



## **ATCO Gas**

**2011-2012 General Rate Application Costs Claim**

**Costs Awards**



**The Alberta Utilities Commission**  
Decision 2011-497: ATCO Gas  
2011-2012 General Rate Application Costs Claim  
Costs Awards  
Application Nos. 1607611, 1607671, 1607679  
Proceeding ID No. 1409

December 20, 2011

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](http://www.auc.ab.ca)

**Contents**

- 1 Introduction..... 1**
- 2 Views of the Commission – Authority to award costs ..... 2**
- 3 Views of the Commission – Assessment ..... 2**
  - 3.1 ATCO Gas costs claim..... 2**
  - 3.2 Consumers’ Coalition of Alberta costs claim ..... 4**
  - 3.3 Climate Change Central costs claim ..... 4**
- 4 GST..... 7**
- 5 Order ..... 7**



## **1 Introduction**

1. ATCO Gas (AG), a division of ATCO Gas and Pipelines Ltd, (AGPL), filed a 2011-2012 General Rate Application (GRA) Phase I (the application) with the Alberta Utilities Commission (the AUC or the Commission) on December 3, 2010. AG requested approval of its forecast revenue requirements for the 2011 and 2012 test years (the test years) that would form the basis for rates to be paid by customers receiving gas distribution services.
2. On December 7, 2010, the Commission issued a notice of application, which was distributed electronically to parties on the Commission's gas and pipelines mailing list and posted on the Commission's website. An alert of notice of application was published in four major Alberta newspapers on December 13, 2010.
3. The Commission received a statement of intent to participate from each of the Consumers' Coalition of Alberta (CCA), Office of the Utilities Consumer Advocate (UCA), AltaGas Utilities Inc., BP Canada Energy Company, Climate Change Central (C3), The City of Calgary (Calgary), and Fortis Alberta Inc.
4. An oral public hearing was convened on May 24, 2011, in Edmonton before Commission Members Moin A. Yahya (Panel Chair), Bill Lyttle and Kay Holgate. The hearing adjourned on June 2, 2011. Written argument was filed by parties on June 27, 2011.
5. On July 14, 2011, the Commission received a request from the Office of the Utilities Consumer Advocate (UCA) (UCA request) to suspend reply argument which was due on July 18, 2011. On August 12, 2011, the Commission ruled on this issue and reply argument was rescheduled for August 18, 2011.
6. On December 5, 2011, the Commission issued [Decision 2011-450](#)<sup>1</sup>, dealing with the application.
7. The Commission established a deadline for the filing of cost claims by September 17, 2011.
8. Cost claims were filed by AG, CCA and C3 with respect to the application. C3 filed its costs claim on August 24, 2011, AG filed its costs claim on September 16, 2011, and CCA filed its costs claim on September 20, 2011. The Commission agreed to proceed with CCA's claim despite the late filing. A summary of the costs being claimed was circulated to interested

---

<sup>1</sup> Decision 2011-450: ATCO Gas 2010-2012 General Rate Application Phase I, Application No. 1606822, Proceeding ID No. 969. Released: December 5, 2011.

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 September 30, 2011. The Commission did not receive any comments. Accordingly, the Commission considers the cost process to have closed on September 30, 2011.

## **2 Views of the Commission – Authority to award costs**

9. When assessing a cost claim pursuant to Section 21 of the *Alberta Utilities Commission Act*, RSA 2007, c A-37.2, the Commission applies Rule 022, *Rules on Intervener Costs in Utility Rate Proceedings* (Rule 022).

10. 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.

11. In the Commission's view, the responsibility to contribute positively to the process is inherent 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.

12. 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**

13. AG, CCA and C3 submitted costs claims totaling \$1,176,913.17.

### **3.1 ATCO Gas costs claim**

14. AG submitted a costs claim totaling \$954,795.37. The cost claim is comprised of the following amounts:

- legal fees incurred by Bennett Jones LLP in the amount of \$494,463.50, together with disbursements of \$4,171.06;
- consulting fees incurred by Gannet Fleming, Inc. and its principle participant Mr. Kennedy, for the purpose of preparing a depreciation study in the amount of \$134,692.50, together with disbursements of \$2,260.31;
- consulting fees incurred by Navigant and its principle participant Dr. Cicchetti, for the purpose of providing expert advice in relation to the proposed expansion of demand side management (DSM) including the renewable energy services, initiatives in the amount of \$226,420.00, together with disbursements of \$7,659.92;

- consulting fees incurred by Patricia A. McCunn-Miller for the purpose of providing advice in relation to DSM in the amount of \$7,410.00;
- consulting fees incurred by Towers Watson for the purpose of providing compensation analysis in the amount of \$2,850.00; and
- disbursements incurred by AG in the amount of \$74,868.08.

15. The Commission has considered the costs submitted by AG. Other than a copy of the invoices provided, no explanation was provided by AG with respect to the costs of Patricia McCunn-Miller and Towers Watson. The invoices provide insufficient justification for these costs and are accordingly denied.

16. The Commission considers the costs submitted with respect to the consulting services provided by Navigant to be excessive. The Commission has reviewed the evidence and testimony provided by Navigant and the information request responses and rebuttal evidence provided or attributed to Navigant. The Commission has also reviewed the argument and reply argument relating to the issues addressed by Navigant and considers that such materials were of minimal assistance to the Commission in understanding the matters to which it was directed. In particular, the Commission did not find the evidence of Navigant to be persuasive with respect to the role (including the need for such a role) of regulated gas distribution utilities in North America and in Alberta in particular, in providing DSM, energy conservation, energy efficiency, environmental awareness or renewable energy programs or services. The Commission also did not find of assistance Dr. Cicchetti's discussion of the Roles, Relationships and Responsibilities Regulation<sup>2</sup> as it might apply to the delivery of DSM programs and services by AG.

17. The Commission notes the 717.75 hours recorded as preparation time, totaling \$193,142.50 on Form U2 and 74.25 hours recorded in respect of Argument and Reply for \$20,047.50. The Commission does not consider that the Navigant expert evidence contributed to an understanding of the issues before the Commission in proportion to the costs claimed. Accordingly, the Commission considers that a reduction of 50 per cent to the fees claimed in respect of Navigant is warranted. Accordingly, the claim in respect of Navigant fees is reduced from \$226,420.00 to \$113,210.00.

18. The Commission considers the balance of costs submitted by AG reasonable and directly and necessarily related to the proceeding, and notes that the claim is in accordance with the *Scale of Costs*. The Commission notes however, the travel costs associated with the attendance of Ms. Beattie from the Toronto offices of Bennett Jones LLP at the oral hearing. While the Commission is prepared to allow these expenses on the understanding that Ms. Beattie's involvement was cost effective given her previous involvement in ATCO Gas matters, the Commission questions the reasonability of requesting ratepayers to continue to fund such costs in future proceedings.

---

<sup>2</sup> Exhibit 3, Application, Section 4.4, Appendix A, Written evidence of Dr. Charles Cicchetti, pages 27-28 and page 37. Transcript Volume 3, May 26, 2011 page 421 to 428.

19. The Commission approves AG's claim for professional fees, disbursements and GST in the total amount of \$831,325.37.

### 3.2 Consumers' Coalition of Alberta costs claim

20. CCA submitted a costs claim totaling \$156,997.21. The costs claim is comprised of legal fees incurred by Wachowich & Company in the amount of \$40,438.75, together with disbursements of \$6,411.30 and GST of \$2,342.50; and consulting fees incurred by Regulatory Services Inc. in the amount of \$101,492.50, together with disbursements of \$1,162.65 and GST of \$5,149.51.

21. CCA suggested a 50 per cent allocation of costs to each of ATCO Gas North and ATCO Gas South, in accordance with past practice.

22. The Commission has considered the costs submitted by CCA. The Commission considers the costs submitted by CCA reasonable and directly and necessarily related to the proceeding, and notes that the claim is in accordance with the *Scale of Costs*. Accordingly, the Commission approves CCA's claim for professional fees, disbursements and GST in the total amount of \$156,997.21. The Commission also approves the proposed cost allocation.

### 3.3 Climate Change Central costs claim

23. C3 submitted a costs claim totaling \$65,120.59. The costs claim is comprised of legal fees incurred by Fraser Milner Casgrain LLP in the amount of \$54,041.00, together with disbursements of \$4,760.00 and GST of \$2,940.05; and disbursements incurred by the C3 in the amount of \$3,218.61 together with GST of \$160.93.

24. C3's costs requested an allocation of allowed costs of 50 per cent to each of ATCO Gas North and ATCO Gas South.

25. C3 submitted in its cost claim that it was not an "ineligible intervener" as defined in Section 4 of Rule 022. Section 4(d) of Rule 022 states:

4 Unless the Commission orders otherwise the following types or classes of interveners are ineligible to claim costs

(d) business, commercial, institutional, or industrial entities including associations of these entities;

26. Mr. Reading on behalf of C3 described C3 and its activities in testimony in the following manner:

C3 is an independent, not-for-profit organization that administers and delivers DSM programs province wide for the provincial government; federal government; various cities, including Medicine Hat, Calgary and Edmonton; various municipalities, including Lac La Biche and Strathcona County; and corporate clients that have operations both within and outside of Alberta.<sup>3</sup>

---

<sup>3</sup> Transcript Volume 7, June 1, 2011 page 1425.



27. In testimony, Mr. Walter confirmed that: "...C3 has both operational funding as well as program funding, which is targeted towards DSM".<sup>4</sup> Mr. Walter further described the funding C3 receives in the following manner in a discussion with Commission Counsel:

The overwhelming majority is provincially funded. I guess a point of clarification is with respect to our operating funding or with respect to our programming funding. So our operational funding is primarily government of Alberta, but our program funding can be from a host of other --

Again, so if we deliver the Retire a Ride program on behalf of the federal government, they advance us the funds. We hold them in restricted accounts. So it's all reflected on our financial statements for the specific program funding.

Q. Thank you. So if you do have funding through the private sector, what would those sources be?

A. MR. WALTER: So a good example of that is what was made reference to again in my discussions with Ms. Beattie earlier this morning. We deliver a corporate demand side management program for ENMAX Corporation, as well as Cenovus, Encana. And so we're under contract to cover our project management administration fees to do that, and we also do flow through of incentives.<sup>5</sup>

28. Although C3 is a not-for-profit entity, the Commission considers that C3 is a business or commercial entity in the sense that it offers services to public and private customers, markets its activities and enter into contracts to provide services on a fee-for-service basis. Further, if C3 was in doubt as to its eligibility to claim cost recovery, Section 3(2) of Rule 022 provides that an intervener may request an advance ruling on its eligibility for costs. The Commission notes that C3 did not make such a request. Accordingly, absent another basis for the Commission to exercise its discretion and allow C3 costs, the Commission would deny C3 cost recovery on the basis that it is an ineligible intervener. The Commission will next consider whether C3 has established a sufficient basis for the Commission to exercise its discretion to consider the C3 cost claim.

29. In its March 15, 2011 correspondence C3 sought permission to intervene in the proceeding after the date set for the filing of a statement of intent to participate for the following reason:

C3 was unaware, until very recently, that we were specifically named in the Application, at Volume 1, page 4.4-33, para. 84, which states:

Climate Change Central (CCC) has a key role in achieving the Province's GHG reduction targets, and therefore ATCO Gas has entered into "partnership" discussions with CCC to ensure that ATCO Gas' DSM Program can complement and enhance CCC's efforts. It is ATCO Gas' view that CCC can play a vital role in ATCO Gas' Program by providing assistance in Program Development, consumer communications, fund and incentive/rebate administration. Discussions to date with CCC regarding a potential partnership have been very positive and encouraging. Subject to the Commission's approval of this comprehensive utility delivered DSM initiative, a more formal partnership agreement would be contemplated.

<sup>4</sup> Transcript Volume 7, June 1, 2011 pages 1439 to 1440.

<sup>5</sup> Transcript Volume 7, June 1, 2011 pages 1468 to 1469.

C3 acknowledges that there have been discussions with ATCO regarding DSM programming and those discussions are ongoing. C3 would have preferred to have a signed MOU with ATCO, defining the specific role ATCO envisions for C3, before this portion of the Application was presented to the Commission. ATCO did not advise C3 that we were specifically referenced in the Application, nor were we aware it had been filed.<sup>6</sup>

30. C3 also stated in its March 15, 2011 letter:

We believe our 10 years of experience as the central, independent, third-party deliverer of DSM/energy efficiency programs in Alberta gives us a unique, Alberta-based perspective and we request the opportunity to provide input to the Commission in response to the points ATCO has raised in section 4.4 of its Application. There is no other intervener in this rate application that provides DSM in the Province.<sup>7</sup>

31. The Commission also notes the following statement from the evidence of Dr. Cicchetti with respect to C3 and its activities in providing rebates to consumers:

...ATCO Gas would expect to work with CCC in a manner that focuses on its strengths in the natural gas sector. I understand discussions to date with CCC regarding a potential partnership have been very positive and encouraging.<sup>8</sup>

32. In light of the direct references to C3 in the evidence of ATCO Gas and its expert, the Commission considers that it was beneficial to the Commission to have C3 participate in the proceeding to provide evidence with respect to its relationship with ATCO Gas and on DSM programs and initiatives. Further the Commission found that C3's contribution to the proceeding was of some assistance to the Commission in considering DSM related matters. On this basis, the Commission is prepared to exercise its discretion under Section 4 of Rule 022 and will consider C3 as eligible to file a cost claim in this proceeding. The Commission emphasizes that this determination is specific to the 2011-2012 ATCO Gas GRA proceeding and should not be considered as a general ruling on cost eligibility for future proceedings, including the compliance filing to Decision 2011-450. C3 should consider making an application for an advanced ruling on eligibility for costs in future proceedings it may wish to participate in.

