



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

Urban Pipeline Replacement Project

Costs Award

April 4, 2014

The Alberta Utilities Commission

Decision 2014-090: ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd.

Urban Pipeline Replacement Project

Costs Award

Application Nos. 1610090, 1610094, 1610119 and 1610144

Proceeding ID No. 2933

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1 Introduction

1. On July 5, 2012, the Alberta Utilities Commission (“AUC” or “Commission”) issued a Notice of Proceeding to address the multi-year and multi-phase project proposal from ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd. (ATCO Pipelines) known as the Urban Pipeline Replacement (UPR) Project.

2. The UPR project proposed to replace certain of the existing high-pressure gas pipelines, convert certain high-pressure gas pipelines to low-pressure distribution service and build new high-pressure gas pipelines in and around the transportation and utility corridors (TUC) of the cities of Calgary and Edmonton. The UPR proposal is comprised of 12 individual pipeline projects. The Commission in [Decision 2012-170](#)¹ advised that it planned to initiate Proceeding No. 1995 to evaluate the need for the entire UPR project rather than individually test the merits of each constituent project.

3. On August 15, 2012, the Commission held a process meeting for the UPR proceeding in Calgary. On September 4, 2012, the Commission issued [Decision 2012-233](#)² with respect to the process meeting.

4. On March 19, 2013, ATCO Pipelines filed its UPR project application with the Commission in accordance with the Commission's direction in [Decision 2012-233](#).

5. Written arguments and reply arguments were filed by participants on October 11 and October 21, 2013 respectively. Accordingly, the close of record for Proceeding No. 1995 was October 21, 2013.

6. The Commission received costs claims from the following parties:

- Consumers Coalition of Alberta (CCA)
- ATCO Pipelines
- Graves Engineering Corp.
- Tsuu T’ina Nation
- Blake Group

¹ Decision 2012-170: ATCO Pipelines, 2012 Interim Revenue Requirements, Application No. 1608058, Proceeding No. 1666, June 20, 2012.

² Decision 2012-233: ATCO Pipelines, Urban Pipeline Initiative – Application Scope, Requirements and Process, Application No. 1608617, Proceeding No. 1995, September 4, 2012.

7. The costs claim applications filed in relation to Proceeding No. 1995 were designated as Proceeding No. 2933.
8. On January 17, 2014, the Commission issued Decision 2014-010 with respect to Proceeding No. 1995. An errata to Decision 2014-010³ was subsequently issued on February 21, 2014.
9. In a December 5, 2013 letter, the Commission circulated a summary of costs being claimed to interested parties.
10. On December 20, 2013, in response to a letter from ATCO Pipelines, the Commission issued a revised summary of the costs claimed. 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 January 6, 2014. No comments were received.
11. On January 21, 2014, the Commission received an errata costs claim from the Blake Group. The Blake Group indicated that the cost of transcripts was not included in its original costs claim. The Commission extended the filing period for costs claims until January 21, 2014.
12. Accordingly, for the purposes of this costs decision the Commission considers the costs process to have closed on January 21, 2014.

2 Views of the Commission

2.1 Authority to Award Costs in the UPR Proceeding

13. The Commission's authority to award costs arises pursuant to sections 21 and 22 of the *Alberta Utilities Commission Act*.
14. Section 21 of the *Alberta Utilities Commission Act* grants the Commission the authority to order costs incidental to any hearing or other proceeding. When assessing a cost claim pursuant to Section 21 of the *Alberta Utilities Commission Act* the Commission applies Rule 022, *Rules on Intervener Costs in Utility Rate Proceedings* (Rule 022).
15. Section 22 of the *Alberta Utilities Commission Act* provides that the Commission may award costs to persons or groups of persons that meet the definition of "local intervener". That provision reads, in part, as follows:

22(1) For purposes of this section, "local intervener" means a person or group or associations of persons who, in the opinion of the Commission,

- (a) has interests in, and
- (b) is in actual occupation of or is entitled to occupy land that is or may be directly and adversely affected by a decision or order of the Commission in or as a result of a hearing or other proceeding of the Commission on an application to construct or operate a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act*, but unless otherwise authorized by the Commission does not include a person or group or association of persons

³ Decision 2014-010(Errata): ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd., Errata to Decision 2014-010, Urban Pipeline Replacement Project, Application No. 1608617, Proceeding No. 1995, February 21, 2014.

whose business interest may include a hydro development, power plant or transmission line or gas utility pipeline.

(2) The Commission may make rules respecting the payment of costs to a local intervener for participation in any hearing or other proceeding of the Commission.

16. Section 22 of the *Alberta Utilities Commission Act* provides the Commission with a specific authority to make rules on the payment of costs to a “local intervener” for participation in certain facility proceedings such as those dealing with gas utility pipelines. Rule 009: *Rules on Local Intervener Costs* (Rule 009) which relates to local interveners’ costs claims under Section 22 of the *Alberta Utilities Commission Act*, describes the process for applying for an award of costs and lists factors that the Commission may consider when deciding on a local intervener’s costs claim.

