



**Report to the Minister of Justice
and Attorney General
Public Fatality Inquiry**

Fatality Inquiries Act

The Provincial Court of Alberta
Calgary Courts Centre
601-5th Street S.W.

WHEREAS a Public Inquiry was held at the _____

in the _____ City _____ of _____ Calgary _____, in the Province of Alberta,
(City, Town or Village) (Name of City, Town, Village)

on the _____ 20th _____ day of _____ April _____, _____ 2010 _____, (and by adjournment
year

on the _____ 21st and 22nd _____ day of _____ April _____, _____ 2010 _____),
year

before _____ The Honourable Judge G. Sean Dunnigan _____, a Provincial Court Judge,

into the death of _____ Winnifred Belle Palmer (D.O.B. 1918/09/19) _____ 88 years _____
(Name in Full) (Age)

of _____ 3504-29 Street S.W., Calgary, Alberta _____ and the following findings were made:
(Residence)

Date and Time of Death: _____ August 26th, 2007 at 8:00 p.m. _____

Place: _____ Sarcee Hospice, Carewest Continuing Care Centre _____

Medical Cause of Death:

("Cause of Death" means the medical cause of death according to the International Statistical Classification of Diseases, Injuries and Causes of Death as last revised by the International Conference assembled for that purpose and published by the World Health Organization – The Fatality Inquiries Act, Section 1(d)).

Bronchial pneumonia as a complication of blunt force injuries to the head and neck.

Manner of Death:

("Manner of Death" means the mode or method of death whether natural, homicidal, suicidal, accidental, unclassifiable or undeterminable – The Fatality Inquiries Act, Section 1(h)).

Accidental

CIRCUMSTANCES UNDER WHICH DEATH OCCURRED:

SUMMARY –

[1] On June 21st, 2007, Mrs. Palmer, who was mostly blind but lived independently in her own home, fell into a pit approximately four to five feet deep which had been dug at her backdoor by a firm contracted to ATCO Gas for a meter removal and relocation. Mrs. Palmer was apparently unclear on the proposed timing of the excavation work. Further, the pit was neither covered nor surrounded by a protective barrier. Mrs. Palmer spent approximately one month at Foothills Hospital before being transferred to the Sarcee Hospice where she died on August 26th, 2007 of complications developed from her injuries.

CIRCUMSTANCES

Main Issues

[2] The primary issues of this Inquiry are how Mrs. Palmer came to fall into the pit and what measures might be taken to prevent further such occurrences.

Counsel and Parties to the Inquiry

[3] The following were party to this Inquiry:

Ms. Phyllis Shier	Daughter of Mrs. Palmer (not represented by counsel)
Dan Gallagher, Q.C. Bennett Jones	Counsel for ATCO Gas
S. Allan Low, Q.C. Low Glenn & Card	Counsel for Dunwald & Fleming Construction
Ms. M. Rico Stones Carbert Waite	Counsel for Alberta Health Services (“AHS”), Calgary Region
Mr. Larry Palmer	Son of Mrs. Palmer (not represented by counsel)

Witnesses

[4] The following were called as witnesses to this Inquiry:

Dr. Sam William Andrews	Assistant Chief Medical Examiner
Ms. Phyllis Shier	Daughter of Mrs. Palmer
Shauna Mitchell	Medical Investigator
Chad Zelensky	Worker for Dunwald & Fleming
Ryan Nolet	Dunwald & Fleming Foreman
Marvin Dunwald	Senior Dunwald & Fleming Official
Anthony John Rocque	Inspector for ATCO Gas
Murdock Leonard Stephenson	Inspector for ATCO Gas
Daryl Kong	ATCO Gas

Testimony of Dr. Sam William Andrews

[5] Dr. Andrews, Assistant Chief Medical Examiner for Alberta, was qualified as an expert witness in determining cause of death.

[6] Dr. Andrews testified that on August 27th, 2007, the office of the Medical Examiner was contacted by the University of Calgary anatomy laboratory regarding concerns they had about a decedent the laboratory had received as a donation. Upon further investigation, it was discovered that the decedent, Mrs. Palmer, had suffered an accident on July 19th, 2007. The Medical Examiner's Office took over the matter under their mandate to investigate unnatural deaths.

[7] Dr. Andrews' office gathered preliminary information from the University of Calgary anatomy laboratory, as well as from the person who first notified the Medical Examiner's Office, Dr. Lourene Roode (a physician at the Sarcee Hospice) and Ms. Shier (Mrs. Palmer's daughter). Dr. Andrews then performed an autopsy and reviewed Mrs. Palmer's medical records.

