



ATCO Gas

2008-2009 General Rate Application
Income Tax Module

Cost Awards



ALBERTA UTILITIES COMMISSION
Utility Cost Order 2010-007: ATCO Gas
2008-2009 General Rate Application Phase I
Application No. 1553052
Cost Application No. 1605525

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ALBERTA UTILITIES COMMISSION

Calgary, Alberta

ATCO Gas
2008-2009 General Rate Application
Income Tax Module

Utility Cost Order 2010-007
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1 INTRODUCTION

1. In Decision [2008-113](#)¹, the Alberta Utilities Commission (AUC or Commission) issued its findings with respect to the 2008-2009 General Rate Application Phase I for ATCO Gas (AG or ATCO). In that decision, the Commission found that it was not in a position to determine the proper regulatory treatment for a number of tax related issues and set a specific income tax process (Module) to address these issues.
2. The Commission dealt with the Module by way of a written process that included the examination of expert evidence filed by AG as well as intervener evidence. Argument and reply submissions were made on June 9, 2009 and June 23, 2009, respectively. Due to similarities noted between the issues raised in the Module and those raised in an ATCO Electric Ltd. proceeding², the Commission set further process to address additional matters raised.
3. On November 12, 2009, the Commission issued Decision [2009-214](#)³ in respect of the Module.
4. On October 13, 2009, a summary of the costs being claimed 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. Accordingly, the Commission considers, for the purposes of this Cost Order, the cost process to have closed on October 27, 2009.

2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS

5. 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 application 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 this Application was filed.
6. In exercising its discretion to award costs, the Commission will, in accordance with section 11 of Rule 022, consider whether an eligible participant acted responsibly and

¹ Decision 2008-113 – ATCO Gas 2008-2009 General Rate Application, Phase I (Application No. 1553052/EPS ID 11) (Released: November 13, 2008).

² See Decision 2009-087 - 7 Decision 2009-087 - ATCO Electric Ltd. 2009-2010 General Tariff Application Phase I (Released: July 2, 2009).

³ Decision 2009-214 - ATCO Gas 2008-2009 General Rate Application, Income Tax Module (Released: November 12, 2009)

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.

7. 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.

8. 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

9. Various participants submitted cost claims totaling \$129,469.72 including actual GST of \$2,346.95 with respect to the Module.

3.1 ATCO Gas North

10. AGN submitted a cost claim totaling \$39,105.75. The claim was comprised of legal fees incurred by Bennett Jones LLP in the amount of \$32,029.40, together with disbursements of \$51.52; legal fees incurred by Fraser Milner Casgrain LLP in the amount of \$6,948.00, together with disbursements of \$76.83.

11. The Commission notes that AGN has claimed in excess of the Commission's *Scale of Costs* for claimants of Bennett Jones LLP. Mr. Smith claimed 38.9 hours at the hourly rate of \$350.00 (\$13,615.00). Based on Mr. Smith's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 38.9 hours results in a total of \$9,725.00. Ms. Beattie claimed 59.98 hours at the hourly rate of \$280.00 (\$16,794.40). Based on Ms. Beattie's experience, the *Scale of Costs* allows for a maximum hourly rate of \$180.00, which for 59.98 hours results in a total of \$10,796.40. Ms. Drozdowski claimed 2.9 hours at the hourly rate of \$280.00 (\$812.00). Based on Ms. Drozdowski's experience, the *Scale of Costs* allows for a maximum hourly rate of \$180.00, which for 2.9 hours results in a total of \$522.00. Mr. Stewart claimed 1.6 hours at the hourly rate of \$350 (\$560). Based on Mr. Stewart's experience, the *Scale of Costs* allows for a maximum hourly rate of \$250, which for 1.6 hours results in a total of \$400.00. Ms. Illsey claimed 0.25 hours at the hourly rate of \$320.00 (\$80.00). Based on Ms. Illsey's experience, the *Scale of Costs* allows for a maximum hourly rate of \$220.00, which for 0.25 hours results in a total of \$55.00. Mr. Broughton claimed 1.2 hours at the hourly rate of \$140.00 (\$168.00). Based on Mr. Broughton's experience, the *Scale of Costs* allows for a maximum hourly rate of \$90.00, which for 1.2 hours results in a total of \$108.00. The total claim for Bennett Jones LLP reduced in accordance with the applicable *Scale of Costs*, including \$51.52 in disbursements, is \$21,657.92.

