



AUC

Alberta Utilities Commission

**ATCO Gas and Pipelines Ltd. and
ATCO Electric Ltd.**

2014-2018 Pension Application

Costs Award

January 29, 2018

Alberta Utilities Commission

Decision 22655-D01-2018

ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd.

2014-2018 Pension Application

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Proceeding 22655

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Fifth Avenue Place, Fourth Floor, 425 First Street S.W.

Calgary, Alberta

T2P 3L8

Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

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1 Introduction

1. In this decision the Alberta Utilities Commission considers applications (the costs claim applications) by ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd. for their respective transmission functions and the Consumers’ Coalition of Alberta (CCA). The costs claims applications request approval and payment of the costs of participation in Proceeding 21831¹ related to the ATCO Utilities 2014-2018 Pension Application (the original proceeding) and Proceeding 3405,² the ATCO Utilities 2014 Pension Application (Proceeding 3405). The latter application addressed the 2014 year only and was subsequently withdrawn.

2. ATCO Gas and Pipelines Ltd. is eligible to claim costs for its transmission function (ATCO Pipelines). ATCO Electric Ltd is also eligible to claim costs for its transmission function (ATCO Electric – Transmission). For the purposes of this decision, ATCO Pipelines and ATCO Electric – Transmission are referred to as the “ATCO transmission utilities.” The distribution utilities of ATCO Gas and Pipelines Ltd. (ATCO Gas) and ATCO Electric Ltd. (ATCO Electric – Distribution), are not entitled to claim their own costs of participating in regulatory proceedings because they are under performance-based regulation. The four ATCO utilities are collectively referred to as the “ATCO Utilities.”

3. The following table sets out ATCO Pipelines’, ATCO Electric – Transmission’s and the CCA’s total costs claimed for the original proceeding and for Proceeding 3405:

Claimant	Total Fees Claimed	Total Disbursements Claimed	Total GST Claimed ³	Total Amount Claimed
ATCO Electric - Transmission				
Bennett Jones LLP	\$43,366.50	\$251.35	\$0.00	\$43,617.85
Mercer Canada	\$112,663.60	\$0.00	\$0.00	\$112,663.60
Total	\$156,030.10	\$251.35	\$0.00	\$156,281.45
ATCO Pipelines				
Bennett Jones LLP	\$43,366.50	\$251.35	\$0.00	\$43,617.85
Mercer Canada	\$112,663.60	\$0.00	\$0.00	\$112,663.60
Total	\$156,030.10	\$251.35	\$0.00	\$156,281.45
CCA				
Wachowich & Company	\$13,265.00	\$0.00	\$663.25	\$13,928.25
Regulatory Services Inc.	\$42,066.00	\$0.00	\$2,103.30	\$44,169.30
Total	\$55,331.00	\$0.00	\$2,766.55	\$58,097.55
Total of all amounts claimed				\$370,660.45

¹ Proceeding 21831: ATCO Utilities 2014-2018 Pension Application.

² Proceeding 3405: ATCO Utilities 2014 Pension Application.

³ In Exhibit 22655-X0001.01, the ATCO Utilities claimed GST on forms U1 and U2 of the costs application. The affidavit of fees and disbursements, Form U5, does not include GST. GST amounts have been adjusted to zero, consistent with Form U5.

4. The Commission has denied the ATCO Utilities proposed allocation of costs and has approved the following allocation of costs among the ATCO Utilities: 35 per cent to ATCO Gas, 35 per cent to ATCO Electric - Distribution, 15 per cent to ATCO Pipelines and 15 per cent to ATCO Electric - Transmission. The allocation of the ATCO Utilities costs is set out in Appendix A of this decision. The CCA's costs have been allocated to each of the ATCO Utilities in accordance with each utility's 2016 Rule 005⁴ revenue. The allocation of the CCA's costs to each of the ATCO Utilities is found in Appendix B of this decision.

5. The total amounts awarded to ATCO Pipelines, ATCO Electric-Transmission and the CCA are shown in the following table:

Claimant	Total Fees Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
ATCO Electric - Transmission				
Bennett Jones LLP	\$10,811.21	\$73.75	\$0.00	\$10,884.96
Mercer Canada	\$25,349.31	\$0.00	\$0.00	\$25,349.31
Total	\$36,160.52	\$73.75	\$0.00	\$36,234.27
ATCO Pipelines				
Bennett Jones LLP	\$10,811.21	\$73.75	\$0.00	\$10,884.96
Mercer Canada	\$25,349.31	\$0.00	\$0.00	\$25,349.31
Total	\$36,160.52	\$73.75	\$0.00	\$36,234.27
CCA				
Wachowich & Company	\$14,280.00	\$0.00	\$714.00	\$14,994.00
Regulatory Services Inc.	\$28,625.40	\$0.00	\$1,431.27	\$30,056.67
Total	\$42,905.40	\$0.00	\$2,145.27	\$45,050.67
Total awarded				\$117,519.21

6. In this decision, the Commission disallowed the costs related to Proceeding 3405 and has also reduced the ATCO transmission utilities and the CCA costs related to the original proceeding for the reasons set out below.

Background and preliminary matters

7. The original proceeding was convened by the Commission to consider an application by the ATCO Utilities requesting approval of the ATCO Utilities 2014-2018 pension application. The original proceeding included information requests (IRs), IR responses, written evidence, argument and reply argument. After reply argument, the Commission issued further IRs, received responses to IRs, and allowed for the filing of supplemental argument. The close of record for the original proceeding was June 22, 2017 and the Commission issued Decision 21831-D01-2017⁵ on July 12, 2017.