[8] At autopsy there were revealed healing fractures of the vertebrae, healing contusions of the brain, a subdural hemorrhage, and acute bronchopneumonia of both lungs. Dr. Andrews' testimony and autopsy report indicated that the head and neck injuries suffered by Mrs. Palmer led to her hospitalization and subsequent pneumonia. Dr. Andrews testified that bronchial pneumonia is usually the result of other processes which make the individual susceptible to the infection.

[9] It was Dr. Andrews' opinion that bronchial pneumonia was the immediate cause of death. Mrs. Palmer developed the pneumonia as a result of being hospitalized and bed-ridden from the injuries incurred in her fall.

Testimony of Ms. Phyllis Shier

[10] Ms. Shier testified that her mother, Mrs. Palmer, had been an active person, an artist, a gardener and still loved to dance. She stated that Mrs. Palmer was in very good health for her age, barring the fact that she had untreatable glaucoma which had decreased her vision dramatically. Her mother had lived in the same house for 30 years and had routes into her house marked. She knew the location of all the furniture, counters and doorways. She also knew the location of everything outdoors. She said that her mother was very cautious about everything she did and, although was very independent, would ask for help when she needed it.

[11] The Calgary Health Region Support Services came twice a week to read to Mrs. Palmer and to assist with some chores that she was unable to do, such as shopping. Ms. Shier testified that she called her mother at least every other day, and the family ensured that she got to appointments as required. She also stated that her mother's hearing was still excellent, as was her memory and her ability to communicate with people.

[12] Ms. Shier testified that she was aware that the meter relocation was to occur at her mother's house. Approximately 10 days before her mother fell, they discussed the fact that ATCO Gas was to come on the 20th of June. As her mother wanted to be home for when ATCO Gas arrived, Ms. Shier moved several of her mother's appointments that were booked for the 20th of June to the 19th of June.

[13] On the 19th of June, Ms. Shier took her mother to two appointments and then returned Mrs. Palmer to her home around noon. She did not look into the backyard but offered to help with a lawnmower that Mrs. Palmer said she wanted to move before the ATCO people arrived on the 20th, as she was worried they might trip over it. Her mother refused her offer of assistance to move the mower and Ms. Shier left her mother's house around 12:30.

[14] Ms. Shier testified that she saw no signs of workers, either from ATCO or any other contractors, at her mother's house on June 19th, 2007. Nor did she see any signs or notices on the door, or any flashing light to indicate a message left on the answering machine. She did not talk to her mother the next day (June 20th). On June 21st the Calgary Health Region Support Services called to tell her that her mother had had an accident. The caregiver told her that her mother said that she had gone out the backdoor, fallen into a hole and remained there until a young man passing by the house finally heard her cries for help. The caregiver told her that the back of her mother's head was caked in blood and that her mother said that she had been unable to move much for two days. She had tried to get to her bedroom but fainted and then crawled back to a chair where she stayed for the two days.

[15] Ms. Shier then spoke with the caregiver's supervisor and it was decided that Mrs. Palmer should go to an emergency room or walk-in clinic. Her mother sounded like she was in a lot of pain. Her told Mrs. Shier that her mother had not been able to see the phone to call for her for help and that she could not remember Mrs. Shier's phone number or that of her brother. Ms. Shier testified that her mother had never in her life forgotten such information.

[16] On the evidence, it appears Mrs. Palmer had gone to move the lawnmower after ATCO or its contractor had come, dug the hole and apparently not told her about it. Her mother thought she had fallen into the hole around 1:30 p.m. and that the young man had helped her out sometime around 3:00 or 4:00 p.m. The evidence indicates a much shorter period of time in the hole.

[17] Ms. Shier called her son who arranged to have an ambulance come to her mother's house and take Mrs. Palmer to hospital.

[18] Ms. Shier was with her mother almost daily for the ensuing 65 days until her death at the Sarcee Hospice. Mrs. Palmer was moved to the Sarcee Hospice as there wasn't anything more the hospital could do. During the time Mrs. Palmer was in hospital and in the hospice, her health deteriorated rapidly – she lost the ability to eat properly and gagged on all of her food and drinks, resulting in weight loss. She became angry and at times very confused and her neck seemed to be constantly bothering her.

[19] On the morning of her death, Mrs. Palmer appeared to be breathing fine. Around supertime, the hospice called Ms. Shier informing her that her mother's condition had worsened. Upon returning to the hospice, she saw that her mother's condition was significantly different from the morning - her mother was now barely conscious, short of breath and very uncomfortable. Mrs. Palmer died at about 8:00 p.m. that night.