12. The Statement of Justification submitted with the cost claim did not provide a sufficient basis, in the Commission's view, to justify a rate above the *Scale of Costs*. The Commission considers the claim for legal fees incurred by Bennett Jones LLP, reduced in accordance with the applicable *Scale of Costs*, to be reasonable and approves the reduced amount.

13. The Commission notes that AGN has also claimed in excess of the Commission's *Scale of Costs* for claimants of Fraser Milner Casgrain LLP. Mr. Bowman claimed 19.05 hours at the hourly rate of \$350.00 (\$6,667.50). Based on Mr. Bowman's experience, the *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 19.05 hours results in a total of \$4,762.50. Ms. Gibson claimed 0.10 hours at the hourly rate of \$350.00 (\$35.00). Based on Ms. Gibson's experience, the *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 0.10 hours results in a total of \$25.00. Mr. Woodbury claimed 0.65 hours at the hourly rate of \$350.00 (\$227.50). Based on Mr. Woodbury's experience, the *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 0.65 hours results in a total of \$162.50. The Commission notes that Fraser Milner Casgrain LLP claimed 0.4 hours for support staff in the amount of \$45.00. Fees for legal support staff are not recoverable under Rule 022, *Rules on Intervener Costs*. Accordingly, the Commission denies this claim for support staff. The total claim for Fraser Milner Casgrain LLP reduced in accordance with Rule 22 and the applicable *Scale of Costs*, including \$76.83 in disbursements, is \$5,026.83.

14. The Statement of Justification submitted with the cost claim did not provide a sufficient basis, in the Commission's view, to justify a rate above the *Scale of Costs*. The Commission considers the claim for Fraser Milner Casgrain LLP, reduced in accordance with the applicable *Scale of Costs*, reasonable and approves the reduced amount.

15. Taking the foregoing into account, the Commission approves AGN's cost claim in the amount of \$26,684.75.

3.2 ATCO Gas South

16. AGS submitted a cost claim totaling \$39,102.94. The claim is comprised of legal fees incurred by Bennett Jones LLP in the amount of \$32,026.60, together with disbursements of \$51.52; legal fees incurred by Fraser Milner Casgrain LLP in the amount of \$6,948.00, together with disbursements of \$76.82.

17. The Commission notes that AGS claimed in excess of the Commission's *Scale of Costs* for claimants of Bennett Jones LLP. Mr. Smith claimed 38.9 hours at the hourly rate of \$350.00 (\$13,615). Based on Mr. Smith's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 38.9 hours results in a total of \$9,725.00. Ms. Beattie claimed 59.97 hours at the hourly rate of \$280.00 (\$16,791.60). Based on Ms. Beattie's experience, the *Scale of Costs* allows for a maximum hourly rate of \$180.00, which for 59.97 hours, results in a total of \$10,794.60. Ms. Drozdowski claimed 2.9 hours at the hourly rate of \$280.00 (\$812.00). Based on Ms. Drozdowski's experience, the *Scale of Costs* allows for a maximum hourly rate of \$180.00, which for 2.9 hours, results in a total of \$522.00. Mr. Stewart claimed 1.6 hours at the hourly rate of \$350.00 (\$560.00). Based on Mr. Stewart's experience, the *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 1.6 hours, results in a total of \$400.00. Ms. Illsey claimed .25 hours at the hourly rate of \$320.00 (\$80.00). Based on Ms. Illsey's experience, the *Scale of Costs* allows for a maximum hourly rate of \$220.00, which for 0.25 hours, results in a total of \$55.00. Mr. Broughton claimed 1.2 hours at the hourly rate of \$140.00 (\$168.00). Based on Mr. Broughton's experience, the *Scale of Costs* allows for a

maximum hourly rate of \$90.00, which for 1.2 hours, results in a total of \$108.00. The total claim for Bennett Jones LLP reduced in accordance with the applicable *Scale of Costs*, including \$51.52 in disbursements is \$21,656.12.

18. The Statement of Justification submitted with the cost claim did not provide a sufficient basis, in the Commission's view, to justify a rate above the *Scale of Costs*. The Commission considers the claim for Bennett Jones LLP, reduced in accordance with the applicable *Scale of Costs*, reasonable and approves the reduced amount.

