



Capital Power Corporation

Halkirk 2 Wind Power Project

Costs Award

July 9, 2018

Alberta Utilities Commission

Decision 23255-D01-2018

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Fifth Avenue Place, Fourth Floor, 425 First Street S.W.

Calgary, Alberta

T2P 3L8

Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

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Calgary, Alberta

Capital Power Generation Services Inc.
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1 Introduction

1. In this decision the Alberta Utilities Commission considers an application by the Battle River Group (BRG) (the costs claim application) for approval and payment of its costs of participation in Proceeding 22563¹ (the original proceeding). The costs claimed and costs awarded are provided in the following table:

Claimant	Total Fees Claimed	Total Disbursements Claimed	Total GST Claimed	Total Amount Claimed	Total Fees Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
Battle River Group								
Ackroyd LLP	\$81,512.00	\$4,598.25	\$4,287.23	\$90,397.48	\$78,800.00	\$4,583.28	\$4,151.63	\$87,534.91
FDI Acoustics	\$8,900.00	\$299.65	\$459.98	\$9,659.63	\$8,900.00	\$299.65	\$459.98	\$9,659.63
Hydrogeological Consultants Ltd.	\$21,356.10	\$1,364.41	\$1,128.05	\$23,848.56	\$16,017.08	\$1,364.41	\$861.07	\$18,242.56
Cottonwood Consultants Ltd.	\$18,967.50	\$442.39	\$962.66	\$20,372.55	\$18,967.50	\$442.39	\$962.66	\$20,372.55
Honorarium	\$5,000.00	\$4,211.99	\$57.46	\$9,269.45	\$5,000.00	\$4,211.99	\$57.46	\$9,269.45
Total	\$135,735.60	\$10,916.69	\$6,895.39	\$153,547.68	\$127,468.58	\$10,901.72	\$6,492.80	\$145,079.10

2. The Commission has awarded reduced costs to the applicant for the reasons set out below.

3. The original proceeding was convened by the Commission to consider the applications filed by Capital Power Generation Services Inc. (Capital Power) for the construction and operation of the Halkirk 2 Wind Power Project. The original proceeding involved information requests (IRs), IR responses, written evidence, an oral hearing held between November 21, 2017 and November 23, 2017, cross-examination, argument and reply argument. The close of record for the original proceeding was March 21, 2018 and the Commission issued Decision 22563-D01-2018² on April 11, 2018.

4. The BRG submitted its costs claim application on January 17, 2018, within the 30 day timeline permitted by the Commission's rules. The Commission assigned Proceeding 23255 and Application 23255-A001 to the cost application.

5. On February 7, 2018, Capital Power Corporation filed a letter stating they had no comments with respect to the Battle River Group's costs claim application.

¹ Proceeding 22563: Capital Power Generation Services Inc. Halkirk 2 Wind Power Project.

² Decision 22563-D01-2018: Capital Power Generation Services Inc. Halkirk 2 Wind Power Project, Proceeding 22563, April 11, 2018.

6. On March 29, 2018, the BRG submitted an additional costs claim in the total amount of \$3,084.38. The additional costs claim related to events that occurred after the filing of its costs claim on January 17, 2018.
7. On April 4, 2018, Capital Power submitted comments on the additional costs claim of the BRG. The BRG responded to Capital Power's comments on April 11, 2018.
8. The Commission considers the close of record for this proceeding to be April 11, 2018, the date final submissions were made on the costs claim application.

2 Commission findings

9. Only "local interveners" are eligible to claim costs in facility related applications. The Commission's authority to award costs for the participation of a local intervener in a hearing or other proceeding 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* is found in sections 21 and 22 of the *Alberta Utilities Commission Act*. When considering a claim for costs for a facilities proceeding, the Commission is also guided by the factors set out in Section 7 of Rule 009: *Rules on Intervener Costs* and the Scale of Costs found in Appendix A of Rule 009.

