



Aura Power Renewables Ltd.
Fox Coulee Solar Project

Costs Award

December 5, 2019

Alberta Utilities Commission

Decision 24476-D01-2019

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Eau Claire Tower

1400, 600 Third Avenue S.W.

Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282 in Alberta)

1-833-511-4AUC (1-833-511-4282 outside Alberta)

Email: info@auc.ab.ca

Website: www.auc.ab.ca

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Calgary, Alberta

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers a final costs claim by the Solar Opposition Participants (SOP) for approval and payment of its costs of participation in Proceeding 23951¹ (the original proceeding), as well as a supplemental costs claim filed after the final costs claim.

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
SOP - Final costs claim								
Ackroyd LLP	\$87,150.50	\$4,923.99	\$4,588.21	\$96,662.70	\$87,150.50	\$4,923.99	\$4,588.21	\$96,662.70
Cottonwood Consultants	\$14,512.50	\$360.68	\$736.07	\$15,609.25	\$13,061.25	\$360.68	\$663.50	\$14,085.43
Solas Energy Consulting Inc.	\$23,835.00	\$8,231.24	\$1,589.51	\$33,655.75	\$23,715.00	\$8,231.24	\$1,583.51	\$33,529.75
FDI Acoustics	\$12,160.00	\$580.10	\$618.86	\$13,358.96	\$9,408.00	\$580.10	\$481.26	\$10,469.36
Intervener Honoraria	\$2,200.00	\$360.29	\$7.19	\$2,567.48	\$2,200.00	\$360.29	\$7.19	\$2,567.48
Total	\$139,858.00	\$14,456.30	\$7,539.84	\$161,854.14	\$135,534.75	\$14,456.30	\$7,323.67	\$157,314.72
SOP - Supplemental costs claim								
Ackroyd LLP	\$13,712.50	\$95.70	\$690.42	\$14,498.62	\$13,354.00	\$95.70	\$672.49	\$14,122.19
JetPro Consultants	\$2,415.00	\$0.00	\$120.75	\$2,535.75	\$2,415.00	\$0.00	\$120.75	\$2,535.75
Total	\$16,127.50	\$95.70	\$811.17	\$17,034.37	\$15,769.00	\$95.70	\$793.24	\$16,657.94
Total amount claimed				\$178,888.51	Total amount awarded			\$173,972.66
Less interim funding								\$75,080.61 ²
Total amount payable after interim funding								\$98,892.05 ³

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

4. The original proceeding was convened by the Commission to consider applications from Aura Power Renewables Ltd. to construct and operate a 75-megawatt solar power plant designated as the Fox Coulee Solar Project, and to interconnect the power plant to ATCO Electric Ltd.'s electric distribution system (the project). It involved written submissions, information requests (IRs) and responses to IRs, written evidence, an oral hearing held from March 5 to 7, 2019, and responses to the Commission's request for additional information after

¹ Proceeding 23951: Aura Power Renewables Ltd., Fox Coulee Solar Project.

² The Commission awarded interim funding to the SOP in the amount \$75,080.61 in Decision 24381-D01-2019.

³ \$173,972.66 - \$75,080.61 = \$98,892.05.

the oral hearing concluded.⁴ The close of record for the original proceeding was July 15, 2019, and the Commission issued Decision 23951-D01-2019⁵ on August 13, 2019.

5. The SOP submitted a claim for advance funding in relation to Proceeding 23951 on March 1, 2019, and the Commission awarded interim costs to the SOP in the amount \$75,080.61 in Decision 24381-D01-2019.⁶ The Commission indicated in that decision that any interim costs paid to the SOP would be deducted from the final costs award relating to Proceeding 23951.⁷

6. The SOP filed its final costs claim application in relation to Proceeding 23951 on April 5, 2019 (the final costs claim). The Commission assigned Proceeding 24476 and Application 24476-A001 to the final costs claim. On August 9, 2019, the Commission advised participants in Proceeding 23951 that the SOP could file a claim for supplemental costs incurred to respond to the Commission's request for additional information that was made after the oral hearing was completed. On August 23, 2019, the SOP filed its supplemental costs claim (the supplemental costs claim). Comments were submitted by Aura on the final costs claim on April 15, 2019 and on the supplemental costs claim on August 30, 2019, to which the SOP filed reply comments on April 22, 2019 and September 6, 2019, respectively. The Commission considers the close of record for Proceeding 24476 to be September 6, 2019, the date the final reply comments were received.