8. In Decision 21831-D01-2017, the Commission determined that the funding position of the pension plan, in which the ATCO Utilities participated, had improved on a going-concern basis but that the hypothetical windup valuation of the plan had not improved. The Commission considered that a relevant factor in assessing the reasonableness of the determination of the annual cost-of-living adjustment (COLA) is the balance between an adjustment and the declining number of active defined benefit employees who contribute to current service costs. The Commission approved a COLA of 50 per cent of the Consumers' Price Index, up to three per cent from 2014 onward that could be recovered through customers' rates. The Commission

⁴ Rule 005: *Annual Reporting Requirements of Financial and Operational Results*, effective January 1, 2015.

⁵ Decision 21831-D01-2017: ATCO Utilities (ATCO Gas and Pipelines Ltd., and ATCO Electric Ltd.) 2014-2018 Pension Application, Proceeding 21831, July 12, 2017.

directed the ATCO Utilities to file certain information respecting pension contribution amounts, comparator group plan provisions, pension plan funding, and plan membership in all future pension-related applications.

9. The ATCO transmission utilities submitted a joint costs claim application on May 12, 2017, in respect of the original proceeding and Proceeding 3405, within the 30 day timeline permitted by the Commission's rules for the original proceeding. The Commission assigned Proceeding 22655 and Application 22655-A001 to the costs claim application.

10. The CCA submitted its costs claim application in respect of the original proceeding only, on May 19, 2017, within the 30 day timeline permitted by the Commission's rules. Within Proceeding 22655, the CCA's costs claim application was assigned Application 22655-A002. The CCA also filed correspondence, a costs attestation letter, which it proposed to include in all future costs claim applications to satisfy the Commission's direction from Decision 21747-D01-2017.⁶ On June 14, 2017, the Commission issued correspondence requesting further information from the CCA. The Commission received this additional information from the CCA on June 28, 2017. On July 27, 2017, the Commission found that the CCA had satisfied the direction in Decision 21747-D01-2017.⁷

11. On June 26, 2017, the Commission issued an IR to the ATCO transmission utilities requesting further information on their cost allocations.

12. In a July 6, 2017 letter, the Commission requested supplemental costs claims in relation to the additional process established by the Commission after the filing of reply argument in the original proceeding. The Commission received supplemental cost claims from the ATCO transmission utilities and the CCA by the July 24, 2017 deadline specified by the Commission.

13. On August 10, 2017, the ATCO transmission utilities filed comments on the CCA's costs claim application. On October 31, 2017, the CCA requested leave to file an attached late submission responding to the ATCO transmission utilities. The CCA advised the Commission that it missed the filing of correspondence by the ATCO transmission utilities on the CCA's costs claim due to inadvertent error. The Commission exercised its discretion to accept the late filing by the CCA but reminds the CCA that it may not accept late filings in future proceedings.

14. The Commission considers the close of record for this proceeding to be October 31, 2017, the date upon which the CCA's final submissions were received.

2 Commission's authority to award costs

15. The Commission's authority to award costs for participation in a utility rates proceeding is found in Section 21 of the *Alberta Utilities Commission Act*. When considering a claim for costs for a utility rates proceeding, the Commission is also guided by Rule 022, and specifically the factors set out in Section 11 of Rule 022: *Rules on Costs in Utility Rate Proceedings* (Rule

⁶ Decision 21747-D01-2017: ATCO Electric Ltd. 2015-2017 Transmission General Tariff Application Costs Award, Proceeding 21747, January 30, 2017.

⁷ The Commission's June 14, 2017 and July 27, 2017 letters can be found on Proceeding 22670, the AUC Initiated Income Tax Methodologies proceeding.

022). These factors include, among other things, whether eligible participants' costs claims are reasonable and directly and necessarily related to the original proceeding, and whether the participants acted responsibly and contributed to a better understanding of the issues before the Commission. Appendix A of Rule 022 prescribes a Scale of Costs applicable to all costs claimed.

16. Paragraph 4 of Appendix C of Rule 022 reflects the statutory onus on the eligible claimant to provide sufficient information to the Commission to allow it to effectively assess the costs claim. The claimant must also address the specifics of the proceeding. In reaching the determinations set out within this decision, the Commission has considered all relevant materials on the records of both the original proceeding and this costs claim proceeding. Accordingly, references in this decision to specific parts of the records are intended to assist the reader in understanding the Commission's reasoning relating to a particular matter and should not be taken as an indication that the Commission did not consider all relevant portions of the records with respect to that matter.

2.1 ATCO transmission utilities

17. The following table summarizes the ATCO transmission utilities' costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
ATCO Electric							
Bennett Jones LLP	124.55	0.00	0.00	\$43,366.50	\$251.35	\$0.00	\$43,617.85
Mercer (Canada) Limited	490.77	0.00	0.00	\$112,663.60	\$0.00	\$0.00	\$112,663.60
Total	615.32	0.00	0.00	\$156,030.10	\$251.35	\$0.00	\$156,281.45
ATCO Pipelines							
Bennett Jones LLP	124.55	0.00	0.00	\$43,366.50	\$251.35	\$0.00	\$43,617.85
Mercer (Canada) Limited	490.77	0.00	0.00	\$112,663.60	\$0.00	\$0.00	\$112,663.60
Total	615.32	0.00	0.00	\$156,030.10	\$251.35	\$0.00	\$156,281.45

18. The Commission finds that the 2014-2018 pension plan application and related submissions contributed to the Commission's understanding of the relevant issues. However, the Commission is unable to approve the full amount of the costs claimed in respect of the services performed by Bennett Jones LLP and Mercer (Canada) Limited for the reasons set out below.

2.1.1 Proceeding 3405 costs

19. The following table summarizes the ATCO transmission utilities' costs claim for the 2014 pension application in Proceeding 3405:⁸

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
ATCO Electric							
Bennett Jones LLP	9.50	0.00	0.00	\$3,325.00	\$5.51	\$0.00	\$3,330.51
ATCO Pipelines							
Bennett Jones LLP	9.50	0.00	0.00	\$3,325.00	\$5.51	\$0.00	\$3,330.51

⁸ Invoices 1044070, 1048747, 1051941, 1065405, 1069268 and 1102615 were related to Proceeding 3405. The Commission has determined that the remaining invoices relate to Proceeding 21831.