17. The Commission convened the UPR proceeding pursuant to sections 22 and 24 of the *Gas Utilities Act*, subsections 4(a) and (b) of the *Pipeline Act*, and Section 8(2) of the *Alberta Utilities Commission Act*. The Commission generally awards costs to local interveners for facility applications under the *Pipeline Act* including gas utility pipelines pursuant to Section 22 of the *Alberta Utilities Commission Act* and Rule 009 and awards costs for rate or rate related applications pursuant to Section 21 of *Alberta Utilities Commission Act* and Rule 022. Given the unique nature of the of the UPR proceeding, the Commission is of the view that it may award costs pursuant to either section 21 or 22 of the *Alberta Utilities Commission Act*. This approach is similar to the approach taken by the Commission when it receives costs claims related to an application by the Alberta Electric System Operator relating to the need for new transmission facilities under Section 34 of the *Electric Utilities Act*.

18. The Commission considers that the costs it awards should take into account the role of each party in the UPR proceeding and notes that its findings with respect to each party outlined below are consistent with the type (facility or rates) of cost applications filed.

19. The Commission considers that the Blake Group, the T’suu Tina First Nation and the Papaschase First Nation intervened in the UPR proceeding because of their respective locations to the UPR project. In particular, each party’s concern related to land that is near to or borders the proposed UPR project. The Commission considers that each of these parties is eligible to claim costs under Section 22 of the *Alberta Utilities Commission Act* because each claimed an interest in land or submitted a land based claim.⁴

20. The Commission will assess the costs claimed by ATCO Pipelines, the CCA and Mr. Graves pursuant to Rule 022.

21. ATCO Pipelines is not a local intervener and its eligibility to recover its hearing costs flows from Section 21 of the *Alberta Utilities Commission Act* and Section 3.3 of Rule 022.

22. The Commission understands that the CCA participated in the UPR proceeding to represent the interests of residential customers of regulated utilities in Alberta. In particular, the CCA intervened to address the implications that the UPR project would have on the rates paid by

⁴ Graves Engineering Corp. submitted the cost claim on behalf of the Papaschase First Nation. According to the evidence presented in the proceeding, the UPR project traverses the Papaschase First Nation’s traditional territory. No evidence was before the Commission that Graves Engineering Corp, has land within 800 meters of the UPR project.

residential customers. The CCA stated that its goal was to ensure that all costs to customers are the lowest possible costs that allow the utility to maintain a safe reliable and adequate level of service.⁵

23. Mr. Graves intervened in the UPR proceeding because he was concerned with the UPR project's potential impacts to those members of the public who either plan to construct natural gas fueling stations in the Edmonton area or intend to own natural gas vehicles. Mr. Graves does not meet the definition of a local intervener because he has not asserted a land based interest in support of his intervention. However, having regard to the broad nature of the UPR proceeding, the specific nature of Mr. Graves' concerns, and the similarity of the UPR proceeding to an electric transmission need proceeding under Section 34 of the *Electric Utilities Act*, the Commission is prepared to consider Mr. Graves' costs claim pursuant to Rule 022 in this instance.

2.2 Considerations when Assessing Costs Claims

24. Appendix A of both Rule 009 and Rule 022 contains a *Scale of Costs* which provides prescribed fees that are considered fair and reasonable. The Commission is mindful that the *Scale of Costs* for Rule 009 and Rule 020 are substantively the same with respect to the hourly rates recoverable from consultants and legal counsel. For this reason, the Commission determines that no party will be prejudiced by having its costs assessed under either Rule 009 or Rule 022.

25. Before exercising its discretion to award costs, the Commission must consider in accordance with Section 11 of Rule 022 and Section 7 of Rule 009, whether the party acted responsibly and contributed to a better understanding 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 raised in Proceeding No. 1995.

26. In the Commission's view, the responsibility to contribute positively to the process is inherent in the choice to participate 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.

3 Views of the Commission – Assessment

27. The Commission has set out its consideration of the costs claims in the order that each was filed.

3.1 CCA

28. The CCA submitted a costs claim totalling \$134,464.11. The claim is comprised of legal fees for Wachowich & Company in the amount of \$29,312.50, disbursements of \$4,278.57 and

⁵ Exhibit 1 – CCA Cost Claim, page 4 para 11.

GST of \$1,679.55; consulting fees for Regulatory Services Inc. in the amount of \$92,812.50, disbursements of \$1,657.49 and GST of \$4,723.50.

3.1.1 Legal Fees

29. The Commission finds from its review of the CCA's costs submission and a review of the evidence, testimony and argument of the CCA in the UPR proceeding that the hours claimed by Wachowich & Company are commensurate with the work performed and were directly and necessarily related to the UPR proceeding. The legal fees claimed on behalf of the CCA are reasonable given the nature and scope of its participation. Further, the claim for legal fees was in accordance with the *Scale of Costs*.