7. Since the supplemental costs claim was filed as a procedural reply document on the record of Proceeding 24476, it was not issued a separate application number. Accordingly, in this decision, the final and supplemental costs claims are considered as though they constituted a single costs claim.

2 Commission's authority to award costs and intervenor eligibility

8. Only "local intervenors" 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.

9. Section 7 of Rule 009 provides that the Commission may award costs to a local intervenor, in accordance with the Scale of Costs, if the Commission is of the opinion that:

⁴ On May 31, 2019, the Commission advised participants that it required additional information relating to the potential hazard to pilots if the Commission approved the installation of solar panels on the land north of the Drumheller Municipal Airport. The SOP, the Town of Drumheller and Aura each filed submissions responding to the Commission's information request.

⁵ Decision 23951-D01-2019: Aura Power Renewables Ltd., Fox Creek Solar Project, Proceeding 23951, August 13, 2019.

⁶ Decision 24381-D01-2019: Aura Power Renewables Ltd., Fox Coulee Solar Project Interim Costs Award, Proceeding 24381, July 8, 2019.

⁷ Decision 24381-D01-2019, paragraph 21.

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.

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

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.

11. In the original proceeding, the Commission granted standing to the members of the SOP because they demonstrated that they had legal rights that may be directly and adversely affected by the Commission’s decision.⁸ These individuals own land in close proximity to the project or have a legal right to use a hangar that is part of the Drumheller Municipal Airport, which is located near the project site. Further, the Commission found, in Decision 24831-D01-2019, that the SOP members qualify as local interveners under Section 22 of the *Alberta Utilities Commission Act* and are eligible for cost recovery.⁹ The Commission has therefore applied Rule 009 to the SOP’s costs claims.

3 Solar Opposition Participants – Final costs claim

12. The following table summarizes the SOP’s final costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
SOP - Final costs claim							
Ackroyd LLP	259.70	50.80	23.60	\$87,150.50	\$4,923.99	\$4,588.21	\$96,662.70
Cottonwood Consultants	41.00	14.75	0.00	\$14,512.50	\$360.68	\$736.07	\$15,609.25
Solas Energy Consulting	101.20	30.00	0.00	\$23,835.00	\$8,231.24	\$1,589.51	\$33,655.75
FDI Acoustics	47.00	18.00	0.00	\$12,160.00	\$580.10	\$618.86	\$13,358.96
Intervener Honoraria	0.00	0.00	0.00	\$2,200.00	\$360.29	\$7.19	\$2,567.48
Total	448.90	113.55	23.60	\$139,858.00	\$14,456.30	\$7,539.84	\$161,854.14

⁸ Exhibit 23951-X0067, AUC letter – Ruling on standing.

⁹ Decision 24381-D01-2019, paragraph 15.

13. The Commission finds that the SOP 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 Cottonwood Consultants Ltd., Solas Energy Consulting Inc. and FDI Acoustics Inc., for the reasons set out below.

3.1 Comments from Aura

14. Aura stated that the claim for legal fees for Ackroyd LLP is excessive and unreasonable, and should be substantially reduced. Aura submitted that the 18 hours of preparation time claimed for counsel Richard Secord should be denied because Mr. Secord did not appear at the hearing and there was no indication that he provided services that were directly and necessarily related to the original proceeding. Aura also stated that the claim for 316.1 hours for Ifeoma Okoye and Heather Beyko was excessive. It noted that 241.7 hours was claimed in total for hearing preparation, and compared that figure to the 211.3 hours of preparation time claimed for Ackroyd in relation to a three-day wind power project hearing held by the Commission for which a costs award was issued in Proceeding 23255.¹⁰ Aura noted that the wind project in Proceeding 23255 involved a 31-person intervener group, some of the same experts and similar noise and environmental issues.

