



Aura Power Renewables Ltd.

Fox Coulee Solar Project

Interim Costs Award

July 8, 2019

**Alberta Utilities Commission**

Decision 24381-D01-2019

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## Contents

<b>1</b>	<b>Introduction .....</b>	<b>1</b>
<b>2</b>	<b>Commission’s authority to award interim costs .....</b>	<b>2</b>
<b>3</b>	<b>Interim costs application .....</b>	<b>3</b>
<b>4</b>	<b>Commission decision.....</b>	<b>4</b>
<b>5</b>	<b>Order .....</b>	<b>5</b>

## **1 Introduction**

1. In this decision, the Alberta Utilities Commission considers an application by the Solar Opposition Participants group (SOP) for payment of interim costs to participate in Proceeding 23951.<sup>1</sup> For the reasons that follow, the Commission has awarded interim costs to the SOP in the amount of \$75,080.61.

2. Proceeding 23951 was assigned by the Commission to consider applications by Aura Power Renewables Ltd. (Aura) to construct and operate a 75-megawatt solar power plant approximately four kilometres north of Drumheller, and to interconnect the power plant to the Alberta Interconnected Electric System. On December 21, 2018, the Commission issued a ruling that granted standing in Proceeding 23951 to 33 individuals who own or reside on land in close proximity to the proposed power plant or have a legal right to use a hangar that is part of the Drumheller airport, which is near the proposed power plant.<sup>2</sup> These individuals formed the SOP for the purpose of participating in Proceeding 23951.

3. The SOP submitted a claim for advance funding on March 1, 2019.<sup>3</sup> The Commission assigned Proceeding 24381 and Application 24381-A001 to the advance funding application. The oral hearing in Proceeding 23951 commenced on March 5, 2019 and concluded on March 7, 2019. On April 4, 2019, Aura filed a letter commenting on the SOP's advance funding application.<sup>4</sup> Aura stated that advance funding is intended to be awarded prior to a hearing taking place and in this case where the hearing had concluded and the SOP was able to participate in it, the claim for advance funding was moot and should be dismissed. Aura also stated that costs awarded after the close of a hearing are governed by Section 5 of Rule 009: *Rules on Local Intervener Costs*, and that the SOP may choose to file a full costs claim within 30 days after the close of Proceeding 23951 in accordance with Section 5. On April 9, 2019, the SOP filed a reply to Aura's letter in which it asked the Commission to treat its advance funding application as a request for interim costs pursuant to Section 4.1 of Rule 009.<sup>5</sup>

4. On April 4, 2019, the Town of Drumheller filed a letter in Proceeding 23951 requesting an opportunity to present its concerns about the proposed power plant directly to the Commission.<sup>6</sup> In a ruling dated April 16, 2019, the Commission allowed the Town of Drumheller to file a written submission stating its concerns.<sup>7</sup> The Town of Drumheller filed its

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<sup>1</sup> Proceeding 23951: Aura Power Renewables Ltd. Fox Creek Solar Project.

<sup>2</sup> Exhibit 23951-X0067, AUC letter - Ruling on standing.

<sup>3</sup> Exhibit 24381-X001, 2019-02-20 LT AUC - SOP Advance Cost Claim.

<sup>4</sup> Exhibit 24381-X0006, Aura Letter to AUC re Response to Solar Opposition Participant's Advance Cost Claim.

<sup>5</sup> Exhibit 24381-X0007, 2019-04-09 LT AUC - SOP reply on Advance Cost Claim.

<sup>6</sup> Exhibit 23951-X0127, Letter to AUC RE - AUC Hearings for Proposed Fox Coulee Solar Array.

<sup>7</sup> Exhibit 23951-X0130, AUC ruling on the Town of Drumheller's request to present its objections.

submission on April 24, 2019.<sup>8</sup> Aura filed a written response to the Town of Drumheller's submission on May 1, 2019.<sup>9</sup>

5. In a letter dated May 31, 2019, the Commission advised participants in Proceeding 23951 that it required additional information relating to the potential hazard to pilots if solar panels are installed on the project lands north of the Drumheller airport.<sup>10</sup> On June 25, 2019, Aura<sup>11</sup> and the SOP<sup>12</sup> filed additional information in response to the Commission's request. The Town of Drumheller filed additional information on June 26, 2019.<sup>13</sup> The Commission has provided participants with an opportunity to each file a response to the additional information filed by other participants, with those responses due to be filed by July 15, 2019.<sup>14</sup>

6. The Commission also notes that the SOP filed a final costs claim application relating to Proceeding 23951 on April 5, 2019. The Commission assigned Proceeding 24476 to that application. Aura filed comments on the SOP's final costs claim on April 15, 2019, and the SOP filed a reply to those comments on April 22, 2019. The Commission intends to issue further process directions in Proceeding 24476 that will allow the SOP to supplement its final costs claim to account for any costs it may have incurred to respond to the Commission's request for additional information in Proceeding 23951, and to allow Aura an opportunity to comment on any supplemental costs claimed by the SOP.