30. The Commission therefore approves legal fees in the amount of \$29,312.50, and GST of \$1,465.63.

3.1.2 Consultant Fees

31. The Commission has reviewed the claim by Regulatory Services Inc. and considers that the preparation time of 290.25 hours claimed by this company was excessive given its role in the UPR proceeding. The CCA submitted that it retained Regulatory Services Inc. to assist with the technical analysis of the application and that this required familiarity with models used in the derivation of costs and rates.⁶ Regulatory Services Inc. reviewed the application, assisted in drafting the CCA's 18 information requests, many of which focused on the existing state of the urban pipelines and risk assessment, and reviewed the subsequent information responses. It also reviewed additional expert and intervener evidence and assisted in drafting cross-examination questions, argument and reply. In determining whether the costs incurred are reasonable, the Commission considered the nature of the CCA's information requests and responses and other submissions. The Commission also notes that Regulatory Services Inc. did not present evidence at the hearing and did not file an expert report. Therefore, the Commission has reduced Regulatory Services Inc.'s preparation hours by 30 per cent or 87.08 hours and approves hours for consulting services incurred by Mr. Jodoin in the amount of \$50,793.75, exclusive of GST.

32. As a result, the Commission approves consulting fees in the total amount of \$71,043.75 and GST of \$3,552.19.

3.1.3 Disbursements

33. Mr. Wachowich claimed \$852.78 for a four night hotel stay, which exceeds the maximum of \$140.00 per day present in the *Scale of Costs*. The Commission finds this costs claim to be reasonable, given the time of year during which the hearing occurred and recognizing that Mr. Wachowich stayed in a moderately priced hotel in proximity to the Commission's Calgary hearing room. Therefore, the Commission has approved \$852.78 for this hotel stay.

34. Regulatory Services Inc. claimed \$926.00 for a four night hotel stay which exceeds the maximum of \$140.00 per day present in the *Scale of Costs*. The Commission finds this costs claim to be reasonable, given the time of year during which the hearing occurred and recognizing that Mr. Jodoin stayed in a moderately priced hotel in proximity to the Commission's Calgary hearing room. Therefore, the Commission has approved \$926.00 for this hotel stay.

⁶ Exhibit 0001.00.CCA-2993: Page 2

35. The Commission approves disbursements in the amount of \$5,936.06 plus GST of \$296.80 for a total amount of \$6,232.86.

3.2 ATCO Pipelines

36. ATCO Pipelines submitted a costs claim totalling \$1,285,128.68. The claim consists of legal fees for Bennett Jones LLP (Bennett Jones) in the amount of \$639,627.00, disbursements of \$6,806.22, and GST of \$32,321.66; and consulting fees and disbursements in the amounts specified below:

| Firm/Company Name | Fees | Disbursements | GST |
|---------------------------------------|--------------|---------------|-------------|
| Dynamic Risk Assessment Systems, Inc. | \$206,506.25 | \$3,816.35 | \$10,513.21 |
| Kiefner & Associates, Inc. | \$157,697.86 | \$2,349.20 | \$8,000.72 |
| M C Felts Company | \$28,939.73 | \$2,889.74 | \$1,581.83 |
| Amicus Reporting Group | | \$3,663.60 | \$183.19 |
| Alberta Utilities Commission | | \$138,034.51 | \$6,901.73 |
| ATCO Pipelines Witness – Jason Sharpe | | \$3,078.60 | \$155.13 |
| ATCO Pipelines – Open House | | \$26,898.16 | \$1,291.11 |
| ATCO Gas Witness – Graeme Feltham | | \$2,117.48 | \$94.85 |
| UPR – Open House | | \$1,581.48 | \$79.07 |

3.2.1 Legal Fees

37. ATCO Pipelines submitted that it engaged the firm of Bennett Jones for legal assistance with respect to the UPR project.

3.2.1.1 Fees Outside the *Scale of Costs*

38. ATCO Pipelines' costs claim requested full recovery of professional fees and disbursements. The hourly rate amounts claimed exceed the *Scale of Costs*.

39. On March 3, 2014, the Commission issued a letter to ATCO Pipelines directing ATCO Pipelines to provide an additional set of forms U1-U4 to permit the Commission to effectively compare the fees claimed by ATCO Pipelines with the fees that ATCO Pipelines was eligible to recover under the *Scale of Costs*.

40. On March 11, 2014, ATCO Pipelines responded to the Commission's March 3, 2014 letter and requested approval of its costs claim in its entirety or, if the Commission was not

prepared to do so, that “any award of costs now be treated as a placeholder or interim award subject to the outcome of appeal on this matter presently before the Alberta Court of Appeal.”⁷

41. Appendix A of both Rule 009 and Rule 022 provides that the prescribed fees are considered fair and reasonable but allows for the approval of amounts in excess of the *Scale of Costs* in certain circumstances. The *Scale of Costs* provides that the Commission may award an amount greater than provided by the *Scale of Costs* to address unique circumstances where a claimant can advance persuasive argument that the scale is inadequate given the complexity of the case.

