



## **ATCO Gas**

**2008-2009 General Rate Application – Phase II  
Negotiated Settlement**

**Cost Awards**



**ALBERTA UTILITIES COMMISSION**

Decision 2010-385: ATCO Gas

2008-2009 General Rate Application – Phase II

Application No. 1604944

Cost Application No. 1606185

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## **1 INTRODUCTION**

1. On March 30, 2009, ATCO Gas (ATCO) filed a 2008-2009 General Rate Application (GRA) – Phase II (Phase II Application) with the Alberta Utilities Commission (AUC or Commission). The Phase II Application relates to both its north (ATCO North) and south (ATCO South) service territories.
2. By letter dated September 4, 2009, ATCO requested approval to enter into a negotiated settlement process in respect of its Phase II Application.
3. The Commission issued Decision [2009-150](#)<sup>1</sup>, granting ATCO permission to negotiate with customer representatives a settlement of the matter addressed in its Phase II Application. The Commission appointed an observer to the negotiations as per section 5 of AUC [Rule 018: Rules on Negotiated Settlements](#) (Rule 018).
4. On November 17, 2009 ATCO filed with the Commission an application (Settlement Application) requesting approval of the 2008-2009 Negotiated Settlement (Settlement). The Settlement addressed all aspects of the Phase II Application and certain other matters.
5. The Commission dealt with this Application by way of a written proceeding. On June 25, 2010 the Commission issued Decision [2010-291](#)<sup>2</sup> with respect to the Settlement Application.
6. On May 6, 2010, 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 May 20, 2010. 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 May 20, 2010.

## **2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS**

7. 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).

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<sup>1</sup> Decision 2009-150: ATCO Gas Request to Negotiate and ENMAX Rate Class Issue 2008-2009 General Rate Application – Phase II (Application No. 1604944; Proceeding ID. 184) (Released: September 25, 2009).

<sup>2</sup> Decision 2010-291: ATCO Gas 2008-2009 General Rate Application – Phase II Negotiated Settlement (Application No. 1604944; Proceeding ID 184) (Released: June 25, 2010).

8. 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.

9. 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.

10. 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 COSTS IN A NEGOTIATED SETTLEMENT**

11. In the case of a negotiated settlement process, the Commission does not directly participate in the process. Rather, the Commission reviews the nature of the process itself and its results to ensure that it was fair, reasonable, and in the public interest. Without the direct opportunity to review the effectiveness of participants, the Commission will take into account other considerations to ensure that the costs of participation in a negotiated settlement process, which are ultimately passed on to all customers, are reasonable and represent fair value.

12. As noted in Decision 2010-291 at paragraph 50, the Commission observer to the negotiations advised the Commission as to fairness of the settlement process. The observer supported ATCO's assertion that the settlement process was open and fair and provided a forum for meaningful stakeholder participation.

13. The Commission found at paragraph 177 of Decision 2010-291 that the Settlement "is fair and reasonable and it forms the basis for developing rates and terms and conditions of service which are fair and reasonable and in the public interest".

14. The above factors and a review of the activities described and the costs claimed in respect of settlement negotiations and the balance of the proceeding support a finding that the costs are reasonable and should be approved by the Commission.

### **4 VIEWS OF THE COMMISSION – ASSESSMENT**

#### **4.1 ATCO Gas**

15. ATCO Gas submitted a cost claim totaling \$55,165.65. The claim is comprised of legal fees incurred by Bennett Jones LLP in the amount of \$46,930.00, together with disbursements of \$26.98; and internal costs in the amount of \$8,208.67 for meals and Notice of Application. The costs submitted by ATCO were allocated equally amongst ATCO North and ATCO South.

16. The Commission has considered the costs submitted by ATCO. The Commission finds that the participation of ATCO was effective and of assistance in reviewing the Application. The Commission notes the scope and complexity of the issues before it and the extent of the examination thereof. 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's claims for fees and disbursements in the total amount of \$55,165.65 to be reasonable.

#### **4.2 Consumers' Coalition of Alberta**

17. The Consumers' Coalition of Alberta (CCA) submitted a cost claim totaling \$96,602.52. The claim is comprised of legal fees incurred by Wachowich & Company in the amount of \$24,530.00, together with GST of \$1,226.50; consulting services incurred by Regulatory Services in the amount of \$45,660.00, together with disbursements and GST in the amount of \$62.40 and \$2,286.12; and consulting services incurred by Econanalysis in the amount of \$21,750.00, together with GST of \$1,087.50. The costs submitted by the CCA were allocated equally amongst ATCO North and ATCO South.

18. The Commission has reviewed the CCA's cost claim and considers the amounts to be reasonable. Their claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission approves the CCA's claim in the full amount of \$96,602.52.

### **5 GST**

19. In accordance with the Commission's treatment of the GST on cost awards, ATCO 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 \$4,600.12. The GST allowed by the Commission may also be charged against ATCO's Hearing Cost Reserve Account.

20. 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.

### **6 ORDER**

IT IS HEREBY ORDERED:

1. ATCO Gas North shall pay intervener costs in the amount of \$48,301.26.
2. ATCO Gas North external costs in the amount of \$27,582.83 are approved.
3. ATCO Gas North shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$75,884.09.
4. ATCO Gas South shall pay intervener costs in the amount of \$48,301.26.

5. ATCO Gas South external costs in the amount of \$27,582.83 are approved.
6. ATCO Gas North shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$75,884.09.

Dated on August 9, 2010.

**ALBERTA UTILITIES COMMISSION**

*(Original signed by)*

Willie Grieve  
Chair

*(Original signed by)*

Bill Lyttle  
Commissioner