## **2 Commission's authority to award interim costs**

7. The Commission's authority to award costs for participation in facility-related proceedings is found in Sections 21 and 22 of the *Alberta Utilities Commission Act*. In assessing an application for costs in this type of proceeding, the Commission applies Rule 009 to facility-related applications.

8. Section 4.3 of Rule 009 sets out the basis for the Commission's consideration of an application for interim costs by a "local intervener." It states:

4.3 The Commission may award interim costs to a local intervener if the Commission is of the opinion that

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

4.3.2 the hearing or other proceeding in which interim costs are claimed is lengthy, and

4.3.3 the local intervener has demonstrated a need for financial assistance to continue to address relevant issues in the hearing or other proceeding.

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<sup>8</sup> Exhibit 23951-X0131, Letter of response to AUC and AURA.

<sup>9</sup> Exhibit 23951-X0132, Letter to AUC re response to Drumheller Concerns.

<sup>10</sup> Exhibit 23951-X0133, AUC letter - Request for additional information and notice of further process.

<sup>11</sup> Exhibit 23951-X0138, Letter to AUC Providing Additional Evidence; 23951-X0139, Aura Additional Evidence Appendices.

<sup>12</sup> Exhibit 23951-X0140, 2019-06-25 LT AUC re May 31, 2019 Request; Exhibit 23951-X0141, 2019 06 25 SOP Evidence re AUC May 31 Request and appendices A to F, filed separately.

<sup>13</sup> Exhibit 23951-X0148, Response to AUC correspondence from June 6, 2019.

<sup>14</sup> Proceeding 23951, AUC letter - responses to submissions related to Drumheller airport, June 27, 2019.

9. Although the oral hearing in Proceeding 23951 concluded on March 7, 2019, developments subsequent to the hearing have extended the proceeding in a way that could not have been anticipated by the hearing participants. In the Commission's view, Proceeding 23951 has become lengthy within the meaning of Section 4.3.2 of Rule 009. In these circumstances, the Commission accepts the SOP's request to treat its application for advance funding as an application for interim costs. Given that the application was filed with estimated costs, rather than actual cost amounts that would normally be provided in an interim costs application, the Commission will consider awarding the amounts estimated by the SOP in its application.

### 3 Interim costs application

10. The SOP stated in its funding application that it is an intervener group comprised of landowners, individuals, families, business owners and pilots that decided to coordinate their efforts to create better efficiencies and reduce overlap in their individual interventions. The SOP also stated that it requires financial assistance to fully participate in Proceeding 23951, given the scope of fees and costs involved in retaining the necessary legal counsel and experts to address the issues in the proceeding. The SOP submitted that it would present considerable difficulties for the individual members of the group to provide pro-rata contributions to fund the intervention.

11. The SOP stated that it had retained three subject matter experts to address different issues it believed were relevant to Proceeding 23951. The table below summarizes the experts retained by the SOP, the issues that each expert was expected to address, and the budget for their respective services inclusive of fees, disbursements and GST:

Expert	Issue	Budget
Solas Energy Consulting Inc.	Glare and Glint Impacts	\$25,470.00
Cottonwood Consultants Ltd.	Environmental and Wildlife Impacts	\$12,999.00
FDI Acoustics Inc.	Noise Impacts	\$13,650.00

12. The SOP indicated that Solas Energy Consulting Inc. was retained to review the glare study filed by Aura, to complete an independent study on potential glare and glint issues and to provide expert evidence. Cottonwood Consultants Ltd. was retained to provide an expert opinion on the effects of the solar power project on environmentally significant areas, species at risk and matters related to biodiversity. FDI Acoustics Inc. was retained to review the noise studies filed by Aura and to provide an expert opinion on noise impacts of the project.