10. Section 7 of Rule 009 provides that the Commission may award costs, in accordance with the Scale of Costs, to a local intervener if the Commission is of the opinion that:

7.1.1 the costs are reasonable and directly and necessarily related to the hearing or other proceeding, and

7.1.2 the local intervener acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission.

11. Section 22 of the *Alberta Utilities Commission Act* defines what a "local intervener" is and states:

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

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

2.1 Battle River Group

12. The members of the BRG, with the exception of Circle Square Ranch,³ own or reside on property located within two kilometers of the project. Given the proximity of this property to the Halkirk 2 Wind Power Project, the Commission is satisfied that they have an interest in, and are entitled to occupy, land that may be directly and adversely affected by the Commission's decision on Capital Power's application. Accordingly, the Commission finds that the BRG, with the exception of Circle Square Ranch, are local interveners within the meaning of Section 22 of the *Alberta Utilities Commission Act*.

13. The following table summarizes the BRG's cost claim for the original proceeding:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Battle River Group							
Ackroyd LLP	211.30	50.30	66.30	\$78,584.00	\$4,588.75	\$4,140.35	\$87,313.10
FDI Acoustics	36.00	14.00	0.00	\$8,900.00	\$299.65	\$459.98	\$9,659.63
Hydrogeological Consultants Ltd.	113.90	16.20	0.00	\$21,356.10	\$1,364.41	\$1,128.05	\$23,848.56
Cottonwood Consultants Ltd.	44.00	27.00	1.00	\$18,967.50	\$442.39	\$962.66	\$20,372.55
Honorarium	0.00	0.00	0.00	\$5,000.00	\$4,211.99	\$57.46	\$9,269.45
Total	405.20	107.50	67.30	\$132,807.60	\$10,907.19	\$6,748.51	\$150,463.30

14. The Commission finds that the Battle River Group acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues. However, the Commission is unable to approve the full amount of the costs claimed in respect of the services performed by Hydrogeological Consultants Ltd. for the reasons set out below.

Ackroyd LLP

15. Ackroyd LLP represented the BRG in the original proceeding. The fees claimed by the BRG for the legal services provided by Mr. Richard Secord, Ms. Ifeoma Okoye, Ms. Jenna Broomfield and Mr. Eric Pentland relate to reviewing the application, drafting IRs, corresponding with experts and interveners, reviewing IR responses, reviewing evidence of other parties and preparing reply evidence, preparing cross-examination, preparing for and attending the hearing, drafting argument, and drafting motions following the oral hearing.

16. The Commission finds that the services performed by Ackroyd LLP were directly and necessarily related to the BRG's participation in the original proceeding, and that the fees claimed in accordance with the Scale of Costs for those services were reasonable. The Commission's determination on the additional costs claimed by Ackroyd LLP is set out in section 2.1.1 below.

17. The claims made for accommodation by Ackroyd LLP are not in accordance with the rates permitted by the Scale of Costs. The Commission has, therefore, determined that a

³ Exhibit 22563-X0077, Standing ruling.

reduction in the daily rate for accommodation from the claimed rate of \$144.99 to \$140.00 for three days is warranted.

18. The Commission approves the remaining disbursements for accommodation, meals, mileage, transcripts, courier fees, photocopying, scanning and court searches. Consequently, the Commission approves total disbursements for Ackroyd LLP in the amount of \$4,576.78, inclusive of the accommodation approved.

19. Accordingly, the Commission approves the Battle River Group's claim for legal fees for Ackroyd LLP in the amount of \$78,584.00, disbursements of \$4,573.78 and GST of \$4,140.35 for a total of \$87,298.10.

FDI Acoustics

20. FDI Acoustics was retained by the Battle River Group to perform consulting services in the original proceeding. The fees claimed by the Battle River Group for the consulting services provided by Mr. James Farquharson and Mr. Hossein Mehravaran relate to drafting a noise impact assessment review, and preparing for and attending the oral hearing.