19. The Commission notes that AGS has also claimed in excess of the Commission's *Scale of Costs* for claimants of Fraser Milner Casgrain LLP. Mr. Bowman claimed 19.05 hours at the hourly rate of \$350.00 (\$6,667.50). Based on Mr. Bowman's experience, the applicable *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 19.05 hours, results in a total of \$4,762.50. Ms. Gibson claimed 0.10 hours at the hourly rate of \$350.00 (\$35.00). Based on Ms. Gibson's experience, the *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 0.10 hours, results in a total of \$25.00. Mr. Woodbury claimed 0.65 hours at the hourly rate of \$350.00 (\$227.50). Based on Mr. Woodbury's experience, the *Scale of Costs* allows for a maximum hourly rate of \$250.00, which for 0.65 hours, results in a total of \$162.50. The Commission notes that Fraser Milner Casgrain LLP claimed 0.40 hours for support staff in the amount of \$45.00. Fees for legal support staff are not recoverable under Rule 022, *Rules on Intervener Costs*. Accordingly, the Commission denies this claim for support staff. The total claim for Fraser Milner Casgrain LLP reduced in accordance with Rule 22 and the applicable *Scale of Costs*, including \$76.82 in disbursements, is \$5,026.82.

20. The Statement of Justification submitted with the cost claim did not provide a sufficient basis, in the Commission's view, to justify a rate above the *Scale of Costs*. The Commission considers the claim for Fraser Milner Casgrain LLP, reduced in accordance with the applicable *Scale of Costs*, reasonable and approves the reduced amount.

21. Taking the foregoing into account, the Commission approves AGS' cost claim in the amount of \$26,682.94 for AGS.

3.3 Public Institutional Consumers of Alberta

22. The Public Institutional Consumers of Alberta (PICA) submitted a cost claim totaling \$16,416.06. The claim is comprised of legal fees incurred by Nancy J. McKenzie Professional Corporation in the amount of \$14,750.00, together with disbursements and GST of \$27.20 and \$738.86, respectively; and consulting fees incurred by Energy Management & Regulatory Consulting Ltd. in the amount of \$900.00. The costs claimed by PICA were allocated equally amongst AGN and AGS.

23. The Commission notes that PICA has claimed GST for Nancy J. McKenzie Corporation in the amount of \$738.86. PICA is not entitled to claim GST, as it is eligible to claim for a GST credit. Accordingly, the Commission denies PICA's GST claim of \$738.86.

24. With the exception of the GST reduction, the Commission considers the amounts claimed by PICA to be reasonable. The Commission finds that their claims for professional fees and other fees were in accordance with the *Scale of Costs*. Accordingly, the Commission approves PICA's cost claim in the amount of \$15,677.20.

3.4 Consumers' Coalition of Alberta

25. The Consumers' Coalition of Alberta submitted a cost claim totaling \$14,469.00. The claim is comprised of consulting fees incurred by Professional Regulatory Services in the amount of \$13,780.00, together with GST of \$689.00. The costs claimed by the CCA were allocated equally amongst AGN and AGS.

26. The Commission has reviewed the CCA's costs and considers the claims to be reasonable. The Commission also finds that their claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission approves CCA's cost claim in the amount of \$14,469.00 for the CCA.

3.5 Alberta Sugar Beet Growers/Potato Growers of Alberta

27. Alberta Sugar Beet Growers/Potato Growers of Alberta (ASBG/PGA) submitted a cost claim totaling \$1,075.00. The claim is comprised of legal fees incurred by Unryn & Associates Ltd. in the amount of \$1,075.00. The costs claimed by ASBG/PGA have been allocated 100% to AGS.

28. The Commission has reviewed ASBG/PGA's cost claim and considers the amounts to be reasonable. The Commission also notes that their claims for professional fees are in accordance with the Scale of Costs. Accordingly, the Commission approves ASBG/PGA's cost claim in the amount of \$1,075.00 for ASBG/PGA.

3.6 The City of Calgary

29. The City of Calgary (Calgary) submitted a cost claim totaling \$19,300.97. The claim was comprised of legal fees incurred by McLennan Ross LLP in the amount of \$8,098.00, together with disbursements and GST of \$158.88 and \$412.84, respectively; and consulting fees incurred by Stephen Johnson Chartered Accountants in the amount of \$10,125.00, together with GST of \$506.25. The costs claimed by Calgary have been allocated 100% to AGS.

30. The Commission has reviewed Calgary's cost claim and considers the amounts to be reasonable. Their claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission approves Calgary's cost claim in the amount of \$19,300.97.

4 GST

31. In accordance with the Commission's treatment of the GST on cost awards, ATCO Gas 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 \$1,608.09. The GST allowed by the Commission may also be charged against AG's Hearing Cost Reserve Account.