13. The SOP indicated that three different counsel from Ackroyd LLP would provide legal services: Richard Secord, Ifeoma Okoye and Heather Beyko. The SOP indicated that the legal fees and disbursements incurred to the date the funding application was filed totaled \$46,971.25. It estimated that additional legal fees, for Ifeoma Okoye and Heather Beyko only, disbursements and GST would total \$51,070.06. The SOP estimated that Ackroyd LLP's total legal costs for Proceeding 23951 would be \$98,041.31.

14. The SOP estimated that the expert and legal fees incurred by it to participate in Proceeding 23951 would total \$150,161.21. It requested that the Commission award one-half of that amount, for a total interim costs award of \$75,080.61.

#### **4 Commission decision**

15. In its standing ruling in Proceeding 23951, the Commission determined that the 33 members of the SOP have legal rights that may be directly and adversely affected by the Commission's decision on Aura's applications, based on their ownership, occupation or use of land (including hangars at the Drumheller airport) in close proximity to the proposed solar project. The Commission finds that the SOP members qualify as "local interveners" under Section 22 of the *Alberta Utilities Commission Act* and are eligible to claim costs pursuant to Rule 009.

16. The Commission has already stated in this decision that Proceeding 23951 has become a lengthy proceeding, in accordance with Section 4.3.2 of Rule 009. Based on the submissions provided by the SOP, and having regard for the nature of the proceeding and the subject matter experts and legal counsel retained by the SOP to assist it, the Commission also finds that the SOP has demonstrated a need for financial assistance to address relevant issues in the proceeding, as required under Section 4.3.3 of Rule 009.

17. Since the SOP's interim costs claim was originally filed as a request for advance funding, the Commission does not have statements of account from the SOP's subject matter experts and legal counsel that would permit a detailed assessment of whether the costs claimed are reasonable and are directly and necessarily related to Proceeding 23951. The Commission does, however, have the benefit of having reviewed the written evidence filed by the SOP and observed the conduct of the SOP's experts and legal counsel during the oral hearing. Based on this, and without commenting on the merits of this evidence, the Commission is satisfied that at least a portion of the interim costs claimed are reasonable and are directly and necessarily related to the proceeding, in accordance with Section 4.3.1 of Rule 009. The Commission notes that the cost estimates provided by the SOP do not include fees the SOP may have incurred to respond to the Commission's request, made after the oral hearing, for additional information about the potential hazard to pilots if solar panels are installed on the project lands north of the Drumheller airport.

18. The Commission believes that in the absence of detailed statements of account from the SOP's experts and legal counsel, it is reasonable in this instance to grant an interim costs award based on the approach the Commission uses when it approves advance funding for local interveners. In approving awards for advance funding, the Commission has historically awarded between 30 and 60 per cent of an intervener's projected costs. The SOP has requested an interim cost award equal to 50 per cent of its incurred and anticipated costs of \$150,161.21. The Commission considers that an award of interim costs on that basis, in the amount of \$75,080.61, is warranted.

19. Accordingly, for the above reasons, the Commission grants an interim costs award to the SOP in the amount of \$75,080.61.

20. The Commission emphasizes that the interim costs award approved in this decision is subject to adjustment when a final costs decision is issued following completion of Proceeding

23951. As noted above, in making this interim costs award the Commission makes no determination on the value of the SOP's participation in the proceeding, the weight that may be attributed by the Commission to the evidence given by its experts, the merits of legal arguments that may be made, or the amount of any final costs award that the Commission may issue.

21. If the SOP accepts the interim costs awarded pursuant to this decision and the final costs award for the SOP relating to Proceeding 23951 is less than the amount of interim costs awarded in this decision, the SOP will be required to repay the difference.

22. All fees and disbursements claimed by a local intervener following the conclusion of a proceeding must conform to the Scale of Costs adopted by the Commission. Any local intervener claiming costs exceeding the Scale of Costs will be required to provide evidence that the scale is inadequate. In assessing costs, the Commission will consider the effectiveness of the participation by each local intervener and whether the costs of the participation were reasonable and directly and necessarily related to the proceeding.

## **5 Order**

23. It is hereby ordered that:

- 1) Aura Power Renewables Ltd. shall pay interim costs in the amount of \$75,080.61 to the Solar Opposition Participants group. Payment shall be made to Ackroyd LLP.

Dated on July 8, 2019.

**Alberta Utilities Commission**

*(original signed by)*

Carolyn Hutniak  
Commission Member