



Alberta Electric System Operator

Rycroft 730S Substation Voltage Support
Needs Identification Document

Costs Award

July 19, 2019

Alberta Utilities Commission

Decision 24306-D01-2019

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Calgary, Alberta

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1 Introduction

1. In this decision the Alberta Utilities Commission considers the costs claim applications by Mr. Dennis Woronuk and by the Consumers' Coalition of Alberta (CCA) for approval and payment of their costs of participation in Proceeding 23105¹ (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
Dennis Woronuk								
Honorarium	\$8,100.00	\$882.99	\$2.44	\$8,985.43	\$2,600.00	\$148.11	\$2.44	\$2,750.55
CCA								
Wachowich & Company	\$12,845.00	\$1,022.40	\$693.37	\$14,560.77	\$12,845.00	\$1,022.40	\$693.37	\$14,560.77
Nicholas Bryanskiy	\$68,704.00	\$0.00	\$3,435.20	\$72,139.20	\$57,152.00	\$0.00	\$2,857.60	\$60,009.60
Bema Enterprises Ltd.	\$52,021.35	\$978.57	\$2,649.37	\$55,649.29 ²	\$52,021.35	\$940.57	\$2,649.37	\$55,611.29
Total	\$133,570.35	\$2,000.97	\$6,777.94	\$142,349.26	\$122,018.35	\$1,962.97	\$6,200.34	\$130,181.66
Total of all amounts claimed and awarded				\$151,334.69				\$132,932.21

3. The Commission has awarded reduced costs to Mr. Woronuk and to the CCA for the reasons set out below.

4. The original proceeding was convened by the Commission to consider a needs identification document (NID) application filed by the Alberta Electric System Operator (AESO) for voltage support at the Rycroft 730S Substation. The original proceeding included information requests (IRs) and responses, written evidence and rebuttal evidence, an oral hearing held January 10, 2019, and written argument and reply argument. The close of record for the original proceeding was March 7, 2019 and the Commission issued Decision 23105-D01-2019³ on May 3, 2019.

5. Mr. Woronuk and the CCA submitted their costs claim applications on February 7, 2019 and April 8, 2019, respectively. The applications were filed within the 30-day timeline permitted

¹ Proceeding 23105: Alberta Electric System Operator Rycroft 730S Substation Voltage Support Needs Identification Document.

² In Exhibit 24306-X0004, Form U1 – Summary of Total Costs Claimed, PDF page 21, the Commission notes an addition error and has corrected it.

³ Decision 23105-D01-2019: Alberta Electric System Operator Rycroft 730S Substation Voltage Support Needs Identification Document, Proceeding 23105, May 3, 2019.

by the Commission's rules. The Commission assigned Proceeding 24306 and applications 24306-A001 and 24306-A002 to the respective costs claim applications.

6. On April 15, 2019, the AESO filed comments on the CCA's costs claim application. On April 22, 2019, the CCA filed its reply comments. The Commission considers the close of record for this proceeding to be April 22, 2019.

2 Commission's authority to award costs and intervenor eligibility

7. The Commission's authority to award costs is found in sections 21 and 22 of the *Alberta Utilities Commission Act*. When assessing a costs claim pursuant to Section 21 of the *Alberta Utilities Commission Act*, the Commission applies Rule 022: *Rules on Costs in Utility Rate Proceedings* or Rule 009: *Rules on Local Intervenor Costs*.

8. Rule 022 applies to proceedings for rate applications of utilities under the jurisdiction of the Commission, or those related to rate applications. When an intervention on a NID application is premised upon the potential effects of a proposed project on rates, the Commission has generally applied Rule 022 to the intervenor's costs claim. This rule allows the Commission to consider, among other things, whether the costs claimed are reasonable and directly and necessarily related to the original proceeding, and whether the participants acted responsibly and contributed to a better understanding of the issues before the Commission. Appendix A of Rule 022 prescribes a Scale of Costs applicable to all costs considered under this rule. This approach is consistent with the Commission's broad statutory authority under Section 21(1) of the *Alberta Utilities Commission Act*.

9. Rule 009 applies to costs claims related to facilities proceedings. When considering a claim for costs for a facilities proceeding, the Commission is guided by the factors set out in Section 7 of Rule 009 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.

