



Alberta Electric System Operator

**Strathcona Substation Connection Enhancement
Needs Identification Document Application**

EPCOR Distribution & Transmission Inc.

**Strathcona Capacity Increase and
New Transmission Line 72DS26
Facility Applications**

Costs Award

April 11, 2019

Alberta Utilities Commission

Decision 24158-D01-2019

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

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Telephone: 403-592-8845

Fax: 403-592-4406

Website: www.auc.ab.ca

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Calgary, Alberta

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Proceeding 24158**

1 Introduction

1. In this decision, the Alberta Utilities Commission considers applications by Jim Pattison Broadcast Group (JPBG) and by 408652 Alberta Ltd. for approval and payment of their costs of participation in Proceeding 23641¹ (the original proceeding).

2. The following table sets out the costs claimed and the amounts awarded:

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
Jim Pattison Broadcast Group								
Ackroyd LLP	\$20,545.00	\$130.70	\$1,033.79	\$21,709.49	\$19,705.00	\$130.70	\$991.79	\$20,827.49
ERP Engineering	\$10,395.00	\$0.00	\$519.75	\$10,914.75	\$10,395.00	\$0.00	\$519.75	\$10,914.75
Pippin Technical	\$550.00	\$0.00	\$27.50	\$577.50	\$550.00	\$0.00	\$27.50	\$577.50
Total	\$31,490.00	\$130.70	\$1,581.04	\$33,201.74	\$30,650.00	\$130.70	\$1,539.04	\$32,319.74
408652 Alberta Ltd.								
Ogilvie LLP	\$11,907.00	\$125.30	\$600.82	\$12,633.12	\$11,907.00	\$92.30	\$599.37	\$12,598.67
Total of all amounts claimed and awarded				\$45,834.86				\$44,918.41

3. The Commission has awarded reduced costs to JPBG and 408652 Alberta Ltd. for the reasons set out below.

4. The original proceeding was convened by the Commission to consider the needs identification document (NID) application by the Alberta Electric System Operator (AESO), and the facility applications by EPCOR Distribution & Transmission Inc. for a transmission development consisting of a new 72-kilovolt transmission line and alterations to existing facilities in the Edmonton area.

¹ Proceeding 23641: Alberta Electric System Operator Strathcona Substation Connection Enhancement Needs Identification Document Application, EPCOR Distribution & Transmission Inc. Strathcona Capacity Increase and New Transmission Line 72DS26 Facility Applications.

5. The applications were filed in the original proceeding in June 2018. On October 31, 2018, the AESO submitted a request to be excused from participating further in the original proceeding and asked that the NID application be approved by the Commission in due course. The AESO stated that its request was based on its review of the evidence filed by the interveners, which addressed concerns about facility routing. Further, the AESO indicated that none of the interveners had provided any information to challenge the AESO's NID application. On November 9, 2018, the Commission issued a ruling in the original proceeding granting the AESO's request to not attend or present witnesses at the oral hearing.

6. The original proceeding included information requests (IRs), responses to IRs, evidence, rebuttal evidence and an oral hearing on December 10, 2018, in Edmonton. The issues raised in the oral hearing were limited to the facility applications: no party had concerns with the NID application. The close of record for the original proceeding was December 10, 2018, and Decision 23641-D01-2019 was issued March 8, 2019.²

7. JPBG and 408652 Alberta Ltd. submitted their costs claim applications on December 18, 2018 and January 9, 2019, respectively. The applications were filed within the 30-day timeline permitted by the Commission's rules. On January 14, 2019, 408652 Alberta Ltd. amended its costs claim application. The Commission assigned Proceeding 24158 and Applications 24158-A001 and 24158-A002 to the applications filed by JPBG and 408652 Alberta Ltd, respectively.

8. There were no comments filed on the costs claim applications. The Commission considers January 16, 2019 to be the close of record for this proceeding, the deadline date for filing comments.

2 Commission's authority to award costs and intervenor eligibility

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 intervenor 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 Local Intervenor 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 intervenor" 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 intervenor acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission.

² Decision 23641-D01-2019: Alberta Electric System Operator Strathcona Substation Connection Enhancement Needs Identification Document Application, EPCOR Distribution & Transmission Inc. Strathcona Capacity Increase and New Transmission Line 72DS26 Facility Applications, Proceeding 23641, March 8, 2019.

