



ATCO Gas South, a division of ATCO Gas and Pipelines Ltd.

**Reconsideration of
Application No. 13047852 and Decision 2005-036 and
Application No. 1524763 and Decision 2008-001
Pursuant to the Judgment of the Court of Appeal of
Alberta dated April 23, 2010**

Cost Awards

ALBERTA UTILITIES COMMISSION

Decision 2010-543: ATCO Gas South, a division of ATCO Gas and Pipelines Ltd.
Reconsideration of Application No. 1347852 and Decision 2005-036 and
Application No. 1524763 and Decision 2008-001 Pursuant to the Judgment of the Court of
Appeal of Alberta dated April 23, 2010
Application No. 1606175
Cost Proceeding ID. 785

Published by

Alberta Utilities Commission
Fifth Avenue Place, 4th Floor, 425 - 1 Street SW
Calgary, Alberta
T2P 3L8

Telephone: (403) 592-8845
Fax: (403) 592-4406

Web site: www.auc.ab.ca

Contents

1 INTRODUCTION..... 1

2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS 1

3 VIEWS OF THE COMMISSION – ASSESSMENT..... 2

3.1 ATCO Gas South 2

3.2 City of Calgary 2

4 GST..... 3

5 ORDER 3

APPENDIX A – Summary of Costs Claimed and Awarded..... 5

ALBERTA UTILITIES COMMISSION

Calgary, Alberta

**ATCO Gas South, A division of ATCO Gas and Pipelines Ltd.
Reconsideration of Application No. 1347852 and
Decision 2005-036 and Application No. 1524763 and
Decision 2008-001 Pursuant to the Judgment of
The Court of Appeal of Alberta
Dated April 23, 2010**

**Decision 2010-543
Application No. 1606175
Cost Proceeding ID. 785**

1 INTRODUCTION

1. On April 23, 2010, the Alberta Court of Appeal released its reasons for judgment in *Calgary (City) v. Alberta (Energy and Utilities Board)*, 2010 ABCA 132, 477 A.R. 1 (DGA Appeal Decision). In that decision the Court of Appeal found that the Alberta Energy and Utilities Board (EUB or Board) had the authority to use deferral accounts, and that its authority to make adjustments to those accounts was not limited by section 40 of the *Gas Utilities Act*. The Court found, however, that the Board exercised its authority in an unreasonable manner based on the facts of the case before it. The Court directed that the orders under appeal be vacated, and the matter returned to the Board (now the Alberta Utilities Commission (AUC or Commission)) for consideration in accordance with the Court's reasons for judgment.

2. On June 3, 2010, the Commission issued notice of a Commission initiated process in which the original Board decisions subject to appeal in the DGA Appeal Decision would be reconsidered.

3. The Commission held a written proceeding and on October 15, 2010 the Commission issued Decision [2010-494](#)¹ with respect to the DGA Appeal Decision.

4. On August 20, 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 September 3, 2010. The Commission did not receive any comments. Accordingly, the Commission considers the cost process to have closed on September 3, 2010.

2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS

5. In assessing a cost claim pursuant to section 21 of the *Alberta Utilities Commission Act* (AUC Act), the Commission applies Rule 022, *Rules on Intervener Costs* (Rule 022). Rule 022 was revised on September 30, 2008. Given that this proceeding related to applications filed before the revised Rule 22 came into force, the Commission has assessed the costs claimed in respect to this proceeding in accordance with Rule 022 and the *Scale of Costs* in place prior to September 30, 2008.

¹ Decision 2010-494: ATCO Gas South (a division of ATCO Gas and Pipelines Ltd.) Reconsideration of Decision 2005-036 and 2008-001 Pursuant to the Judgment of the Court of Appeal of Alberta dated April 23, 2010. (Application No. 1606175, Proceeding ID. 623) (Released: October 15, 2010)

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 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.