33. The Commission notes that C3's costs claim is in accordance with the *Scale of Costs*. However, the Commission considers that efficiencies may have been achieved had C3 coordinated some or all of its activities with the UCA. The UCA is mandated by legislation to represent many of the customer groups that are impacted by the application. Section 11(2)(c) of Rule 022 states that in determining the amount of costs to be awarded to a participant, the Commission will consider, among other things, the extent to which the claimant:

made reasonable efforts to cooperate with other parties to reduce the duplication of evidence and questions or to combine its submission with that of similarly interested participants

34. In its cost submission dated August 22, 2011, C3 did address the efforts that it undertook to avoid duplication with other interveners; however, it did not discuss the efforts it made, if any, to cooperate with other participants or to combine its submission with other parties. The

---

<sup>6</sup> Exhibit 87.01, pages 1 to 2.

<sup>7</sup> Exhibit 87.01, page 2.

<sup>8</sup> Exhibit 3, Application, Section 4.4, Appendix A, Written evidence of Dr. Charles Cicchetti, page 53.

Commission notes that the UCA did prepare and file evidence, sit a witness panel and file argument on DSM related matters. The Commission considers that a greater degree of cooperation and integration of evidence and argument with the UCA could have been attempted. Accordingly, the Commission considers a reduction of 50 percent to the fees claimed by C3 is warranted in the interests of ratepayers and regulatory efficiency. The Commission approves C3's claim for professional fees of \$27,020.50, which together with disbursements and GST results in a total amount of \$36,749.07. The Commission approves the proposed cost allocation.

#### 4 GST

35. 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. Eligible GST approved by the Commission amounts to \$9,241.97. The GST allowed by the Commission may also be charged against ATCO Gas' Hearing Cost Reserve Account.

36. 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*, RSC 1985, c E-15.

#### 5 Order

It is hereby ordered that:

1. ATCO Gas North shall pay external costs in the amount of \$415,662.69 as set out in column (h) of [Appendix A](#).
2. ATCO Gas North shall pay intervener costs in the amount of \$96,873.14 as set out in column (h) of [Appendix A](#).
3. ATCO Gas North shall record in its Hearing Cost Reserve Account the allowed external and intervener costs in the amount of \$512,535.82 as set out in column (h) of [Appendix A](#).
4. ATCO Gas South shall pay external costs in the amount of \$415,662.69 as set out in column (h) of [Appendix A](#).
5. ATCO Gas South shall pay intervener costs in the amount of \$96,873.14 as set out in column (h) of [Appendix A](#).
6. ATCO Gas South shall record in its Hearing Cost Reserve Account the allowed external and intervener costs in the amount of \$512,535.82 as set out in column (h) of [Appendix A](#).

Dated on December 20, 2011.

**The Alberta Utilities Commission**

*(original signed by)*

Moin Yahya  
Chair

*(original signed by)*

Kay Holgate  
Commission Member

*(original signed by)*

Bill Lyttle  
Commission Member

**ATCO Gas**  
**Cost Proceeding ID. 1409**  
**2011-2012 General Rate Application Cost Claim**  
**(1607611, 1607671, 1607679)**

**Total 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)
<b>APPLICANT</b>								
<b>ATCO Gas</b>								
Bennet Jones LLP	\$494,463.50	\$4,171.06	\$0.00	\$498,634.56	\$494,463.50	\$4,171.06	\$0.00	\$498,634.56
Gannet Fleming Inc.	\$134,692.50	\$2,260.31	\$0.00	\$136,952.81	\$134,692.50	\$2,260.31	\$0.00	\$136,952.81
Navigant	\$226,420.00	\$7,659.92	\$0.00	\$234,079.92	\$113,210.00	\$7,659.92	\$0.00	\$120,869.92
Patricia A. McCunn-Miller	\$7,410.00	\$0.00	\$0.00	\$7,410.00	\$0.00	\$0.00	\$0.00	\$0.00
Towers Watson	\$2,850.00	\$0.00	\$0.00	\$2,850.00	\$0.00	\$0.00	\$0.00	\$0.00
ATCO Gas	\$0.00	\$74,868.08	\$0.00	\$74,868.08	\$0.00	\$74,868.08	\$0.00	\$74,868.08
<b>Sub-Total</b>	<b>\$865,836.00</b>	<b>\$88,959.37</b>	<b>\$0.00</b>	<b>\$954,795.37</b>	<b>\$742,366.00</b>	<b>\$88,959.37</b>	<b>\$0.00</b>	<b>\$831,325.37</b>
<b>INTERVENERS</b>								
<b>Climate Change Central</b>								
Fraser Milner Casgrain LLP	\$54,041.00	\$4,760.00	\$2,940.05	\$61,741.05	\$27,020.50	\$4,760.00	\$1,589.03	\$33,369.53
Climate Change Central	\$0.00	\$3,218.61	\$160.93	\$3,379.54	\$0.00	\$3,218.61	\$160.93	\$3,379.54
<b>Sub-Total</b>	<b>\$54,041.00</b>	<b>\$7,978.61</b>	<b>\$3,100.98</b>	<b>\$65,120.59</b>	<b>\$27,020.50</b>	<b>\$7,978.61</b>	<b>\$1,749.96</b>	<b>\$36,749.07</b>
<b>Consumers' Coalition of Canada</b>								
Wachowich & Company	\$40,438.75	\$6,411.30	\$2,342.50	\$49,192.55	\$40,438.75	\$6,411.30	\$2,342.50	\$49,192.55
Regulatory Services Inc.	\$101,492.50	\$1,162.65	\$5,149.51	\$107,804.66	\$101,492.50	\$1,162.65	\$5,149.51	\$107,804.66
<b>Sub-Total</b>	<b>\$141,931.25</b>	<b>\$7,573.95</b>	<b>\$7,492.01</b>	<b>\$156,997.21</b>	<b>\$141,931.25</b>	<b>\$7,573.95</b>	<b>\$7,492.01</b>	<b>\$156,997.21</b>
<b>ATGO GAS North Amount of External Costs</b>	<b>\$432,918.00</b>	<b>\$44,479.69</b>	<b>\$0.00</b>	<b>\$477,397.69</b>	<b>\$371,183.00</b>	<b>\$44,479.69</b>	<b>\$0.00</b>	<b>\$415,662.69</b>
<b>ATGO GAS South Amount of External Costs</b>	<b>\$432,918.00</b>	<b>\$44,479.69</b>	<b>\$0.00</b>	<b>\$477,397.69</b>	<b>\$371,183.00</b>	<b>\$44,479.69</b>	<b>\$0.00</b>	<b>\$415,662.69</b>
<b>ATGO GAS North Amount of Intervener Costs</b>	<b>\$97,986.13</b>	<b>\$7,776.28</b>	<b>\$5,296.50</b>	<b>\$111,058.90</b>	<b>\$84,475.88</b>	<b>\$7,776.28</b>	<b>\$4,620.98</b>	<b>\$96,873.14</b>
<b>ATGO GAS South Amount of Intervener Costs</b>	<b>\$97,986.13</b>	<b>\$7,776.28</b>	<b>\$5,296.50</b>	<b>\$111,058.90</b>	<b>\$84,475.88</b>	<b>\$7,776.28</b>	<b>\$4,620.98</b>	<b>\$96,873.14</b>
<b>Amount to be recorded in ATCO Gas North's Hearing Cost Reserve Account</b>	<b>\$530,904.13</b>	<b>\$52,255.97</b>	<b>\$5,296.50</b>	<b>\$588,456.59</b>	<b>\$455,658.88</b>	<b>\$52,255.97</b>	<b>\$4,620.98</b>	<b>\$512,535.82</b>
<b>Amount to be recorded in ATCO Gas South's Hearing Cost Reserve Account</b>	<b>\$530,904.13</b>	<b>\$52,255.97</b>	<b>\$5,296.50</b>	<b>\$588,456.59</b>	<b>\$455,658.88</b>	<b>\$52,255.97</b>	<b>\$4,620.98</b>	<b>\$512,535.82</b>
<b>TOTAL INTERVENER COSTS</b>	<b>\$195,972.25</b>	<b>\$15,552.56</b>	<b>\$10,592.99</b>	<b>\$222,117.80</b>	<b>\$168,951.75</b>	<b>\$15,552.56</b>	<b>\$9,241.97</b>	<b>\$193,746.28</b>
<b>TOTAL INTERVENER AND APPLICANT COSTS</b>	<b>\$1,061,808.25</b>	<b>\$104,511.93</b>	<b>\$10,592.99</b>	<b>\$1,176,913.17</b>	<b>\$911,317.75</b>	<b>\$104,511.93</b>	<b>\$9,241.97</b>	<b>\$1,025,071.65</b>