20. On September 10, 2014, the ATCO Utilities filed an application requesting approval of their 2014 pension plan costs. The Commission assigned Proceeding 3405 and Application 1610833-1 to the 2014 pensions application. The Office of the Utilities Consumer Advocate (UCA) filed a motion requesting a stay of the proceeding until a final determination was made on the ATCO Utilities' 2013 pension application, Proceeding 2954.⁹ In an October 17, 2014 letter, the Commission granted the UCA's motion and held the proceeding in abeyance.

21. The Commission issued Decision 2954-D01-2015 relating to the 2013 pension application on January 15, 2015.¹⁰

22. On January 20, 2015, the ATCO Utilities requested that the 2014 pension plan proceeding remain in abeyance until the Supreme Court of Canada released its judgement on an appeal of the ATCO Utilities' 2011 pension application, decided in Decision 2011-391.¹¹ The Commission granted this request.¹²

23. On April 26, 2016, the ATCO Utilities applied to withdraw their 2014 pension application because they planned to file a revised application that incorporated a 2014 Mercer valuation report and a new 2016 Mercer valuation report.

24. The Commission issued an April 27, 2016 disposition letter confirming the withdrawal of the ATCO Utilities' 2014 pension application and Proceeding 3405 was closed.

Bennett Jones LLP

25. In this costs proceeding, the ATCO Utilities claimed total legal fees for Bennett Jones LLP of \$6,650.00 and disbursements for photocopying of \$11.02, for a total of \$6,661.02 relating to the closed 2014 pension plan proceeding.

Commission findings

26. The ATCO Utilities costs claimed for Proceeding 3405 was not filed within the 30 day time limit following the close of record for costs recovery set out in Section 9.3 of Rule 022. Proceeding 3405 was closed on April 27, 2016, at the ATCO Utilities' request.

27. No costs claim was filed for these costs within the time period specified by Rule 022 and no explanation was provided in the current costs claim on why the costs claimed in Proceeding 3405 were not filed in time or why these costs should be now be considered in the current costs claim proceeding. Accordingly, the Commission disallows Bennett Jones LLP legal fees of \$6,661.02, which represent the total amount of costs claimed in relation to Proceeding 3405.

⁹ Proceeding 2954, ATO Utilities, 2013 Pension Application.

¹⁰ Decision 2954-D01-2015 (Errata): ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.), 2013 Pension Application, Proceeding 2954, May 28, 2015.

¹¹ Decision 2011-391: ATCO Utilities (ATCO Gas, ATCO Pipelines, and ATCO Electric Ltd.): 2011 Pension Common Matters, Application 1606850, Proceeding 999, September 27, 2011. The Supreme Court of Canada's decision was issued on September 25, 2015, cited as *ATCO Gas and Pipelines Ltd. v Alberta (Utilities Commission)*, [2015] 3 SCR 219, 2015 SCC 45.

¹² Exhibit 3405-X0004, Commission ruling on the ATCO Utilities request to continue the abeyance of the 2014 pension application, February 3, 2015.

2.1.2 Proceeding 21831 costs

28. The following table summarizes the ATCO transmission utilities costs claimed for the original proceeding, Proceeding 21831:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
ATCO Electric							
Bennett Jones LLP	106.50	0.00	0.00	\$40,041.50	\$245.84	\$0.00	\$40,287.34
Mercer Canada	493.02	0.00	0.00	\$112,663.60	\$0.00	\$0.00	\$112,663.60
Total	599.52	0.00	0.00	\$152,705.10	\$245.84	\$0.00	\$152,950.94
ATCO Pipelines							
Bennett Jones LLP	106.50	0.00	0.00	\$40,041.50	\$245.84	\$0.00	\$40,287.34
Mercer Canada	493.02	0.00	0.00	\$112,663.60	\$0.00	\$0.00	\$112,663.60
Total	599.52	0.00	0.00	\$152,705.10	\$245.84	\$0.00	\$152,950.94

2.1.2.1 Bennett Jones LLP

29. The ATCO Utilities were represented by Bennett Jones LLP in the original proceeding. The fees claimed by the ATCO transmission utilities for the legal services provided by Mr. Loyola Keough, Mr. Tim Myers, Mr. Wesley Novotny and Ms. Christine Plante relate to reviewing the draft application, reviewing IRs and draft IR responses, reviewing evidence, preparing argument, reviewing intervenor argument, and finalizing reply argument and supplemental argument.

30. The invoices for the services performed by Bennett Jones LLP did not contain information on the actual hourly rates claimed by counsel or the amounts invoiced for individual tasks. A similar practice was adopted with respect to invoices provided by consultants. Invoices were redacted so that hourly rates and amounts charged for individual tasks would not be disclosed. In their costs application, the ATCO transmission utilities did not claim legal privilege or request that confidential treatment be applied to the costs proceeding, in order to support redactions of the costs information filed with the Commission.

31. Below is an example of a redacted invoices from Bennett Jones LLP, where actual amounts invoiced are removed from the “Amount” column:¹³

¹³ Exhibit 22655-X0001.01, PDF page 25.



