



ATCO Electric Ltd.

2009 - 2010 General Tariff Application –
Regulatory Treatment of Income Tax Refund

Cost Awards



ALBERTA UTILITIES COMMISSION

Utility Cost Order 2010-005: ATCO Electric Ltd.
2009-2010 General Tariff Application –
Regulatory Treatment of Income Tax Refund
Application No. 1578371, Proceeding ID. 86
Cost Application No. 1605524

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ALBERTA UTILITIES COMMISSION

Calgary, Alberta

**ATCO Electric Ltd.
2009-2010 General Tariff Application -
Regulatory Treatment of Income Tax Refund**

**Utility Cost Order 2010-005
Application No. 1578371
Cost Application No. 1605524**

1 INTRODUCTION

1. The Alberta Utilities Commission (AUC or Commission) received Application No. 1578371, entered as Proceeding ID. 86, (Application) dated July 4, 2008 from ATCO Electric Ltd. (AE). The Application requested Commission approval of AE's 2009-2010 Transmission and Distribution General Tariff Application (GTA), and an order or orders to establish a Transmission Facility Owner and Distribution Tariff. AE also requested approval to dispose of its 2007 Transmission and Distribution Deferral Accounts and Annual Filing for Adjustment Balances.

2. The Commission dealt with this Application by way of an oral hearing held in Edmonton, Alberta beginning on February 17, 2009 before Commission members Carolyn Dahl Rees (Vice-Chair), Bill Lyttle (Commissioner), and Anne Michaud (Commissioner). The oral evidentiary process was completed on February 25, 2009.

3. On July 2, 2009, the Commission issued Decision [2009-087](#)¹ which dealt with the Application except for specific income tax deductions claimed by AE. In the Application, AE identified the following matters related to income tax: inclusion for the test years of three additional income tax deductions for easement costs, stock handling costs, and removal and abandonment costs; and the retention of the income tax refund related to these deductions for 2006, 2007 and 2008 in the amount of \$6 million. On this issue, the Commission found that more information was required. Simultaneous responses and reply responses were received from interested parties on July 31, 2009 and August 14, 2009 respectively. The Commission considers the record for this additional process closed on August 14, 2009.

4. On November 12, 2009, the Commission issued Decision [2009-215](#)² in respect of the income tax matters.

5. On October 13, 2009, a summary of the costs being claimed for the additional process 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 October 27, 2009. 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 October 27, 2009.

¹ Decision 2009-087: ATCO Electric Ltd. 2009-2010 General Tariff Application – Phase I (Application No. 1578371) (Released: July 2, 2009)

² Decision 2009-215: ATCO Electric Ltd. 2009-2010 General Tariff Application – Regulatory Treatment of Income Tax Refund (Application No. 1578371) (Released: November 12, 2009)

2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS

6. 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) when considering cost claims for applications filed prior to October 1, 2008. The Commission has assessed the costs claimed in respect of the Application in accordance with Rule 022 and the *Scale of Costs* in place at the time of this Application.

7. Before exercising its discretion to award costs, the Commission will consider whether an eligible participant acted responsibly and contributed to a better understating 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.

8. 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.

9. 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

10. Various participants submitted cost claims totaling \$13,431.38, including GST of \$311.88 with respect to the Proceeding.

3.1 ATCO Electric Ltd.

11. AE submitted a cost claim totaling \$6,707.00. The claim is comprised of legal fees incurred by Bennett Jones LLP in the amount of \$6,607.00, together with disbursements of \$100.00.

12. The Commission has reviewed AE's claim and considers the claim to be reasonable. The Commission also notes that its claims for professional fees and other fees were in accordance with the *Scale of Costs*. Accordingly, the Commission approves AE's cost claim in the full amount of \$6,707.00.

3.2 Public Institutional Consumers of Alberta

13. The Public Institutional Consumers of Alberta (PICA) submitted a cost claim totaling \$1,929.38. The claim is comprised of legal fees incurred by Nancy J. McKenzie in the amount of \$1,837.50, together with GST of \$91.88.