Testimony of Shauna Mitchell

[20] Ms. Shauna Mitchell has been a medical investigator for five and one-half years, working with the Medical Examiner to investigate unexpected or unnatural deaths. Prior to becoming a medical investigator, she had been an emergency room nurse for 23 years.

[21] Ms. Mitchell became involved in this matter when contacted by the University of Calgary's anatomy lab stating they had received a body donation and that the Death Certificate had 'Cause of Death' as a C-spine fracture. Knowing this was not a natural death, they contacted the Medical Examiner's office.

[22] Ms. Mitchell interviewed Dr. Roode, Mrs. Palmer's doctor at the Sarcee Hospice, and examined the site of the incident. She took pictures of the site, though it was by then two months after the incident. The hole had been filled in and the patio retiled. Her report related a conversation that Dr. Roode indicated that Mrs. Palmer had no paralysis but was bedridden and became difficult to manage due to her significant pain. On the day of her death, Mrs. Palmer became acutely short of breath and it is believed that she suffered a pulmonary embolus (a blood clot in the lungs which can result from being immobilized for extended periods).

Testimony of Chad Zelensky

[23] In June 2007, Mr. Zelensky was employed as a pharmacist at the Foothills Hospital a few blocks north of Mrs. Palmer's home. On June 19, 2007, he left work at about 3:15 p.m. and was walking to his car when he heard faint cries. At first he thought these were the sounds of children. As the cries continued, he went to investigate Mrs. Palmer's yard, saw a hole by the back door, and discovered Mrs. Palmer there. She appeared quite coherent and her chief concern was getting out of the hole. The hole was immediately outside the back door, longer than it was wide and about chest deep on Mr. Zelensky. It had an exposed pipe towards the bottom of the hole.

[24] Mrs. Palmer told him that she had planned on cleaning up the backyard because someone was coming by to dig a hole. She opened the backdoor and stepped directly into the pit. She said she hadn't been there that long. Mr. Zelensky proceeded to help Mrs. Palmer out by sliding into the hole and putting his hands together to create a step for her to use to get out. He stated that even with his hands serving as a step she had difficulty getting out of the hole. He himself found getting out of the hole to be a challenge. He saw no barriers, barricades, or anything covering the hole or any part of the hole. He similarly saw no workers or trucks at any time.

[25] After he helped Mrs. Palmer out of the hole, Mr. Zelensky guided her inside as she wanted to sit down to call her daughter. Mrs. Palmer held onto his arm as they walked to the front of the house. Once at the front of the house, Mr. Zelensky offered to call an ambulance or medical help but Mrs. Palmer insisted she was alright. She asked only that he get her some medication – robaxacet or robaxisal - a muscle relaxant, as she was going to call her daughter. Although he had concerns about leaving Mrs. Palmer, she kept insisting that she was okay and would contact her family. She didn't indicate to him that she was in pain, nor did she express any specific complaints regarding her neck, head or back. He didn't recall seeing any blood on the back of her head at that time.

Testimony of Ryan Nolet

[26] At the time of the incident Mr. Nolet was employed by Dunwald & Fleming as a crew foreman. Dunwald & Fleming did work for ATCO Gas on natural gas lines in the city, such as moving gas meters from inside houses and moving gas lines to vent away from houses.

[27] Each crew comprised about 20 people, including representatives from ATCO. His responsibilities as foreman were to direct the workflow, including who went where and when, and making sure the work was done on time and according to specifications. Meter relocation was usually a three day process – on the first day a crew would excavate the hole, the next day the current piping was removed and the new piping redone (requiring the residents to be at home to allow access to the house). The third day involved backfilling the hole and yard cleanup.

[28] Notice letters are dropped off about three days before work begins, explaining that crews will be there the day before meter relocation to do the excavating and that residents need not be at home. Mr. Nolet could not confirm whether such a letter had been left at Mrs. Palmer's residence. Before excavating, the crew knocks on the homeowner's door to let them know that they will be working in the yard. If there is no answer, they leave, come back later and try again. If they don't make contact, they proceed with the work as a phone call has been made prior to the work and a letter left for the resident.