11. Section 22 of the *Alberta Utilities Commission Act* defines "local intervenor" as follows:

22(1) For purposes of this section, "local intervenor" 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,⁴ the Commission granted standing to the CCA, Mr. Woronuk and the Village of Rycroft. The CCA was granted standing because approval of the NID had the potential to affect all Alberta electricity ratepayers as they bear the cost of new transmission facilities. The Commission has applied Rule 022 to the costs application filed by the CCA. Mr. Woronuk and the Village of Rycroft were found to have demonstrated land-based rights that may be directly and adversely affected by the NID application. Mr. Woronuk is a "local intervener" within the definition provided in Section 22 of the *Alberta Utilities Commission Act*. The Commission has therefore applied Rule 009 to the costs application filed by him and notes that this is consistent with previous costs decisions relating to claims by landowners in NID application proceedings.⁵ The Village of Rycroft did not file a costs application.

3 Dennis Woronuk

13. The following table summarizes Mr. Woronuk's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Dennis Woronuk							
Honorarium	0.00	0.00	0.00	\$8,100.00	\$882.99	\$2.44	\$8,985.43

14. The Commission finds that Mr. Woronuk 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 for the reasons set out below.

3.1 Commission findings

15. Mr. Woronuk was self-represented in the original proceeding. In his costs claim application, he claimed \$8,000.00 for preparation honorarium, \$100.00 for attendance honorarium and \$885.43 for disbursements and GST. In his costs claim, Mr. Woronuk stated:

"... [he] spent well in excess of 90 hours on this proceeding between filings, correspondence (emails and letters), reading all of the registered documents, meetings, telephone calls, intervener preparation for the hearing itself, evidence preparation and submission of final arguments."

...

I have claimed \$8,000 for my preparation honorarium. I would add that I did not engage a lawyer and had I done so, the costs would have been substantially larger than this amount. If this amount

⁴ Exhibit 23105-X0036, Ruling on standing, PDF pages 5 and 6.

⁵ For example, Decision 2014-071: Alberta Electric System Operator Goose Lake to Chapel Rock Southern Alberta Transmission Reinforcement Needs Identification Document Amendment Costs Award, Proceeding 2952, March 25, 2014.

cannot be paid under Rule 009 honorarium Form U3 then it should be paid under Rule 009 professional fees.”⁶

16. On his Form U5, Mr. Woronuk stated that he should be entitled to claim fees in excess of the Scale of Costs because: “[t]he magnitude of filings, duration of time of this proceeding and hours spent justify payment in full.”⁷

17. Appendix A of Rule 009 provides a Scale of Costs that “. . . represents a fair and reasonable tariff to provide any eligible interested party with adequate, competent and professional assistance in making an effective submission before the Commission.” It also indicates that “[i]n a case where an eligible participant can advance persuasive argument that the scale is inadequate given the complexity of the case, the Commission may award an amount greater than stated in this scale to address such unique circumstances.”

18. Section 2.b) of Appendix A of Rule 009 allows for a preparation honorarium in the range of \$300.00 to \$2,500.00, depending on the complexity of the submission, for a local intervenor who personally prepares a submission without expert help. In this manner, the Scale of Costs contemplates a range of amounts for a preparation honorarium depending on the complexity of the circumstances. The Commission has previously stated⁸ that an award in excess of the Scale of Costs is only justified in unique circumstances when the complexity of the matter makes a persuasive argument that the Scale of Costs is inadequate.

19. Mr. Woronuk was granted standing in the original proceeding as a landowner whose role in the NID application was “to provide high level advice regarding land use impacts and potential environmental concerns associated with any of the proposed options considered by AESO.”⁹ In the Commission’s view, Mr. Woronuk’s participation in the proceeding stayed within that role and nothing in his intervention was sufficiently unique or complex to make a persuasive argument that an award of costs for a preparation honorarium within the Scale of Costs would be inadequate. The Commission therefore awards Mr. Woronuk a preparation honorarium in the amount of \$2,500.00, which is the maximum amount permitted under the Scale of Costs.

20. Mr. Woronuk stated that if he cannot be awarded a preparation honorarium in the amount of \$8,000.00, he should be awarded that amount as professional fees under Rule 009. In a previous local intervenor costs award decision, the Commission addressed the matter of local intervenors claiming professional fees for their own participation in a hearing. The Commission stated:

The Scale of Costs allows honoraria and reasonable personal disbursements to be claimed by local intervenors. It also sets out a scale for professional fees for legal counsel and other subject area professionals, where local intervenors make a reasonable choice to engage these professionals for purposes related to the hearing. Members of Calla Condo Owner’s Group participated in the original proceeding as owners of property near the proposed development.

