



ATCO Pipelines

2019-2020 General Rate Application

Costs Award

August 9, 2019

**Alberta Utilities Commission**

Decision 24546-D01-2019

ATCO Pipelines

2019-2020 General Rate Application

Costs Award

Proceeding 24546

August 9, 2019

Published by the:

Alberta Utilities Commission

Eau Claire Tower

1400, 600 Third Avenue S.W.

Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282 in Alberta)

1-833-511-4AUC (1-833-511-4282 outside Alberta)

Email: [info@auc.ab.ca](mailto:info@auc.ab.ca)

Website: [www.auc.ab.ca](http://www.auc.ab.ca)

The Commission may, within 30 days of the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

## Contents

<b>1</b>	<b>Introduction</b> .....	<b>1</b>
<b>2</b>	<b>Commission findings</b> .....	<b>2</b>
2.1	ATCO Pipelines .....	3
2.1.1	Bennett Jones LLP .....	3
2.1.2	Mercer Canada Limited .....	3
2.1.3	AUS Consultants.....	4
2.1.4	Total awarded to ATCO Pipelines.....	4
2.2	Consumers' Coalition of Alberta .....	4
2.2.1	Costs related to the CCA's April 17, 2019 letter .....	5
2.2.2	Wachowich & Company .....	5
2.2.3	Regulatory Services Inc. ....	6
2.2.4	Total awarded to the CCA .....	6
<b>3</b>	<b>Order</b> .....	<b>7</b>

**Alberta Utilities Commission**  
**Calgary, Alberta**

---

**ATCO Pipelines**  
**2019-2020 General Rate Application**  
**Costs Award**

**Decision 24546-D01-2019**  
**Proceeding 24546**

---

**1 Introduction**

1. In this decision, the Alberta Utilities Commission considers applications by ATCO Gas and Pipelines Ltd. (ATCO Pipelines) and the Consumers' Coalition of Alberta (CCA) for approval and payment of their costs of participation in Proceeding 23793<sup>1</sup> (the original proceeding).

2. 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
ATCO Pipelines								
Bennett Jones LLP	\$339,856.00	\$3,412.75	\$0.00	\$343,268.75	\$339,856.00	\$3,274.75	\$0.00	\$343,130.75
Mercer	\$35,570.40	\$0.00	\$0.00	\$35,570.40	\$35,570.40	\$0.00	\$0.00	\$35,570.40
AUS Consultants	\$35,426.25	\$0.00	\$0.00	\$35,426.25	\$35,426.25	\$0.00	\$0.00	\$35,426.25
<b>Total</b>	<b>\$410,852.65</b>	<b>\$3,412.75</b>	<b>\$0.00</b>	<b>\$414,265.40</b>	<b>\$410,852.65</b>	<b>\$3,274.75</b>	<b>\$0.00</b>	<b>\$414,127.40</b>
CCA								
Wachowich & Company	\$33,197.50	\$0.00	\$1,659.88	\$34,857.38	\$33,197.50	\$0.00	\$1,659.88	\$34,857.38
Regulatory Services Inc.	\$121,162.50	\$38.90	\$6,060.07	\$127,261.47	\$121,162.50	\$38.90	\$6,060.07	\$127,261.47
<b>Total</b>	<b>\$154,360.00</b>	<b>\$38.90</b>	<b>\$7,719.95</b>	<b>\$162,118.85</b>	<b>\$154,360.00</b>	<b>\$38.90</b>	<b>\$7,719.95</b>	<b>\$162,118.85</b>
<b>Total of all amounts claimed and awarded</b>				<b>\$576,384.25</b>				<b>\$576,246.25</b>

3. The Commission has awarded reduced costs to ATCO Pipelines for the reasons set out below. The CCA's costs are approved as filed.

4. The original proceeding was convened by the Commission to consider an application from ATCO Pipelines requesting approval of its general rate application for 2019 and 2020. The proceeding consisted of two rounds of information requests (IRs), responses to IRs, intervenor evidence, rebuttal evidence, argument and reply argument. The close of record for the original proceeding was March 27, 2019, and the Commission issued Decision 23793-D01-2019,<sup>2</sup> on June 25, 2019.

5. ATCO Pipelines submitted its costs claim application on April 26, 2019, within the 30-day timeline permitted by the Commission's rules. The CCA submitted its costs claim

---

<sup>1</sup> Proceeding 23793: ATCO Pipelines 2019-2020 General Rate Application.