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 South

9. ATCO Gas South (AGS) submitted a cost claim totaling \$12,810.00. The claim is comprised of legal fees incurred by Bennett Jones LLP.

10. The Commission notes that AGS claimed in excess of the *Scale of Costs* for a lawyer from Bennett Jones LLP. Lawrence Smith claimed 36.6 hours at the hourly rate of \$350 (\$12,810.00). Based on Mr. Smith's experience, the applicable *Scale of Costs* based on Rule 022 before it was amended allows for a maximum hourly rate of \$250, which for 36.6 hours results in a total of \$9,150.00.

11. The total claim for AGS when reduced in accordance with Rule 22 and the applicable *Scale of Costs* is \$9,150.00. The Commission considers that the Statement of Justification submitted with AGS's cost claim did not provide a sufficient basis to justify a rate above the applicable *Scale of Costs*.

12. The Commission finds that the participation of AGS was effective and of assistance in reviewing the Application. Accordingly, the Commission approves the costs for AGS, as reduced in accordance with the applicable *Scale of Costs*, in the total amount of \$9,150.00.

3.2 City of Calgary

13. The City of Calgary (City) submitted a cost claim totaling \$18,054.50. The claim is comprised of legal fees incurred by D'Arcy Deacon LLP in the amount of \$17,045.00, together with disbursements and GST of \$149.76 and \$859.74, respectively.

14. The Commission notes Calgary claimed in excess of the Commission's *Scale of Costs* for a lawyer from D'Arcy Deacon LLP. Brian Meronek claimed 48.7 hours at the hourly rate of

\$350 (\$17,045.00). Based on Mr. Meronik's experience, the applicable *Scale of Costs* based on Rule 022 before it was amended allows for a maximum hourly rate of \$250, which for 48.7 hours results in a total of \$12,175.00.

15. 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 D'Arcy Deacon LLP, reduced in accordance with the applicable *Scale of Costs*, and approves the reduced amount.

16. Taking the foregoing into account, the Commission approves Calgary's cost claim including \$1,009.50 in disbursements and applicable GST in the total amount of \$13,184.50.

4 GST

17. In accordance with the Commission's treatment of the GST on cost awards, AGS 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 \$859.74. The GST allowed by the Commission may also be charged against AGS's Hearing Cost Reserve Account.

18. 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 \$13,184.50, as set out in column (h) of [Appendix A](#).
2. ATCO Gas South's external costs in the amount of \$9,150.00, 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 \$22,334.50, as set out in column (h) of [Appendix A](#).

Dated on November 23, 2010.

ALBERTA UTILITIES COMMISSION

(Original signed by)

Moin Yahya
Panel Chair

(Original signed by)

Bill Lyttle
Commissioner

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A.xls

[\(Back to Table of Contents\)](#)

Cost Proceeding ID. 785

AUC Reconsideration of Decisions 2005-036 and 2008-001
(1606175)

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)
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 LLP	\$12,810.00	\$0.00	\$0.00	\$12,810.00	\$9,150.00	\$0.00	\$0.00	\$9,150.00
Sub-Total	\$12,810.00	\$0.00	\$0.00	\$12,810.00	\$9,150.00	\$0.00	\$0.00	\$9,150.00
City of Calgary								
D'Arcy Deacon	\$17,045.00	\$149.76	\$859.74	\$18,054.50	\$12,175.00	\$149.76	\$859.74	\$13,184.50
Sub-Total	\$17,045.00	\$149.76	\$859.74	\$18,054.50	\$12,175.00	\$149.76	\$859.74	\$13,184.50
TOTAL INTERVENER COSTS	\$29,855.00	\$149.76	\$859.74	\$30,864.50	\$21,325.00	\$149.76	\$859.74	\$22,334.50
TOTAL INTERVENER AND APPLICANT COSTS	\$29,855.00	\$149.76	\$859.74	\$30,864.50	\$21,325.00	\$149.76	\$859.74	\$22,334.50