[29] Mr. Nolet went to the Palmer residence on June 19th, before the excavation crew had arrived, and believes that the crew had started the excavation after lunch on the 19th, finishing between 2:30 and 3:30. He was at the residence again later that day around 4:30 or 5:00 to make sure all the work was done. He didn't see anyone around the excavation, did not see Mrs. Palmer, and noted that the hole was covered and barricaded. Earlier in the afternoon, Mr. Nolet had been informed by Mr. Stephenson that there were no barricades around the excavation. He called his crew around 5:00 or 5:30 to check on this and they informed him that they were going back to install the barricades. At the time he contacted the excavation crew they were getting the barricade materials at the equipment container, about a five to ten minute drive from Mrs. Palmer's residence. The reason for the materials not being at the residence was that there hadn't been room for them in the truck. Mr. Nolet stated that, given where the excavation was done at Mrs. Palmer's, the backdoor should have been restrained by tying it shut with a cable so it couldn't be opened, a plywood cover installed and a barricade placed on top of the plywood.

[30] On June 20th, 2007, Mr. Nolet first learned that Mrs. Palmer had fallen into the hole outside her back door when he was informed of the incident by one of the ATCO inspectors, Len Stephenson. When he arrived at Mrs. Palmer's house, he asked her if she had any problems and she replied that she had a sore neck but, other than that, she was fine. She seemed fine to him, so the crew carried on with the meter relocation.

[31] Mr. Nolet spoke to Mrs. Palmer on the day of her fall but was unaware of the incident. He spoke to her again on the second day, as noted above and then again on the third day, in the presence of homecare people. Mrs. Palmer said she didn't need anything and he left. It was a couple of days later that he heard she had been admitted to the hospital. He said that on the day he heard about Mrs. Palmer's fall he called the safety person to let him know, did his initial incident report but had no further involvement.

[32] Mr. Nolet testified that the safety policy of Dunwald & Fleming was always to have materials on-site to safeguard the excavation hole before work began and never to leave an excavation unattended. He said he wasn't sure if there was a written policy, but there was a procedure book/safety manual they followed under the ATCO safety procedures. These were dedicated job specific work instructions outlining what needed to be done on a

specific job and how to do it. The book consisted of three or four thick binders and was kept in the onsite office trailer. There was no requirement that the crew read the materials. A smaller handbook was required employee reading, confirmed by their signatures. No training was mandated other than the provision of the handbook.

[33] He testified that there had been earlier problems with leaving excavations unattended or unsafeguarded and this had been the subject of a tail-gate meeting. He had felt it was becoming an issue again.

[34] Mr. Nolet left Dunwald & Fleming about two months after this incident and couldn't say if any changes had been made because of Mrs. Palmer's events as they were still investigating the incident at the time of his departure.

Testimony of Marvin Dunwald

[35] Mr. Dunwald confirmed he is a fifty percent owner of the company Dunwald & Fleming Enterprises Limited ("D & F"), and that the company has been involved in the installation of natural gas lines for 32 years. The company is small, with 20 full time employees and up to 100 during the peak season. Most of their work was performed at the behest of Canadian Western Natural Gas and the successor, ATCO Gas. They have been doing such contract work for about 25 years out of the 32 years D & F has been in existence.

[36] His company had a contract with ATCO Gas in 2007 to perform meter relocations. The contract covered Mrs. Palmer's home. 2007 was the last year that the company did private property meter relocations for ATCO Gas. Now their excavations are on public property, using different protection methods than those for residential yards.

[37] Up to and including 2007, foremen were required to attend the Alberta Construction Safety Association's ("ACSA") Leadership for Safety Excellence course, covering the roles and responsibilities of supervisors. Operators and supervisors took an additional ACSA course on ground disturbance and safety aspects related to excavations. In April of each year, before the season started, D & F put on a two day in-house training program in which all facets of the company's safety program were discussed. A full day was also scheduled to discuss with supervisors their role and responsibilities. Summer crews were oriented on all company safety rules, practices and procedures. They also took a safety course – CSTS (Computer Safety Training System) dealing with general safety around excavations.

[38] In 2007, D & F also had a safety manual that referred to excavations and safety. Foremen had copies of the manual and a safety handbook was given to employees to read, and sign that they had read it. ATCO Gas also had a general safety handbook that was distributed. D & F expected their employees to abide by the ATCO handbook. This expectation was communicated to all D & F employees.

[39] In 2007, as the prime contractor, D & F was responsible for safety at meter relocation work sites, not ATCO Gas. D & F also performed hazard assessments to identify risks specific to a work site. These were to be done at the start of every job, and if there were changes to the job. The hazard assessment was reviewed by the safety supervisor, with a copy going to ATCO Gas, a copy to the work site and a copy for the office. It was the duty of the safety supervisor to monitor overall compliance with the hazard assessments, while day-to-day compliance was the responsibility of the foreman. After learning of Mrs. Palmer's fall, the company reinforced the rule that all excavations had to be covered and barricaded before the crew left.