July 19, 2017
Page 2

Client: 062169.00045
Invoice No.: 1182840

Date	Lawyer	Description	Hours	Amount
10/07/17	L. G. Keough	Reviewing various emails re additional I.R.s and AU approach; Reviewing draft I.R. Responses	0.70	\$
12/07/17	L. G. Keough	Reviewing AUC Decision summary and notes re same	0.30	
13/07/17	L. G. Keough	Reviewing AUC Decision 21831-D01-2017 re AU Pension Application and notes re same; Telephone call with Mr. Wright to discuss Decision; Reviewing related emails	1.70	
Total Hours and Professional Services			2.70	\$

32. A supporting letter was provided by counsel for Bennett Jones LLP to confirm that all of the hourly rates charged by counsel were above the Scale of Costs, after discounts.¹⁴ In previous costs claims, the Commission has accepted letters from Bennett Jones LLP that the Bennett Jones LLP professional fees, including any discounts, are equal to or in excess of the hourly rates under the Scale of Costs.¹⁵

33. In the current proceeding, the Commission will evaluate the current costs claim based on the information provided, as redacted. While the Commission finds that the services performed by Mr. Keough, Mr. Myers, Mr. Novotny and Ms. Plante were generally directly and necessarily related to the ATCO Utilities' participation in the original proceeding, it finds that the fees claimed for these services were not fully justified.

34. The number of legal hours spent reviewing file correspondence and the 29.5 hours incurred for assistance in the preparation of a 13 page application and attached supporting documents, are excessive in the circumstances of the original proceeding. Accordingly, the Commission considers that a 10 per cent reduction of the ATCO transmission utilities' total costs claim for Bennett Jones LLP's legal fees is warranted. Subject to the comments below, the remainder of the hours and costs claimed for reviewing IRs and draft IR responses, drafting evidence, preparing argument, reviewing intervenor argument, and finalizing reply argument and supplemental argument appear to be reasonable.

35. Sufficient information with respect to the redacted invoices must be supplied on the public record to meet the applicant's onus and support the quantum and activities performed for which a costs claim is made. No explanation has been provided by the ATCO transmission utilities or their counsel for the redactions. The Commission considers that invoices in support of

¹⁴ In previous costs claims, the Commission has accepted letters from Bennett Jones LLP that the Bennett Jones legal fees including any discounts are equal to or in excess of the hourly rates under the Scale of Costs. For example, see Proceeding 22632 for ATCO Electric Transmission's Common Group Application Costs Claim Exhibit 22632-X0001, PDF Page 11.

¹⁵ For example, see Proceeding 22632 for ATCO Electric Transmission's Common Group Application Costs Claim Exhibit 22632-X0001, PDF Page 11.

a costs award should not be redacted unless there is a pre-existing confidential ruling in place for such amounts or the information is subject to legal privilege.

36. The Commission previously addressed the issue of redacted invoices in Decision 21212-D01-2016 where it directed ATCO Pipelines to file unredacted versions of the consultant invoices in a concurrent proceeding. The Commission found:

...ATCO Pipelines may resubmit the \$21,140.50 in costs related to the preparation of: the license fee evidence, information responses on matters addressed in Gowlings' evidence, and rebuttal evidence, as part of its cost application related to Proceeding 21029. In resubmitting the invoices for Gowlings in Proceeding 21029, ATCO Pipelines is directed to provide a summary of the work performed by the consultants named in the invoices, whose costs are claimed for recovery, and the curricula vitae for each of the consultants. **Invoices filed as part of that proceeding must be unredacted.**¹⁶ (footnotes removed) (emphasis added)

37. The Commission considers that the legal invoices should be governed by the same principles applied to consultant invoices in Decision 21212-D01-2016, and that full invoices should be filed to allow transparency of the hours and rates claimed to the actual hours and rates invoiced. The Commission directs that in future costs proceedings, all ATCO Utilities file unredacted legal invoices for purposes of cost recovery.

38. In consideration of the above findings, the Commission approves 90 per cent of costs for legal fees for Bennett Jones LLP in the amount of \$72,074.70 and disbursements of \$491.68 for a total of \$72,566.38. The allocation of costs among the ATCO Utilities is discussed in Section 2.1.2.3 of this decision.

2.1.2.2 Mercer (Canada) Limited

39. Mercer (Canada) Limited (Mercer) was retained by the ATCO Utilities to perform consulting services in the original proceeding. The fees claimed by the ATCO transmission utilities for the consulting services provided by Mercer relate to preparing initial valuation reports, reviewing IRs, drafting IR responses, drafting evidence, preparing argument, reply argument and supplementary IRs. In preparation of the Mercer valuation reports in the original proceeding, the following 24 staff were used:

- Eight senior personnel (more than 12 years experience)
- Eight intermediate personnel (between five and 12 years of experience)
- Eight junior personnel (four or less years of experience)

40. The majority of the work performed, approximately 73 per cent, was undertaken by three of the senior consultants.

41. While the Commission finds the services performed by Mercer to be generally directly and necessarily related to the ATCO Utilities' participation in the original proceeding, it finds

¹⁶ Decision 21212-D01-2016: ATCO Pipelines, 2015-2016 General Rate Application, Costs Award, Proceeding 21212, April 19, 2016, paragraph 18.

the number of consultants used by Mercer in the proceeding to be excessive in light of the materials filed and the nature of their participation in the original proceeding.

42. The invoices filed by the ATCO transmission utilities for the services performed by Mercer were also redacted and did not contain information on the actual hourly rates or total fees invoiced for each individual consultant. While Bennett Jones LLP filed a supporting letter to confirm that all of the legal hourly rates were above the Scale of Costs, there was no similar letter with respect to Mercer’s hourly rates. Further, no confidentiality ruling that would support a redaction of costs information applied to the original proceeding or to the costs proceeding. The Mercer invoices likewise did not include an itemized description of the tasks performed by individual consultants and the time recorded for the performance of each task in preparing the evidence.

43. Below are examples of the redacted Mercer invoices:¹⁷

For professional services rendered for the period through to the end of March 2016.
 The consulting fees detailed in this invoice relate to:


	Fees
GTA 2017-2018	\$ 24,257.00
<ul style="list-style-type: none"> • Model various bonus assumptions • Re-run the total remuneration analysis with various pension assumptions • Ongoing communication and correspondence during the period including the following telephone conversations: <ul style="list-style-type: none"> - 11 and 16 February as well as 1 and 7 March 2016, Kenneth Yung and Wayne Wright - 25 February 2016, Kenneth Yung with Wayne Wright and Carole Field - 29 February 2016, Kenneth Yung with Wayne Wright, Carole Field and Loyola Keough 	

¹⁷ Exhibit 22655-X001, PDF pages 63 and 59.