42. ATCO Pipelines submitted that the fees incurred represent the degree of assistance required to participate effectively in the UPR proceeding. ATCO Pipelines further stated:

The legal fees reflect the extensive nature of the UPR Proceeding, one which the Commission ruled would "...streamline the regulatory process for the future segments of the [UPR] both in terms of forecast revenue requirements for [UPR] projects and for specific facility approvals."⁸

43. The Commission has considered ATCO Pipelines' submission suggesting a costs award in excess of the *Scale of Costs* would be justified in the present circumstances given the complexity and unique nature of the UPR proceeding. The Commission finds that the legal issues raised in the UPR proceeding were not of a sufficient degree of complexity to warrant an award in excess of the *Scale of Costs* as the majority of the issues focused on pipeline integrity, pipeline risk assessment and pipeline safety.⁹

44. The Commission has also considered the length of the UPR proceeding, the number of expert witnesses who filed evidence and the number and the extent of the participation by the interveners. Specifically, the Commission observes that the UPR proceeding was a four and a half day hearing, and that only the applicant's experts and the independent expert, Dr. Murray, filed expert reports and testified at the hearing. Also, with the exception of the Office of the Utilities Consumer Advocate (UCA) and the CCA the remaining parties' participation was limited.

45. Based on the forgoing, the Commission denies ATCO Pipelines' request for legal fees that exceeded the *Scale of Costs*. Accordingly, the legal fees have been reduced to the amounts claimed in ATCO Pipelines' March 11, 2014, submission and are further considered below.

46. Consistent with its established practice, and as confirmed in previous communication with ATCO Pipelines' appellate counsel, the Commission declines to implement placeholder or interim costs awards for legal and consulting fees claimed in excess of the amounts permitted by the *Scale of Costs*. The Commission is, nonetheless, mindful of the claimant's position with respect to its reservation of rights to claim full indemnity for such costs pending the determination of Appeal Nos. 1301-0069AC and 1301-0070AC and does not consider ATCO Pipelines' provision of adjusted cost figures on March 11, 2014, to constitute any alteration to, or retreat from, its stated position in this regard.

⁷ Exhibit 19.01 ATCO Pipelines' Response to the AUC March 3, 2014, letter page 1.

⁸ Exhibit 02: ATCO Pipelines Cost Claim Justification Page 7 para 31-32.

⁹ Exhibit 23.01-AUC letter- process October 15, 2012.

3.2.1.2 Assessment of Legal Fees

47. Two lawyers from Bennett Jones were primarily employed in this matter, namely Mr. Gretener and Mr. Synnott. The Commission recognizes the history and unique nature of the UPR proceeding and therefore finds it reasonable for ATCO Pipelines to have had second counsel in attendance.

48. Bennett Jones claimed 1,079.40 hours for hearing preparation. For the following reasons, the Commission considers the amount of preparation time claimed to be excessive.

49. The Commission finds the volume of the record in the UPR proceeding to be relatively small in comparison to other proceedings recently before the Commission.¹⁰ In making this determination, the Commission has taken into account the number and nature of the information requests, the number and subject matter of the pre-hearing motions, and the evidence filed by each party. In the Commission's view, all interveners other than the CCA and the UCA had a limited role in the UPR proceeding. The Commission further considers that Dr. Murray was the only expert not retained by ATCO Pipelines who filed an expert report and appeared before the Commission in the UPR proceeding.

50. As described above, the UPR proceeding centred on specific issues relating to pipeline integrity, pipeline risk assessment and pipeline safety. The Commission finds that the UPR proceeding did not raise novel legal issues or require a considerable degree of legal analysis. Accordingly, the Commission would expect the hours submitted by counsel to reflect the technical nature of the UPR proceeding, especially given that the issues were specified in the Notice of Hearing and in Decision 2012-233. While the Commission considers that legal counsel is entitled to, and should, review technical submissions, the Commission would expect that counsel would not be primarily responsible for drafting or reviewing such submissions.

51. Bennett Jones claimed over 200 hours for drafting and reviewing information requests and responses. The Commission was unable to determine the precise amount of time that Bennett Jones allocated to specific tasks because multiple tasks were present on individual time entries. The Commission has assessed the information requests and responses filed in the UPR proceeding and finds that the majority of these information requests and responses were of a technical nature and, as such, should not require over 200 hours of counsel's time.

52. Further, the Commission considers that there would have been duplication in some of the work completed in the UPR proceeding and the applications previously filed with the Commission for approval of the UPR's component projects.¹¹ The Commission is mindful that ATCO Pipelines' position was that the business cases had been sufficiently demonstrated in

¹⁰See for example Decision 2012-303, ATCO Electric Ltd. Eastern Alberta Transmission Line Project, Application 1607153 and No. 1607736, Proceeding ID No. 1069, November 15, 2012; 2010 Evergreen Proceeding for Provision of Information Technology and Customer Care and Billing Services Post 2009, Application No. 1605338, Proceeding Id, No. 240 and 2012-2377; Rate Regulation Initiative: Distribution Performance-Based Regulation, Application No. 1606029, Proceeding ID No. 566, September 12, 2012.

¹¹ ATCO Pipelines 2011 Interim Revenue Requirement, Application No. 1606838, Proceeding ID. 985; ATCO Pipelines 2011 Final Revenue Requirement, Application No. 1607451, Proceeding ID No. 1314; ATCO Pipelines Northwest Edmonton Connector Licence, Application No. 1607680, Proceeding ID No. 1452; ATCO Pipelines Southeast Calgary Connector Licence, Application No. 1608219, Proceeding ID No. 1755; ATCO Pipelines 2012 Interim Revenue Requirement, Application No. 1608058, Proceeding ID No. 1666.