15. Aura submitted that additional reductions are warranted as some of the time claimed related to counsel corresponding with one individual from Solas Energy Consulting Inc. whose name did not appear on any of the hearing-related documents, and with two other named individuals whose identities were unknown. Aura also submitted that the SOP's counsel's conduct during the hearing elongated the hearing and introduced inefficiencies, including by counsel attempting to file or introduce late or additional evidence and counsel's inability to provide a reference for quotations used during the cross-examination of Aura's witness panel.

16. Aura submitted that in addition to entirely eliminating the fees claimed for Mr. Secord, Ackroyd's fees should be reduced by a further 20 per cent, and that a reasonable award for legal fees would be \$64,680.00. Aura stated that it did not dispute the disbursements claimed by Ackroyd in the amount of \$4,923.99.

17. Aura stated that the evidence submitted by Cottonwood Consultants Ltd. was largely irrelevant or confirmed what Aura had stated in its own evidence, and therefore did not contribute to a better understanding of the issues before the Commission. Aura submitted that two of the four major concerns addressed in Cottonwood's evidence, namely environmentally significant areas and ephemeral wetlands, did not arise in relation to the project application and so Cottonwood's evidence did not assist the Commission's understanding. Aura also submitted that the other two major concerns addressed by Cottonwood, being additional mitigation and additional wildlife surveys, were addressed in Aura's own evidence. Aura noted that Cottonwood's witness, Cliff Wallis, confirmed during the hearing that he could find no compelling information to suggest that the proposed facility was improperly sited. Aura stated that the fees associated with Cottonwood's expert report and participation in the original proceeding should be rejected in their entirety.

¹⁰ Decision 23255-D01-2018: Capital Power Corporation Halkirk 2 Wind Power Project Costs Award Proceeding 23255, July 9, 2018.

18. Aura noted that the SOP claimed professional fees for 131.2 hours of work for four individuals from Solas. It stated that even taking into consideration that Solas provided two reports, compared to the other experts' single reports, the Solas claim was more than three times the amount claimed for other experts and was excessive. It submitted that having two senior experts and two junior employees work on the same file indicated a duplication of efforts, especially where one of the senior expert's time was roughly equivalent to that of one junior employee. Aura also stated that Solas's invoice failed to provide sufficient detail to allow an assessment of the reasonableness of the work done. It noted that in some cases the invoice simply stated "Fox Coulee evidence," and did not provide the detail required under Appendix A of Rule 009.

19. Aura stated that the two hours of non-hearing travel time claimed by each of Paula McGarrigle and Leonard Olien should not be awarded. It submitted that after making that deduction, the claim for professional fees should be further reduced by 35 per cent and that reasonable professional fees for Solas would be \$15,180.75. Finally, Aura stated that the fixed fee of \$7,900.00 claimed as a disbursement for Solar Glare Analysis Report – Fox Coulee Solar Project (the glare report)¹¹ should be deducted in its entirety, given that each Solas expert involved in the glare report also claimed professional fees.

20. Aura stated that the SOP's claim for expert fees for FDI Acoustics Inc. (FDI) was excessive, that FDI's evidence contributed only minimally to a better understanding of the issues, and that the expert fees for FDI should be reduced by half. It submitted that it was unreasonable for two very senior experts, James Farquharson and Peter Davis, to have spent 24 and 19 hours respectively on the project. Aura compared those figures to the corresponding claim in Proceeding 23255, in which Mr. Farquharson claimed 26 hours and his associate claimed 10 hours. Aura also submitted that the reports provided by FDI did not materially challenge Aura's own noise assessment, which was demonstrated by Aura repeating its noise assessment taking into consideration the concerns raised by FDI and finding that the results were not materially different.

21. Aura noted that Mr. Davis claimed \$324.00 for travel time but did not attend the hearing, and stated that his claim for travel time should not be awarded. Aura also stated that FDI's claim for mileage costs in the amount of \$362.94 was excessive, given that the distance from Calgary to Drumheller is roughly 135 km, and so the charge for a return trip calculated at the rate of \$0.46/km should be \$124.20.

