commission assigned to hear the proceeding was W. Grieve, Commission Chair and Chair of the panel, and Commissioners N.A. Maydonik, Q.C., and T. Beattie, Q.C.

3. On December 16, 2009, the Commission issued Decision [2009-253](#)³ with respect to the R&V Proceeding.

4. On December 10, 2009, 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 December 24, 2009. The Commission did not receive any comments. Accordingly, the Commission considers, for the purposes of this Cost Order, the cost process to have closed on December 24, 2009.

2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS

5. In assessing a cost claim pursuant to section 21 of the AUC Act, the Commission applies Rule 022, *Rules on Intervener Costs* (Rule 022). Rule 022 was revised on September 30, 2008. Given that the R&V Proceeding related to proceedings which commenced prior to the revised rules coming into force, the Commission has assessed the costs claimed in respect of the R&V Proceeding in accordance with Rule 022 and the *Scale of Costs* in place prior to September 30, 2008.

¹ Decision 2009-004 – ATCO Gas South, Removal of Carbon Related Assets from Utility Service Pre-hearing Conference Scoping Decision (Application No. 1579086, Proceeding ID. 87) (Released: January 9, 2009)

² Decision 2009-067 – ATCO Gas South, Removal of Carbon Related Assets from Utility Service, Preliminary Questions (Application No. 1579086, Proceeding ID. 87) (Released: June 26, 2009)

³ Decision 2009-253 – ATCO Gas South, Review and Variance Proceeding of Decision 2009-004 and Decision 2009-067 (Removal of Carbon Related Assets from Utility Service) (Application No. 1605365) (Released: December 16, 2009)

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 understating 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. 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 VIEWS OF THE COMMISSION – ASSESSMENT

3.1 ATCO Gas

9. ATCO Gas submitted a cost claim totaling \$33,816.00, together with disbursements of \$52.30 with respect to the ATCO Gas South service territory. The claim is comprised of legal fees incurred by Bennett Jones LLP.

10. The Commission notes that ATCO Gas claimed in excess of the *Scale of Costs* for claimants of Bennett Jones LLP. Mr. Smith claimed 36.3 hours at the hourly rate of \$350 (\$12,705.00). Based on Mr. Smith's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 36.3 hours results in a total of \$9,075.00. Ms. Goldbach claimed 4.8 hours, at the hourly rate of \$320 (\$1,536.00). Based on Ms. Goldbach's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$220, which for 4.8 hours results in a total of \$1,056.00. Ms. Illsey claimed 54.5 hours at the hourly rate of \$320 (\$17,440.00). Based on Ms. Illsey's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$220, which for 54.5 hours results in a total of \$11,990.00. Mr. Kay claimed 6.1 hours at the hourly rate of \$350 (\$2,135.00). Based on Mr. Kay's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250, which for 6.1 hours results in a total of \$1,525.00. The total claim for Bennett Jones LLP reduced in accordance with the applicable *Scale of Costs* is \$23,646.00.

11. The Statement of Justification submitted with the cost claim, did not provide a sufficient basis, in the Commission's view, to justify a rate above the *Scale of Costs*. The Commission considers the claim for Bennett Jones LLP, reduced in accordance with the applicable *Scale of Costs*, reasonable and approves the reduced amount.

12. Taking the foregoing into account, the Commission approves AGS's cost claim, including disbursements of \$52.30, in the total amount of \$23,698.30.

3.2 The City of Calgary

13. The City of Calgary submitted a cost claim totaling \$23,725.00, together with disbursements of \$494.84. The claim is comprised of legal fees incurred by Burnet, Duckworth & Palmer.

14. The Commission has considered the costs submitted by the Calgary. The Commission finds that the participation of the Calgary was, for the most part, effective and of assistance in reviewing the Application. 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 claims for fees, disbursements and applicable GST for all participants to be reasonable in the total amount of \$24,219.84.

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 \$0.00. The GST allowed by the Commission may also be charged against AG'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:

1. ATCO Gas South shall pay intervener costs in the amount of \$24,219.84, as set out in column (h) of [Appendix A](#).
2. ATCO Gas South's external costs in the amount of \$23,698.30, as set out in column (h) of [Appendix A](#), are approved.
3. ATCO Gas South shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$47,918.14, as set out in column (h) of [Appendix A](#).

Dated on March 16, 2010.

ALBERTA UTILITIES COMMISSION

(Original signed by)

Willie Grieve
Chair

(Original signed by)

N. Allen Maydonik, Q.C.
Commissioner

(Original signed by)

Tudor Beattie, Q.C.
Commissioner

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A

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AUC
Cost Application No. 1605701

Commission Initiated Review and Variance of Decision 2009-004 and Decision 2009-067
(1605365)

Costs claimed and awarded

	Total Fees Claimed (a)	Total Expenses Claimed (b)	Total GST Claimed (c)	Total Amount Claimed (d)	Total Fees Awarded (e)	Total Expenses Awarded (f)	Total GST Awarded (g)	Total Amount Awarded (h)
APPLICANT								
Alberta Utilities Commission								
No Applicant Costs	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Sub-Total	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
INTERVENERS								
ATCO Gas South								
Bennett Jones	\$33,816.00	\$52.30	\$0.00	\$33,868.30	\$23,646.00	\$52.30	\$0.00	\$23,698.30
Sub-Total	\$33,816.00	\$52.30	\$0.00	\$33,868.30	\$23,646.00	\$52.30	\$0.00	\$23,698.30
The City of Calgary								
Burnet, Duckworth & Palmer	\$23,725.00	\$494.84	\$0.00	\$24,219.84	\$23,725.00	\$494.84	\$0.00	\$24,219.84
Sub-Total	\$23,725.00	\$494.84	\$0.00	\$24,219.84	\$23,725.00	\$494.84	\$0.00	\$24,219.84
TOTAL INTERVENER COSTS	\$57,541.00	\$547.14	\$0.00	\$58,088.14	\$47,371.00	\$547.14	\$0.00	\$47,918.14
TOTAL INTERVENER AND APPLICANT COSTS	\$57,541.00	\$547.14	\$0.00	\$58,088.14	\$47,371.00	\$547.14	\$0.00	\$47,918.14