Alberta Energy Regulator

Grand Rapids Pipeline GP Ltd.

Applications for the Grand Rapids Pipeline Project

Costs Awards

November 26, 2014

Alberta Energy Regulator
Cost Order AERCO 2014-006: Grand Rapids Pipeline GP Ltd., Applications for the Grand Rapids Pipeline Project

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ALBERTA ENERGY REGULATOR
Calgary, Alberta

GRAND RAPIDS PIPELINE GP LTD.
APPLICATIONS FOR THE
GRAND RAPIDS PIPELINE PROJECT

Costs Order AERCO 2014-006
Applications No. 1771853 et al
Costs Application No. 1803414

1 Introduction

1.1 Background

[1] Grand Rapids Pipeline GP Ltd. (Grand Rapids) applied under the *Pipeline Act*, the *Public Lands Act*, and the *Environmental Protection and Enhancement Act* for approval to construct, operate, and reclaim the Grand Rapids pipeline project.

[2] The Alberta Energy Regulator (AER) held a public hearing in Edmonton, Alberta, before hearing commissioners A. H. Bolton (presiding), R. C. McManus, and C. Macken. The hearing began on June 23, 2014, and adjourned on June 25, 2014. The hearing resumed on July 14, 2014, and closed on July 18, 2014.

[3] There were twelve confirmed participants when the hearing began: D. and D. Trenholm (the Trenholms), Cactus Holdings Ltd. and Westways Contractors (1986) Ltd. (Cactus Holdings and Westways), MEG Energy Corp., McLeod Services & Contracting Ltd. (McLeod Services), Fort Industrial Estates Ltd. (Fort Industrial), D&A Guenette Farms, the Athabasca Chipewyan First Nation (ACFN), Laricina Energy Ltd., A. Komant, N. and D. Pentelechuk and 631913 Alberta Ltd. (the Pentelechuks), M. Mitchell, and M. Mucha (on behalf of F. Mazurenko, D. Turko, D. Babiak, C. Mazurenko, and T. Mazurenko). It was unclear whether Bigstone Cree Nation (BCN) intended to participate.

[4] The participants' concerns included the need for the Saleski terminal, pipeline routing and facility siting, construction and reclamation methods and schedule, the effects of the project on land use (including effects on industrial development and agricultural operations), the effects on wildlife and its habitat, emergency response procedures and capability, the effects on aboriginal rights and traditional land use, and stakeholder consultation.

[5] BCN was granted the right to participate in the hearing but was deemed by the panel to have withdrawn from the hearing when it failed to provide a written submission or register for the hearing.

[6] ACFN withdrew from the hearing before it ended.

[7] On October 9, 2014, the AER issued *Decision 2014 ABAER 012,* granting conditional approval of 84 of Grand Rapids' 90 applications.

1.2 Costs Claims

[8] Eight hearing participants and BCN submitted cost claims. Before the costs claims were considered, Grand Rapids reached settlements on the claims filed by A. Komant, McLeod

Services, Cactus Holdings and Westways, and the Trenholms. The only costs claims remaining are those filed by M. Mitchell, D&A Guenette Farms, Fort Industrial, the Pentelechuks, and BCN.

[9] The AER considers the costs process to have closed on September 16, 2014.

2 Costs Considerations

[10] In determining who is eligible to submit a claim for costs, the AER is guided by the *Alberta Energy Regulator Rules of Practice* (*Rules of Practice)*, in particular sections 58(1)(c) and 62:

> 58(1)(c) "participant" means a person or a group or association of persons who have been permitted to participate in a hearing for which notice of hearing is issued or any other proceeding for which the Regulator has decided to conduct binding dispute resolution, but unless otherwise authorized by the Regulator, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.
>
> 62(1) A participant may apply to the Regulator for an award of costs incurred in a proceeding by filing a costs claim in accordance with the Directive.
>
> (2) A participant may claim costs only in accordance with the scale of costs.
>
> (3) Unless otherwise directed by the Regulator, a participant shall
>
> (a) file a claim for costs within 30 days after the hearing record is complete or as otherwise directed by the Regulator, and
>
> (b) serve a copy of the claim on the other participants.
>
> (4) After receipt of a claim for costs, the Regulator may direct a participant who filed the claim for costs to file additional information or documents with respect to the costs claimed.
>
> (5) If a participant does not file the information or documents in the form and manner, and when directed to do so by the Regulator under subsection (4), the Regulator may dismiss the claim for costs.