AUC Decision [2011-494](#).¹² In the Commission's view, at least some of the legal work necessary to justify the need for these component projects would have been completed in the five applications where each component project was first identified.

53. Accordingly, the Commission has reduced Bennett Jones' preparation time of 1,079.40 hours by 20 percent.

54. As a result, the Commission approves legal fees in the total amount of \$275,517.80 and GST of \$13,775.89.

3.2.2 Consultants Fees

55. ATCO Pipelines also submitted consultants fees in amounts that exceed the *Scale of Costs*. Based on its review of the evidence and submissions made by each of the experts, the Commission finds that while the technical complexity of the UPR proceeding justified the retention of ATCO Pipelines' various consultants, the *Scale of Costs* represents a fair and reasonable tariff for the work performed.

56. Further, the Commission finds from its review of the ATCO Pipelines costs submission and a review of the evidence, testimony and argument of ATCO Pipelines in the UPR proceeding, that the hours claimed by its various consultants and experts are commensurate with the work performed and were directly and necessarily related to the UPR proceeding.

57. Therefore, the Commission approves the costs for consultant fees in the hourly rates specified in the *Scale of Costs* and as identified in ATCO Pipelines' March 11, 2014, submission.

3.2.3 Disbursements

58. ATCO Pipelines claimed \$29,849.82¹³ for matters relating to its open houses. The Commission does not consider that open houses should be eligible for cost recovery.

59. ATCO Pipelines submitted a hotel invoice for Mr. Sharpe claiming ten days accommodation for his attendance at the oral hearing. The Commission has adjusted this amount to seven days, given that the hearing was only five days long, and approves \$980.00 for Mr. Sharpe's accommodation for his attendance at the oral hearing.

60. The Commission has reviewed ATCO Pipelines' disbursements and notes that several disbursements claimed for its various lawyers and consultants exceed the *Scale of Costs*. Therefore, the Commission has adjusted ATCO Pipelines' remaining disbursements to those amounts provided in its March 11, 2014.

61. As a result, the Commission approves disbursements in the total amount of \$152,652.48 plus GST of \$7,634.38.

3.3 Mr. Graves and the Papaschase First Nation

62. Graves Engineering Corp. submitted a cost claim totalling \$6,240.00 on behalf of Mr. Graves and the Papaschase First Nation. The claim consists of consulting fees for Mr. Graves in the amount of \$5,400.00, disbursements of \$570.00 and GST of \$270.00. Graves Engineering

¹² Exhibit 02 ATCO Pipelines response to AUC letter dated 2012-07-05 AUC Decision [2011-494](#).

¹³ Exhibit 02-ATCO Pipelines Letter and Justification for Cost Claimed states \$28,189.27 whereas Exhibit 19 states \$29,849.82 .

Corp. claimed 36 hours of consulting fees at a rate of \$150 per hour for its involvement in the UPR proceeding. However, no statement of account was submitted detailing the work performed.

63. The costs claim filed by Graves Engineering Corp. was filed on behalf of both Mr. Graves and the Papaschase First Nation. Graves Engineering Corp. submitted that it represented both the personal interests of Mr. Graves and the interests of the Papaschase First Nation. The costs submission also did not specify which fees related to the representation of Mr. Graves' personal interests and which fees related to the representation of the Papaschase First Nation.

64. Mr. Graves was personally concerned with the impacts that may occur to future natural gas fuelling stations in Edmonton if the Edmonton pipeline system were to operate under distribution pressure.

65. During Proceeding No. 1995, Mr. Calvin Bruneau appeared on behalf of the Papaschase First Nation and explained that its traditional territory was located in south Edmonton. Mr. Bruneau further stated that the Papaschase First Nation intervened in the UPR proceeding because its ancestral burial grounds are located in south Edmonton, including near the TUC, and that remains had previously been found near the Rosedale power plant.¹⁴

3.3.1 Mr. Graves

66. Mr. Graves was concerned with the impacts to future natural gas fuelling stations if the Edmonton pipeline system was to operate under distribution pressure. Mr. Graves' pursuit of this issue involved the filing of four information requests, a brief cross-examination of the ATCO Pipelines witness panel, and the submission of a brief argument. During the oral hearing, after his cross-examination of the ATCO Pipelines witness panel, Mr. Graves requested via email to Commission staff that new documents be admitted as evidence, then failed to attend the oral hearing to speak to this issue. The Commission issued a ruling denying Mr. Graves' request to admit new evidence. After the evidentiary portion of the hearing concluded, Mr. Graves submitted a review and variance request on the Commission's ruling to deny the late-filed evidence.

67. When assessing a costs claim, the Commission is guided by Rule 022. Not only does Rule 022 outline what fees and disbursements the Commission will consider in a claim, it provides criteria for assessing a claim.