<sup>2</sup> Decision 23793: ATCO Pipelines 2019-2020 General Rate Application, Proceeding 23793, June 25, 2019.

application on April 29, 2019 noting it filed one day late due to a miscalculation of filing dates, and requested the Commission exercise its discretion to accept the late filing. In the circumstances, the Commission accepts the late filing. The Commission assigned Proceeding 24546 and applications 24546-A001 and 24546-A002 to the respective costs claim applications of ATCO Pipelines and the CCA.

6. On May 7, 2019, ATCO Pipelines filed comments on the CCA's costs claim and on May 14, 2019, the CCA filed its reply comments.

7. In its comments, ATCO Pipelines requested that the Commission reduce the CCA's costs by \$6,227.00 for costs associated with a letter filed on April 17, 2019 (April 17, 2019 letter) after reply argument was due. ATCO Pipelines submitted that a further reduction of 10 per cent be applied to the CCA's costs for introduction of what ATCO Pipelines characterized as new evidence in the CCA's argument and because there was insufficient evidence provided by the CCA to support its claim that it took on greater responsibility in the original proceeding than it had in prior rate applications due to the decision of the Canadian Association of Petroleum Producers not to participate.

8. The CCA replied that there was no support or analysis for ATCO Pipelines' statements that the CCA had introduced new evidence in argument. The CCA, in its April 19, 2019 letter, asked for leave of the Commission to file the letter because there was no other forum available to raise its concerns on ATCO Pipelines' comments included in reply argument alleging that the CCA raised new evidence in argument. In addition, in past proceedings the Canadian Association of Petroleum Producers would have intervened with four to five analysts acting as resources on the file. The CCA and the UCA took greater responsibility on the file and the CCA reviewed the entire application filed in the proceeding.

9. The Commission considers the close of record for this proceeding to be May 14, 2019.

## **2 Commission findings**

10. 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 by eligible participants for costs incurred in connection with a utility rates proceeding, the Commission is also guided by the factors set out in Section 11 of Rule 022: *Rules on Costs in Utility Rate Proceedings*. This rule allows the Commission to consider, among other things, whether 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 ATCO Pipelines

11. The following table summarizes ATCO Pipelines' costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
ATCO							
Bennett Jones LLP	874.10	0.00	132.10	\$339,856.00	\$3,412.75	\$0.00	\$343,268.75
Mercer Canada Limited	248.95	0.00	0.00	\$35,570.40	\$0.00	\$0.00	\$35,570.40
AUS Consultants	137.25	0.00	0.00	\$35,426.25	\$0.00	\$0.00	\$35,426.25
Total	1260.30	0.00	132.10	\$410,852.65	\$3,412.75	\$0.00	\$414,265.40

12. The Commission finds that ATCO Pipelines acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues. However, the Commission is unable to approve the full amount of the disbursement costs claimed in respect of the services performed by Bennett Jones LLP for the reasons set out below.

### 2.1.1 Bennett Jones LLP

13. ATCO Pipelines was represented by Bennett Jones in the original proceeding. The fees claimed by ATCO Pipelines for the legal services provided by Mr. Nick Gretener, Ms. Marie Buchinski, Mr. Tim Myers, Ms. Deirdre Sheehan, Mr. Laurie Smith and Ms. Micaela Zila relate to reviewing the application, reviewing IRs and responses to IRs, researching legal issues, editing responses to motions, reviewing intervener evidence, drafting IRs, preparing rebuttal evidence and editing argument and reply argument.

14. The Commission finds that the services performed by Bennett Jones were directly and necessarily related to ATCO Pipelines' 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 ATCO Pipelines' claim for legal fees for Bennett Jones in the amount of \$339,856.00.

15. With respect to the disbursements claimed for Bennett Jones LLP, the claim for accommodation costs for Bennett Jones is not recoverable under Rule 022. Appendix A of Rule 022 states that disbursements for accommodations are restricted to an oral hearing. Because the original proceeding did not involve an oral hearing, the \$138.00 claimed for accommodations is disallowed. The remaining disbursements for printing and photocopying of \$3,164.25 and for Westlaw archive searches of \$110.50 were claimed in accordance with the Scale of Costs and are reasonable. Accordingly, the Commission approves disbursements in the total amount of \$3,274.75.

