



Alberta Utilities Commission

**Commission-Initiated Proceeding to Review the Terms and
Conditions of Service of Regulated Rate Service Providers**

Costs Award

January 8, 2018

Alberta Utilities Commission

Decision 22959-D01-2018

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers an application (the costs claim application) by the Consumers' Coalition of Alberta (CCA) for approval and payment of its costs of participation in Proceeding 22091¹ (the original proceeding). The following table sets out the costs claimed and the amounts awarded:

Claimant	Total Fees Claimed	Total Disbursements Claimed	Total GST Claimed	Total Amount Claimed	Total Fees Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
CCA								
Wachowich & Company	\$1,575.00	\$0.00	\$78.75	\$1,653.75	\$0.00	\$0.00	\$0.00	\$0.00
Regulatory Services Inc.	\$9,139.50	\$0.00	\$456.98	\$9,596.48	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$10,714.50	\$0.00	\$535.73	\$11,250.23	\$0.00	\$0.00	\$0.00	\$0.00

2. The Commission has denied the applicant's costs claim for the reasons set out below.

3. The original proceeding was initiated by the Commission to consider proposed amendments to the terms and conditions of service of EPCOR Energy Alberta GP Inc. (EEA), Direct Energy Regulated Services (DERS), ATCO Electric Ltd. (ATCO) and FortisAlberta Inc. (Fortis), (collectively the companies). The amendments were to protect rural property owners from liability for electrical distribution charges related to third party oil and natural gas facilities located on their land in circumstances where the rural property owner had not requested the distribution service. The original proceeding included information requests (IRs), IR responses, argument and reply argument. The close of record for the original proceeding was August 11, 2017, and the Commission issued Decision 22091-D01-2017² on November 9, 2017.

4. The CCA submitted its costs claim application on September 20, 2017. The costs claim application was filed nine days outside of the required 30 day timeline permitted by the Commission's rules, specifically Rule 022: *Rules on Costs in Utility Rate Proceedings* (Rule 022). In its cover letter, the CCA advised that the costs claim was being filed late as the CCA's legal counsel was involved in a hearing in another application, which prevented the timely completion of the costs claim. Costs not received within the specified timeframe may be rejected without further process. The Commission exercised its discretion to accept the late filing but advises the CCA to put measures in place to ensure timely filing of costs claim applications. The

¹ Proceeding 22091: Commission-Initiated Proceeding to Review the Terms and Conditions of Service of Regulated Rate Service Providers

² Decision 22091-D01-2017: Commission-Initiated Proceeding to Review the Terms and Conditions of Service of Regulated Rate Service Providers, Proceeding 22091, November 9, 2017.

Commission assigned Proceeding 22959 and Application 22959-A001 to the costs claim application.

5. No comments were filed with respect to the costs claim application and the Commission considers the close of record for this proceeding to be October 10, 2017, the deadline for filing comments.

2 Commission findings

6. 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 the factors set out in Section 11 of Rule 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.

2.1 Consumers' Coalition of Alberta

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

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company	3.80	0.00	0.70	\$1,575.00	\$0.00	\$78.75	\$1,653.75
Regulatory Services Inc.	17.30	0.00	16.55	\$9,139.50	\$0.00	\$456.98	\$9,596.48
Total	21.10	0.00	17.25	\$10,714.50	\$0.00	\$535.73	\$11,250.23

8. The Commission finds that the CCA did not contribute to a better understanding of the issues before the Commission in the original proceeding. Further, the CCA's costs are not directly and necessarily related to the original proceeding. For both these reasons, as explained in greater detail below, the Commission awards no costs to the applicant.

Wachowich & Company

9. 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 draft IRs and reviewing draft final argument.

10. For the reasons detailed below, the Commission finds that the services performed by Wachowich & Company did not contribute to a better understanding of the relevant issues before the Commission in the original proceeding and were not directly and necessarily related to it. Consequently, the fees claimed for these services provided by Wachowich & Company are denied.