ATCO Ltd.

Breakdown of Professional Services Rendered

January 1, 2016 to January 31, 2016

	<u>AUC Process</u>	<u>TOTAL</u>	<u>Hourly Rate</u>
Arron Dobson	1.00	1.00	
Beverly Zheng	1.00	1.00	
Braydon Lietz	7.25	7.25	
Jay Stanley	3.25	3.25	
Luc Berneche	1.25	1.25	
Mark Greenwood	14.00	14.00	
Nelson Tishcoff	3.25	3.25	
TOTAL HOURS:	31.00	31.00	
Amount Invoiced:	\$16,542.50	\$16,542.50	

44. The Commission finds that the redactions of the Mercer activities made it difficult for the Commission to objectively consider the reasonableness of the consulting costs claimed in the original proceeding. Actual hourly rates would have also assisted the Commission in determining the justification of costs for junior, intermediate and senior consultants. The Commission found it difficult to assess the need for 24 consultants to prepare the evidence presented by Mercer.

45. Further, no information was provided about the work performed by individual Mercer consultants, their expertise, or why the number of consultants did not result in duplication of work. The use of 24 consultants resulted in multiple consultants performing technical analysis and review of the materials for the preparation of the Mercer valuation reports. As the invoices above show, there was no description of activities by individual consultants and the Commission could not ascertain whether the length of time spent on a task was reasonable given the experience and seniority of the consultant performing the task. No biographies, curriculum vitae, or other supporting information about the work of individual consultants were provided. Without further information on each consultant's expertise, the work performed by each of the consultants, and the time required to perform a task, the Commission is unable to assess whether the number of hours and the activities undertaken by individual Mercer consultants were reasonable, and directly and necessarily related to the proceeding.

46. In the Commission's view, the principles applied to consultant invoices in Decision 21212-D01-2016 should also apply to Mercer's invoices. The Commission directs the ATCO Utilities in future costs claim proceedings to provide unredacted versions of consultant invoices filed for cost recovery. The Commission also directs that future cost applications include: (1)

itemized invoices that show the hours, rates and amounts invoiced for each consultant, and (2) a summary of the consultant's experience or curricula vitae for each consultant.

47. As a result of the redactions and for the above reasons, the costs claimed for Mercer have been partially denied. The number of consultants and hours of consultant work were not sufficiently supported in the costs claim application and supporting invoices. The Commission therefore considers that a 25 per cent reduction is warranted. The Commission consequently approves costs for consulting fees for Mercer in the total amount of \$168,995.40.

48. The allocation of costs among the ATCO Utilities is discussed in the following section of this decision.

2.1.2.3 Allocation of costs claimed among the ATCO Utilities

49. In their original costs application, the ATCO transmission utilities submitted that the costs incurred by the ATCO Utilities in Proceeding 3405 were allocated 15 per cent to each of ATCO Electric – Transmission and ATCO Pipelines, while the costs incurred in the original proceeding were allocated 50 per cent to each of ATCO Electric - Transmission and ATCO Pipelines. In their supplemental costs claim application, the ATCO transmission utilities submitted that the eligible costs, i.e. the portion of the total costs allocated to the transmission companies, incurred in both Proceeding 3405 and the original proceeding, should be allocated 50 per cent to ATCO Electric-Transmission and 50 per cent to ATCO Pipelines.¹⁸

50. In the last pension costs decision, Decision 3525-D01-2015, the Commission approved the following allocation of costs among the ATCO Utilities: 35 per cent to ATCO Gas, 35 per cent to ATCO Electric - Distribution, 15 per cent to ATCO Pipelines and 15 per cent to ATCO Electric - Transmission. The Commission found the following:

In their response to IRs in the current costs proceeding, however, the ATCO Utilities stated that specific calculations were not performed, but rather a general allocator was used “based on the relative size and representative amount of effort for each company.” While the Commission accepts this explanation for the purposes of the costs in this proceeding, the Commission would like further clarification on the cost allocation methodology to be applied in future pension costs applications. Specifically, the Commission will require more information with respect to the general allocation methodology used and how it was applied to arrive at the cost allocations to the ATCO Utilities.

The ATCO Utilities are directed to provide in future pension applications an explanation of the cost allocation methodology (ies) used and the underlying calculations and resulting percentages allocated to each of ATCO Gas, ATCO Electric – Distribution, ATCO Electric –Transmission, and ATCO Pipelines. The ATCO Utilities must fully explain the allocation methodology (ies) used and indicate whether it is based on the

¹⁸ The invoices for Bennett Jones show that the total number of hours invoiced was 218.5 and the total number of hours that the ATCO transmission utilities claimed was 118.75. The invoices for Mercer Canada show that the number of hours invoiced was 229.50 and the total number of hours that the ATCO transmission utilities claimed was 114.75. The Commission has used the total number of hours invoiced for Bennett Jones and Mercer Canada to allocate the costs awarded.

number of employees within the defined benefit plan for each utility, the relative size of each utility, the amount of effort for each company, or if some other basis was used.¹⁹

51. The ATCO transmission utilities' proposal to allocate costs incurred in Proceeding 3405 and in the original proceeding is not consistent with the allocation of costs approved in Decision 3525-D01-2015. The ATCO transmission utilities have not provided sufficient support in the application for the allocation of 50 per cent of eligible costs to ATCO Pipelines and 50 per cent to ATCO Electric – Transmission without explanation of the allocations to either ATCO Gas or ATCO Electric – Distribution. The ATCO transmission utilities did not explain their rationale for why they recommended a change to the allocation methodology or why the proposed allocation methodology is better reflective of the costs borne by each of the ATCO Utilities in Commission proceedings. They have not indicated whether the new allocation is based upon the number of employees, the relative size of each utility, the amount of effort of each company or any other reason for the proposed allocation. In the absence of this information, the Commission must deny the requested change in allocation, and approves an allocation of ATCO Utilities costs that is based on the methodology approved in Decision 3525-D01-2015, namely 35 per cent to ATCO Gas, 35 per cent to ATCO Electric - Distribution, 15 per cent to ATCO Pipelines and 15 per cent to ATCO Electric - Transmission.