68. Section 11 of Rule 022 provides that when assessing a cost claim, the Commission will take into account whether the participant acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission. The following excerpt from Section 11. 2 of Rule 022 provides additional matters of conduct that the Commission may consider when assessing a costs claim:

- Presented in oral evidence significant new evidence that was available to it at the time it filed documentary evidence but was not filed at that time.
- Failed to comply with a direction of the Commission, including a direction on the filing of evidence.
- Submitted evidence and argument on issues that was not relevant.

¹⁴ Transcript, Volume Page 8 lines 14-25.

- Needed legal or technical assistance to take part in the hearing or other proceeding.
- Engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to the applicant or other participants.

69. For the reasons that follow, the Commission finds that Mr. Graves' participation in the proceeding with respect to his interests regarding natural gas vehicles did not contribute to a better understanding of the issues before it.

70. The Commission is of the view that the evidence presented by Mr. Graves would have been available in accordance with the process schedule, including the late-filed evidence. Mr. Graves sought to admit the evidence referred to by Mr. Graves in cross-examination of the ATCO Pipelines' witness panel.¹⁵ Mr. Graves registered as a participant in Proceeding No. 1995 on May 10, 2013. The additional evidence Mr. Graves sought to file was consistent with the issues raised in his statement of intent to participate and his information requests. However, this evidence was not filed in accordance with the process schedule. The Commission, in its September 27, 2013, ruling on Mr. Graves' review and variance application, stated that Mr. Graves had ample opportunity to address this issue before the Commission, but failed to do so in a reasonable way. In that ruling, the Commission also stated that the serial reconsideration of interlocutory decisions can delay proceedings and result in an inefficient regulatory process.

71. The Commission finds that Mr. Graves failed to comply with directions from the Commission on the filing of evidence. Mr. Graves did not upload documents to be submitted on the Commission's electronic proceeding system, despite repeated requests by AUC staff. Instead, Mr. Graves sought to submit both new evidence and his review and variance to the Commission through email to AUC staff.

72. Further, in the Commission's view, Mr. Graves engaged in conduct that unnecessarily lengthened the duration of the UPR proceeding and resulted in unnecessary costs to the applicant. Specifically, Mr. Graves' repeated requests to admit new evidence and a subsequent review and variance application unnecessarily lengthened the hearing.

73. The issue Mr. Graves advanced in cross-examination and argument had little relevance to the outcome of the UPR proceeding.

74. Having regard to the foregoing, the Commission denies the fees claimed by Mr. Graves for his participation in the hearing.

3.3.2 The Papaschase First Nation

75. The Papaschase First Nation became involved in Proceeding No. 1995 when it registered at the commencement of the oral hearing. At that time, Mr. Bruneau made an introductory statement outlining the Papaschase First Nation's interest in the area, which statement was treated as evidence by the Commission, as were statements made by Mr. Bruneau in his cross-examination of the ATCO Pipelines witness panel. The written evidence filed by the Papaschase First Nation was limited to a map showing its traditional territory.

¹⁵ Transcript Page 418 lines 1-2.

76. The Commission considers that the issues the Papaschase First Nation pursued at the hearing related to consultation and the potential for land impacts associated with the Edmonton projects described in the UPR proposal. In the Commission's view, these were valid issues that were directly related to the UPR project. When assessing the Papaschase First Nation's participation in the oral hearing, the Commission considers that Mr. Bruneau acted in a reasonable manner.

77. The *Scale of Costs* allows for a preparation honorarium of between \$300.00 and \$2,500.00 to be claimed by local interveners for the preparation of a submission, depending on the complexity of the submission, as long as a legal counsel or an expert was not primarily responsible for the preparation of the submission. In this circumstance, the Commission considers it reasonable that the Papaschase First Nation be awarded a preparation honoraria of \$300.00. The Commission recognizes that Mr. Graves assisted Mr. Bruneau in the preparation and presentation of the Papaschase First Nation's intervention and notes that it is open to Mr. Bruneau to allocate the honorarium awarded as he sees fit.

78. The Commission also awards Mr. Bruneau and Mr. Graves an attendance honorarium of \$150.00 each for their attendance at the hearing to represent the interests of the Papaschase First Nation. Accordingly, the Commission awards attendance honoraria totalling \$300.00 to the Papaschase First Nation and Graves Engineering Corp.

3.3.3 Disbursements

79. Graves Engineering Corp. disbursements included accommodation, meals and mileage for Mr. Graves and Mr. Bruneau that were not accompanied by receipts. Nonetheless, the Commission determines that the disbursements claimed were in accordance with the *Scale of Costs* and finds them to be reasonable. The disbursement costs are approved as filed.

80. The Commission approves the disbursements in the total amount of \$570.00.

3.4 Tsuu T'ina First Nation

3.4.1 Legal Fees

81. MacPherson Leslie & Tyerman LLP submitted a costs claim on behalf of the Tsuu T'ina First Nation totalling \$10,206.32. The claim consists of legal fees in the amount of \$6,504.00, disbursements of \$3,216.30 and GST of \$486.02.

82. Two legal counsel were primarily employed in this matter; namely Mr. Gruber and Mr. Lafond. The Commission finds that, based on the issues raised in the UPR proceeding, the assistance of junior counsel was warranted.