⁶ Exhibit 24306-X0001, PDF page 5.

⁷ Exhibit 24306-X0001, PDF page 4.

⁸ For example, see Decision 2013-316: ATCO Electric Ltd. Rate Regulation Initiative Performance-Based Regulation, Z Factor Adjustment Application Costs Award, Proceeding 2527, August 27, 2013, paragraphs 15 and 16.

⁹ Exhibit 23105-X0036, PDF page 5.

None of them provided written or oral evidence in the nature of an expert report or similar information that is typically provided by a professional when he or she is retained to give expert evidence. The Commission finds that Mr. Retallack, Ms. Budny and Ms. Beaujot did not participate in the original proceeding as subject area professionals and consequently denies their respective claims for professional fees.¹⁰

21. Mr. Woronuk's claim for professional fees, as an alternative to an \$8,000.00 honorarium, does not meet the Commission's requirements for an award of professional fees. Regardless of Mr. Woronuk's personal expertise and experience in the matters he addressed in the original proceeding, the fact is, he participated as a local intervener landowner and not as an expert providing a report or giving expert evidence. In addition, Mr. Woronuk is not an accredited lawyer and his participation in the proceeding was not in a professional legal capacity. The award of a preparation honorarium is in part, recognition of Mr. Woronuk's efforts in organizing his submissions including questions asked in the hearing and the filing of argument. The Commission therefore denies Mr. Woronuk's claim for professional fees.

22. The Commission finds that, as a local intervener participating in one full hearing day, Mr. Woronuk's claim for attendance honorarium of \$100.00 is within the Scale of Costs and is approved.

23. The Commission reviewed Mr. Woronuk's claimed disbursements and notes the claim for \$734.88 for mileage is described as "Mileage (\$.46/km) T/F Rycroft to meet with MD Spirit River, Village of Rycroft and LRT stn."¹¹ Since the Scale of Costs only allows for mileage for intercity travel to attend an oral hearing, the Commission denies the mileage claim. The Commission finds the remaining disbursements for transcripts, photocopying, computer fees, transit fares and the Commissioner of Oaths fee in the amount of \$148.11 are reasonable and are approved.

3.2 Total awarded to Dennis Woronuk

24. For the reasons provided above, the Commission approves Mr. Woronuk's claim for recovery of costs in the total amount of \$2,750.55. This amount is composed of preparation honorarium of \$2,500.00, attendance honorarium of \$100.00, disbursements of \$148.11 and GST of \$2.44.

¹⁰ Decision 23906-D01-2018: ENMAX Power Corporation Downtown Calgary Transmission Reinforcement Project Costs Award, Proceeding 23906, November 21, 2018, paragraph 27.

¹¹ Exhibit 24306-X0001, Form U2, PDF page 1.

4 The Consumers' Coalition of Alberta

25. The following table summarizes the CCA's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company	28.00	3.70	5.00	\$12,845.00	\$1,022.40	\$693.37	\$14,560.77
Nicholas Bryanskiy	71.60	7.00	136.10	\$68,704.00	\$0.00	\$3,435.20	\$72,139.20
Bema Enterprises Ltd.	188.33	14.00	36.40	\$52,021.35	\$978.57	\$2,649.37	\$55,649.29
Total	287.93	24.70	177.50	\$133,570.35	\$2,000.97	\$6,777.94	\$142,349.26

26. The Commission finds that the CCA 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 for the reasons set out below.

4.1 Comments from the AESO

27. The AESO submitted that the fees and expenses claimed by the CCA for Bema Enterprises Ltd. for organizing and administering the CCA's participation in the original proceeding exceeded what was necessary or reasonable. It also stated that a review of the roles described for Bema personnel, and the timesheets it provided, showed an overlap with the legal functions for which the CCA's counsel also charged fees. It cited the review of the AESO's confidentiality request and the Commission's ruling granting that request, and the CCA's motion for further and better responses and the Commission's ruling dismissing that motion, as examples where multiple people performed the same function for the CCA.