Scope of the original proceeding

11. Before the initiation of the original proceeding, broad issues related to unbillable electrical distribution charges and in particular, those arising as a consequence of abandoned oil and gas sites, were raised in the context of an industry consultation to review Rule 021: *Settlement System Code Rules* and Rule 028: *Natural Gas System Settlement Code*. That review was suspended pending the completion of the original proceeding but is contemplated to resume now that Decision 22091-D01-2017 has been issued.

12. The original proceeding was initiated by the Commission in the circumstances described in paragraph 4 of Decision 22091-D01-2017 and to address a singular issue or purpose. That purpose was consistently described in the Commission's October 20, 2016 notice of proceeding, January 9, 2017 process letter and in its July 5, 2017 ruling.

13. The October 20, 2016³ notice of proceeding states the following under the heading "Nature of the proceeding:"

The Commission, on its own initiative, will be reviewing certain terms and conditions of regulated rate service of EPCOR Energy Alberta GP Inc. (EPCOR) and Direct Energy Regulated Services (DERS). If you feel you may be affected by this proceeding, you can provide input to the AUC to review before it makes its decision. Specifically, the Commission will be considering changes required to article 8.11 (Owner's Liability for Payment) of EPCOR's regulated rate tariff terms and conditions and article 3.7 (Owner's Liability for Payment) of DERS' terms and conditions of regulated rate service so that a rural property owner will not be made responsible for paying electrical distribution charges related to service for an energy company's oil and natural gas facilities located on the rural property owner's sites.

14. On January 9, 2017,⁴ the Commission issued a process letter. Paragraph 6 of that letter stated the following:

The Commission requests that ATCO and Fortis submit any revisions required to their terms and conditions to ensure rural landowners are not billed for oil and gas services located on the landowner's property. The Commission requests parties wishing to ask IRs seek responses from EPCOR, DERS, ATCO and Fortis only regarding the proposed changes to their terms and conditions. Questions regarding refunds to landowners are out of scope of this proceeding.

15. In a ruling dated July 5, 2017,⁵ the Commission reiterated the purpose of the original proceeding. Paragraph 7 of the ruling stated the following:

The current proceeding was established for the singular purpose of considering and making changes to the companies' terms and conditions of service to ensure that rural landowners are not billed for electrical distribution charges related to service for an energy company's oil and natural gas facilities located on their land where those services were not requested by the rural property owner. None of the companies objected to the Commission's initiative to amend or make new terms of service to ensure that rural landowners would not be billed in the described circumstances in future.

³ Exhibit 22091-X0005 Notice of Proceeding.

⁴ Exhibit 22091-X0014 Process Announcement.

⁵ Exhibit 22091-X0067 Ruling on refunds and IR responses.

16. The notice of October 20, 2016, the process letter of January 9, 2017 and the ruling of July 5, 2017 were explicit in describing the purpose of the original proceeding. Namely, to consider and make changes to the wording in the terms and conditions of service to ensure that rural property owners would not be billed for electrical distribution charges related to services for an energy company's oil and natural gas facilities located on their land where the rural property owner did not request those services.

17. The CCA provided no information that contributed to a better understanding of the factual or legal issues relevant to that stated purpose.

Information Requests

18. As noted above, in its January 9, 2017 process letter, the Commission requested parties wishing to ask information requests to seek responses only with regard the proposed changes to the terms and conditions.

19. On February 10, 2017, the CCA issued information requests to EEA and DERS. The CCA posed three information requests consisting of 13 questions to EEA. Likewise, the CCA issued three information requests to DERS consisting of 17 questions. 12 of the questions asked of EEA and DERS were identical in wording.

20. Both EEA and DERS declined to provide responses to most of the information requests, claiming them to be out of scope. In a letter dated March 10, 2017, the CCA supported the motion of the Office of the Utilities Consumer Advocate (who was participating in joint effort with the Farmers' Advocate Office) to expand the scope of the proceeding to compel EEA and DERS to respond to the information requests of the interveners.

