



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

Review and Variance Decision 2014-090

Costs Award

December 5, 2014

The Alberta Utilities Commission

Decision 2014-333: ATCO Pipelines, a division of ATCO Gas and ATCO Pipelines Ltd.

Review and Variance Decision 2014-090

Costs Award

Application No. 1610861

Proceeding No. 3432

December 5, 2014

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1 Introduction

1. On April 4, 2014, the Alberta Utilities Commission (AUC or the Commission) issued AUC Decision [2014-090](#)¹ the Urban Pipeline Replacement Project (UPR): Costs Award.
2. On May 23, 2014, ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. (ATCO Pipelines) filed a review and variance application with the Commission to review Decision [2014-090](#). The basis for the review and variance application was two-fold: ATCO Pipelines inadvertently missed an invoice from Bennett Jones LLP (Bennett Jones) and there was an error on a spreadsheet included in its costs application.
3. The review and variance application was assigned Application No. 1610599 and Proceeding No. 3245.
4. On August 11, 2014, the Commission issued Decision [2014-237](#), granting the review and variance application. On August 26, 2014, the Commission issued an Errata to Decision 2014-237².
5. On September 24, 2014, the Commission received a costs application from ATCO Pipelines in relation to Decision 2014-237. The Commission assigned Application No. 1610861 and Proceeding No. 3432 to the submitted costs application.
6. By letter dated September 29, 2014, the Commission circulated a summary of costs being claimed. Parties were advised to file any comments with regards to the figures listed in the summary, or merits of the costs claimed, by October 8, 2014. No comments were received from parties.
7. The Commission considers the close of record for this costs proceeding to be October 8, 2014.

2 Commission's authority to award costs

8. 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 incidental to any hearing or other proceeding. When

¹ Decision 2014-090: ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. Urban Pipeline Replacement Project, Costs Award. Application Nos. 16100090, 1610094, 1610119 and 1610144, Proceeding No. 2933, April 4, 2014.

² Decision 2014-237 (Errata): ATCO Gas and Pipelines Ltd. Request for Review and Variance of AUC Decision 2014-090, Application No. 1610599, Proceeding No. 3245, August 26, 2014.

assessing a cost claim pursuant to Section 21 of the *Alberta Utilities Commission Act* the Commission applies AUC [Rule 022: Rules on Intervener Costs in Utility Rate Proceedings](#) (Rule 022).

9. 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.

10. As the costs of a utility proceeding are generally passed on to customers, it is the Commission's duty to ensure that the customers receive fair value for a party's contribution. The Commission only approves those costs that are reasonable and directly and necessarily related to the party's participation in the proceeding.

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

3 Commission's findings – Views of Assessment

3.1 ATCO Pipelines

12. ATCO Pipelines submitted a costs claim for legal fees totalling \$7,550.77 attributable to the services of Bennett Jones. The claim is comprised of legal fees of \$7,490.00 and disbursements of \$60.77. This amount relates to 21.40 hours of legal services for the preparation of the review and variance application.

13. In the Commission's view, the time spent by Bennett Jones preparing the review and variance application is not recoverable in this instance given the tasks described in the costs claim for legal services.

14. In Utility Cost Order [2003-37](#)³, the Commission's predecessor, the Alberta Energy and Utilities Board, stated the following:

The Board notes that the cost claim filed by NOVA Chemicals includes legal fees for the preparation of the cost submission. In the Board's view, costs related to the preparation of cost claims are not recoverable.⁴

15. In line with this approach, the Commission has reviewed the costs application and considers that the time spent by Bennett Jones preparing the review and variance application was similar in nature to the preparation of the initial costs application that led to AUC Decision [2014-090](#). Specifically, Bennett Jones' invoices submitted as part of this costs application included the time spent correcting an error made by ATCO Pipelines in its initial costs application.

³ Decision 2003-037 : ATCO Electric Ltd. 2001 Regulated Rate Option Tariff, Part G : Final 2001 Deferral Account Balances, Application No.1285072, May 12, 2003.

⁴ <http://www.auc.ab.ca/applications/orders/cost-orders/Cost%20Orders/2003/UCO2003-37.pdf>

16. The Commission further observes that although it approved ATCO Pipelines' review and variance application, the onus to provide sufficient information for the Commission to effectively assess its costs claim rest on the eligible claimant: Appendix C of AUC Rule 022.

17. On further review of the hours claimed by Bennett Jones in preparation of the review and variance application, the Commission determines that even if the claim was recoverable, the time spent was not reasonable given the nature of the review and variance application and the scope of the work performed. As described above, the grounds for review in Proceeding No.3245 were a missed invoice and a calculation error in a spreadsheet. The Commission considers that the basis for the review request did not require the amount of counsel's assistance claimed. Therefore, the Commission finds, that these costs are not reasonable and justified in the circumstances, and not recoverable under Rule 022.

18. Accordingly, the Commission disallows ATCO Pipelines' costs claim for legal fees in the amount of \$7,550.77.

4 GST

19. No GST is being claimed for this costs application.

5 Order

20. It is hereby ordered that:

(1) The costs application of ATCO Gas and Pipelines Ltd. is denied.

Dated on December 5, 2014.

The Alberta Utilities Commission

(Original Signed by)

Tudor Beattie, QC
Commission Member