52. In future costs applications where costs are allocated between different ATCO utilities,²⁰ the ATCO Utilities are directed to provide the Commission with an allocation methodology with supporting reasons on why that allocation should be used. In future cost applications, the ATCO Utilities are also directed to indicate whether the Rule 005 filing costs allocations that have been applied to the CCA's costs claims in Section 2.3 of this decision could be used for the allocation of the ATCO Utilities' external legal and consulting costs.

2.1.3 Total costs awarded

53. The following table summarizes the Bennett Jones LLP and Mercer costs approved by the Commission in accordance with the findings of this decision:

Claimant	Total Fees Claimed (reallocated)	Total Disbursements Claimed (reallocated)	Total GST Claimed	Total Amount Claimed (reallocated)	Total Fees Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
ATCO Electric - Transmission								
Bennett Jones LLP	\$13,009.95	\$75.41	\$0.00	\$13,085.26	\$10,811.21	\$73.75	\$0.00	\$10,884.96
Mercer Canada	\$33,799.08	\$0.00	\$0.00	\$33,799.08	\$25,349.31	\$0.00	\$0.00	\$25,349.31
Total	\$46,809.03	\$75.41	\$0.00	\$46,884.44	\$36,160.52	\$73.75	\$0.00	\$36,234.27
ATCO Electric-Distribution								
Bennett Jones LLP	\$30,356.55	\$175.95	\$0.00	\$30,532.50	\$25,226.15	\$172.09	\$0.00	\$25,398.23
Mercer Canada	\$78,864.52	\$0.00	\$0.00	\$78,864.52	\$59,148.39	\$0.00	\$0.00	\$59,148.39
Total	\$109,221.07	\$175.95	\$0.00	\$109,397.02	\$84,374.54	\$172.09	\$0.00	\$84,546.62
ATCO Gas								
Bennett Jones LLP	\$30,356.55	\$175.95	\$0.00	\$30,532.50	\$25,226.15	\$172.09	\$0.00	\$25,398.23
Mercer Canada	\$78,864.52	\$0.00	\$0.00	\$78,864.52	\$59,148.39	\$0.00	\$0.00	\$59,148.39
Total	\$109,221.07	\$175.95	\$0.00	\$109,397.02	\$84,374.54	\$172.09	\$0.00	\$84,546.62
ATCO Pipelines								
Bennett Jones LLP	\$13,009.95	\$75.41	\$0.00	\$13,085.26	\$10,811.21	\$73.75	\$0.00	\$10,884.96
Mercer Canada	\$33,799.08	\$0.00	\$0.00	\$33,799.08	\$25,349.31	\$0.00	\$0.00	\$25,349.31
Total	\$46,809.03	\$75.41	\$0.00	\$46,884.44	\$36,160.52	\$73.75	\$0.00	\$36,234.27
				Total				\$241,561.78

¹⁹ Decision 3525 at paragraphs 20 and 21.

²⁰ Proceeding 20514.

2.2 Consumers' Coalition of Alberta

54. The following table summarizes the CCA's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company	30.90	0.00	7.00	\$14,280.00	\$0.00	\$714.00	\$14,994.00
Regulatory Services Inc.	115.00	0.00	40.80	\$47,709.00	\$0.00	\$2,385.45	\$50,094.45
Total	145.90	0.00	47.80	\$61,989.00	\$0.00	\$3,099.45	\$65,088.45

55. The Commission finds that the CCA acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues. The Commission approves the costs claimed for Wachowich & Company. However, the Commission is unable to approve the full amount of the costs claimed in respect of the services performed by Regulatory Services Inc. for the reasons set out below.

Wachowich & Company

56. The CCA was represented by Wachowich & Company in the original proceeding. The fees claimed by the CCA for the legal services provided by Mr. James Wachowich relate to reviewing the application, reviewing prior decisions, reviewing draft IRs, reviewing evidence, and editing argument, reply argument and supplemental argument.

57. The Commission finds that the services performed by Mr. Wachowich were directly and necessarily related to the CCA's participation in the original proceeding, and that the fees, which were claimed in accordance with the Scale of Costs for those services, are reasonable. Accordingly, the Commission approves the CCA's claim for legal fees for Wachowich & Company in the amount of \$14,280.00 and GST of \$714.00, for a total of \$14,994.00.

Regulatory Services Inc.

58. Regulatory Services Inc. was retained by the CCA to perform consulting services in the original proceeding. The CCA fees claimed for the consulting services provided by Mr. Jan Thygesen relate to reviewing the application, drafting IRs, reviewing IR responses, preparing a motion, and drafting evidence, argument, reply argument and supplemental argument. Mr. Thygesen's evidence raised issues on the increasing pension costs to customers, employee and employer contribution rates, comparisons to the Alberta Public Service Pension Plan (PSPP) and the Local Authorities Pension Plan (LAPP), the impact of a contribution holiday, mixed reporting of the defined benefit and defined contribution plans, impact of performance-based regulation, the increase in COLA, retroactive ratemaking, and future market uncertainty.