16. As a result, the Commission approves ATCO Pipelines' claim for legal fees for Bennett Jones in the amount of \$339,856.00 and disbursements of \$3,274.75 for a total of \$343,130.75.

### 2.1.2 Mercer Canada Limited

17. Mercer was retained by ATCO Pipelines to perform consulting services in the original proceeding. The fees claimed by ATCO Pipelines for the consulting services provided by Mr. Kenneth Yung, Ms. Alexa Gathercole, Mr. Arron Dobson, Mr. Derek Yu, Mr. Grant Ashley, Mr. Jay Stanley, Ms. Michele Buhr, Mr. Mark Greenwood, Ms. Michelle Nguyen, Mr. Paul

Irwin and Ms. Sheida Arjmandi relate to preparing total compensation review and salary escalation reports used to determine ATCO Pipelines' forecast out-of-scope labour,<sup>3</sup> assisting with ATCO Pipelines' responses to IRs, reviewing intervenor evidence and assisting with the preparation of rebuttal evidence.

18. The Commission finds that the services performed by Mercer were directly and necessarily related to ATCO Pipelines' participation in the original proceeding, and that the fees, which were claimed in accordance with the Scale of Costs for those services, are reasonable. Although 11 consultants were used by Mercer, the Commission finds that the supporting invoices show the majority of hours were incurred by four of the consultants, with the remaining seven consultants each incurring 8.75 hour or less for activities related to the proceeding. In these particular circumstances and upon review of the supporting invoices, the Commission finds that there was not unnecessary duplication between consultants nor extra hours incurred by each consultant that would be considered duplicative under Rule 022. Accordingly, the Commission approves ATCO Pipelines' claim for consulting fees for Mercer in the amount of \$35,570.40.

### 2.1.3 AUS Consultants

19. AUS Consultants was retained by ATCO Pipelines to perform consulting services in the original proceeding. The fees claimed by ATCO Pipelines for the consulting services provided by Mr. Earl M. Robinson and administrative support of Ms. Susan Machia relate to preparing the Depreciation Study Technical Update as of December 31, 2017,<sup>4</sup> preparing responses to IRs, and assisting ATCO Pipelines with preparation of rebuttal evidence.

20. The Commission finds that the services performed by AUS Consultants were directly and necessarily related to ATCO Pipelines' 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 ATCO Pipelines' claim for consulting fees for AUS in the amount of \$35,426.25.

### 2.1.4 Total awarded to ATCO Pipelines

21. For the reasons provided above, the Commission approves ATCO Pipelines' claim for recovery of costs in the total amount of \$414,127.40 This amount is composed of legal fees of \$339,856.00, consulting fees of \$70,996.65 and disbursements of \$3,274.75.

## 2.2 Consumers' Coalition of Alberta

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

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company	79.85	15.00	0.00	\$33,197.50	\$0.00	\$1,659.88	\$34,857.38
Regulatory Services Inc.	305.10	143.65	0.00	\$121,162.50	\$38.90	\$6,060.07	\$127,261.47
Total	384.95	158.65	0.00	\$154,360.00	\$38.90	\$7,719.95	\$162,118.85

<sup>3</sup> Exhibit 23793-X0003 included Mercer's reports in support of ATCO Pipelines 2018-2019 General Rates Application, attached as 1) peer compensation review, 2) Mercer's 2019-2020 Salary Escalations Projections and 3) 2018 Total Remuneration Review for ATCO Pipelines. All three attachments are dated May 16, 2018.

<sup>4</sup> Exhibit 23793-X0007.01.

23. The Commission finds that the CCA acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues.

### **2.2.1 Costs related to the CCA's April 17, 2019 letter**

24. The Commission does not find that a reduction of costs claimed by the CCA is required for the preparation of the April 17, 2019 letter, as asserted by ATCO Pipelines. In the circumstances of the current costs proceeding, the Commission considers that if ATCO Pipelines objected to the contents of the April 17, 2019 letter, it should have either dealt with its concerns informally with the CCA or submitted its objection to the Commission through the filing of a formal motion under AUC Rule 001: *Rules of Practice* in the original proceeding. In that manner, the Commission in the original proceeding could have determined the merits of the objection, which may have then resulted in costs consequences in the costs proceeding.