11. Section 22 of the *Alberta Utilities Commission Act* defines “local intervener” as follows:

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.

12. In the Commission’s ruling on standing in the original proceeding,³ the Commission granted standing to Mr. Robert Michaels, JPBG and 408652 Alberta Ltd. In Decision 23641-D01-2019, the Commission accepted 408652 Alberta Ltd.’s request that Mr. Michaels and 408652 Alberta Ltd. be considered to be the same participant.⁴ The Commission has decided that JPBG and 408652 Alberta Ltd are each eligible for costs as a local intervener and has applied Rule 009 to their costs applications.

3 Jim Pattison Broadcast Group

13. The following table summarizes JPBG’s costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Jim Pattison Broadcast Group							
Ackroyd LLP	71.90	0.00	0.00	\$20,545.00	\$130.70	\$1,033.79	\$21,709.49
ERP Engineering	38.50	0.00	0.00	\$10,395.00	\$0.00	\$519.75	\$10,914.75
Pippin Technical	4.00	0.00	0.00	\$550.00	\$0.00	\$27.50	\$577.50
Total	114.40	0.00	0.00	\$31,490.00	\$130.70	\$1,581.04	\$33,201.74

14. JPBG operates two FM radio stations from its studio located at 102, 9894 42nd Avenue N.W., Edmonton, which is approximately 130 metres from one of the transmission line routes proposed in the original proceeding. JPBG was concerned that the proposed transmission line would interfere with the broadcast functionality of its radio stations. More specifically, JPBG was concerned that a proposed transmission line tower near its studio and the transmission line itself may interfere with the radio communication pathway between its studio and its transmitter located west of Edmonton, in the Acheson area.

³ Exhibit 23641-X0049.

⁴ Decision 23641-D01-2019, paragraph 27.

15. JPBG submitted information requests to EPCOR, filed evidence in the proceeding and responded to information requests on its evidence. On December 5, 2018, JPBG filed a letter stating that it had reached an agreement with EPCOR and was withdrawing its objection to the facility applications, but it also requested that the Commission impose the terms of that agreement as conditions of any approvals that may be issued for the facility applications. JPBG did not participate in the oral hearing.

16. The Commission considers that, except as noted below, the costs claimed by JPBG were incurred for the purpose of participating in the proceeding notwithstanding that JPBG filed an agreement with EPCOR five days before the oral hearing was scheduled to commence and ultimately did not participate in the oral hearing. This includes the work of the consultants that JPBG retained to investigate the potential for the proposed transmission facilities to interfere with its radio operations, and to explore solutions. The Commission accepts that the primary purpose of that work was to advance JPBG's position in the proceeding, and any use of the information in settlement discussions was ancillary to that.

17. The Commission finds that JPBG 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 Ackroyd LLP, for the reasons set out below.

3.1 Commission findings

3.1.1 Ackroyd LLP

18. JPBG was represented by Ackroyd LLP in the original proceeding. The fees claimed by JPBG for the legal services provided by Mr. Richard Secord, Ms. Ifeoma Okoye and Ms. Heather Beyko relate to reviewing the applications, preparing IRs, filing written evidence, responding to IRs, corresponding with the Commission and EPCOR, and negotiating a settlement of issues prior to the hearing, which JPBG submitted saved additional costs and time.

19. The Commission finds that the services performed by Ackroyd LLP were directly and necessarily related to JPBG's participation in the original proceeding, and that the majority of the fees that were claimed in accordance with the Scale of Costs for those services were reasonable.

20. The Commission notes, however, that not all the fees claimed were in accordance with the Scale of Costs. The Commission disallows 3.0 hours claimed for Ms. Okoye for December 10, 2018 to prepare the costs claim.⁵ The Commission does not permit the recovery of costs incurred to prepare costs claims because this work does not contribute to a better understanding of the issues before the Commission in the original proceeding. Accordingly, the Commission approves JPBG's claim for legal fees for Ackroyd LLP in the reduced amount of \$19,705.00. The disbursement claimed for photocopying in the amount of \$130.70 is approved.

21. For the reasons set out above, the Commission approves JPBG's claim for legal fees for Ackroyd LLP in the amount of \$19,705.00, disbursements of \$130.70 and GST of \$991.79 for a total of \$20,827.49.

⁵ Exhibit 24158-X0002, PDF page 18.