83. The Commission has considered the costs claim in accordance with Section 7 of Rule 009 and the Commission's *Scale of Costs*. In the Commission's view, the hours claimed by MacPherson Leslie & Tyerman LLP appear reasonable for the work undertaken and the fees claimed are within the *Scale of Costs*. Therefore, the Commission approves the legal fees and GST as claimed.

3.4.2 Disbursements

84. The disbursements claimed by the Tsuu T'ina First Nation are limited to the cost of obtaining copies of the transcript of the UPR proceeding. The Commission finds the disbursement submitted by the Tsuu T'ina First Nation to be reasonable and approves it in full.

3.5 The Blake Group

85. Carscallen LLP filed a costs claim totalling \$101,677.99 on behalf of the Blake Group. The costs claim submitted consists of legal fees for Carscallen LLP in the amount of \$72,686.00, disbursements of \$4,653.42 and GST of \$3,688.42; consulting fees for the Bercha Group in the amount of \$19,143.00, and disbursements of \$947.15; and an intervener honorarium in the amount of \$550.00 for Brenda Blake.

86. Two counsel were primarily employed in this matter; namely Mr. Niven and Mr. Ramessar. The Commission finds that, in light issues brought forward by the Blake Group, the assistance of junior counsel was warranted.

87. The Commission has considered the costs claim in accordance with Section 7 of Rule 009 and the Commission's *Scale of Costs* and finds that the participation of Blake Group was effective and of assistance to the Commission. From its review of the Blake Group's costs submission and a review of the Blake Group evidence, testimony and argument in the UPR proceeding, the Commission finds that the hours claimed by legal counsel are reasonable for the services described and that the claim for legal fees was in accordance with the *Scale of Costs*. Accordingly, the claim for legal costs is approved, as filed.

3.5.1 Consultant Fees

85. The total hours claimed for consultant fees appear reasonable to the Commission, given the submissions of the Blake Group. Accordingly, the Commission approves the Bercha Group's consulting fees in the amount of \$19,143.00 in full.

3.5.2 Disbursements

86. The Commission considers the Blake Group's disbursements reasonable and approves the fees as claimed.

3.5.3 Honorarium

87. The *Scale of Costs* allows for a claim for an honorarium of up to \$500.00 for the formation of a group, even if the group is represented by legal counsel. The *Scale of Costs* allows for a claim for an attendance honorarium to be made by an intervener in the amount of \$50.00 for each half day of attendance at the hearing. The Commission considers that a preparation honorarium in the amount of \$500.00 and an attendance honorarium of \$50.00 is reasonable in the circumstances. Accordingly, the Commission approves the intervener honorarium claimed for Ms. Blake in full.

4 GST

88. In accordance with the Commission's treatment of GST on cost awards, ATCO Pipelines is required to pay only that portion of GST paid by interveners that may not be recoverable

through the GST credit mechanism. Accordingly, the Commission approves the eligible GST in the amount of \$47,960.79.

89. The Commission emphasizes that its treatment of the GST claim in no way relieves participants or their consultants from their GST obligations pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15.

5 Order

90. It is hereby ordered that:

(1) ATCO Pipelines shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$111,606.92.

(2) ATCO Pipelines shall pay external costs in the amount of \$807,870.44.

(3) ATCO Pipelines shall pay intervener costs to Graves Engineering Corp. and Papaschase First Nation in the amount of \$1,170.00.

(4) ATCO Pipelines shall pay intervener costs to Tsuu T'ina First Nation in the amount of \$10,206.32.

(5) ATCO Pipelines shall pay intervener costs to the Blake Group in the amount of \$101,677.99.

(6) ATCO Pipelines shall record external and intervener costs in the amount of \$1,032,531.67 in its Hearing Cost Reserve Account.

Dated on April 4, 2014.

The Alberta Utilities Commission

(original signed by)

Anne Michaud
Panel Chair

(original signed by)

Mark Kolesar
Vice-Chair

(original signed by)

Neil Jamieson
Commission Member

ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd.
 Urban Pipeline Replacement Project