[40] Mr. Dunwald did not recall that open excavations were ever a concern, notwithstanding a notation in the minutes of a pre-construction meeting of 2006 that said: "All open excavations must be covered up, too many complaints last year."

[41] When asked if D & F had made any changes to their safety procedures, Mr. Dunwald stated that he believed that ATGO Gas, through their detailed work instructions, had made all the appropriate changes necessary.

[42] Mr. Dunwald was unable to explain why there hadn't been a full sheet of plywood available to cover the excavation at Mrs. Palmer's residence or why Mrs. Palmer was not aware that anyone was coming on June 19th, 2007 to do the excavation. He was also not able to explain why there were no records of any telephone or mail contact with Mrs. Palmer, which should have been on the file.

Testimony of Anthony John Rocque

[43] Mr. Rocque testified that he worked for ATCO Gas for thirty years, during twenty-seven of which he was a distribution operator on the service side involving gas fitting, installation of meters, appliance checks, and inspection checks. During the summer of 2007 he was involved in inspections and his duties specifically included observing the contracted company's work to ensure gas piping and meters were installed properly. If the contracted company wasn't following procedures correctly, he would have a conversation with the crew to ensure they were following the proper guidelines, safety rules and regulations. Typically, he oversaw two gas fitters who would be working at the various residences where meters were being relocated. He would meet with the gas fitter at the first job site and, once sure there were no problems, would visit the second gas fitter. He would typically rotate back and forth between the two fitters as the jobs were completed.

[44] In 2007, he was partnered with another inspector from ATCO Gas, Mr. “Adlai” Stephenson, who was a ‘distribution operator field’ or “doffer”, which meant all underground piping was his area of expertise. Part of the doffer’s job involved checking the excavation needed for meter relocation. Meter relocation is a three stage process: the first stage is the excavation, the second stage is actual meter relocation and the third stage is the backfilling and cleanup. Excavation is done the day before the meter relocation. Meter relocation occurs the next day. The third stage, backfilling and cleanup, started once the relocation and re-hookup was completed. This third stage could be performed on day two or extend into a third day if sod or concrete had to be replaced.

[45] Typically, there would be twelve sites on a given day – four sites with actual gas fitting going on, four sites being pre-dug (the excavation work) and four sites in backfill/cleanup phase. Mr. Rocque’s responsibility was focused on the gas fitting and cleanup phases. Mr. Stephenson’s related more to the excavation phase and checking on the progress of the D & F crews doing the excavations. Mr. Stephenson would call him if he needed a hand to look at any of the sites for the next day. Site inspections at the pre-dig stage would include confirming that safety precautions had been taken.

[46] The safety policy in effect in 2007 stated that barricades were to go up prior to excavation and to remain up until backfill was completed. Any excavation had to have barricades, fencing and/or construction flashers when left unattended. A copy of this safety policy would have been given to each employee upon starting to work for D & F. Any breach of the safety policy, especially regarding excavations by D & F employees, would have resulted in his raising the issue with D & F personnel, contacting Mr. Stephenson and speaking with the site foreman. Neither he nor Mr. Stephenson had any authority to sanction employees of D & F as they were a contracted company which could impose sanctions or punishments as they saw fit.

[47] With respect to the pre-construction meeting in April 2006 wherein the minutes state, “All open excavations must be covered up, too many complaints last year”, Mr. Rocque recalls that complaints weren’t coming from homeowners but rather from inspectors on the job sites, including himself. He didn’t specifically recall any excavations being left open in 2006 but does recall noticing that in some cases the piece of plywood was too small to properly cover the open excavation, or that the plywood was breaking down or cracking as each sheet of plywood is re-used repeatedly over the course of the year.

[48] Prior to June 19th, 2007, Mr. Rocque had not come across any open excavations left unattended. He was also unaware of any homeowner complaints that year.

[49] Hazard assessments were left to D & F. When the crew or he came onto a job site, they would go to the contractor's trailer first, review the hazard assessment, sign off on it and then head out to begin the day's work. The sign-off indicated that the person had read the document.

[50] In February of 2006, Mr. Rocque attended Mrs. Palmer's residence to discuss the planned relocation of her gas meter from inside to outside. He went with Mrs. Palmer to the basement to see where the gas meter was located, outside to where the gas line was coming, and discussed with Mrs. Palmer to work to be done and how the gas meter was going to be moved. There was no discussion of a specific time when this move would happen. This was ATCO's only contact with Mrs. Palmer. All other contact and scheduling was to be handled by D & F. During his time with Mrs. Palmer, he didn't observe any specific limitation or disability regarding her hearing or her eyesight, though she was elderly and walked with some difficulty.

[51] He told Mrs. Palmer there would be a pre-dig excavation on the day prior to the meter relocation. He recalled her having certain concerns regarding the move, primarily the new location of the meter. She was also concerned about the curb stop (a shut-off device to cut the gas flow off at the curb or at the main line), as it was in the path of where she walked to put out her garbage. Mr. Rocque directed on the order form that the old curb stop be removed. During the twenty minutes they discussed different options, Mrs. Palmer did not express any concerns regarding her safety or the fact there was going to be an excavation in her backyard.

[52] Mr. Rocque testified that he had been at Mrs. Palmer's residence on the afternoon of the 19th of June sometime between 4:00 and 5:00 p.m., as Mr. Stephenson had indicated to him several hours earlier in the day that he had found some of the excavations left uncovered. Mr. Stephenson asked him to check on the four sites scheduled to be worked on June 20th to ensure they were all properly boarded and barricaded. When he attended Mrs. Palmer's excavation site in the late afternoon it was boarded, and barricaded. Earlier in the afternoon, around 2:00 or 3:00 p.m., Mr. Rocque had learned from Mr. Stephenson that the excavation hole had been left open and that Mr. Stephenson had contacted Mr. Nolet to come to the work site immediately to cover the open excavation.

[53] On June 20th, at about 1:00, Mr. Rocque signed off on the meter completion form indicating that the meter had been moved, a meter reading done, and a safety survey done on the inside equipment once the gas had been installed. Backfilling was done immediately and he checked on it at the end of the day. There remained only a few bricks around the new gas meter to be installed. That day Mr. Rocque was told by the gas fitter, Paul Cote, that Mrs. Palmer had fallen into the open excavation the previous day. Mrs.

Palmer never mentioned her fall into the open excavation. He had no sense that she was disoriented, injured or incapable of caring for herself. She seemed fine.

[54] Once Mr. Rocque learned of the fall, he and Mr. Stephenson instructed Mr. Nolet, who was on site, to talk with Mrs. Palmer. Mr. Nolet met with Mrs. Palmer, then returned and filled out an incident report. This was given first to Mr. Stephenson and then to the ATCO Gas foreman on site, Mr. Bruce Brown.

[55] After Mrs. Palmer's fall, certain steps were taken regarding open excavations. Crews were instructed to finish the backfill and immediately replace all bricks. The detailed work instructions were also changed to specify that, if someone comes across an open excavation, they are to stay on the spot until the situation has been rectified. The hazard assessment sheets were also revised to incorporate a broader assessment of hazards, including blind or elderly persons, people with disabilities and people with either mental or physical concerns.

Testimony of Murdock Leonard Stephenson

[56] Mr. Stephenson has worked for ATCO Gas for approximately thirty years, and for the past two years as a foreman on company projects. In June of 2007, his job was overseeing the installation of new services and alterations to existing distribution systems on customer property and on public property. He also conducted inspections in conjunction with the meter relocation program when he was partnered with Mr. Rocque. As an inspector, he was involved with all three phases of meter relocation. He would attend at a homeowner's property at the first stage (the pre-dig) to answer any questions regarding the work to be done on the property, either by the contractor or by ATCO.

[57] On the day of Mrs. Palmer's fall, Mr. Stephenson had started work at 7:30 a.m. and had four properties to inspect that day, each of which was at stage two. Inspections took approximately six hours to complete and he finished this segment of the work between 2:00 and 2:30 in the afternoon. He would then proceed to inspect four pre-digs to ensure the work been done correctly by the contractor and the excavation protected and properly covered. On the day in question, Mrs. Palmer's house was the second address he attended. At the first pre-dig, the excavation had not been properly covered with plywood and there were no barricades surrounding it. The excavation was left open and unmarked, without pylons, cones or flags. At this point he became concerned about all pre-digs and proceeded to the next address, Mrs. Palmer's, to check the property. He found the pre-dig excavation at Mrs. Palmer's residence also uncovered and unprotected. He then called the contractor's foreman for the project, Mr. Nolet, and told him of his concerns regarding the open and unprotected excavations at the two pre-digs. He instructed him to address this issue immediately. Mr. Nolet assured him he would. Mr. Stephenson testified that he was at Mrs. Palmer's house for about four to six minutes, during which time he did a quick visual inspection and called Mr. Nolet. He does not recall if he knocked on the door of the

residence and couldn't say why he didn't consider waiting for Mr. Nolet or his crew to arrive except to say that he was concerned about the condition of the other two pre-dig excavations.