3.1.2 ERP Engineering

22. ERP Engineering was retained by JPBG to perform consulting services in the original proceeding. The fees claimed by JPBG for the consulting services provided by Mr. Eric Poppleton relate to reviewing the applications, reviewing the impacts of the proposed transmission line on JPBG's communications systems, preparing an expert report, responding to IRs, developing requested conditions of approval and participating in settlement discussions.

23. The Commission finds that the services performed by ERP Engineering were directly and necessarily related to JPBG's participation in the original proceeding, and that the fees, claimed in accordance with the Scale of Costs for those services, were reasonable. Accordingly, the Commission approves JPBG's claim for consulting fees for ERP Engineering in the amount of \$10,395.00 and GST of \$519.75 for a total of \$10,914.75.

3.1.3 Pippin Technical

24. Pippin Technical was retained by JPBG to perform consulting services in the original proceeding. The fees claimed by JPBG for the consulting services provided by Mr. Dave Ellis relate to reviewing the applications, providing advice on mitigation options and costs, reviewing IRs and providing requested information.

25. The Commission finds that the services performed by Pippin were directly and necessarily related to JPBG's participation in the original proceeding, and that the fees, claimed in accordance with the Scale of Costs for those services, were reasonable. Accordingly, the Commission approves JPBG's claim for consulting fees for Pippin in the amount of \$550.00 and GST of \$27.50 for a total of \$577.50.

3.1.4 Total awarded to JPBG

26. For the reasons provided above, the Commission approves JPBG's claim for recovery of costs in the total amount of \$32,319.74. This amount is composed of legal fees of \$19,705.00, consulting fees of \$10,945.00, total disbursements of \$130.70 and GST of \$1,539.04.

4 408652 Alberta Ltd.

27. The following table summarizes 408652 Alberta Ltd.'s costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
408652 Alberta Ltd.							
Ogilvie LLP	33.70	11.00	0.00	\$11,907.00	\$125.30	\$600.82	\$12,633.12

28. The Commission finds that 408652 Alberta Ltd. 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 Ogilvie LLP for the reasons set out below.

4.1 Commission findings

4.1.1 Ogilvie LLP

29. 408652 Alberta Ltd. was represented by Ogilvie LLP in the original proceeding. The fees claimed by 408652 Alberta Ltd. for the legal services provided by Mr. James Murphy Q.C. and Ms. Erin O'Neill, relate to reviewing the applications, preparing evidence, preparing responses to IRs, reviewing submissions made by registered parties, conducting research, attending the oral hearing, providing oral submissions at the hearing and cross-examining witnesses.

30. The Commission finds that the services performed by Ogilvie LLP were directly and necessarily related to 408652 Alberta Ltd.'s participation in the original proceeding, and that the fees, claimed in accordance with the Scale of Costs for those services, were reasonable. Accordingly, the Commission approves 408652 Alberta Ltd.'s claim for legal fees for Ogilvie LLP in the amount of \$11,907.00.

31. The disbursements claimed for Ogilvie LLP included miscellaneous disbursements of \$25.00 for "File Opening Fee" and \$8.00 for "Document Processing." The claim does not provide an explanation of the document processing charge, in particular it does not indicate that the charge is for third party services. The Scale of Costs states that legal fees are deemed to include all overhead charges implicit in the normal operation of a law firm. As a result, the Commission finds these charges are not permitted under the Scale of Costs and has disallowed these charges. The remaining disbursements for long-distance telephone calls, photocopying and land titles searches are approved.

32. For the reasons set out above, the Commission approves 408652 Alberta Ltd.'s claim for legal fees for Ogilvie LLP in the amount of \$11,907.00, disbursements of \$92.30 and GST of \$599.37 for a total of \$12,598.67.

5 Order

33. It is hereby ordered that:

- 1) EPCOR Distribution & Transmission Inc. (transmission) shall pay intervener costs to Jim Pattison Broadcast Group (JPBG) in the amount of \$32,319.74. Payment shall be made to Ackroyd LLP.
- 2) EPCOR Distribution & Transmission Inc. (transmission) shall pay intervener costs to 408652 Alberta Ltd in the amount of \$12,598.67. Payment shall be made to Ogilvie LLP.
- 3) EPCOR Distribution & Transmission Inc. (transmission) shall record in its Hearing Cost Reserve Account approved intervener costs in the amount of \$44,918.41.

Dated on April 11, 2019.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member