



Irma Wind GP Inc.
Irma Wind Power Project

Costs Award

October 31, 2019

Alberta Utilities Commission

Decision 24814-D01-2019

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Proceeding 24814

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers an application by the Irma Wind Towers Opposition Group (IWOOG) for approval and payment of its costs of participation in Proceeding 22722¹ (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
IWOOG								
Ackroyd LLP	\$22,704.50	\$770.83	\$1,173.76	\$24,649.09	\$18,889.50	\$676.55	\$978.32	\$20,544.37
Cottonwood Consultants	\$4,995.00	\$0.00	\$249.75	\$5,244.75	\$4,995.00	\$0.00	\$249.75	\$5,244.75
Mariana Alves-Pereira	\$3,342.86	\$0.00	\$167.14	\$3,510.00	\$3,342.86	\$0.00	\$167.14	\$3,510.00
dBA Noise Consultants	\$3,847.50	\$0.00	\$192.38	\$4,039.88	\$3,847.50	\$0.00	\$192.38	\$4,039.88
Intervener honorarium	\$500.00	\$0.00	\$0.00	\$500.00	\$500.00	\$0.00	\$0.00	\$500.00
Total	\$35,389.86	\$770.83	\$1,783.03	\$37,943.72	\$31,574.86	\$676.55	\$1,587.59	\$33,839.00

3. The Commission has awarded reduced costs to IWOOG for the reasons set out below.

4. The original proceeding was convened by the Commission to consider applications from Irma Wind Limited Partnership, by its general partner, Irma Wind GP Inc., for approval to construct and operate a 92.4-megawatt wind power plant, collector substation and associated collector systems (the proposed project). On July 19, 2019, following an abeyance in the original proceeding at the applicant's request, the filing of an amended application and the issuance of a notice of hearing, the applicant requested the Commission's approval to withdraw its applications. On July 22, 2019, the Commission granted the request and cancelled the anticipated oral hearing.

5. IWOOG submitted its costs claim application on August 14, 2019, within the 30-day timeline permitted by the Commission's rules. The Commission assigned Proceeding 24814 and Application 24814-A001 to the costs claim application.

6. On August 28, 2019, Irma Wind GP Inc. filed comments on IWOOG's costs claim application and on September 3, 2019, IWOOG filed its reply comments. The Commission

¹ Proceeding 22722: Irma Wind GP Inc. Irma Wind Power Project.

considers the close of record for this proceeding to be September 3, 2019, the date reply comments were received.

2 Commission's authority to award costs and intervener eligibility

7. 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 Local Intervener Costs* and the Scale of Costs found in Appendix A of Rule 009.

8. 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.

9. 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.

10. In the Commission's ruling on standing in the original proceeding,² the Commission granted standing to 28 of the 96 members of IWOOG, and noted that the remaining group members could participate but were not eligible for costs. With respect to those members granted standing, the Commission determined that these persons all own land in close proximity to the proposed project and had demonstrated that the Commission's decision on the applications had the potential to result in a direct and adverse effect on them. The Commission finds that those members of IWOOG granted standing fall within the definition of a "local intervener" as the term

² Exhibit 22722-X0107, AUC Ruling on standing.

is defined in Section 22(1) of the *Alberta Utilities Commission Act*. Accordingly, IWOOG qualifies to claim local intervener costs.

3 Comments on the costs claim application

3.1 Comments from Irma Wind GP Inc.

11. Irma Wind GP submitted that the Commission should substantially reduce the costs claimed by IWOOG on the basis that they are unreasonable given the relatively limited scope of the proceeding.

12. Irma Wind GP also suggested the costs claim is unreasonable because IWOOG did not identify the extent to which the costs claimed relate to those members of the group granted standing and who are entitled to recover costs. As a result, the Commission is unable to determine if costs are reasonable, related to proceeding issues, or related to those members with standing. Accordingly, Irma Wind GP stated that a reduction of approximately 40% of the total amount claimed is warranted.

13. Irma Wind GP noted that the costs claimed relate principally to the provision of legal services accrued prior to the Commission's standing ruling of June 24, 2019 which potentially allows members who were not granted standing to benefit from and recover costs that only a portion of IWOOG members are entitled to receive. Further, "IWOOG did not complete a single procedural step in the Notice of Hearing."³

14. Irma Wind GP disputed certain costs claimed that appear to be unrelated to the proceeding and associated with "its counsel communicating with Brendan Hunter of Fasken Martineau (law firm) regarding the "preferred route" and what otherwise appears to be matters associated with AltaLink and a separate proceeding."

15. Regarding IWOOG's experts, Irma Wind GP submitted that those retained were of "limited utility with respect to furthering the Commission's understanding of the Proceeding issues relative to the quantum of costs claimed by IWOOG on their behalf."⁴ It noted that IWOOG did not file anything on the record which required reliance on its experts.