32. 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 Gas North shall pay intervener costs in the amount of \$15,073.10, as set out in column (h) of [Appendix A](#).
2. ATCO Gas South shall pay intervener costs in the amount of \$35,449.07, as set out in column (h) of [Appendix A](#).
3. ATCO Gas North external costs in the amount of \$26,684.75, as set out in column (h) of [Appendix A](#), are approved.
4. ATCO Gas South external costs in the amount of \$26,682.94, as set out in column (h) of [Appendix A](#), are approved.
5. ATCO Gas shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$103,889.86, as set out in column (h) of [Appendix A](#).

Dated in Calgary, Alberta on this 26th day of January, 2010.

ALBERTA UTILITIES COMMISSION

(Original signed by)

Willie Grieve
Chair

(Original signed by)

Bill Lyttle
Commissioner

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A

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ATCO Gas
Cost Application No. 1605525

2008-2009 General Rate Application - Income Tax Matters
(1553052)

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 Gas North								
Bennett Jones	\$32,029.40	\$51.52	\$0.00	\$32,080.92	\$21,606.40	\$51.52	\$0.00	\$21,657.92
Fraser Milner Casgrain	\$6,948.00	\$76.83	\$0.00	\$7,024.83	\$4,950.00	\$76.83	\$0.00	\$5,026.83
Sub-Total	\$38,977.40	\$128.35	\$0.00	\$39,105.75	\$26,556.40	\$128.35	\$0.00	\$26,684.75
ATCO Gas South								
Bennett Jones	\$32,026.60	\$51.52	\$0.00	\$32,078.12	\$21,604.60	\$51.52	\$0.00	\$21,656.12
Fraser Milner Casgrain	\$6,948.00	\$76.82	\$0.00	\$7,024.82	\$4,950.00	\$76.82	\$0.00	\$5,026.82
Sub-Total	\$38,974.60	\$128.34	\$0.00	\$39,102.94	\$26,554.60	\$128.34	\$0.00	\$26,682.94
INTERVENERS								
Public Institutional Consumers of Alberta								
Energy Management & Regulatory Consulting Ltd.(AG North)	\$450.00	\$0.00	\$0.00	\$450.00	\$450.00	\$0.00	\$0.00	\$450.00
Nancy J. McKenzie Professional Corporation (AG North)	\$7,375.00	\$13.60	\$369.43	\$7,758.03	\$7,375.00	\$13.60	\$0.00	\$7,388.60
Energy Management & Regulatory Consulting Ltd.(AG South)	\$450.00	\$0.00	\$0.00	\$450.00	\$450.00	\$0.00	\$0.00	\$450.00
Nancy J. McKenzie Professional Corporation (AG South)	\$7,375.00	\$13.60	\$369.43	\$7,758.03	\$7,375.00	\$13.60	\$0.00	\$7,388.60
Sub-Total	\$15,650.00	\$27.20	\$738.86	\$16,416.06	\$15,650.00	\$27.20	\$0.00	\$15,677.20
Consumers' Coalition of Alberta								
Professional Regulatory Services	\$13,780.00	\$0.00	\$689.00	\$14,469.00	\$13,780.00	\$0.00	\$689.00	\$14,469.00
Sub-Total	\$13,780.00	\$0.00	\$689.00	\$14,469.00	\$13,780.00	\$0.00	\$689.00	\$14,469.00
Alberta Sugar Beet Growers/Potato Growers of Alberta								
Unryn & Associates Ltd.	\$1,075.00	\$0.00	\$0.00	\$1,075.00	\$1,075.00	\$0.00	\$0.00	\$1,075.00
Sub-Total	\$1,075.00	\$0.00	\$0.00	\$1,075.00	\$1,075.00	\$0.00	\$0.00	\$1,075.00
The City of Calgary								
McLennan Ross LLP	\$8,098.00	\$158.88	\$412.84	\$8,669.72	\$8,098.00	\$158.88	\$412.84	\$8,669.72
Stephen Johnson Chartered Accountants	\$10,125.00	\$0.00	\$506.25	\$10,631.25	\$10,125.00	\$0.00	\$506.25	\$10,631.25

ATCO Gas
 Cost Application No. 1605525

2008-2009 General Rate Application - Income Tax Matters
 (1553052)

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)
Sub-Total	\$18,223.00	\$158.88	\$919.09	\$19,300.97	\$18,223.00	\$158.88	\$919.09	\$19,300.97
TOTAL INTERVENER COSTS	\$48,728.00	\$186.08	\$2,346.95	\$51,261.03	\$48,728.00	\$186.08	\$1,608.09	\$50,522.17
TOTAL INTERVENER AND APPLICANT COSTS	\$126,680.00	\$442.77	\$2,346.95	\$129,469.72	\$101,839.00	\$442.77	\$1,608.09	\$103,889.86