



**Enel Alberta Wind Inc., AltaLink Management Ltd. and the
Alberta Electric System Operator**

Riverview Wind Power Plant and Interconnection Applications

**Advance Funding Request from the
Castleview Ridge Estates Resident Group**

Advance Funding Award

March 27, 2019

Alberta Utilities Commission

Decision 24330-D01-2019

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Eau Claire Tower, 1400, 600 Third Avenue S.W.

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T2P 0G5

Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers an application for advance funding by the Castlevue Ridge Estates Resident Group (CRE Resident Group) for its participation in Proceeding 2402¹ (the advance funding application). The Commission has approved advance funding for the CRE Resident Group in the amount of \$81,845.46 for the reasons that follow.

2. Proceeding 2402 was assigned by the Commission to consider applications by Enel Alberta Wind Inc., AltaLink Management Ltd. and the Alberta Electric System Operator to construct, operate and connect the Riverview wind power plant in the Pincher Creek area.

3. The CRE Resident Group submitted the advance funding application on February 15, 2019. The Commission assigned Proceeding 24330 and Application 24330-A001 to the advance funding application. In its Statement of Intent to Participate, the CRE Resident Group indicated that the focus of its participation in Proceeding 2402 is Enel's application for the Riverview 115 MW Wind Power Plant.²

4. Enel submitted comments on the CRE Resident Group's advance funding application on February 22, 2019, noting that the application did not include a budget for Dr. Erin Baerwald. In reply, the CRE Resident Group submitted that it intended to file Dr. Baerwald's budget on March 8, 2019.

5. On March 5, 2019, the Commission set out further process for the application. On March 8, 2019, the CRE Resident Group submitted the budget for Dr. Baerwald. On March 13, 2019, Enel submitted comments on the budget, to which the CRE Resident Group submitted reply comments on March 18, 2019. Enel submitted that the CRE Resident Group has not sufficiently justified the reasonableness of a team of three bat and bird experts, and questioned the reasonableness of the significantly larger total number of hours and overall budget for the assessment of bat and bird issues, relative to the assessment of noise issues. Finally, Enel submitted that it is not clear from Mr. Gabriel Foley's resume why or how he is an expert that would provide special assistance to the Commission relative to the other experts retained.

¹ Proceeding 2402: Enel Alberta Wind Inc., AltaLink Management Ltd. and the Alberta Electric System Operator Riverview Wind Power Plant and Interconnection Applications.

² Exhibit 2402-X0141, CRE Resident Group Statement of Intent to Participate.

6. The Commission considers the close of record for this proceeding to be March 18, 2019.

2 Advance funding application

7. In its advance funding application, the CRE Resident Group advised that it had retained the services of expert consultants to address issues identified by that group as being relevant to Proceeding 2402. The advance funding application³ included a proposed budget in accordance with Rule 009: *Rules on Local Intervener Costs*, which totalled \$163,690.91. The table below summarizes the experts retained by the CRE Resident Group, the issues that the experts will address, and the total budget for their respective services inclusive of fees, disbursements and GST:

Expert	Issue	Budget
Henk de Haan, dBA Noise Consultants	Noise	\$46,269.83
Dr. Erin Baerwald Mr. Gabriel Foley Mr. Michael Burak	Environmental and wildlife impacts	\$61,960.08

8. Henk de Haan of dBA Noise Consultants was retained to review and provide expert evidence related to noise impacts and Dr. Baerwald was retained to provide an expert opinion on the impacts of wind turbines on the environment and wildlife, with a particular focus on birds and bats. With respect to potential impacts on birds, Dr. Baerwald retained Mr. Gabriel Foley and Mr. Michael Burak as part of her team, to prepare an expert report and sit as witnesses. The CRE Resident Group noted it was also concerned with impacts to property values, visual impacts and impacts on human health, and indicated it may engage an expert consultant in the future to address human health issues.

9. The CRE Resident Group estimated Regulatory Law Chambers' legal costs to be \$55,461.00 (exclusive of disbursements) for its assistance in its intervention in Proceeding 2402. The CRE Resident Group advised that it is an intervenor group comprised of landowners, individuals and families affected by the proposed location of the project. The CRE Resident Group stated it requires financial assistance in order to contribute effectively and efficiently in addressing the relevant issues in Proceeding 2402.

10. The CRE Resident Group requested that the Commission order an advance of 50 per cent of the proposed legal and consultant fees, disbursements and GST, which amounts to \$81,845.46.

³ Exhibit 24330-X0001.01.

3 Commission's authority to award advance funding

11. In assessing a costs claim pursuant to sections 21 and 22 of the *Alberta Utilities Commission Act*, SA 2007, c. A-37.2, the Commission applies Rule 009: *Rules on Local Intervener Costs* to facility related applications.
12. Section 2 of Rule 009 sets out the Commission's authority to award advance funding.

2. Advance of funds request

2.1 A local intervener who intends to take part in a hearing or other proceeding may, at any time during the hearing or other proceeding, make a request to the Commission for an advance of funds in accordance with the scale of costs set out in Appendix A and submit a budget in accordance with Appendix B.