22. Aura observed that Rule 009 limits attendance honoraria for large groups to six people, and that the SOP claimed attendance honoraria for 11 individuals. Nevertheless, Aura stated that it was amenable to providing full attendance honoraria and to providing the \$500.00 preparation honoraria claimed by Terena Kleinschroth and Colin Murray.

3.2 Reply comments from the SOP

23. The SOP stated that it approached Mr. Secord first to provide legal representation, given his extensive experience in environmental matters and representing interveners in regulatory hearings. It added that Mr. Secord conducted the initial client consultation and provided his expertise to the SOP in the crucial beginning stages of the file, including retaining glint and glare

¹¹ Exhibit 23951-X0080, Solar Glare Analysis Report – Fox Coulee Solar Project, January 31, 2019.

experts. The SOP stated that Mr. Secord was not available for the hearing due to a previously scheduled matter, and so beginning in January 2019, he became less active on the file but still provided *ad hoc* direction and assistance to Ms. Okoye and Ms. Beyko leading up to the hearing and during the hearing itself. The SOP submitted that the services provided by Mr. Secord were both required and extremely valuable, and that the claim for “a mere” 18 hours of his time should not be reduced.

24. In response to Aura’s comparison of intervenor counsel’s preparation time claimed in relation to Proceeding 23951 with the corresponding claim made in Proceeding 23255, the SOP emphasized that Ackroyd’s legal representation of the interveners in the wind power project (Proceeding 23255) began after responses to IRs were filed, whereas in Proceeding 23951 Ackroyd was retained before statements of intent to participate were due. The SOP also submitted that Proceeding 23951 was a more complex proceeding involving novel issues about solar power plants, whereas Proceeding 23255 concerned a proposed wind farm, which is a much more common type of application.

25. In response to Aura’s submission that the SOP’s counsel unnecessarily elongated the hearing and introduced inefficiencies, the SOP submitted that its counsel actually helped reduce the length of the hearing (from four scheduled days to three days) and thereby saved additional legal fees. The SOP refuted the suggestion that its witnesses attempted to introduce new evidence during the hearing. It stated that in one case that Aura referred to, the SOP’s expert witness was entitled during questioning to remove one of the recommendations she made in her written report, and that in the other case, the SOP agreed not to introduce new photographic evidence after Aura indicated that it would object to that.

26. The SOP responded to Aura’s comments about the evidence and participation of Cottonwood by stating that concerned interveners should have the ability to retain an environmental and wildlife expert to assess the validity of Aura’s evidence and to identify potential impacts on wildlife and environmental areas near the SOP members’ residences and businesses, which it claimed Aura had not done. It submitted that Mr. Wallis’s evidence was relevant and useful and that he recommended additional mitigation measures to help the Commission make a fully informed decision. The SOP stated that the expert fees claimed by Cottonwood should not be reduced.

27. In response to Aura’s comments on the costs claimed for Solas’s services, the SOP emphasized that glint and glare was a prominent issue in the original proceeding and the associated safety risks required expert evidence in order to address the SOP members’ concerns and the risk to users of the Drumheller Municipal Airport and local highways. The SOP stated that its counsel obtained Ms. Paula McGarrigle’s agreement to lower her rate to meet the Commission’s fee guidelines, in order to keep costs at a reasonable amount. The SOP submitted that Solas’s three experts, Ms. Paula McGarrigle, Mr. Olien and Jason Mah, each had their own role in creating the expert reports and evidence for the hearing and they did not duplicate efforts.

28. The SOP explained that Solas produced its glare report on a fixed fee basis consistent with the standard practice for glare reports of the same nature. Solas provided a second report¹² (the supplemental glare report) on a time and materials basis, after it reviewed the evidence of

¹² Exhibit 23951-X0103, Solar Glare Analysis Report – Fox Coulee Solar Project – Supplemental Analysis, February 12, 2019.

the SOP members and discovered the existence of the additional grass-covered airstrip. The SOP noted that the initial Solas report included 22 observation points on five driving paths and two flight paths, and the supplemental glare report involved two additional flight paths. In comparison, it stated that Aura's glint and glare experts considered only one flight path and one observation point.

