



ATCO Gas and Pipelines Ltd. (South)

**Transfer of Pipelines from ATCO Gas and Pipelines Ltd. (South)
to NOVA Gas Transmissions Ltd.
Tranches 1 and 2**

and

**Transfer of Pipelines from NOVA Gas Transmission Ltd. to
ATCO Gas and Pipelines Ltd. (South)
Tranche 2A**

Costs Award

January 27, 2017

Alberta Utilities Commission

Decision 22074-D01-2017

ATCO Gas and Pipelines Ltd. (South)

Transfer of Pipelines from NOVA Gas Transmission Ltd. to

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**ATCO Gas and Pipelines Ltd. (South)
Asset Swap between ATCO Gas and Pipelines Ltd. (South) and
NOVA Gas Transmission Ltd.
Costs Award**

**Decision 22074-D01-2017
Proceeding 22074**

1 Introduction

1. In this decision the Alberta Utilities Commission considers an application (the costs claim application) by the Consumers' Coalition of Alberta (CCA) for approval and payment of their costs of participation in Proceeding 21369¹ and 21379² (the original proceedings). The costs claimed and costs awarded are provided in the following table:

Claimant	Total Fees Claimed	Total Disbursements Claimed	Total GST Claimed	Total Amount Claimed	Total Fees Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
CCA								
Wachowich & Company	\$8,165.00	\$0.00	\$408.25	\$8,573.25	\$6,532.00	\$0.00	\$326.60	\$6,858.60
Regulatory Services Inc.	\$11,475.00	\$36.40	\$575.57	\$12,086.97	\$9,180.00	\$36.40	\$460.82	\$9,677.22
Total	\$19,640.00	\$36.40	\$983.82	\$20,660.22	\$15,712.00	\$36.40	\$787.42	\$16,535.82

2. The Commission has awarded reduced costs to the applicant for the reasons set out below.

3. The original proceedings were convened by the Commission to consider the exchange of certain pipelines assets between ATCO Gas and Pipelines Ltd. (South) (ATCO) and NOVA Gas Transmission Ltd. (NGTL). The original proceedings involved information requests (IRs), IR responses, argument and reply argument. The close of record for the original proceedings was September 12, 2016, and the Commission issued Decision 21369-D02-2016³ and Decision 21379-D21-2016⁴ on November 2, 2016.

4. In a ruling dated June 1, 2016⁵, the Commission granted the CCA permission to participate in the original proceedings. The ruling also found that the CCA was eligible to recover costs under Section 21 of the *Alberta Utilities Commission Act* and Section 3 of Rule 022.

¹ Proceeding 21369: ATCO Gas and Pipelines Ltd. (South) Transfer of Pipelines from ATCO Gas and Pipelines Ltd. (South) to NOVA Gas and Transmission Ltd. Tranches 1 and 2.

² Proceeding 21379: ATCO Gas and Pipelines Ltd. (South) Transfer of Pipelines from NOVA Gas Transmission Ltd. to ATCO Gas and Pipelines Ltd. (South) Tranche 2a

³ Decision 21369-D02-2016: ATCO Gas and Pipelines Ltd. (South) Transfer of Pipelines from ATCO Gas and Pipelines Ltd. (South) to NOVA Gas and Transmission Ltd. Tranches 1 and 2, Proceeding 21369, November 2, 2016.

⁴ Decision 21379-D21-2016: ATCO Gas and Pipelines Ltd. (South) Transfer of Pipelines from NOVA Gas Transmission Ltd. to ATCO Gas and Pipelines Ltd. (South) Tranche 2a, November 2, 2016.

⁵ Exhibit 21369-X0046 and Exhibit 21379-X0245

5. The CCA submitted its costs claim application on October 12, 2016, within the 30 day timeline permitted by the Commission’s rules. The Commission assigned Proceeding 22074 and Application 22074-A001 to the costs application.

6. No comments were filed with respect to the cost claim application and the Commission considers the close of record for this proceeding to be November 3, 2016, the deadline for filing comments.

2 Commission findings

7. The Commission’s authority to award costs arises pursuant to sections 21 and 22 of the *Alberta Utilities Commission Act*. Section 21 of the *Alberta Utilities Commission Act* grants the Commission the authority to order costs in relation to any hearing or other proceeding. 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). Section 22 of the *Alberta Utilities Commission Act* provides that the Commission may award costs to persons or groups of persons that meet the definition of “local intervener” and provides the Commission with a specific authority to make rules on the payment of costs to a “local intervener” for participation. The Commission enacted Rule 009: *Rules on Local Intervener Costs* in accordance with this authority.

8. The CCA is not a local intervener because it did not assert that it or its members had land that may be affected by the application considered in the original proceedings.

9. ATCO filed the applications considered in the original proceedings pursuant the *Hydro and Electric Energy Act*. The Commission considers that the costs it awards should take into account the role of each party in a proceeding.