[58] He found the third property to have a crew still working on the pre-dig. At the fourth property, the excavation was also uncovered. At that point he returned to Mrs. Palmer's property to deal with the curb stop issue. He parked in the laneway but didn't get out of his truck. He was unable to observe the excavation site from where he was parked. He said that Mr. Nolet arrived almost immediately, got out of his vehicle and headed toward the curb stop. Mr. Stephenson didn't get out of his vehicle or talk with Mr. Nolet but assumed he was there to address the open excavation. He then proceeded to check a number of other addresses but did not revisit Mrs. Palmer's residence. He did not follow up to confirm the open excavation had been safe-guarded. He assumed that the other inspector (Mr. Rocque) would do that.

[59] Mr. Stephenson learned from Mr. Nolet that Mrs. Palmer told him about her fall and her stiff neck and soreness. Mr. Stephenson never did learn who left the excavation open and unguarded. He testified that finding three open unguarded excavations on the same day was extremely unusual. In fact, it was the first time he had ever come across an excavation site that wasn't covered and barricaded. Prior to June 19th, 2007, he hadn't received or heard of any complaints regarding open and unguarded excavation sites and hasn't come across any open excavations since.

Testimony of Daryl Kong

[60] Mr. Kong has worked for ATCO Gas for twenty-eight years. His current position is Vice-President of Calgary Operations, one of four operational divisions at ATCO Gas. He has held this position since July 2007 and reports directly to the President of the company, Mr. Brian Hahn. The Calgary operations crew provides natural gas distribution service in Calgary, including construction and distribution systems, operation and maintenance work on the systems, customer service requests for a homeowner's property and meter readings. He has the leadership role of the crew and his responsibilities encompass safety issues.

[61] Since Mrs. Palmer's accident, ATCO has made changes to its policies and procedures regarding excavations. Although he did not personally have any involvement with the changes made in response to Mrs. Palmer's accident, he is knowledgeable about the changes made.

[62] One change relates to the sign-up procedure. An ATCO Gas employee visits the customer, assesses how a meter can be moved, discusses the job with the customer, finds out preferences as to the new location and obtains customer consent to the move. The sign-up document now has a section that identifies customers or other people on the premises with disabilities or where there are young children on the property. The sign-up person gathers this information by asking questions and making observations. This information is then put into a data base which forms notes on the Sign-Up Form outlining the work to be done. This information is sent to the contractor, to any contracted work crew and to ATCO Gas in-house crews. If the work cannot be done that season and gets pushed over to the next season, the customer is re-contacted to confirm any changes in the property, to update the data base on any resident's disabilities and to ask the customer if they have any specific concerns ATCO should be aware of.

[63] An ATCO employee does the initial sign-up and is responsible for the initial documentation. It is also an ATCO employee who does the follow-up call if the work has to be pushed into the following season. The practice of having someone do a follow-up call, where the original sign-up was performed in a prior year, is new.

[64] The Job Site Hazard Assessment takes place when the crew arrives on site. While many hazards are routine, the information on the Sign-Up sheet now sets forth any special circumstances crews should be aware of and identifies anything unusual. A Job Site Hazard Assessment is completed for each job site and is specific to that site alone. The crew leader, either from a contracted company or the ATCO in-house crew, is responsible for doing the assessment and rules are the same for the ATCO in-house crews or the contractors' crews.

[65] ATCO expects employees or contractors to identify early in the work if the excavation will have to be left overnight. If so, the crew must have the material there ready to cover and barricade the excavation. Contractor crews work differently than ATCO in-house crews in that contractors have specialized crews for each phase. ATCO crews perform all the phases for each job, which normally allows them to complete a meter move in one day rather than the three days it takes a contractor's crew.

[66] Subsequent to Mrs. Palmer's fall, ATCO Gas revised the content and use of their DWI (Detailed Work Information) form which itemizes the work to be performed at a specific site, inspection results and any evidence of non-conformance with safety procedures. Where problems are identified, root causes of the non-compliance are determined and a corrective action plan is developed with approval of the manager of implementation. Compliance reports are also logged to identify any developing trends which must be addressed.