21. In a ruling dated July 5, 2017, the Commission agreed with EEA and DERS that the questions asked related to issues that were outside of the scope of the original proceeding. The Commission denied the motion to expand the scope of the proceeding to include the following matters:

- Investigation and testing of the impact and consequences of the proposed amendments to the terms and conditions;
- An assessment of past, present and future billing procedures to customers and ratepayers; and
- A consideration of the root causes of unbillable distribution charges in these circumstances and the available mechanisms to eliminate or minimize such charges.

22. The ruling of July 5, 2017 determined nine of the 13 questions asked of EEA and 12 of the 17 questions asked of DERS to be out of scope. The responses to the remaining IRs did not contribute to a better understanding of the issues before the Commission.

Argument regarding jurisdiction

23. By letter of April 7, 2017 the Commission requested argument on the Commission's authority to order a refund to rural property owners who were billed for electric services provided to abandoned oil and gas sites in circumstances where the rural property owner did not

request the electric service. The CCA's argument dated April 28, 2017 did not contribute to a better understanding of that issue.

24. The CCA's argument consisted of text cut and pasted from other documents and an analysis of the difference between a rental owner and a rural landowner. Little analysis was offered in relation to the text cut and pasted from other documents and the analysis of the difference between a rental owner and a rural landowner was of no assistance to the Commission. Overall, the CCA's argument did not assist the Commission in addressing the jurisdictional issue raised.

July 28, 2017 Final Argument

25. The CCA's final argument dated July 28, 2017 totalled two pages and consisted mainly of text cut and pasted from other documents with an analysis that did not contribute to a better understanding of the relevant issues before the Commission.

Rural landowner representative

26. The Farmers' Advocate Office (FAO) registered a statement of intent to participate (SIP) on October 31, 2016.⁶ The FAO made the following statements for its reason to participate:

The Farmers' Advocate Office (FAO) will be intervening representing the interests of Albertan landowners. In June 2016 the FAO was approached by landowners who were concerned that EPCOR was attempting to collect payment for three phase electric services that were provided to a now insolvent oil and gas company for its surface leases. This action was based on an interpretation of EPCOR's terms and conditions of service relating to tenancy. The FAO and UCA have been actively engaging in discussions with the AUC to resolve the issue.

27. Alberta Agriculture originally established the FAO in 1973 as a resource for Albertan farmers and ranchers.⁷ In its submission, dated March 12, 2017, the FAO described its role in the original proceeding as follows:

A vital role of the FAO is to obtain fair process for rural Albertans on whose behalf we advocate.⁸

28. The CCA registered its SIP on January 16, 2017. The CCA made the following statement regarding the need for its participation:

Please note our office acts for the Consumers' Coalition of Alberta (CCA), comprised of the Consumers' Association of Canada (Alberta Division), and the Alberta Council on Aging. The CCA is a coalition of two public interest groups and as a collective is concerned with the tariffs, rates and charges of the various public utilities operating in Alberta and regulated by the AUC. As a coalition representing utility ratepayers we submit the CCA is an interested party and the CCA therefore requests the AUC accept this intervention. Further we advise the CCA is not

⁶ Exhibit 22091-X0009 Statement of intent to participate.

⁷ [http://www1.agric.gov.ab.ca/\\$department/deptdocs.nsf/all/ofa2621](http://www1.agric.gov.ab.ca/$department/deptdocs.nsf/all/ofa2621)

⁸ Exhibit 22091-X0009 at page 3.

subject to cost ineligibility by virtue of the business interest rule. This Application will impact utility rates and we have been instructed to intervene in the aforementioned proceeding.

29. In its costs application, the CCA stated in paragraph 6 that it participated in the original proceeding in order to achieve the following objectives:

- a) To address the impacts of the application would have on the rates paid by all customer classes but the residential class in particular.
- b) To maintain an active voice in the utility regulatory process for residential consumer interests in order to ensure that both the cost of service and the resulting rates charged to residential customers are a result of the a fair and just process.
- c) To understand the linkages of this process to other processes on utility rates and other utility general tariff applications.
- d) To ensure that the process and outcomes did not favor or prejudice any of the many stakeholders involved in the process including but not limited to residential customers.