10. The Commission understands that the CCA participated in the original proceeding to represent the interests of residential customers of regulated utilities in Alberta. In particular, the CCA requested to participate to address the implications that the original proceeding would have on the rates paid by customers. Given the unique nature of the of the original proceeding, the Commission is of the view that it may award costs to the CCA pursuant to section 21 of the *Alberta Utilities Commission Act* and Rule 022 in this instance.

11. Appendix A of Rule 022 prescribes a Scale of Costs applicable to all costs claimed.

2.1 Consumers’ Coalition of Alberta

12. The following table summarizes the CCA’s cost claim for Proceedings 21369 and 21379:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company	26.25	0.00	11.00	\$8,165.00	\$0.00	\$408.25	\$8,573.25
Regulatory Services Inc.	35.00	0.00	7.50	\$11,475.00	\$36.40	\$575.57	\$12,086.97
Total	61.25	0.00	18.50	\$19,640.00	\$36.40	\$983.82	\$20,660.22

Wachowich & Company

13. The CCA was represented by Wachowich & Company in the original proceedings. The fees claimed by the CCA for the legal services provided by Mr. James Wachowich and Ms. Shauna Gibbons relate to reviewing the application, performing legal research, reviewing draft IRs and IR responses, reviewing draft argument and reply argument, and reviewing ATCO's argument.

14. The Commission, in granting the CCA participation, limited the CCA's participation to the issue of whether:

assets added have been fully evaluated by AP [ATCO Pipelines] to ensure all legislative requirements and AP [ATCO Pipelines] operational standards have been met.⁶

15. The CCA's argument and reply argument was not limited to matters of pipeline integrity and operational standards and instead spoke to the broader costs implications of the asset swap. The Commission, in Decision 21369-D02-2016, found at paragraphs 17 and 18:

17. The Commission notes that approvals for the ATCO and NGTL asset swap were granted by the Commission in Decision 2012-310; and in Decision 3577-D01-2016, the Commission approved the one-time capital, operating and maintenance costs, and ongoing operating and maintenance cost increases associated with the swapped assets.

18. The Commission addressed the concerns of the CCA in Decision 21379-D21-2016, for the transfer of pipelines from NGTL to ATCO in Tranche 2a.

16. Also, the Commission, in Decision 21379-D21-2016, found at paragraphs 14 and 15:

14. In argument, the CCA raised a number of issues related to potential rate impacts associated with the asset swap. The Commission finds that these submissions address issues that have already been decided by the Commission in decisions 2010-228, 2012-310 and 3577-D01-2016. In its ruling setting out the scope of the CCA's allowed participation in this proceeding, the Commission specifically set out the issues that it was granting the CCA participation rights to address and what issues it considered to be already decided. As noted above, the CCA was granted participation rights to address whether the "assets added have been fully evaluated by AP to ensure all legislative requirements and AP operational standards have been met, including all required integrity assessments." However, the Commission also stated that "it would not be of assistance for the CCA to participate in these facility proceedings to provide input as to the potential rates implications."

15. Having regard to the foregoing, the Commission has not summarized the views of the CCA and ATCO on issues that have either been previously decided or are outside the scope of this proceeding, including the application of the no-harm test, cost allocation and NGTL rate design issues.

17. Based on the above, the Commission finds that the fees claimed for Wachowich & Company were unreasonable because a portion of the argument focused on issues that were not relevant because the issues were out of scope of the proceedings or not of assistance to the

⁶ Exhibit 21369-X0054 at page 3.

Commission in reaching its determinations in Decisions 21369-D02-2016 and 21379-D21-2016. The particular issues raised by the CCA were not required to address the original applications. The Commission finds a fee reduction of 20 per cent is warranted in these circumstances.

18. Accordingly, the Commission approves the CCA's claim for legal fees for Wachowich & Company in the amount of \$6,532.00 and GST of \$326.60 for a total of \$6,858.60.

Regulatory Services Inc.

19. Regulatory Services Inc. was retained by the CCA to perform consulting services in the original proceeding. The fees claimed by the CCA for the consulting services provided by Mr. Jeffrey Jodoin relate to reviewing the application, drafting IRs, reviewing IR responses, research, and drafting argument and reply argument.

20. While the Commission finds that the fees claimed for these services were excessive for the following reasons: the hours claimed are not commensurate with the tasks performed. In the Commission's view the IRs, which primarily related to the age and condition of the assets to be swapped, were not unusually complex. In addition, for the reasons stated above, the Commission finds that the fees claimed were unreasonable because a portion of the argument focused on issues that were not relevant or not of assistance to the Commission in reaching its determinations in Decisions 21369-D02-2016 and 21379-D21-2016. The Commission finds a fee reduction of 20 per cent for Regulatory Services Inc. is warranted in these circumstances.

21. Accordingly, the Commission approves the CCA's claim for consulting fees for Regulatory Services Inc. in the amount of \$9,180.00, disbursements of \$36.40 for photocopying and GST of \$460.82 for a total of \$9,677.22.

3 Order

22. It is hereby ordered that:

- 1) ATCO Gas and Pipelines Ltd. (South) shall pay costs to the Consumers' Coalition of Alberta in the amount of \$16,535.82.

Dated on January 27, 2017.

Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair