



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

2013-2014 General Rate Application

Costs Award

April 21, 2014

The Alberta Utilities Commission

Decision 2014-115: ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd.

2013-2014 General Rate Application Costs Award

Application Nos. 1609965 and 1609968

Proceeding No. 2855

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1 Introduction

1. ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., filed an application with the Alberta Utilities Commission (AUC or Commission) on December 20, 2012, requesting approval for its 2013 and 2014 revenue requirement and settlement of regulatory deferral accounts (the application). The application also contained a request by ATCO Pipelines for a determination of its permitted return on equity (ROE) and capital structure for the 2013 and 2014 period.

2. The Commission received a statement of intent to participate (SIP) from each of TransAlta Corporation, Encana Corporation, Canadian Association of Petroleum Producers (CAPP), The Office of the Utilities Consumer Advocate (UCA), NOVA Gas Transmission Ltd. (NGTL) and the Consumers' Coalition of Alberta (CCA).

3. The UCA brought a motion seeking to have consideration of ATCO Pipelines' proposed ROE and capital structure undertaken in the Commission's upcoming 2013 Generic Cost of Capital (GCOC) proceeding (Proceeding No. 2191). The UCA submitted that this would provide a more efficient means of dealing with these issues, instead of addressing them in two separate proceedings.

4. The Commission received submissions on the UCA motion from the CCA, CAPP, and ATCO Pipelines. In a letter dated January 29, 2013, the Commission approved the UCA's motion to have ATCO Pipelines' ROE and capital structure considered in the 2013 GCOC proceeding. ATCO Pipelines was directed to refile its application, with its capital structure and ROE revised as placeholders, consistent with ATCO Pipelines' approved capital structure and ROE from Decision [2011-474](#).¹

5. On February 11, 2013, ATCO Pipelines refiled its application with placeholders for the ROE and common equity ratio of 8.75 per cent and 38 per cent respectively, consistent with Decision 2011-474.

6. In consideration of the fact that capital structure and ROE had been moved to the 2013 GCOC proceeding, ATCO Pipelines requested that an additional placeholder be established for the impact of its proposed normalized deferred taxes on the 2014 test year revenue requirement.

7. In a letter dated June 28, 2013, after considering the parties' submissions, the Commission denied ATCO Pipelines' request that placeholders be used in respect of proposed

¹ Decision 2011-474: 2011 Generic Cost of Capital, Application No. 1606549, Proceeding ID No. 833, December 8, 2011.

corporate signature rights, donations and sponsorships costs and that the merits of these costs be considered in a separate proceeding. The Commission also established the remainder of the process schedule for the application based on submissions received from ATCO Pipelines, the CCA, and the UCA, all at that time in support of a written process.

8. The Commission considered that the record of Proceeding No. 2322 closed on September 5, 2013.

9. On October 4, 2013, the Commission received the CCA's costs claim application.

10. In an October 7, 2013 letter, the Commission circulated a summary of costs being claimed by the CCA 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 October 21, 2013.

11. The Commission received ATCO Pipelines' cost claim application on October 7, 2013.

12. The Commission circulated a revised summary of costs being claimed to interested parties. Parties were advised that any comments regarding the figures listed in the revised summary or the merits of the total costs claimed, were to be filed by October 24, 2013. No comments were received from parties on the revised summary of costs.

13. On December 4, 2013, the Commission issued Decision [2013-430²](#) in respect of Proceeding No. 2322.

14. On January 15, 2014, the Commission requested additional information from ATCO Pipelines in order to better assess its claim, which was received on January 24, 2014.

15. The Commission considers the cost process to have closed on January 24, 2014.

2 Views of the Commission – authority to award costs

16. When assessing costs claims pursuant to Section 21 of the *Alberta Utilities Commission Act* SA 2007, c. A-37.2, the Commission applies AUC [Rule 022: Rules on Intervener Costs in Utility Rate Proceedings](#) (Rule 022). Rule 022 also prescribes a *Scale of Costs* applicable to costs claims.

17. In exercising its discretion to award costs, the Commission will in accordance with Section 11 of Rule 022, consider whether an eligible participant's costs are reasonable and directly and necessarily related to the proceeding; and whether the eligible participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Commission. To the extent reasonably possible, the Commission will be mindful of a participant's willingness to co-operate with the Commission and other participants to promote an efficient and cost-effective proceeding.

18. 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. The

² Decision 2013-430: ATCO Pipelines, 2013-2014 General Tariff Application, Application No. 1609158, Proceeding No. 2322, December 4, 2013.

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 Pipelines

19. ATCO Pipelines submitted a costs claim in the total amount of \$606,112.91. The claim is comprised of legal fees for Bennett Jones LLP in the amount of \$454,581.00 and disbursements of \$3,306.25; consulting fees for Mercer (Canada) Limited (Mercer) in the amount of \$61,620.25; consulting fees for AUS Consultants in the amount of \$79,011.36; and disbursements for notice publication costs in the amount of \$7,594.05.