29. The SOP noted that Solas's experts were required to help develop the joint expert statement and participate on the joint expert witness panel during the hearing, which was in addition to the work for which Solas was retained by the SOP. It also noted that most of the intervenor IRs were about glare, and a significant portion of the Commission's IRs related to glare.

30. The SOP provided additional information from Solas about the invoice line items that Aura stated lacked sufficient detail. The SOP also addressed Aura's comments about the travel costs claimed for Ms. Paula McGarrigle and Mr. Olien. The SOP stated that the Solas experts expected to travel from Calgary to Drumheller and give evidence on the same day, however, an additional trip was required due to the unexpected timing of the joint expert witness panel's oral evidence and the fact that Ms. Paula McGarrigle and Mr. Olien were not able to stay overnight in Drumheller due to personal reasons. The SOP added that Ms. Paula McGarrigle's and Mr. Olien's travel time to the hearing was charged at 50 per cent, and Solas did not charge anything for Mr. Mah's travel to or attendance at the hearing.

31. The SOP submitted that the claim for Solas was reasonable and should not be reduced, considering the number of reports that the Solas experts authored, the significance of glint and glare issues in the original proceeding and the additional time spent by Solas's experts responding to the Commission's request for a joint expert report on glint and glare.

32. The SOP responded to Aura's comments on the unreasonableness of the claim for FDI by emphasizing that it needed to retain professionals to scrutinize Aura's expert report, given the proximity of its members' residences and businesses to the project. It stated that the complexity of the project and the novel issues associated with solar power plants, together with the lack of completeness in Aura's own noise impact assessment report, required the SOP to retain experts with significant experience. The SOP disagreed that FDI's evidence provided minimal assistance to the Commission. It noted that Mr. Farquharson identified significant issues with Aura's noise measurements and assigned noise values for third-party facilities, as well as Aura's failure to consider other noise sources such as an adjoining bitcoin mine. The SOP submitted that the costs claim for FDI was reasonable and that FDI's experts did not duplicate work.

33. The SOP stated that both Mr. Farquharson and Mr. Davis were required to travel to the project site before the hearing as part of FDI's assessment and report preparation, and their travel time was therefore directly and necessarily related to the hearing.

3.3 Commission findings

3.3.1 Ackroyd LLP

34. The SOP was represented by Ackroyd in the original proceeding. The fees claimed by the SOP for the legal services provided by Mr. Secord, Ms. Okoye and Ms. Beyko relate to reviewing the applications, reviewing draft statements of intent to participate, corresponding with group members and consultants, preparing IRs and reviewing responses to IRs, drafting a

submission, filing written evidence, representing the SOP at the oral hearing and presenting oral argument.

35. Although Mr. Secord did not appear at the hearing or otherwise have a visible presence in the original proceeding, the Commission is satisfied with the SOP's explanation that Mr. Secord was the senior counsel it initially contacted and that he provided legal services early in the original proceeding as well as afterwards on an *ad hoc* basis to assist Ms. Okoye and Ms. Beyko leading up to the hearing and during the hearing itself. The Commission accepts that the 18 hours claimed for Mr. Secord are reasonable for the services that the SOP described him as providing.

36. The Commission considered Aura's comments that the claim for fees for Ms. Okoye's and Ms. Beyko's services is excessive and should be reduced by 20 per cent. The Commission acknowledges that the SOP's claim for legal fees is more than the legal fees claimed in Proceeding 23255. However, the Commission accepts the SOP's submission that the project, which was the first solar project application to go to a Commission hearing, raised several new and complex issues, as well as issues unique to the project—such as solar glare potentially affecting aircraft operations and solar panel installations posing a hazard to aircraft in distress. The Commission is satisfied that collectively, these issues would reasonably require additional work by interveners' counsel. The Commission also notes that Ms. Okoye and Ms. Beyko represented a relatively large intervenor group with varied interests, such as residents, business owners and airport users, and the Commission accepts that this would reasonably increase the workload for counsel in terms of communicating with and adequately representing all of the clients and their respective interests.