25. In ATCO Pipelines reply argument, it identified 12 paragraphs and several footnotes that it alleged contained new evidence. It did not file a motion to strike evidence but rather it submitted that, "the New Evidence submitted by the CCA in argument should be afforded no weight by the Commission."<sup>5</sup>

26. As stated by the CCA in its April 17, 2019 letter, the "schedule does [not] contain a specific step for the CCA to address the concerns expressed by AP and these concerns could not be anticipated by the CCA."<sup>6</sup> The CCA expounded that the Commission is also not bound by the strict rules of evidence.<sup>7</sup>

27. Based on the above and the Commission's review of the record of the original proceeding, there is insufficient evidence before the Commission that a costs reduction for the April 19, 2017 letter is warranted. The Commission was charged with assessing the strengths of argument and reply argument in the original proceeding and it considered all of the documents submitted on the record, including ATCO Pipelines and CCA submissions in reply argument and the April 17, 2019 letter. The CCA noted in its April 17, 2019 letter that it would otherwise not have had an opportunity to respond to ATCO Pipelines' submissions made in reply argument and the CCA's comments were relevant to the Commission's assessment of the CCA's argument in the proceeding. Further, the Commission does not consider that the time incurred by the CCA to respond to the submissions of ATCO Pipelines was unnecessary or the costs incurred were unreasonable.

28. The Commission denies ATCO Pipelines' request to reduce the CCA's costs for the preparation of the CCA's April 17, 2019 letter.

### **2.2.2 Wachowich & Company**

29. 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

---

<sup>5</sup> Exhibit 23793-X0097, ATCO Pipelines' reply argument, paragraph 73.

<sup>6</sup> Exhibit 23793-X0098, CCA letter addressing ATCO Pipelines' argument on new evidence, paragraph 2.

<sup>7</sup> Exhibit 23793-X0098, paragraphs 6-10 and 32.

reviewing the application, IRs, responses to IRs, evidence, rebuttal evidence, argument and reply argument.

30. The Commission finds that the services performed by Wachowich & Company 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 \$33,197.50 and GST of \$1,659.88 for a total of \$34,857.38.

### **2.2.3 Regulatory Services Inc.**

31. Regulatory Services 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. Jeffrey Jodoin, Mr. Don Popowich and Mr. Jan Thygesen relate to reviewing the application, drafting IRs, assessing responses to IRs, formulating recommended positions and drafting evidence, drafting IR responses, reviewing rebuttal evidence and drafting argument and reply argument. Mr. Jodoin was responsible for the capital components of revenue requirement, Mr. Popowich was responsible for operating and maintenance, and Mr. Thygesen was primarily responsible for shared services and debt. The Commission does not consider that it is necessary to consider whether the CCA was required to undertake additional work in the original proceeding due to the non-participation of the Canadian Association of Petroleum Producers. This is because the Commission reviews costs based on whether an eligible participant acted responsibly and whether the costs are reasonable and directly and necessarily related to the proceeding under Section 11.1 of Rule 022. Upon review of the itemized invoices and description of each of the consultants' activities, the Commission is satisfied that the consultants' services, for each of their individual activities related to the sections of the application to which they were assigned, were directly and necessarily related to the proceeding.

32. The Commission finds that the services performed by Regulatory Services Inc. 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.

33. In addition, the Commission finds the claim for disbursements for photocopying in the amount of \$38.90 and GST of \$1.95 to be reasonable.

34. Accordingly, the Commission approves the CCA's claim for consulting fees for Regulatory Services in the amount of \$121,162.50, disbursements of \$38.90 and GST of \$6,060.07 for a total of \$127,261.47.

### **2.2.4 Total awarded to the CCA**

35. For the reasons provided above, the Commission approves the CCA's claim for recovery of costs in the total amount of \$162,118.85. This amount is composed of legal fees of \$33,197.50, consulting fees of \$121,162.50, disbursements of \$38.90 and GST of \$7,719.95.

**3 Order**

36. It is hereby ordered that:

- 1) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall pay external costs in the total amount of \$414,127.40.
- 2) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall record in its Hearing Costs Reserve account approved external costs in the amount of \$414,127.40.
- 3) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall pay intervener costs to the Consumers' Coalition of Alberta in the total amount of \$162,118.85.
- 4) ATCO Gas and Pipelines Ltd. (ATCO Pipelines) shall record in its Hearing Costs Reserve account approved intervener costs in the amount of \$162,118.85.

Dated on August 9, 2019.

**Alberta Utilities Commission**

*(original signed by)*

Neil Jamieson  
Commission Member