Proceeding No. 2933
 Total Costs Claimed

| | Total Fees/Honorarium Claimed | Total Disbursements Claimed | Total GST Claimed | Total Amount Claimed | Total Fees/Honorarium Awarded | Total Disbursements Awarded | Total GST Awarded | Total Amount Awarded |
|---|-------------------------------|-----------------------------|--------------------|----------------------|-------------------------------|-----------------------------|--------------------|----------------------|
| APPLICANT | | | | | | | | |
| ATCO Pipelines (Adjusted to <i>Scale of Costs</i>) | | | | | | | | |
| Benett Jones LLP | \$326,416.00 | \$3,157.32 | \$16,478.67 | \$346,051.99 | \$275,517.80 | \$3,157.32 | \$13,933.76 | \$292,608.88 |
| Dynamic Risk Assessment Systems, Inc | \$154,838.50 | \$2,527.97 | \$7,868.32 | \$165,234.79 | \$154,838.50 | \$2,527.97 | \$7,868.32 | \$165,234.79 |
| Kiefner & Associates, Inc. | \$157,450.23 | \$1,533.69 | \$7,949.20 | \$166,933.12 | \$157,450.23 | \$1,533.69 | \$7,949.20 | \$166,933.12 |
| M C Felts Company | \$28,939.73 | \$1,648.60 | \$1,529.42 | \$32,117.75 | \$28,939.73 | \$1,648.60 | \$1,529.42 | \$32,117.75 |
| Amicus Reporting Group | \$0.00 | \$3,663.60 | \$183.18 | \$3,846.78 | \$0.00 | \$3,663.60 | \$183.18 | \$3,846.78 |
| Alberta Utilities Commission | \$0.00 | \$138,034.51 | \$6,901.73 | \$144,936.24 | \$0.00 | \$138,034.51 | \$6,901.73 | \$144,936.24 |
| ATCO Pipelines Witness - Jason Sharpe | \$0.00 | \$1,486.00 | \$74.30 | \$1,560.30 | \$0.00 | \$1,066.00 | \$53.30 | \$1,119.30 |
| ATCO Gas Witness - Graeme Feltham | \$0.00 | \$1,020.79 | \$52.79 | \$1,073.58 | \$0.00 | \$1,020.79 | \$52.79 | \$1,073.58 |
| ATCO Pipelines - Open House | \$0.00 | \$28,479.64 | \$1,370.18 | \$29,849.82 | \$0.00 | \$0.00 | \$0.00 | \$0.00 |
| Sub-Total | \$667,644.46 | \$181,552.12 | \$42,407.79 | \$891,604.37 | \$616,746.26 | \$152,652.48 | \$38,471.70 | \$807,870.44 |
| INTERVENERS | | | | | | | | |
| Consumers' Coalition of Alberta (CCA) | | | | | | | | |
| Wachowich & Company | \$29,312.50 | \$4,278.57 | \$1,679.55 | \$35,270.62 | \$29,312.50 | \$4,278.57 | \$1,679.55 | \$35,270.62 |
| Regulatory Services Inc. | \$92,812.50 | \$1,657.49 | \$4,723.50 | \$99,193.49 | \$71,043.75 | \$1,657.49 | \$3,635.06 | \$76,336.30 |
| Sub-Total | \$122,125.00 | \$5,936.06 | \$6,403.05 | \$134,464.11 | \$100,356.25 | \$5,936.06 | \$5,314.61 | \$111,606.92 |
| Mr. Graves and the Papaschase First Nation | | | | | | | | |
| Jim Grave Engineering | \$5,400.00 | \$570.00 | \$270.00 | \$6,240.00 | \$600.00 | \$570.00 | \$0.00 | \$1,170.00 |
| Sub-Total | \$5,400.00 | \$570.00 | \$270.00 | \$6,240.00 | \$600.00 | \$570.00 | \$0.00 | \$1,170.00 |
| Tsuu T'ina First Nation | | | | | | | | |
| MacPherson Leslie & Tyerman LLP | \$6,504.00 | \$3,216.30 | \$486.02 | \$10,206.32 | \$6,504.00 | \$3,216.30 | \$486.02 | \$10,206.32 |
| Sub-Total | \$6,504.00 | \$3,216.30 | \$486.02 | \$10,206.32 | \$6,504.00 | \$3,216.30 | \$486.02 | \$10,206.32 |

ATCO Pipelines, a division of ATCO Gas and Pipelines Ltd.
 Urban Pipeline Replacement Project

Proceeding No. 2933
 Total Costs Claimed

| | Total Fees/Honorarium Claimed | Total Disbursements Claimed | Total GST Claimed | Total Amount Claimed | Total Fees/Honorarium Awarded | Total Disbursements Awarded | Total GST Awarded | Total Amount Awarded |
|--------------------------------------|-------------------------------|-----------------------------|-------------------|----------------------|-------------------------------|-----------------------------|-------------------|----------------------|
| The Blake Group | | | | | | | | |
| Carscallen LLP | \$72,686.00 | \$4,653.42 | \$3,688.42 | \$81,027.84 | \$72,686.00 | \$4,653.42 | \$3,688.42 | \$81,027.84 |
| Bercha Group | \$19,143.00 | \$957.15 | \$0.00 | \$20,100.15 | \$19,143.00 | \$957.15 | \$0.00 | \$20,100.15 |
| Brenda Blake | \$550.00 | \$0.00 | \$0.00 | \$550.00 | \$550.00 | \$0.00 | \$0.00 | \$550.00 |
| Sub-Total | \$92,379.00 | \$5,610.57 | \$3,688.42 | \$101,677.99 | \$92,379.00 | \$5,610.57 | \$3,688.42 | \$101,677.99 |
| | | | | | | | | |
| TOTAL INTERVENER COSTS | \$226,408.00 | \$15,332.93 | \$10,847.49 | \$252,588.42 | \$199,839.25 | \$15,332.93 | \$9,489.05 | \$224,661.23 |
| TOTAL INTERVENER AND APPLICANT COSTS | \$894,052.46 | \$196,885.05 | \$53,255.28 | \$1,144,192.79 | \$816,585.51 | \$167,985.41 | \$47,960.75 | \$1,032,531.67 |