16. Lastly, Irma Wind GP contended that the printing costs claimed are unreasonable and severely disproportionate to the scope of the proceeding and IWOOG's participation.

3.2 Reply comments from IWOOG

17. IWOOG disagreed that the original proceeding was limited in scope noting that multiple opposing parties were involved and extensive documentation was filed by Irma Wind GP prior to the notice of application. Regarding Irma Wind GP's contention that IWOOG did not complete any procedural steps subsequent to the Notice of Hearing being issued, IWOOG noted that this was because Irma Wind GP withdrew its application before the intervener information response (IR) deadline. Prior to this withdrawal, IWOOG had retained expert witnesses who had

³ Exhibit 24814-X0005, page 4.

⁴ Exhibit 24814-X0005, page 7.

commenced a review of the application and were engaged in the preparation of IRs. IWOOG stated that all costs incurred were necessary to support its intervention.

18. In IWOOG's view, the legal invoices provided in support of its costs claim clearly indicate the activity undertaken for each time entry which reflected that counsel were dealing with the members of IWOOG as a group and not as individuals. IWOOG clarified that time spent before the June 2019 standing ruling related to working with members of the group who were eventually granted standing in the original proceeding. IWOOG noted that Rule 009 does not make a distinction between pre and post standing costs incurred in relation to a proceeding.

19. With respect to those legal services that Irma Wind GP submitted were related to another proceeding, IWOOG explained that these pertained to a 2017 conversation regarding the routing of the transmission line to connect the wind power project to the Alberta Interconnected Electric System.

20. With respect to printing costs, IWOOG confirmed that these were related to the original proceeding and are within the Scale of Costs.

4 Commission findings

4.1 Irma Wind Towers Opposition Group

21. The following table summarizes IWOOG's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
IWOOG							
Ackroyd LLP	66.97	0.00	0.00	\$22,704.50	\$770.83	\$1,173.76	\$24,649.09
Cottonwood Consultants	18.50	0.00	0.00	\$4,995.00	\$0.00	\$249.75	\$5,244.75
Mariana Alves-Pereira	13.00	0.00	0.00	\$3,342.86	\$0.00	\$167.14	\$3,510.00
dBA Noise Consultants	14.25	0.00	0.00	\$3,847.50	\$0.00	\$192.38	\$4,039.88
Intervener honorarium	0.00	0.00	0.00	\$500.00	\$0.00	\$0.00	\$500.00
Total	112.72	0.00	0.00	\$35,389.86	\$770.83	\$1,783.03	\$37,943.72

22. The Commission finds that IWOOG acted responsibly in the original proceeding and that the costs claimed are generally reasonable having regard to the nature and scope of the proposed project and the duration of the original proceeding. The original proceeding spanned over two years and while it involved a lengthy period of abeyance at the applicant's request, the proceeding resumed with the filing of an amended application and a notice of hearing being issued prior to Irma Wind GP withdrawing its applications.

23. With respect to the objection to the costs claim made by Irma Wind GP based on the minimal contribution of IWOOG to the original proceeding, after review of the costs claim application and its supporting materials, the Commission is satisfied that IWOOG incurred costs with a view to contributing to a better understanding of the issues before the Commission. These supporting materials confirm that experts were retained and legal services were performed before Irma Wind GP's withdrawal of its applications on July 19, 2019. The Commission considers the retention of experts and counsel in the circumstances to have been reasonable. It was as a result

of Irma Wind GP's withdrawal of its applications, that IWOOG did not complete any process steps following the Notice of Hearing. As a consequence, the Commission is not satisfied that a reduction is warranted on the grounds advanced by Irma Wind GP. Notwithstanding this finding, 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.

4.1.1 Ackroyd LLP

24. IWOOG was represented by Ackroyd in the original proceeding. The fees claimed by IWOOG for the legal services provided by Mr. William McElhanney and Ms. Ifeoma Okoye relate to reviewing the applications and amended application, reviewing draft Statements of Intent to Participate, corresponding with IWOOG members and consultants, travelling to Irma to meet with group members, preparing a draft submission and reviewing draft IRs.

25. The Commission is satisfied that the Ackroyd statement of account submitted in support of IWOOG's costs claim application is sufficiently detailed and, subject to the following paragraph, relates to the participation of IWOOG in the original proceeding. The Commission does not accept Irma Wind GP's submission that costs claimed by IWOOG prior to the June 24, 2019 standing ruling should be substantially reduced and is satisfied that these costs related to working with members of IWOOG who were eventually granted standing in the original proceeding.