59. The ATCO transmission utilities submitted that the charges associated with Regulatory Services Inc. should be reduced by 50 per cent because the costs do not meet the Commission's established criteria in Section 11.1 of Rule 022. Further, in past decisions the Commission considered the following to be relevant: (1) whether the consultant had given evidence outside his or her area of expertise, and (2) whether the consultant had sufficient experience in providing

an opinion. The ATCO transmission utilities argued that Mr. Thygesen's costs should be reduced because:

- The number of hours, which included 115.0 hours for preparation and 61.7 hours for argument and reply argument, are unreasonable.
- Mr. Thygesen did not have the requisite expertise to be considered an expert in pension matters.
- Certain positions advanced in evidence, reply argument and supplemental argument on retroactive ratemaking demonstrated a lack of understanding of this concept.²¹

60. The CCA responded that the ATCO transmission utilities' comments do not appear to go to the substance of the evidence of the CCA but rather is an attack on Mr. Thygesen's qualifications and the methodology he employed. In respect of Mr. Thygesen's expertise, the CCA asserted that it:

- Never claimed the witness was a pension expert.
- Did not give an expert opinion, but the witness generally relied on past Commission proceedings and ATCO submissions in the current proceeding and other proceedings in supplying evidence.
- Is well-versed in the regulatory treatment of costs and with pensions as a utility cost.²²

61. The CCA referred to Bulletin 2016-07,²³ in which the Commission commented upon the issue of witness evidence, and indicated that the value ascribed to such evidence is a question of weight.²⁴

62. In its letter, the CCA stated that Mr. Thygesen's work was a compilation and analysis of ATCO Utilities' data. The CCA used the data to demonstrate the deterioration of various solvency and funding metrics. The CCA commented that other areas of the submissions pointed to a lack of clarity in reporting how supplemental pension payments were paid.

Commission findings

63. The Commission acknowledges the CCA's submission that Mr. Thygesen did not purport to be a pension expert. The ATCO transmission utilities have relied on the lack of specialized expertise of Mr. Thygesen to indicate that there should be a reduction of costs. Consistent with Bulletin 2016-07, the Commission considered the qualifications of Mr. Thygesen in assessing the

²¹ Exhibit 22655-X0017, letter from Bennett Jones LLP on behalf of the ATCO Utilities, August 10, 2017, paragraphs 6-8.

²² Exhibit 22655-X0018, page 1.

²³ Exhibit 22655-X0018, page 2 and referring to Bulletin 2016-07: Practice advisory and procedural change – expert witness qualification no longer required, March 24, 2016.

²⁴ Bulletin 2016-07, paragraph 2.

weight to be accorded to his evidence in issuing its decision in the original proceeding. The costs claimed for Mr. Thygesen's services are also assessed in light of the weight accorded to the evidence and the other factors identified in Section 11 of Rule 022.

64. While the Commission finds that the services performed by Regulatory Services Inc. were generally directly and necessarily related to the CCA's participation in the original proceeding as required by Section 11.1(a) of Rule 022, it is of the view that certain portions of the evidence and submissions focused on issues that were not relevant²⁵ or did not contribute to a better understanding of the issues before the Commission.²⁶

65. The evidence and submissions prepared by Mr. Thygesen included a discussion of issues, such as retroactive ratemaking and the similarity of the pension plan to government pension plans, that were irrelevant or of limited assistance to the Commission. In Decision 21831-D01-2017, the Commission stated:

The CCA submitted that revised estimates of costs for demographic changes and changes in assumptions of service provided in prior years constitute retroactive ratemaking. The Commission agrees with the ATCO Utilities that demographic and other assumptions change over time and reflecting those changes in the actuarial reports, which impacts pension costs to be included in rates, is not inconsistent with prospective ratemaking principles. Further, pension costs in the current proceeding were given placeholder treatment until the Commission could assess both valuation reports. The Commission rejects the CCA's retroactive ratemaking argument. The Commission has not previously determined the pension costs to be recovered for 2014, or other years beyond 2014, in past applications, and the pension costs related to these amounts are clearly before it in the current application.

The CCA also asserted that the contribution rates of the ATCO Utilities' employees are significantly below those of employees covered by the LAPP and PSPP. While the CCA's observation may be factually correct, the Commission finds that it is unable to draw any actionable inferences or meaningful policy conclusions from it. In particular, it is not persuaded that deeming higher employee contribution rates is warranted. As the ATCO Utilities has correctly pointed out, employee contributions are largely a function of the financial health of the specific plan, the specific provisions of the plan, and the actual benefits payable under the plan. These are, and have been, quite different as between the CU plan and the LAPP and PSPP.²⁷

66. Furthermore, the Commission finds that the evidence relating to the mixed reporting of the defined benefit and defined contribution elements of the pension plan was not of assistance to the Commission in making its determinations in Decision 21831-D01-2017. The defined benefit and defined contribution portions of these plans were sufficiently explained in the application and explored through IRs.

67. The Commission consequently reduces the costs claimed for Regulatory Services Inc.'s by 40 per cent, which results in fees approved of \$28,625.40 and GST of \$1,431.27, for a total of \$30,056.67.

²⁵ Section 11.2(f) of Rule 022.

²⁶ Section 11.1(b) of Rule 022.

²⁷ Decision 21831-D01-2017, paragraph 102 and 103.

Total amount awarded

68. For the reasons above, the Commission approves the CCA's claim for recovery of costs in the total amount of \$45,050.67. This amount is composed of legal fees of \$14,280.00, consulting fees of \$28,625.40 and GST of \$2,145.27.

2.3 Allocation of the CCA's costs

69. The CCA did not propose a method for allocating its costs and no submissions were provided from the ATCO Utilities on the proposed allocation of costs approved for the CCA. The CCA's participation addressed matters of general application to the transmission and distribution functions of the ATCO Utilities. Accordingly, the Commission has determined that each of the ATCO Utilities should bear a portion of the approved costs of the CCA's participation.

70. The methodology utilized by the Commission to allocate intervenor costs among utilities participating in a proceeding has been based on approved revenue requirements as reflected in filings made under Rule 005. This allocation methodology was previously approved in several decisions, including decisions 22082-D01-2017²⁸ and 2012-030.²⁹ The allocation methodology has been modified for the purposes of this decision, however, because distribution utilities, unlike transmission utilities, do not have an approved revenue requirement under performance-based regulation. Therefore, in determining the allocations for the CCA's approved costs, the Commission has used the 2016 Rule 005 reported revenue amounts rather than the revenue requirement amounts for each of the ATCO Utilities.

71. The Commission has also adjusted the 2016 Rule 005 reported revenue amounts for ATCO Gas to exclude revenue associated with transmission charges and ATCO Electric – Distribution to exclude revenue associated with transmission system access charges because the revenue associated with these charges are also reported for ATCO Pipelines and ATCO Electric – Transmission. The removal of these costs is intended to establish a method in order to allocate intervenor costs consistently and on a comparable basis between the separate regulated ATCO Utilities. These modifications are consistent with the approach taken by the Commission in Decision 22760-D01-2017.³⁰

72. Consistent with the intervenor costs allocation methodology approved by the Commission in past decisions, modified as described above, 25 per cent of the CCA's costs will be allocated on an equal basis to the individual ATCO transmission and distribution utilities, and 75 per cent will be allocated on a proportional basis, using the 2016 revenue reported for each of the ATCO Utilities in their respective Rule 005 filings, adjusted as described above.

73. The allocation of the approved CCA costs to be paid by the ATCO Utilities is attached as Appendix B to this decision.

²⁸ Decision 22082-D01-2017: 2018-2022 Performance-Based Regulation Plans for Alberta Electric and Gas Distribution Utilities, Costs Award, Proceeding 22082, February 6, 2017.

²⁹ Decision 2012-030: 2011 Generic Cost of Capital, Cost Awards, Applications 1607747, 1607754, 1607756, 1607758, 1607760, 1607761, 1607762, 1607778, 1607784, Proceeding 1486, January 25, 2012.

³⁰ Decision 22670-D01-2017: Income Tax Methodologies Generic Proceeding Costs Award, Proceeding 22670, October 30, 2017.

3 Order

74. It is hereby ordered that:

- 1) ATCO Electric Ltd. (ATCO Electric - Transmission) shall pay external costs in the amount of \$36,234.27, as shown in Appendix A.
- 2) ATCO Electric Ltd. (ATCO Electric - Transmission) shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$13,715.90, as shown in Appendix B.
- 3) ATCO Electric Ltd. (ATCO Electric - Transmission) shall record in its Hearing Cost Provision Account approved external and intervener costs in the amount of \$49,950.17.
- 4) ATCO Electric Ltd. (ATCO Electric - Distribution) shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$9,667.03, as shown in Appendix B.
- 5) ATCO Electric Ltd. (ATCO Electric - Distribution) shall record in its Intervener Hearing Costs account approved intervener costs in the amount of \$9,667.03.
- 6) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall pay external costs in the amount of \$36,234.27, as shown in Appendix A.
- 7) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$6,471.91, as shown in Appendix B.
- 8) ATCO Gas and Pipelines Ltd (ATCO Pipelines) shall record in its Reserve for Hearing Costs approved external and intervener costs in the amount of \$42,706.18.
- 9) ATCO Gas and Pipelines Ltd. (ATCO Gas) shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$15,195.83, as shown in Appendix B.
- 10) ATCO Gas and Pipelines Ltd. (ATCO Gas) shall record in its Deferred AUC and Intervener Costs account approved intervener costs in the amount of \$15,195.83.

Dated on January 29, 2018.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

ATCO Utilities
Pension Application
Costs Award
Proceeding 22655

Appendix A

ATCO Utilities Costs Allocation

	Allocation percentage	Bennett Jones LLP fees	Mercer Canada GP Inc. Fees	Disbursements	Total
ATCO Gas and Pipelines Ltd. - Transmission	15%	\$10,811.21	\$25,349.31	\$73.75	\$36,234.27
ATCO Electric Ltd. - Distribution	35%	\$25,226.15	\$59,148.39	\$172.09	\$84,546.62
ATCO Gas & Pipelines Ltd. - Distribution	35%	\$25,226.15	\$59,148.39	\$172.09	\$84,546.62
ATCO Electric Ltd. - Transmission	15%	\$10,811.21	\$25,349.31	\$73.75	\$36,234.27
Total Amount	100%	\$72,074.70	\$168,995.40	\$491.68	\$241,561.78

ATCO Utilities
Pension Application
Costs Award
Proceeding 22655

Appendix B

CCA Costs Allocation

	ATCO Gas and Pipelines Ltd. - Transmission (a)	ATCO Electric Ltd. - Distribution (b)	ATCO Gas & Pipelines Ltd. - Distribution (c)	ATCO Electric Ltd. - Transmission (d)	Total
Total Revenue 2016 Rule 005	\$233,015.00	\$782,885.96	\$969,591.00	\$694,678.93	\$2,680,170.90
Transmission Access Payments/Flow Through Expenses 2016 Rule 005		\$346,243.73	\$180,595.00		\$526,838.73
Total Revenue	\$233,015.00	\$436,642.23	\$788,996.00	\$694,678.93	\$2,153,332.17
% of Total Revenue	10.82%	20.28%	36.64%	32.26%	100%
Consumers' Coalition of Alberta 75% Costs Allocation	\$3,656.25	\$6,851.37	\$12,380.16	\$10,900.23	\$33,788.00
Consumers' Coalition of Alberta 25% Costs Allocation	\$2,815.67	\$2,815.67	\$2,815.67	\$2,815.67	\$11,262.67
Total Amount Awarded	\$6,471.91	\$9,667.03	\$15,195.83	\$13,715.90	\$45,050.67
TOTAL PAYABLE	\$6,471.91	\$9,667.03	\$15,195.83	\$13,715.90	\$45,050.67