20. The fees claimed by ATCO Pipelines for legal and consulting fees reflected its actual costs incurred, and were not adjusted to conform to maximum amounts provided for in the *Scale of Costs* set out in Appendix A of Rule 022. In claiming such costs, ATCO Pipelines asserted that it was entitled to full recovery of all prudently incurred regulatory costs, including costs incurred in relation to judicial proceedings.³

21. ATCO Pipelines therefore requested that “to the extent that the Commission is not prepared to approve AP’s cost claim in its entirety at this time, any award of costs now be treated as a placeholder or interim award subject to the outcome of [Appeal Nos. 1301-0069AC and 1301-0070AC]”.⁴

22. Consistent with its established practice, the Commission declines to implement placeholder or interim costs awards for legal and consulting fees claimed in excess of the amounts permitted by the *Scale of Costs*. The Commission is nonetheless mindful of the claimant’s reservation of rights to claim full indemnity for such costs pending the determination of Appeal Nos. 1301-0069AC and 1301-0070AC.

23. After considering ATCO Pipelines’ request, the Commission has determined this cost claim in accordance with its established practice where the claimant has failed to establish the unique circumstances required by Appendix A to Rule 022 to justify an award of costs in excess of the *Scale of Costs*, and has adjusted the amounts claimed for legal and Mercer consulting fees to align with the maximum amounts prescribed by Appendix A.

24. Accordingly, the Commission approves Bennett Jones LLP’s legal fees in the amount of \$232,369.00 and disbursements of \$3,306.25; and consulting fees for Mercer in the amount of \$29,511.00.

25. The Commission approves AUS Consultants’ costs in the amount of \$79,011.36, which are in accordance with Section 11 of Rule 022 and the *Scale of Costs*.

³ ATCO Submission for Justification of Costs, ATCO Pipelines 2013-2014 General Rate Application, dated October 7, 2013 at paragraph 29.

⁴ *Ibid.*

26. ATCO Pipelines' claim for costs related to the publication of its notice of application in respect of Proceeding No. 2322, in the amount of \$7,594.05 and payable to the Commission, is approved in full.

27. Accordingly, the Commission approves costs for ATCO Pipelines in the amount of \$340,891.36 in fees and \$3,306.25 in disbursements.

28. The Commission reminds eligible participants that the efficiency of the costs claim process is greatly enhanced by the provision of complete information at first instance. This principle applies equally to both the information contained in summary and supporting documentation. In the case of documents tendered in support of costs incurred for legal or consulting services, the Commission expects that, at a minimum, such documents will clearly disclose the following information as required by Appendix A of AUC Rule 022:

- a. The date of the activity undertaken;
- b. A description of the activity undertaken with sufficient detail to allow the Commission to understand the nature of the activity and how it relates to the issues being advanced by the eligible participant; and
- c. The time incurred with respect to each described service.

3.2 Consumers' Coalition of Alberta

29. The CCA submitted a costs claim in the total amount of \$71,377.85. The claim is comprised of legal fees for Wachowich & Company in the amount of \$9,065.00 and GST of \$453.25; and consulting fees for Regulatory Services Inc. in the amount of \$58,875.00, disbursements of \$38.90 and GST of \$2,945.70.

30. The claim for Wachowich & Company is comprised of 25.90 hours of legal services incurred for assisting the technical consultant and for legal process.

31. The claim for Regulatory Service Inc. is comprised of 235.50 hours of consulting services. The consulting hours claimed were incurred for reviewing the application, drafting of information requests, reviewing and assessing the subsequent responses and drafting of argument and reply argument.

32. The Commission has considered the costs claim submitted by the CCA bearing in mind the principles specified in the Commission's *Scale of Costs*, as set out in Appendix A to Rule 022. The Commission finds that the hours incurred are reasonable given the tasks described in the costs claim for consulting and legal services and that the costs are in accordance with the *Scale of Costs*. Accordingly, the CCA's claim for fees, disbursements and GST in the total amount of \$71,377.85 is approved.

4 GST

33. In accordance with the Commission's treatment of the GST on cost awards, ATCO Pipelines 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 \$3,398.95.

34. 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 Pipelines shall pay external costs in the amount of \$344,197.61.
2. ATCO Pipelines shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$71,377.85.
3. ATCO Pipelines shall record in its hearing cost reserve account the external applicant and intervener costs awarded in the amount of \$415,575.46.

Dated on April 21, 2014.

The Alberta Utilities Commission

(Original signed by)

Mark Kolesar
Vice-Chair

(Original signed by)

Anne Michaud
Commission Member

(Original signed by)

Neil Jamieson
Commission Member