21. The Commission finds that that the services performed by FDI Acoustics were directly and necessarily related to the Battle River Group's participation in the original proceeding, and that the fees and disbursements, which were claimed in accordance with the Scale of Costs for those services, were reasonable. Accordingly, the Commission approves the Battle River Group's claim for consulting fees for FDI Acoustics in the amount of \$8,900.00, disbursements for accommodation, mileage and meals of \$299.65 and GST of \$459.98 for a total of \$9,659.63.

Hydrogeological Consultants Ltd.

22. Hydrogeological Consultants Ltd. was retained by the BRG to perform consulting services in the original proceeding. The fees claimed by the BRG for the consulting services provided by Mr. Roger Clissold, Ms. Jennifer Catt, Mr. Dave MacIntyre, Mr. Norm Zastre, Mr. Ben Gilham, Ms. Christy Cachero, Ms. Kari Twiname and Ms. Midge Clissold relate to gathering data, drafting and editing an expert report, corresponding with clients, drafting cross-examination questions, and preparing for and attending the oral hearing.

23. While the Commission finds that the services performed by Hydrogeological Consultants Ltd. were directly and necessarily related to the BRG's participation in the original proceeding, it finds that the fees claimed for these services were unreasonable, in light of the number of consultants employed and based on the limited extent to which the evidence presented was of assistance to the Commission in making its decision on the application.

24. In Decision 22563-D01-2018, the Commission commented that Mr. Clissold had not provided sufficient evidence to substantiate the concerns raised, and presented anecdotal evidence from another project which used different construction techniques. The Commission accordingly considers that some of the information presented by Hydrogeological Consultants Ltd. was not of assistance to the Commission in making its decision. Accordingly, the Commission reduces the amount claimed for Hydrogeological Consultants Ltd. by 25 per cent. The Commission thereby approves the BRG's claim for consulting fees for Hydrogeological Consultants Ltd. in the amount of \$16,017.08, disbursements for accommodation, mileage, meals and telecommunication fees of \$1,364.41 and GST of \$861.07 for a total of \$18,242.56.

Cottonwood Consultants Ltd.

25. Cottonwood Consultants Ltd. was retained by the BRG to perform consulting services in the original proceeding. The fees claimed by the Battle River Group for the consulting services provided by Mr. Cliff Wallis relate to reviewing the application, drafting an expert report, drafting cross-examination questions and preparing for and attending the oral hearing.

26. The Commission finds that the services performed by Cottonwood Consultants Ltd. were directly and necessarily related to the Battle River Group's participation in the original proceeding, and that the fees and disbursements claimed in accordance with the Scale of Costs for those services were reasonable. Accordingly, the Commission approves the BRG's claim for consulting fees for Cottonwood Consultants Ltd. in the amount of \$18,967.50, disbursements for accommodation and mileage of \$442.39 and GST of \$962.66 for a total of \$20,372.55.

Intervener costs

27. The cost claim application also included a claim for attendance for 19 interveners totalling \$4,500.00, an honorarium for Ms. Brenda Anderson for forming a group in the amount of \$500.00, disbursements of \$4,211.99, and GST of \$57.46.

28. In the case of large local intervener groups, the Scale of Costs allows up to six participants to claim attendance honoraria unless exceptional circumstances are found. Based on the participation of the BRG in the hearing and the information provided by the group, the Commission is exercising its discretion in assessing the claim for honoraria, and awards the claimed attendance honoraria to those interveners who were part of the BRG's witness panel. Therefore, the Commission awards attendance honorarium to the 19 interveners.

29. The claim by Ms. Anderson for forming an intervener group is within the Scale of Costs and is also approved.

30. The claims for disbursements for meals, mileage and accommodation are all within the Scale of Costs and are consequently approved.

2.1.1 Additional Costs Claim

31. On March 27, 2018, the BRG filed an additional costs claim with the Commission. The costs claim requested \$2,928.00 in legal fees for Ackroyd LLP, disbursements for faxing, photocopying and scanning of \$9.50 and GST of \$146.88 for a total of \$3,084.38.