37. The Commission reviewed Ackroyd's time entries for January 28 and 29, 2019, which refer to Evelyn Carpenter, Jason James and Laureen Wray.¹³ The entries indicate that Ms. Carpenter and Ms. Wray are with Solas, and in the SOP's reply comments to Aura's comments on the SOP's supplemental costs claim, the SOP stated that Laureen Wray is Ms. Paula McGarrigle's office manager.¹⁴ Although Ms. Wray's and Ms. Carpenter's names do not appear in the material prepared by Solas, the Commission is satisfied that Ms. Okoye's contact with each of them would likely have been related to the work being done by Solas for the SOP. The Commission infers this from the fact that the time entries in question were made in the fourth and fifth days before the deadline for the SOP to file its written evidence in the original proceeding, when the Solas consultants were finalizing their reports. It would be reasonable to expect Ms. Okoye to be in contact with Solas's personnel during this period to ascertain the status of the final reports and provide direction to Solas on the need to finalize and file those reports.

38. The Commission also notes that the name "Jason James" only appears in Ms. Okoye's January 29, 2019 time entry. Although the SOP did not address this comment from Aura, it appears to the Commission that the entry may be in error and likely should have been a reference to Mr. Mah of Solas. The Solas detailed invoice for that time period¹⁵ indicates that Mr. Mah was actively working to review and prepare evidence for the SOP on January 28 and 29, 2019, and so

¹³ Exhibit 24476-X0001, 2019 04 05 SOP Cost Claim, PDF pages 32-33.

¹⁴ Exhibit 24476-X0010, SOP Reply to Aura's Reply on Supplemental Cost Claim, PDF page 5.

¹⁵ Exhibit 24476-X0001, 2019 04 05 SOP Cost Claim, PDF pages 54-56.

Ms. Okoye receiving an email from him on January 29, 2019 would be consistent with that assumption.

39. The Commission also considered Aura's submission that the SOP's counsel unnecessarily prolonged the hearing or duplicated efforts to the extent that a reduction should be imposed. While the Commission acknowledges that the claim for legal fees is higher than what has been considered reasonable in other proceedings, as noted, some of the main issues of concern in Proceeding 23951 were unique and were being raised for the first time in a Commission hearing. Therefore, it was not unreasonable for counsel to incur more time in the preparation and hearing stages of the original proceeding. The novel issues raised by the project and the diverse nature of the interests represented by the SOP may have likewise entailed some duplication of effort and inefficiencies in the SOP's participation in the hearing, however, the Commission does not consider that a reduction of the award of legal fees related to the hearing is warranted in these circumstances.

40. The Commission finds that the services performed by Ackroyd were directly and necessarily related to the SOP'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. In addition, the Commission finds that the disbursement amounts claimed for accommodations (\$608.22), meals (\$67.98), mileage (\$310.45), transcripts (\$2,548.90), postage (\$0.90), courier (\$27.15), long distance calling (\$67.69), photocopying (\$1,281.30) and scanning (\$11.40), which amounts Aura did not dispute, are reasonable. Accordingly, the Commission approves the SOP's claim for legal fees for Ackroyd in the amount of \$87,150.50, disbursements of \$4,923.99 and GST of \$4,588.21 for a total of \$96,662.70.

3.3.2 Cottonwood Consultants Ltd.

41. Cottonwood was retained by the SOP to perform consulting services in the original proceeding. The fees claimed by the SOP for the consulting services provided by Mr. Wallis relate to reviewing the applications, preparing a report on the biodiversity and environmental impacts of the project, drafting IRs and providing expert testimony at the oral hearing.

42. The Commission considered Aura's comments that the evidence submitted by Cottonwood was largely irrelevant or confirmed what Aura had stated in its own evidence, and therefore did not contribute to a better understanding of the issues before the Commission. The Commission also considered the SOP's reply comments that it should have the ability to retain an environmental and wildlife expert to validate the opinions and conclusions in Aura's expert evidence. The Commission accepts that the SOP members were genuinely concerned about the potential environmental effects of the project including those on wildlife, particularly species that inhabited or frequented the rugged coulees in the area. However, in cases where the intervener's expert substantially agrees with the applicant's evidence, the Commission expects that the work done by the expert and the resulting costs claim for that work will be more moderate than in cases where the expert has numerous or substantial points of disagreement with the applicant's evidence.