26. While the Commission finds that the services performed by Ackroyd were generally reasonable and directly and necessarily related to IWOOG's participation in the original proceeding, it finds insufficient support for certain legal services. Specifically, the legal invoices indicate approximately 2.90 hours were claimed for activities that appear to be related to the routing of the transmission line to connect the wind power project to the Alberta Interconnected Electric System, which was not part of the original proceeding.⁵ The claim for these services is denied.

27. In addition, a review of the invoices shows 8.00 hours⁶ for travel time to attend meetings with IWOOG. The Scale of Costs only allows for travel time to be claimed when incurred during an oral hearing. Accordingly, the Commission disallows these hours.

28. The Commission finds the remaining hours for legal services for Ackroyd (45.57 hours for Mr. McElhanney and 10.5 hours for Ms. Okoye), which were claimed in accordance with the Scale of Costs for those services, to be reasonable, resulting in total approved legal fees of \$18,889.50.

29. The disbursements claimed for Ackroyd include postage (\$2.55), fax (\$19.00), photocopying (\$50.30), printing (\$574.10), scanning (\$30.60) and automobile gas (\$94.28). Since claims for travel are restricted to an oral hearing, the Commission denies the claim for automobile gas. The Commission finds the other claimed disbursements, which were claimed in accordance with the Scale of Costs, to be reasonable and approves them.

⁵ Exhibit 24814-X0001, PDF pages 25 and 26, time entries for Sep. 21, 2017 (1.00 hours, 0.80 hours, 0.30 hours and 0.30 hours), Oct. 1, 2017 (0.30 hours) and Oct. 12, 2017 (0.20 hours).

⁶ Exhibit 24814-X0001, PDF pages 27 and 28.

30. Accordingly, the Commission approves IWOOG's claim for legal fees for Ackroyd in the amount of \$18,889.50, disbursements of \$676.55 and GST of \$978.32 for a total of \$20,544.37.

4.1.2 Cottonwood Consultants Ltd.

31. Cottonwood Consultants was retained by IWOOG to perform consulting services in the original proceeding. The fees claimed by IWOOG for the consulting services provided by Mr. Cliff Wallis relate to reviewing the applications, conducting field assessments, report drafting on the biodiversity and environmental impacts of the proposed project and drafting IRs.

32. The Commission finds that the services performed by Cottonwood Consultants were directly and necessarily related to IWOOG'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. Accordingly, the Commission approves IWOOG's claim for consulting fees for Cottonwood Consultants in the amount of \$4,995.00 and GST of \$249.75 for a total of \$5,244.75.

4.1.3 Dr. Mariana Alves-Pereira

33. Dr. Mariana Alves-Pereria was retained by IWOOG to perform consulting services in the original proceeding. The fees claimed by IWOOG for the consulting services provided by Dr. Alves-Pereira relate to reviewing the applications, preparing written evidence and a report on the infrasound and low frequency noise and related human health impacts of the proposed project and drafting IRs.

34. The Commission finds that the services performed by Dr. Alves-Pereria were directly and necessarily related to IWOOG'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. Accordingly, the Commission approves IWOOG's claim for consulting fees for Dr. Alves-Pereria in the amount of \$3,342.86 and GST of \$167.14 for a total of \$3,510.00.

4.1.4 dBA Noise Consultants Ltd.

35. dBA Noise Consultants was retained by IWOOG to perform consulting services in the original proceeding. The fees claimed by IWOOG for the consulting services provided by Mr. Henk de Haan relate to reviewing the applications and drafting IRs regarding audible noise issues.

36. The Commission finds that the services performed by dBA Noise Consultants were directly and necessarily related to IWOOG'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. Accordingly, the Commission approves IWOOG's claim for consulting fees for dBA Noise Consultants in the amount of \$3,847.50 and GST of \$192.38 for a total of \$4,039.88.

4.1.5 Intervener honorarium

37. IWOOG claimed a \$500.00 honorarium for Ms. Shelly Holt for forming the IWOOG group. The Commission finds the claim for honorarium for forming the group to be reasonable and within the Scale of Costs. The claim for honorarium is approved.

4.1.6 Total awarded to IWOOG

38. For the reasons provided above, the Commission approves IWOOG's claim for recovery of costs in the total amount of \$33,839.00. This amount is composed of legal fees of \$18,889.50, consulting fees of \$12,185.36, disbursements of \$676.55, honorarium of \$500.00 and GST of \$1,587.59.

5 Order

39. It is hereby ordered that:

- (1) Irma Wind GP Inc. shall pay intervener costs to Irma Wind Towers Opposition Group in the total amount of \$33,839.00. Payment shall be made to Ackroyd LLP.

Dated on October 31, 2019.

Alberta Utilities Commission

(original signed by)

Carolyn Hutniak
Commission Member