28. The AESO stated that about one-third of the CCA's costs claim is attributable to the AESO's request for an oral hearing, even though the CCA had stated that it was not opposed to an oral hearing if any other parties requested one. The AESO emphasized that the oral hearing was a single day and that the majority of the costs claimed by the CCA for the hearing appeared to relate to preparation time. It questioned whether the amount of preparation time claimed was reasonable or warranted, given the reliance and emphasis the CCA places on its team members' experience.

29. The AESO indicated that the CCA's efforts to challenge the AESO's confidentiality request and require better information responses from the AESO were both unsuccessful, and they delayed the proceeding and added unnecessary process to it.

30. The AESO concluded by stating that the Commission should take all the AESO's comments into account and reduce the total amount of the CCA's costs claim.

4.2 Reply comments from the CCA

31. The CCA replied that it challenged the nature and scope of the AESO's need assessment in the original proceeding by proposing other reasonable, technically compliant and lower-cost alternatives to the AESO's proposed solution. It stated that this was within the CCA's job and mandate as an intervener, and it questioned what the AESO would have preferred the CCA do in terms of specific tasks and costs that would have been more necessary and reasonable. It

submitted that the AESO's argument that the CCA's costs exceeded what was necessary or reasonable had no basis in fact or law and should be rejected.

32. The CCA denied there was overlap between the functions performed by Bema personnel and legal counsel. The CCA also stated that the two examples of role overlap provided by the AESO cannot be clearly distinguished as legal vs. non-legal tasks, and that for efficiency purposes the CCA allocates resources and staff based primarily on their respective areas of responsibility and expertise. It submitted that the timesheets it provided to support its costs claim demonstrate that a focused and involved effort of its consultants resulted in reduced legal charges and reduced overall proceeding costs. With respect to the role of the two legal counsel retained by the CCA, the CCA stated that there was no overlap or duplication of efforts between Mr. James Wachowich and Mr. Nicholas Bryanskiy. There was a clear phasing of activity during the latter half of the proceeding as one legal counsel phased himself out and the other assumed the lead role.

33. In response to the AESO's comments about the CCA's unsuccessful efforts during the motions process, the CCA stated that Rule 022 does not indicate that the success or failure of a party's submissions is relevant to an award of intervenor costs. It added that Commission proceedings are not by nature litigation proceedings in which unsuccessful parties suffer a cost disallowance by default. The CCA submitted that the AESO's comments regarding unnecessary process and delays resulting from the CCA's unsuccessful submissions should be rejected.

34. The CCA stated that the duration of the oral hearing in the original proceeding cannot be used as the single most important factor to assess the costs incurred by the parties. It argued that if witnesses and counsel are fully prepared, this may result in regulatory efficiency and shorter, more focused hearings. It submitted that the fact the oral hearing in the original proceeding was short—a single day—was the direct outcome of both thorough cross-examination preparation and time estimates submitted by the parties (including the CCA), and the fact that questioning was completed on time. The CCA asked the Commission to dismiss the AESO's arguments related to the CCA's hearing preparation costs.

4.3 Commission findings

4.3.1 Wachowich & Company

35. The CCA was represented by Wachowich & Company in the original proceeding, with Mr. Wachowich acting as counsel. The fees claimed by the CCA for the legal services provided by Mr. Wachowich relate to reviewing the application, providing overall direction to the CCA's technical consultants, reviewing draft IRs, reviewing responses to IRs, reviewing drafts of submissions on procedural issues, reviewing drafts of evidence and argument, attending a portion of the oral hearing and reviewing reply argument.

36. The Commission finds that the services performed by Wachowich & Company were directly and necessarily related to the CCA's participation in the original proceeding, and that the fees, claimed in accordance with the Scale of Costs for those services, are reasonable. The Commission agrees with the CCA that during the motions process specific to the original proceeding there would not have been distinct legal and non-legal tasks that could have been allocated exclusively to legal counsel or Bema personnel. In the circumstances of the original proceeding, counsel and Bema subject matter experts would be expected to collaborate without that collaboration constituting unnecessary duplication of effort. Accordingly, the Commission

approves the CCA's claim for legal fees for Wachowich & Company in the amount of \$12,845.00, disbursements for transcripts of \$1,022.40 and GST of \$693.37 for a total of \$14,560.77.

4.3.2 Nicholas Bryanskiy

37. Nicholas Bryanskiy was retained by the CCA to act as the agent for Mr. Wachowich during the oral hearing in the original proceeding. The fees claimed by the CCA for the legal services provided by Mr. Bryanskiy relate to the latter portion of the original proceeding including preparation for the oral proceedings, acting as lead counsel at the oral hearing and the preparation of argument and reply argument.