2.2 The Commission may award an advance of funds to a local intervener if the local intervener demonstrates a need for financial assistance to address relevant issues in the hearing or other proceeding.

2.3 If the Commission awards an advance of funds to a local intervener under Section 2.2, the Commission may

2.3.1 advance the funds to the local intervener and

- (i) set out the terms for repayment of the advance to the Commission by the local intervener, or
- (ii) direct the applicant to reimburse the Commission for the funds advanced to the local intervener

or

2.3.2 direct the applicant to advance funds to the local intervener and set out the terms of repayment for the advance to the applicant by the intervener.

3 Budget to be filed

The Commission may, at any time during a hearing or other proceeding, require a local intervener to file a budget of the intervener's anticipated costs in the proceeding in accordance with Appendix B.

4 Commission decision

13. In its standing ruling in Proceeding 2402, the Commission determined that six individuals,⁴ since identified as the CRE Resident Group,⁵ have legal rights that may be

⁴ Chris Hylton, Barbara Newman, Frank and Jennie Anderson, Joshua Anderson and Harry Bullock were granted standing in the AUC Ruling on Standing, Exhibit 2402-X0124.

⁵ Exhibit 24330-X0001: The current members of the CRE Resident Group include Chris Hylton, Barbara Newman, Frank Anderson, Jennie Anderson, Joshua Anderson, Harry Bulloch, Ray Skoog and Marlene Skoog.

directly and adversely affected by the Commission's decision on the project. The Commission finds that the CRE Resident Group qualifies as a "local intervener" pursuant to Section 22 of the *Alberta Utilities Commission Act* and may therefore claim costs and is eligible for advance funding, on behalf of its respective members who own land in close proximity to the proposed project.

14. The Commission has considered the nature of Proceeding 2402 and the submissions of the CRE Resident Group, including the description of proposed expert evidence and legal assistance, the associated budget and submissions on the need for financial assistance. The Commission has also considered the submissions of Enel on the reasonableness of the costs claimed, and notes its acknowledgement that it may not be possible to assess the reasonableness of the budgeted costs until after the conclusion of Proceeding 2402. In accordance with Section 2 of Rule 009, the Commission is satisfied that the CRE Resident Group has demonstrated a need for financial assistance, and has determined that some amount of advance funding is warranted in this case.

15. Historically, when the Commission has approved an award of advance funding it has awarded between 30 and 60 per cent of an intervener's projected costs where they can be reasonably explained. The CRE Resident Group has requested advance funding of 50 per cent of its total budgeted legal and consultant costs of \$163,690.91.

16. The Commission has reviewed the budget and scope of work for Mr. de Haan, dBA Noise Consultants and Dr. Baerwald. With respect to Dr. Baerwald's proposed costs, the Commission notes Enel's concerns that the CRE Resident Group has retained three separate consultants, two of whom will be working on the same specific subject-matter. Notwithstanding these concerns, the Commission is prepared to order some advance funding for these consultants, but expects a fulsome justification as to the reasonableness of the CRE Resident Group's costs, and in particular a justification of the use of multiple consultants to address environmental matters, in the final costs claim filed after the close of Proceeding 2402.

17. Based on the above, the Commission finds an advance funding award of 50 per cent of the estimated consultant fees for Mr. de Haan, dBA Noise Consultants and Dr. Baerwald and related consultants is warranted. The Commission has also reviewed the budget and scope of work for Regulatory Law Chambers and considers that an advance funding award of 50 per cent of the legal costs claimed is warranted.

18. Accordingly, for the above reasons, the Commission awards advance funding to the CRE Resident Group in the total amount of \$81,845.46. Given that the CRE Resident Group indicated that its submissions will focus on the Riverview wind power plant, the Commission will direct Enel to pay the directed advance funding amount.

19. The Commission emphasizes that the advance funding approved in this decision is subject to adjustment when a final costs application is made and a costs decision is issued following completion of Proceeding 2402. In making an advance funding award, the Commission makes no determination on the value of the CRE Resident Group's participation in the proceeding, the weight that may be attributed by the Commission to the evidence given by its consultants, the merits of legal arguments that may be made, or the amount of any final costs award that the Commission may issue.

20. If the CRE Resident Group accepts the advance funding awarded pursuant to this decision and the final costs award for the CRE Resident Group relating to Proceeding 2402 is less than the amount of the advance funding directed in this decision, the CRE Resident Group will be required to repay the difference.

21. All fees and disbursements eventually claimed by any interested party following the conclusion of a proceeding must conform to the Scale of Costs adopted by the Commission. Any interested party claiming costs exceeding the Scale of Costs will be required to provide evidence that the scale is inadequate in accordance with the provisions of Rule 009. In assessing costs, the Commission will consider the effectiveness of the participation by each interested party and whether the costs of the participation were reasonable and directly and necessarily related to Proceeding 2402.

5 Order

22. It is hereby ordered that:

- 1) Enel Alberta Wind Inc. shall pay advance funding in the amount of \$81,845.46 to the Castlevue Ridge Estates Resident Group. Payment shall be made to Regulatory Law Chambers.

Dated on March 27, 2019.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member