[11] When assessing costs, the AER is guided by division 2 of part 5 of the *Rules of Practice*, *Directive 031: REDA Energy Cost Claims*, and *AER Bulletin 2014-07: Considerations for Awarding Energy Costs Claims and Changes to the AER's Process for Reviewing Energy Costs Claims. Bulletin 2014-017* advises that costs submissions are to address the factors from the *Rules of Practice* that appear relevant to the particular costs claim. The bulletin also advises that as of March 6, 2014, the AER will only review the aspects of a costs claim that are specifically in dispute and may grant the rest of the claim without further review.

[12] The panel has read and thoroughly considered all of the submissions made in this costs process. The absence in this decision of a reference to a particular submission or aspect of a submission in no way indicates that the panel failed to consider the entire submission.

3 Costs Claim of Michele Mitchell

[13] Davis LLP represented Ms. Mitchell at the hearing and filed a costs claim on her behalf on July 23, 2014. Ms. Mitchell falls within the definition of participant in section 58(1)(c) of the *Rules of Practice*. Ms. Mitchell claimed legal fees of $19 355.00, honoraria of $1700.00, disbursements/expenses of $1491.00, and GST of $967.75 for a total of $23 513.75. The panel notes that while not referenced by Grand Rapids, there is an error in the calculations in the costs claim. The legal fees should be $19 271.00, the amount on the invoice issued by Davis LLP. This gives a revised total of $23 425.55.

[14] After attending the first part of the hearing in June, Ms. Mitchell retained Priscilla Kennedy of Davis LLP on July 10 to represent her at the hearing when it resumed on July 14, 2014. Ms. Kennedy submitted that the factors set out in sections 58.1 (b), (k), and (l) of the *Rules of Practice* should be considered when making a determination on the costs claim. These factors are the following:

> (b) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
>
> (k) whether the costs are reasonable and directly and necessarily related to matters contained in the notice of hearing on an application or regulatory appeal and the preparation and presentation of the participants submission;
>
> (l) whether the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the regulator.

[15] Ms. Kennedy submitted that factor (b) is relevant in that she questioned the responsibilities and past record of Grand Rapids and its parent companies in their protection, enhancement, and wise use of the environment. She submitted that factor (k) is relevant in that her representation helped Ms. Mitchell in formulating her cross-examination and direct evidence and contributed to the panel's understanding of the issues related to the pipelines crossing Ms. Mitchell's land. She also submitted that Ms. Mitchell acted responsibly and contributed to a better understanding of the issues related to the application.

[16] In response, Grand Rapids only disputed the costs claimed for Ms. Kennedy's attendance at the hearing. It submitted that Ms. Kennedy's fees for attending the hearing should be reduced by 50 per cent of the $12 600 claimed because her participation tended to unnecessarily lengthen the proceeding and did not contribute to the AER's understanding of application issues (factors (m) and (l) of section 58.1 of the *Rules of Practice*). Grand Rapids raised no concerns about whether the costs claim complied with *Directive 031*.

3.1 Impact of Participation on the Length of the Proceeding (Factor (m))

[17] Grand Rapids submitted that Ms. Mitchell's and Ms. Kennedy's participation at the hearing led to inefficiencies as a result of late filing of evidence and introduction of third-party reports and voluminous materials unrelated to Grand Rapids' project. As well, Ms. Kennedy spent a lot of time preparing written-motion materials and discussing those materials at the hearing. Grand Rapids submitted that the motion, which focused on the *Alberta Bill of Rights*, was a question of constitutional law for which proper notice was not given, and was held by the panel to be premature. Grand Rapids submitted that factor (m) should weigh in favor of reducing the costs

claim because the filing of voluminous irrelevant evidence and the time spent on the aforementioned motion unnecessarily lengthened the proceeding.

[18] Ms. Kennedy responded that these matters did not unnecessarily lengthen the proceedings and were required to ensure that the scope of the proceedings fully covered the matters within the jurisdiction of the AER. She submitted that she provided proper notice for her motion, which was in relation to Grand Rapids' objection to cross-examination questions, and that her motion did not raise a question of constitutional law because it was captured by the *Alberta Bill of Rights* and not the Constitution of Canada. She further noted that the motion focused on the exclusion of evidence such that the requirement for written notice under the *Administrative Procedures and Jurisdiction Act* did not apply.

[19] The panel notes that some inefficiency resulted from the late filing of evidence at the hearing by Ms. Mitchell and Ms. Kennedy and the submission of the motion, which was found by the panel to be premature. However, it is not clear to the panel that these inefficiencies significantly prolonged the hearing. Rather, the panel finds that these matters are more properly dealt with under factor (l) below.

3.2 Impact of Participation on the AER's Understanding of Application Issues (Factor (l))

[20] Grand Rapids submitted that when deciding on costs awards, the AER has regularly considered the extent to which a participant has presented information that helped the panel reach its decision or that otherwise contributed to a better understanding of the issues related to the applications. Grand Rapids submitted that much of Ms. Mitchell's evidence was held by the panel as not sufficiently connected to the matters at issue in the hearing. Ms. Mitchell's testimony, as prepared by Ms. Kennedy, was focused on "speculation and perceived doubts" that she had about various aspects of the project rather than providing substantive evidence or opinions directly related to the applications. Ms. Kennedy did not properly use the opportunity provided to ask questions about issues that were of apparent concern to Ms. Mitchell and to which Grand Rapids' witnesses could have responded. Grand Rapids submitted that Ms. Kennedy's participation did not contribute to a better understanding of issues relevant to the panel's decision and that factor (l) should weigh in favour of reducing the costs claim.

[21] Ms. Kennedy argued that the panel did not rule that the material submitted by Ms. Mitchell was "not sufficiently connected to the matters of the hearing." She submitted that on the contrary, the matters argued by Ms. Mitchell in closing argument contributed to a better understanding of the issues before the AER.

[22] The panel notes that while Ms. Mitchell had initially sought to present evidence on human rights and environmental violations in China, she complied with the panel's direction and limited her presentation to matters that were within the AER's jurisdiction and relevant to the applications being considered. The panel also found that the evidence provided by Ms. Mitchell at the hearing regarding pipeline safety and integrity, including the late-filed National Energy Board audit, contributed to the panel's understanding of the issues.

[23] Of less help to the panel was the motion brought by Ms. Kennedy. Its purpose was unclear, as it related to whether Ms. Mitchell's evidence and cross-examination were within the AER's jurisdiction and was introduced in the absence of any objection to the evidence that she was providing. It also resulted in an unnecessary debate about the *Alberta Bill of Rights* that appears

to have also made its way into the parties' costs submissions, despite the panel's finding that the motion was premature and ultimately unnecessary.

[24] The panel agrees with Grand Rapids that Ms. Kennedy could have done more to help Ms. Mitchell in her cross-examination of Grand Rapids' panel and to ensure that Grand Rapids' panel had an opportunity to address some of the concerns raised by Ms. Mitchell in her direct evidence. Ms. Kennedy's decision to raise routing concerns and propose an alternate route in closing argument provided no value and created confusion about Ms. Mitchell's concerns.

[25] In determining whether the costs claimed by Ms. Mitchell are reasonable or should be reduced as proposed by Grand Rapids, the panel finds factors (k) and (l) of the *Rules of Practice* to be of the greatest assistance. The panel is not convinced that all of the costs submitted by Ms. Kennedy in relation to her attendance at the hearing were reasonable or contributed to a better understanding of the issues on behalf of Ms. Mitchell. The panel notes that Ms. Kennedy has claimed costs that are not much lower than those submitted by counsel who were involved in the process from the start. The panel also notes that Ms. Kennedy submitted costs for attending the full second week of the hearing when it is not apparent that her attendance was necessary for the entire duration. The panel notes that it was Ms. Mitchell, not Ms. Kennedy, who cross-examined Grand Rapids' panel. While Ms. Kennedy asked questions of Ms. Mitchell during her direct evidence, she never asked Ms. Mitchell any questions about rerouting the project. Rerouting was raised for the first and only time in closing argument. Accordingly, the panel agrees that a decrease in Ms. Kennedy's costs is warranted; however, it does not agree with the 50 per cent reduction proposed. The panel is prepared to award Ms. Kennedy 70 per cent of her costs in relation to attending the hearing. This results in a $3780 reduction in Ms. Kennedy's fees. The total costs award granted to Ms. Mitchell including GST is $18 133.55.

4 Costs Claim of D&A Guenette Farms Ltd. and Fort Industrial Estates Ltd.

[26] Guenette Farms and Fort Industrial fall within the definition of participant in section 58(1)(c) of the *Rules of Practice*. Both were represented by Wilson Law in the hearing process. Guenette Farms claimed $26 565.00 in legal fees, $16 987.50 in expert fees, $200.00 in honoraria, $4730.09 in disbursements/expenses, and GST of $2424.13 for a total claim of $50 906.72. Fort Industrial claimed $27 265.00 in legal fees, $16 987.50 in expert fees, $200.00 in honoraria, $4479.82 in disbursements/expenses, and GST of $2446.62 for a total claim of $51 378.94.

[27] On behalf of his clients, Mr. Wilson of Wilson Law submitted that the new regulatory framework directs the panel to consider, in all of its decision-making, the landowners and the impacts of energy projects on landowners' use of their lands. Since an AER hearing is the only place that landowners can go to protect their property rights, their participation in the AER hearing process is one of necessity, not choice. Landowners are not to suffer losses or financial burdens because an energy company has planned a pipeline on their land.

[28] Mr. Wilson said that if landowners are forced to fund these costs on their own, they are put at a competitive disadvantage with their neighbours who do not have to bear these costs. This would undermine the spirit of cooperation and goodwill between landowners and energy companies that the government and the AER seek to foster.

[29] Mr. Wilson said that his clients participated in alternative dispute resolution in an effort to resolve the dispute (factor (q) of section 58.1 of the *Rules of Practice*). They collaborated on common issues to streamline the process and reduce costs, including sharing legal counsel and the expert witness, Bob Berrien of Berrien and Associates (factor (f) of section 58.1 of the *Rules of Practice*).

[30] Mr. Wilson submitted that the landowners and their expert presented substantive evidence on routing selection and superior routing choices.

[31] Grand Rapids accepted all fees submitted by Mr. Wilson, the attendance honoraria of Don Guenette and Bob Horton and all submitted disbursements. Grand Rapids' only dispute with the costs claims is in relation to Mr. Berrien's expert report and testimony. Grand Rapids submitted that Mr. Berrien did not make a substantial contribution to the panel's understanding of the issues or final resolution and tended to unnecessarily lengthen the proceeding (factors (l) and (m) of section 58.1 of the *Rules of Practice*). Grand Rapids proposed that Mr. Berrien's fees for preparation and attendance be reduced by 25 percent (i.e. a 25 per cent reduction applied to each client's respective allocation). Grand Rapids raised no concerns about whether the costs claims complied with *Directive 031*.

4.1 Impact of Participation on the AER's Understanding of Application Issues (Factor (l))

[32] Grand Rapids submitted that Mr. Berrien's expert report and the testimony he provided at the hearing included opinions on many routing subdisciplines in which he, by his own admission, lacked subject matter expertise such that the panel could not rely on this information. Grand Rapids also submitted that Mr. Berrien made erroneous assumptions about the status of the "recommended pipeline corridors."

[33] Grand Rapids noted that in focusing primarily on Fort Industrial lands, Mr. Berrien's testimony did not effectively help the panel understand the issues relevant to both of his clients in an equal manner.

[34] Mr. Wilson responded that Grand Rapids' characterizations of Mr. Berrien's evidence were wholly without merit and unfair. He noted that Mr. Berrien was previously accepted as a qualified expert on routing before the Energy Resources Conservation Board, the Energy and Utilities Board, and the Alberta Utilities Commission (AUC) in numerous hearings over the past several decades. Mr. Wilson also submitted that Mr. Berrien applied the same routing methodology as Grand Rapids' external experts advocated, but which Grand Rapids failed to apply across the Fort Industrial and Guenette lands. He also submitted that Grand Rapids' failure to conduct a proper routing assessment left a gaping hole in the evidence that Mr. Berrien was able to fill.

[35] The panel found that Mr. Berrien's participation helped the panel understand and evaluate the degree to which Grand Rapids had considered alternative routes across the lands of Guenette Farms and Fort Industrial. In its decision, the panel agreed with Mr. Berrien's evidence that Grand Rapids failed to adequately consider relevant routing criteria and failed to provide an in-depth comparison of the routes identified. This finding formed the basis for the conditions the panel imposed in relation to the lands of Guenette Farms and Fort Industrial.

4.2 Impact of Participation on the Length of the Proceeding (Factor (m))

[36] Grand Rapids submitted Mr. Berrien's testimony at the hearing included discussion of irrelevant matters such as the quality of application maps, which was of no help to the panel in its determination of the issues. Grand Rapids submitted that these factors weigh in favour of reducing the costs claim.

[37] Mr. Wilson pointed out that Mr. Berrien was efficient with his time during his presentation and by providing a written report in advance, despite short timelines. Mr. Berrien was also responsive to the panel's request that the evidence and presentation be moved up in the schedule on very short notice. Having a highly qualified expert like Mr. Berrien work on this case allowed Mr. Wilson to defer tasks, which resulted in the legal fees being less than they would otherwise have been. Mr. Wilson also said that by pointing out the errors in the maps and their reference points, Mr. Berrien was able to demonstrate how Grand Rapids made numerous errors about the impacts of its preferred route versus the alternative eastern route.

[38] Contrary to Grand Rapids' assertion that Mr. Berrien's participation unnecessarily lengthened the proceeding, the panel finds that his participation resulted in efficiencies. The panel notes that Mr. Berrien provided evidence on behalf of two participants, which avoided duplication of efforts. The panel also notes that Mr. Berrien helped create efficiencies by being flexible in terms of when he presented his evidence and by accommodating scheduling changes. Overall, the panel found Mr. Berrien's testimony to be helpful and relatively succinct. This included Mr. Berrien's pointing out of errors in Grand Rapids' applications, which helped the panel assess Grand Rapids' applications.

[39] Based on the above findings, the panel finds that the costs submitted in relation to Mr. Berrien's expert report and testimony are reasonable and do not warrant a reduction as proposed by Grand Rapids. Mr. Berrien contributed to the efficiency of the hearing, and his participation was of great assistance to the panel. Accordingly, the panel awards Guenette Farms the total amount claimed of $50 906.72 and Fort Industrial the total amount claimed of $51 378.94.

5 Costs Claim of the Pentelechuks

[41] Ackroyd LLP submitted a costs claim on behalf of NPS Farms Ltd. However, the panel notes that NPS Farms Ltd. did not participate in the hearing; rather, its principals, N. and D. Pentelechuk and 631913 Alberta Ltd., participated. The panel assumes that Ackroyd LLP referenced NPS in error and is treating the costs claim as being submitted on behalf of the Pentelechuks.

[42] The Pentelechuks fall within the definition of participant in section 58(1)(c) of the *Rules of Practice*. Ackroyd LLP represented the Pentelechuks at the hearing and filed a costs claim on their behalf on September 14, 2014. The Pentelechuks claimed legal fees of $44 315.00, honoraria of $200.00, disbursements/expenses of $6003.78, and GST of $2515.94 for a total claim of $53 034.72.

[43] Mr. McElhanney submitted that the Pentelechuks had tried to engage Grand Rapids in an effort to reduce or avoid an intervention in the hearing, with an attempt as late as July 15 between counsel for the Pentelechuks and Grand Rapids, but to no avail (factor (q) of section

58.1 of the *Rules of Practice*). Mr. McElhanney submitted that the Pentelechuks' evidence contributed to clarity regarding ramifications of multiple pipelines on a landowner's property, the unique aspects of the Pentelechuks' operations and the efficacy of alternative routes. Mr. McElhanney submitted that the Pentelechuks acted responsibly in the proceeding and contributed to a better understanding of the issues before the panel (factor (l) of section 58.1 of the *Rules of Practice*).

[44] Grand Rapids said that it took steps to resolve the costs claim with the Pentelechuks, but the proposal was rejected by the Pentelechuks. It noted that participants may only claim costs in accordance with *Directive 031* and that factors from section 58.1 of the *Rules of Practice* weigh against granting in full the costs requested by the Pentelechuks. Grand Rapids submitted that the fees attributed to Mr. McDougall for preparation, attendance, and argument should be reduced by 75 per cent.

5.1 Efficiency of Representation

[45] Grand Rapids questioned the need for three lawyers to be involved in preparing for the hearing, and for both Mr. McElhanney and Mr. McDougall to attend the hearing. Mr. McDougall did not lead any direct evidence for the Pentelechuks, cross-examine Grand Rapids' witnesses, or present argument.

[46] Grand Rapids pointed out that in AERCO 2014-001, the panel reduced the fees claimed by counsel for similar activities. In AERCO 2014-003, where multiple counsel represented the same participant, the panel reduced the fees claimed by one counsel by 50 per cent because they "neither conducted examination at the hearing nor made any submissions," and there appeared to be duplication of efforts. Grand Rapids noted that there were several examples in the Ackroyd LLP statement of account where the work done by Mr. McElhanney and Mr. McDougall appeared to have been duplicated. Both recorded time for preparing for direct examination and cross-examination; Mr. McDougall, however, did not conduct either during the hearing, nor did he present argument.

[47] Mr. McElhanney submitted that the use of Mr. McDougall, a junior counsel, increased efficiency because it allowed legal work and preparation to be done at a lower rate.

[48] The panel notes that Mr. McElhanney had two junior counsel helping him. While the panel questions the need for three counsel, it appreciates there is some value in having junior counsel help on files where this reduces the time required by senior counsel. As Mr. McElhanney said, the use of junior counsel can create efficiencies by allowing work to be done at a lower rate of pay. However, the panel questions whether such efficiencies occurred in this case. From a review of the bill of costs submitted, Ackroyd LLP counsel spent more time preparing for the hearing than did some of the other counsel, counsel that provided more technical evidence and had experts to prepare for the hearing. The panel also notes that some work appears to have been duplicated and that the bill of costs appears to contain an error in suggesting that Mr. McDougall billed 37 hours on July 17, 2014.

[49] Another example of inefficiencies resulting from the Pentelechuks' counsel is unclear correspondence from counsel dated May 23, 2014, in response to the AER's request that the Pentelechuks confirm whether they intended to participate. The correspondence sought a decision on the processing of multiple projects on the Pentelechuks' property and advised that no

further oral or written evidence would be presented pending the regulator's decision. This required AER staff to seek clarification about whether the Pentelechuks intended to participate in the hearing and to clarify that the only time for the Pentelechuks to present evidence would be at the hearing and not after the panel's decision. This resulted in the need for an extension for the filing of the request to participate and for Grand Rapids' response.

[50] During the hearing, AER staff also had to seek clarification and spend time following up with counsel for the Pentelechuks when counsel failed to register the Pentelchuks at the start of the hearing despite being provided an opportunity to do so either in writing or in person. This created uncertainty about whether the Pentelechuks intended to participate. The foregoing all supports a reduction in the legal fees submitted by Ackroyd LLP.

5.2 Reasonableness of Costs

[51] Grand Rapids submitted that the time Ackroyd LLP lawyers spent preparing for the hearing was disproportionately high compared with that of other counsel, and should be significantly reduced. Grand Rapids submitted that the Pentelechuks did not prepare comprehensive submissions or present third-party expert evidence as other participants did. Grand Rapids further noted that the costs claims submitted by other parties at the hearing were about one half and one quarter of that submitted by Ackroyd LLP.

[52] Grand Rapids pointed out that the Ackroyd LLP statement of account indicates Mr. McDougall's role at the hearing involved, in large part, helping Mr. McElhanney with the electronic document system. Grand Rapids submitted that Mr. McDougall was not involved with leading evidence, cross-examination, or presenting argument, and that either of the lawyers could have monitored the proceedings by webcast.

[53] Grand Rapids noted that the AER has reduced claimed fees by 50 per cent in past costs orders for both ineffective representation and claiming unreasonable costs. Grand Rapids submitted that Mr. McDougall's fees for preparation, attendance, and argument should be reduced by 75 per cent because both these factors exist in the costs claim of the Pentelechuks.

[54] Mr. McElhanney submitted that the hours for legal fees are reasonable and directly related to the hearing. Mr. McDougall assisted Mr. McElhanney throughout the hearing process and conducted preliminary work that Mr. McElhanney reviewed and used in preparation, attendance, and argument. If Mr. McElhanney were to have prepared all of the direct examination and cross-examination, it would have been at substantially greater cost.

[55] Mr. McElhanney argued that in *AUC Decision 2011-107: Capital Power Management Inc. and Capital Power Generation Services Inc.*, the commission noted that depending on the application and the number of persons represented by legal counsel, the attendance of junior counsel with senior counsel may be necessary. Mr. McElhanney also submitted that allowing junior counsel to attend and participate in hearings trains new professionals, so that the AER can fulfill its public interest mandate.

[56] The panel finds the fees submitted by Ackroyd LLP to be excessive. While the panel found the testimony of the Pentelechuks contributed to the panel's understanding of the issues, the panel found the conduct of counsel for the Pentelechuks to have contributed to inefficiencies, and the legal fees claimed were excessive compared with those submitted by other parties'

counsel. The panel expects that when senior counsel submits costs related to the fees of a junior, the junior counsel's involvement has resulted in efficiencies and decreased legal fees. The panel finds that it is unreasonable to expect an applicant to pay for the training of new professionals as part of the costs of a hearing.

[57] While the panel acknowledges that Grand Rapids has only sought a reduction in the fees submitted by Mr. McDougall, the panel finds that Mr. McElhanney as senior counsel should share the responsibility for the work conducted and fees submitted. Accordingly, the panel reduces the overall counsel fees submitted by 50 per cent. This results in a $22 157.50 reduction in legal fees. The total costs award granted to the Pentelechuks is $29 769.34. The panel notes that while Grand Rapids made a general statement that the Pentelechuks' claim needs to comply with *Directive 031,* it did not specifically seek any reductions on this basis nor did it identify any specific instances of noncompliance. The panel expects that if a respondent takes issue with any of the amounts claimed, they will provide specific reasons for their concerns.

6 Costs Claim of Bigstone Cree Nation

[58] Ackroyd LLP represented BCN during the hearing process and filed a costs claim on its behalf on August 14, 2014. BCN claimed legal fees of $13 440.00 and disbursements/expenses of $197.97 for a total amount of $13 637.97. No GST was claimed.

[59] Mr. McElhanney noted that BCN has a very real capacity issue as it relates to its ability to review and analyze applications for major projects and to make detailed submissions. Lack of capacity also affects its ability to be involved in a hearing process in its entirety. Mr. McElhanney submitted that BCN had actively engaged with "Athabasca Chipewyan Prairie First Nation" and had hoped that the partnership would reduce the costs of participation (factor (f) of section 58.1 of the *Rules of Practice*), but when confronted with the financial realities it reluctantly felt compelled to withdraw from the proceedings.

[60] Mr. McElhanney submitted that the costs as submitted were reasonable and directly and necessarily related to matters contained in the notice of hearing (factor (k) of section 58.1 of the *Rules of Practice*). Mr. McElhanney also submitted that junior legal counsel was used as much as possible to ensure that costs were kept to a minimum. Mr. McElhanney said that BCN tried to engage Grand Rapids in an effort to reduce or avoid an intervention in the hearing but had failed to reach an agreement.

[61] Grand Rapids noted that BCN did not file a written submission by the required deadline and did not respond to the AER's subsequent requests for clarification of BCN's intentions to participate. Ultimately, BCN was deemed to have withdrawn from the process prior to the hearing.

[62] Grand Rapids noted that contrary to *Rules of Practice* sections 58.1 (j), (k), (l), and (m), which refer to the participant's submissions, no submissions were made by BCN's counsel, so BCN's participation did not contribute to the panel's final decision on the applications. Having failed to file a submission, it is impossible to determine whether the costs claim is reasonable and necessarily related to the hearing. Grand Rapids submitted that these factors should weight in favour of denying the costs claim in its entirety.

[63] Grand Rapids submitted that if BCN had needed financial resources to make an adequate submission, it could have requested advance costs under *Directive 031*.

[64] Grand Rapids submitted that the lack of a timely response by BCN's counsel to the AER's request for clarification of BCN's intentions to participate in the hearing, and the resulting uncertainty, unnecessarily lengthened the proceeding. Grand Rapids noted that in past AER costs orders, the AER has generally not granted costs for individuals, lawyers, or experts who do not attend the hearing. In summary, Grand Rapids submitted that because BCN did not file written submissions, participate in the hearing, or provide adequate notice of its intention to withdraw, its involvement did not contribute to the AER's understanding and it should be ineligible for costs.

[65] In reply, Mr. McElhanney submitted that the costs were directly related to preparing for the hearing. Mr. McElhanney contests that BCN unnecessarily lengthened the proceeding, as at least some of BCN`s issues and concerns about the proposed project and applications were common issues and concerns that were expressed and tested by other parties in the proceeding.

[66] While the panel acknowledges that the need for financial resources to make an adequate submission is a factor the panel can consider in assessing a costs claim, it notes that BCN did not avail itself of the AER's advance-of-funds request process. The advance-of-funds request process is intended to assist participants requiring financial resources to make an adequate submission.

[67] Not only did BCN not seek an advance of funds, BCN and its counsel did not respond to the AER's inquiries about whether BCN intended to participate. This resulted in inefficiencies and uncertainty. The panel ultimately had to deem BCN as having withdrawn from the proceeding, as BCN failed to advise the panel that it did not intend to participate. The panel finds that BCN did not act responsibly in the proceeding, nor did it contribute to a better understanding of the issues because BCN failed to provide any submissions. As a result, the panel denies BCN's entire costs claim.

7 Order

[68] The AER hereby orders that Grand Rapids pay costs to Michele Mitchell in the amount of $18 682.00 and GST of $774.55, for a total of $19 456.55. This amount must be paid within 30 days of issuance of this order to

Priscilla Kennedy
Davis LLP
Suite 1201, Scotia Tower 2
10060 Jasper Avenue
Edmonton AB T5J 4E5

[69] The AER hereby orders that Grand Rapids pay costs to D&A Guenette Farms Ltd. in the amount of $48 482.29 and GST of $2424.13, for a total of $50 906.42. This amount must be paid within 30 days of issuance of this order to

Keith Wilson

Wilson Law Office
Suite 195, 3 – 11 Bellerose Drive
St. Albert AB T8N 5C9

[70] The AER hereby orders that Grand Rapids pay costs to Fort Industrial Estates Ltd. in the amount of $48 931.82 and GST of $2446.62, for a total of $51 378.44. This amount must be paid within 30 days of issuance of this order to

Keith Wilson
Wilson Law Office
Suite 195, 3 – 11 Bellerose Drive
St. Albert AB T8N 5C9

[71] The AER hereby orders that Grand Rapids pay costs to the Pentelechuks in the amount of $28 361.28 and GST of $1408.06, for a total of $29 769.34. This amount must be paid within 30 days of issuance of this order to

W.L. (Bill) McElhanney
Ackroyd LLP
1500 First Edmonton Place
10665 Jasper Avenue
Edmonton AB T5J 3S9

[72] The AER hereby denies the costs claim of Bigstone Cree Nation.

[73] Costs recipients should be aware that despite the above orders, in accordance with *Bulletin 2014-07* the AER may, at its sole discretion, audit a costs claim for compliance with the *Rules of Practice* and *Directive 031* any time after it is filed, including after the AER has issued a costs award. Any noncompliance identified during such an audit may result in a decision by the AER to rescind all or part of the costs award. Recurring or persistent noncompliance with AER costs requirements may result in that party's costs applications being audited more frequently by the AER.

Dated in Calgary, Alberta, on November 26, 2014.

ALBERTA ENERGY REGULATOR

<original signed by>

A. H. Bolton, P.Geo.
Presiding Hearing Commissioner

<original signed by>

R. C. McManus, M.E.Des.
Hearing Commissioner

<original signed by>

C. Macken
Hearing Commissioner

Appendix A Summary of Costs Claimed and Awarded

	Total fees/ honoraria claimed	Total expenses claimed	Total GST claimed	Total amount claimed	Total fees/ honoraria awarded	Total expenses awarded	Total GST awarded	Total amount awarded
Michele Mitchell	$20 971.00	$1 491.00	$963.55	$23 425.55	$17 191.00	$1 491.00	$774.55	$19 456.55
D & A Guenette Farms Ltd.	$43 752.20	$4 730.09	$2424.13	$50 906.42	$43 752.20	$4 730.09	$2424.13	$50 906.42
Fort Industrial Estates Ltd.	$44 452.00	$4 479.82	$2446.62	$51 378.44	$44 452.00	$4 479.82	$2446.62	$51 378.44
Pentelechuks	$44 515.00	$6 003.78	$2515.94	$53 034.72	$22 357.50	$6 003.78	$1408.06	$29 769.34
Bigstone Cree Nation	$13 440.00	$197.97	$0.00	$13 637.97	$0.00	$0.00	$0.00	$0.00
	$167 130.20	$16 902.66	$8350.24	$192 383.10	$127 752.70	$16 704.69	$7053.36	$151 510.75