14. PICA is not entitled to claim GST as it is eligible for a GST credit. Accordingly, the Commission denies PICA's GST claim of \$91.88.

15. With the exception of the GST, the Commission considers the amount claimed to be reasonable. Accordingly, the Commission approves PICA's cost claim in the amount of \$1,837.50.

3.3 Consumers' Coalition of Alberta

16. The Consumers' Coalition of Alberta (CCA) submitted a cost claim totaling \$4,620.00. The claim was comprised of consulting fees incurred by Regulatory Services Inc. in the amount of \$4,400.00, together with GST of \$220.00.

17. The Commission has reviewed the CCA's claim and considers the amounts claimed to be reasonable. The Commission also finds the claims for professional fees and other claims are in accordance with the *Scale of Costs*. Accordingly, the Commission approves CCA's cost claim in the full amount of \$4,620.00.

3.4 Alberta Sugar Beet Growers/Potato Growers of Alberta

18. The Alberta Sugar Beet Growers/Potato Growers of Alberta (ASBG/PGA) submitted a cost claim totaling \$175.00. The claim was comprised of legal fees incurred by Unryn & Associates.

19. The Commission has reviewed ASBG/PGA's cost claim and considers the amount claimed to be reasonable. Accordingly, the Commission approves ASBG/PGA's cost claim in the full amount of \$175.00.

4 GST

20. In accordance with the Commission's treatment of the GST on cost awards, AE 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 \$220.00. The GST allowed by the Commission may also be charged against AE's Hearing Cost Reserve Account.

21. 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 Electric Ltd. shall pay intervener costs in the amount of \$6,632.50, as set out in column (h) of [Appendix A](#).

2. ATCO Electric Ltd.'s external costs in the amount of \$6,707.00, as set out in column (h) of [Appendix A](#), are approved.
3. ATCO Electric Ltd. shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$13,339.50, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 21st day of January, 2010.

ALBERTA UTILITIES COMMISSION

(Original signed by)

Bill Lyttle
Commissioner

(Original signed by)

Anne Michaud
Commissioner

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A

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ATCO Electric Ltd.
Cost Application No. 1605524

2009-2010 General Tariff Application - Income Tax Module
(1578371)

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								
ATCO Electric								
Bennett Jones	\$6,607.00	\$100.00	\$0.00	\$6,707.00	\$6,607.00	\$100.00	\$0.00	\$6,707.00
Sub-Total	\$6,607.00	\$100.00	\$0.00	\$6,707.00	\$6,607.00	\$100.00	\$0.00	\$6,707.00
INTERVENERS								
Public Institutional Consumers of Alberta								
Nancy J. McKenzie Professional Corporation	\$1,837.50	\$0.00	\$91.88	\$1,929.38	\$1,837.50	\$0.00	\$0.00	\$1,837.50
Sub-Total	\$1,837.50	\$0.00	\$91.88	\$1,929.38	\$1,837.50	\$0.00	\$0.00	\$1,837.50
Consumers' Coalition of Alberta								
Regulatory Services Inc.	\$4,400.00	\$0.00	\$220.00	\$4,620.00	\$4,400.00	\$0.00	\$220.00	\$4,620.00
Sub-Total	\$4,400.00	\$0.00	\$220.00	\$4,620.00	\$4,400.00	\$0.00	\$220.00	\$4,620.00
Alberta Sugar Beet Growers/Potato Growers of Alberta								
Unryn & Associates Ltd.	\$175.00	\$0.00	\$0.00	\$175.00	\$175.00	\$0.00	\$0.00	\$175.00
Sub-Total	\$175.00	\$0.00	\$0.00	\$175.00	\$175.00	\$0.00	\$0.00	\$175.00
TOTAL INTERVENER COSTS	\$6,412.50	\$0.00	\$311.88	\$6,724.38	\$6,412.50	\$0.00	\$220.00	\$6,632.50
TOTAL INTERVENER AND APPLICANT COSTS	\$13,019.50	\$100.00	\$311.88	\$13,431.38	\$13,019.50	\$100.00	\$220.00	\$13,339.50