[67] Mr. Kong described measures recently put into place in the DWI –

- immediately before working on a customer's property there is a requirement to make reasonable attempts to contact the customer, such as knocking on the door, phoning the customer and, if the customer is at home, explaining the work to be done, the fact that there is going to be an excavation on the customer's property and the hazards regarding an excavation;
- if the customer is not at home, alternative measures such as telephone messages or postings on doors are used to warn of the work being done and of the hazards present;
- members of the crew or crews are notified of any disabilities the customer or any resident of the property may have and whether there are young children on the property so that extra precautions can be taken;
- barricades are now installed on the property to protect anyone from approaching the excavation while work is in progress;
- in the case of an excavation immediately outside a door, ATCO and its contractors ensure a barricade or other means of stopping anyone from exiting through the door is in place;
- one crew member is responsible for control of the work site;
- during work hours, the excavation must be barricaded to prevent people from approaching the excavation. If the excavation is not covered and barricaded, one person must be left at the excavation to control access; after hours, the excavation must be securely covered with plywood and barricaded;
- a barricade plan is posted on each of the doors of the customer to notify the customer of the excavation and of its hazards;
- when the excavation is covered, crews are required to ensure there are no gaping areas or open spots left in the plywood placed over the excavation;
- fencing must be strong enough to prevent a person from falling into the excavation even if they weren't paying attention and walked into the barricade;
- crews are expected to identify early in the work if the excavation must be left open and all materials to barricade and cover the excavation are to be on site before the excavation begins.

[68] Mr. Kong testified that, prior to Mrs. Palmer's fall, he had not been aware of any issues relating to excavations. He has neither heard of any falls since Mrs. Palmer's accident, nor received any non-conformance reports regarding barricading and covering of excavations. ATCO Gas does not have a formal complaint department but, if a customer calls with a complaint, the company investigates the nature of the complaint and then directs the call to the appropriate department.

[69] ATCO's supervisor of the Meter Relocation and Replacement Project met with the principal of D & F after Mrs. Palmer's fall to discuss the incident and to reiterate the need for vigilance respecting safety procedures. ATCO Gas also passed on information about the incident to all of the ATCO Gas contractors to enhance awareness and increase vigilance regarding excavations.

CONCLUSION AND SUBMISSIONS

[70] It was apparent from the evidence adduced during the Inquiry that the crew employed by D & F, the contractor to ATCO Gas, failed to follow prescribed safety procedures when they left the excavation at Mrs. Palmer's residence uncovered and unprotected. It is further clear from the evidence that Mrs. Palmer, unaware of the excavation completed in her backyard, stepped into the uncovered hole and suffered injuries resulting in her hospitalization. Given her advanced years, the injuries she sustained and her subsequent hospitalization commenced a chain of events which ultimately resulted in her death by pneumonia. The bronchial pneumonia, which is the official cause of death of Mrs. Palmer, was likely the end result of her being bedridden, with attendant aspiration of food and drink and/or exposure to germs in the hospital environment.

[71] Since Mrs. Palmer's death, and in part due to it, significant changes have been implemented in ACTO Gas safety procedures and directions to contractors for the completion of work.

[72] Recommendations made to this Inquiry by family members of Mrs. Palmer and by counsel for ATCO Gas and its contractor, focused upon increased communication with the property owner and with trades regarding worksite specific conditions and precautions. It was thought that development of further written materials would be less effective than opening better lines of communication with property owners to flag site specific issues and to bring these to the attention of work crews immediately prior to commencing work at any given site. Where children or persons with frailties reside at the property, this information is to be flagged early in the process, at the time of sign-up and then reiterated with work crews through tail-gate meetings and review of DWIs at the time of the work. Further, specific steps to alert property owners to the specific time and nature of work have been

implemented by ATCO Gas with a view to avoiding repetition of incidents such as Mrs. Palmer's accident.

[73] Mrs. Shier, the daughter of Mrs. Palmer, suggested that ATCO Gas personnel stress to clients the order in which work will be performed and the timing of each element such as excavation, meter movement, and reclamation of the property. It was apparent from the evidence that Mrs. Palmer misunderstood that work could be completed over a two day span and that the excavation would be performed the day before the meter move as Mr. Rocque had indicated. The evidence disclosed that she appeared to anticipate excavation of her property on the day of the meter move, not the day before.

[74] For the most part, the family of Mrs. Palmer was satisfied with ATCO Gas's increased focus on communication and safety.

[75] Safety procedures existed at the time of Mrs. Palmer's fall but had not been followed. Since that time, significant steps have been taken to improve the communication and safety procedure process by ATCO Gas and its contractors. In the end, however, this Inquiry recognizes that any safety procedures depend upon human compliance with the directives.

RECOMMENDATIONS FOR THE PREVENTION OF SIMILAR DEATHS:

[76] Having regard to the evidence heard by this Inquiry, I have no recommendations additional to those undertaken by ATCO Gas since the death of Mrs. Palmer.

DATED December 7, 2010 ,

at Calgary , Alberta.

G. S. Dunnigan
A Judge of the Provincial Court of
Alberta