32. The fees claimed by the BRG for the additional 12.20 hours of legal services provided by Ms. Okoye relate to corresponding with clients, reviewing IRs and IR responses, drafting a request to file further evidence and reviewing responses from the Commission and Capital Power to the request.

Comments from Capital Power

33. In its comments, Capital Power submitted that the BRG's additional claim should be rejected in its entirety.

34. Capital Power noted that Rule 009 states that costs claims are to be submitted within 30 days of the end of the hearing. Capital Power submitted that the BRG submitted its additional costs claim long after the close of the hearing, and that it should be rejected for that reason alone.

35. Capital Power further noted that, even if the BRG were permitted to advance its request, the costs claimed fail to satisfy the basic criteria set out in Rule 009 as they were not reasonable nor directly or necessarily related to the proceeding. Capital Power noted that the costs claimed relate to the additional IRs issued by the Commission to Capital Power. Capital Power submitted that the IRs did not pertain to the BRG and that the BRG was not invited to comment on the IRs or IR responses.

36. Capital Power finally argued that the BRG's failed application to file new evidence did not advance a better understanding of the issues before the Commission.

Reply from the Battle River Group

37. In its reply, the BRG submitted that its additional costs claim is reasonable, directly and necessarily incurred in relation to the original proceeding, complies with Rule 009 and should be allowed in full.

38. The BRG submitted that as an intervener in the original proceeding, it was entitled to review and consider information and evidence filed in relation to IRs and IR responses. The BRG also argued that it sought to bring information to the Commission that would affect the Commission's consideration of the issues before it, and that the BRG's actions in bringing the application to file new evidence were actions any intervener would have taken.

39. The BRG submitted that Rule 009 does not preclude it from filing additional costs claims, especially where the costs were incurred as a result of Capital Power's actions. The BRG argued that it filed its additional costs claim within the timeframe specified by Rule 009.

40. The BRG submitted that the additional costs claim was reasonable and within the Scale of Costs, incurred in relation to the original proceeding and should be allowed in full.

Commission findings

41. The Commission agrees with the BRG that the costs incurred as a result of reviewing and considering the information filed in relation to IRs and IR responses was reasonable given its role in the proceeding. The Commission notes that the IR process was initiated as a result of Capital Power informing the Commission of an error in the evidence filed in the original proceeding. The Commission considers that it is reasonable in the circumstances for an intervener group such as the BRG to have reviewed the IRs and IR responses filed as a result of that error in order to, at a minimum, determine whether that information pertained to the BRG. In these specific circumstances, the Commission further considers that it is reasonable for the BRG to have filed an additional costs claim notwithstanding the period of time that had passed since the conclusion of the oral hearing.

42. Based on the invoice provided by Ackroyd LLP in support of the BRG's cost claim, the Commission considers that the work conducted from January 23, 2018 through February 21, 2018 relates to the BRG's review of the IRs and IR responses. The Commission accordingly

approves that portion of the BRG's additional costs claim, in the amount of \$216.00, along with disbursements of \$9.50 and associated GST.

43. With respect to the costs incurred as a result of the motion to bring new evidence before the Commission, the Commission notes that the motion at issue is directly related to the subject matter of a review and variance application that has been filed in Proceeding 23638⁴ by Donna and Gerard Fetaz. Given the nexus between the costs claimed and the issues raised in the review and variance application, the Commission will defer its decision on the recovery of these costs pending the outcome of Proceeding 23638. The Commission accordingly defers its decision on that portion of the BRG's additional costs claim, in the amount of \$2,712.00 and associated GST.

3 Order

44. It is hereby ordered that:

- 1) Capital Power Generation Services Inc. shall pay intervener costs to the Battle River Group in the amount of \$145,079.10. Payment shall be made to Ackroyd LLP, attention: Mr. Richard Secord at 1500 First Edmonton Place, 10665 Jasper Avenue, Edmonton Alberta, T5J 3VS.

Dated on July 9, 2018.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Panel Chair

⁴ Proceeding 23638: Application for Review and Variance of Decision 22563-D01-2018.