30. In paragraph 11, the CCA stated:

As noted earlier, the CCA represents primarily the residential customer class in phase I and II proceedings, the CCA is interested in ensuring the costs to all customers are the lowest possible costs allowing the utility to maintain safe, reliable and adequate level of service.

31. Based on the SIP and submissions filed by the FAO, the Commission is satisfied that the interests of rural landowners in the original proceeding were directly represented by the FAO. In contrast, through its SIP and the submissions filed by the CCA on its costs application, the CCA identified that it was representing the interests of ratepayers generally, and more particularly, the interests of residential customers. The CCA further identified that the objective of its intervention in the original proceeding was the protection and/ or advancement of those interests.

32. However, as previously described, the scope of the original proceeding was restricted to a consideration of proposed amendments to terms and conditions of service to ensure that rural property owners would not be billed for electrical distribution charges related to services for an energy company's oil and natural gas facilities located on their land where the rural property owner did not request those services. The scope of the original proceeding did not include consideration of any resulting rate impacts generally, or more particularly to the residential rate class of customers. Given its stated objectives and represented interests, the CCA's participation in the original proceeding was therefore not required and its claimed costs of participation cannot be reasonably justified as directly and necessarily related to the proceeding.

33. For the above reasons, the Commission considers that a reduction of 100 per cent to the CCA's claim in respect of legal services is warranted. The reduction results in the denial of \$1,653.75 in legal fees.

Regulatory Services Inc.

34. Regulatory Services Inc. was retained by the CCA to perform consulting services in the original proceeding. The fees claimed by the CCA for the consulting services provided by Mr.

Jan Thygesen relate to reviewing the application, drafting IRs, reviewing IR responses, drafting argument and reviewing argument from other parties.

35. For those same reasons provided above in respect of the services of Wachowich and Company, and as more particularly described below, the Commission finds that the services performed by Mr. Thygesen were not directly and necessarily related to the proceeding and did not contribute to a better understanding of the issues before the Commission.

36. The costs claim indicates that Mr. Thygesen was retained to assist with the technical analysis of the application. Again, the CCA's reason for participating, as stated in its argument on jurisdiction in the original proceeding was to "ensure issues of particular concern and importance to the residential customers of the utility are fully and appropriately addressed."⁹ Neither residential rates nor other matters related to the residential customers represented by the CCA were in scope in the original proceeding, nor did the Commission address issues that had direct relevance to those customers. The services performed by Mr. Thygesen were therefore not directly and necessarily related to the proceeding.

37. The CCA's cost claim also indicated that Mr. Thygesen spent 20.15 hours researching the legal jurisdictional issue of whether the Commission could order refunds to rural property owners and preparing the related argument. The cost submission stated Mr. Thygesen examined prior cases and whether landowners have any choice in allowing oil and gas companies onto their land and to obtain electrical services for oil and gas facilities located on their land.

38. According to the biography filed with the costs submission, Mr. Thygesen possesses a chartered accountant designation and an MBA degree. There is no mention of Mr. Thygesen being legally trained or qualified to provide legal argument. Further, and as already noted, the argument filed by the CCA did not contribute to a better understanding of the jurisdictional or any of the other issues before the Commission in the original proceeding.

39. For all these reasons, the Commission considers that a reduction of 100 per cent to the CCA's claim in respect of consulting services is warranted. The reduction results in the denial of \$9,596.48 in consulting fees.

⁹ Exhibit 22091-X0059, paragraph 1.

Costs claim is denied

40. For the reasons provided above, the CCA's claim for recovery of costs in the original proceeding is denied.

Dated on January 8, 2018.

Alberta Utilities Commission

(original signed by)

Willie Grieve, QC
Chair

(original signed by)

Neil Jamieson
Commission Member

(original signed by)

Carolyn Hutniak
Commission Member