38. The Commission finds that the services performed by Nicholas Bryanskiy were directly and necessarily related to the CCA's participation in the original proceeding, and that the fees claimed are in accordance with the Scale of Costs for those services. The Commission has decided, however, that not all of the fees claimed for the serviced performed by Mr. Bryanskiy are reasonable.

39. The Commission notes the statements of the CCA that there was no overlap or duplication of efforts between Mr. Wachowich and Mr. Bryanskiy. The CCA indicates that Mr. Wachowich's participation was largely connected with the initial portion of the original proceeding and that Mr. Bryanskiy's involvement commenced in the latter half of the proceeding where he acted as the primary counsel at the oral hearing and in the preparation of argument and reply argument, all under the general direction of Mr. Wachowich. Although the Commission generally accepts the CCA's submission with respect to the lack of overlap and duplication between counsel, as generally supported by the timesheets filed in this proceeding, the Commission considers that some duplication of effort is inherent in the transfer of the lead counsel role and that a reduction to reflect this duplication is warranted.

40. In addition, the CCA claimed 136.1 hours for Mr. Bryanskiy's services during the argument/reply argument portion of the proceeding. The Commission notes that the CCA's claim for all other aspects of both legal counsel's services, i.e., preparation, attendance and Mr. Wachowich's services during argument, totals approximately 20 hours less than the 136.1 hours claimed for Mr. Bryanskiy's services during argument. In the Commission's view, this part of the CCA's claim for legal fees is disproportionately high and exceeds what is reasonable, given the issues arising in the proceeding and the size and complexity of the evidentiary record.

41. In light of the foregoing findings in respect of duplication and hours claimed for the preparation of argument, the Commission has reduced the costs award for Mr. Bryanskiy's legal fees during the argument portion of the proceeding to an amount equal to 100 hours at his rate of charge, which totals \$32,000.00. Accordingly, the Commission approves the CCA's claim for legal fees for Nicholas Bryanskiy in the amount of \$57,152.00 and GST of \$2,857.60 for a total of \$60,009.60.

4.3.3 Bema Enterprises Ltd.

42. Bema was retained by the CCA to perform consulting services in the original proceeding. The fees claimed by the CCA for the consulting services provided by Mr. Dan Levson, Mr. Dustin Madsen and Mr. Chris Codd relate to reviewing the application, drafting and submitting IRs, reviewing responses to IRs, drafting and submitting correspondence and

motions, drafting evidence and reviewing rebuttal evidence, and reviewing argument and reply argument. Mr. Codd also acted as a witness on behalf of the CCA at the oral hearing. Fees for administrative services provided by Ms. Christine Nash and Ms. Elizabeth Zielke were also included in the costs claim application.

43. The Commission finds that the services performed by Bema were directly and necessarily related to the CCA's participation in the original proceeding, and that the fees, which were claimed in accordance with the Scale of Costs for those services, are reasonable.

44. The Commission reviewed the disbursements claimed for Bema and finds that the claim for accommodation for Mr. Codd exceeds the approved rate in the Scale of Costs. As a consequence, the Commission reduces the applied for daily rate from \$159.00 to \$140.00 for two nights. The Commission finds the remaining disbursements for airfare (\$459.15) and taxis (\$188.70) are within the Scale of Costs and are reasonable. Consequently, the Commission approves disbursements for Bema in the amount of \$940.57 and GST on disbursements of \$48.30.

45. Accordingly, the Commission approves the CCA's claim for consulting fees for Bema in the amount of \$52,021.35, disbursements in the amount of \$940.57 and GST of \$2,649.37 for a total of \$55,611.29.

4.3.4 Total awarded to the CCA

46. For the reasons provided above, the Commission approves the CCA's claim for recovery of costs in the total amount of \$130,181.66. This amount is composed of legal fees of \$69,997.00, consulting fees of \$52,021.35, disbursements of \$1,962.97 and GST of \$6,200.34.

5 Order

47. It is hereby ordered that:

- 1) The Alberta Electric System Operator shall pay intervener costs to Dennis Woronuk in the total amount of \$2,750.55.
- 2) The Alberta Electric System Operator shall pay intervener costs to the Consumers' Coalition of Alberta in the total amount of \$130,181.66.

Dated on July 19, 2019.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member