43. The Commission agrees with Aura that much of Cottonwood's evidence in the hearing confirmed Aura's own evidence. In itself, that finding would not necessarily warrant a reduction in costs claimed as the identification of areas of agreement between experts can be of benefit to the Commission. However, the Commission also agrees that Cottonwood addressed matters that

did not arise from the applications in the original proceeding. Mr. Wallis's initial report filed in the original proceeding stated that he could "find no compelling information, subject to additional studies, from a biodiversity perspective, that would suggest the facility is improperly sited."¹⁶ In questioning during the hearing on two specific concerns raised by Cottonwood in its report, Mr. Wallis acknowledged that the project did not include environmentally significant areas and Aura demonstrated that it would comply with provincial regulatory requirements relating to the protection of ephemeral wetlands. Accordingly, while the Commission is satisfied that the services performed by Cottonwood were directly and necessarily related to the SOP's participation in the original proceeding, and the majority of the costs claimed for aspects of Cottonwood's participation in the original proceeding are reasonable, certain aspects of Cottonwood's participation provided limited assistance to the Commission in understanding the issues before it. The Commission has therefore decided to reduce the award for Cottonwood's costs by 10 per cent of the fees claimed for Cottonwood.

44. The Commission finds the claim for Cottonwood's disbursements for accommodations (\$217.16) and mileage (\$143.52) to be reasonable. Accordingly, the Commission approves the SOP's claim for consulting fees for Cottonwood Consultants in the amount of \$13,061.25, disbursements of \$360.68 and GST of \$663.50 for a total of \$14,085.43.

3.3.3 Solas Energy Consulting Inc.

45. Solas was retained by the SOP to perform consulting services in the original proceeding. The fees claimed by the SOP for the consulting services provided by Ms. Paula McGarrigle, Mr. Olien, Mr. Mah and Adrienne McGarrigle relate to reviewing the applications, preparing three expert reports (the glare report, the Green Cat report¹⁷ review and the supplemental glare report for the crosswind strip), preparing and reviewing IRs and providing responses to IRs, assisting in preparing cross-examination questions and providing expert evidence at the oral hearing. Ms. Paula McGarrigle also engaged in discussions with Aura's glare expert and co-authored the joint expert report, as directed by the Commission.

46. The Commission considered Aura's submission that the professional fees claimed for Solas are excessive and should be reduced by 35 per cent to \$15,180.75. Having regard for the prominence of the glint and glare issues in the original proceeding and the multiple reports provided by Solas as well as Ms. Paula McGarrigle's participation in the joint expert statement and witness panel, the Commission does not accept that the fees claimed for Solas are excessive or unreasonable, or that work was unnecessarily duplicated. The Commission also finds that the detailed invoice information provided by Solas satisfies the information requirements in Appendix A of Rule 009 and includes a reasonably detailed description of the work that was undertaken by Solas.

47. Aura addressed the \$7,900.00 disbursement claimed by the SOP as the fixed fee charged by Solas to provide a glare report for the project. Aura correctly indicated that the Commission does not normally permit costs awards for fixed fee arrangements with consultants because the associated invoicing for that work does not typically contain the details required under Appendix A of Rule 009. However, in this case the SOP provided two invoices from Solas with time entries detailing the work done by Solas in the preparation of the glare report. The

¹⁶ Decision 23951-D01-2019, paragraph 289.

¹⁷ Exhibit 23951-X0081, Technical review of Aura's glare study, January 31, 2019.

Commission is satisfied that the time and materials invoices from Solas include sufficient detail to: (i) refute Aura's suggestion that the amount claimed for the glare report is duplicative of the professional fees otherwise charged; and (ii) meet the requirements of Rule 009 that is, provide an adequate description of the work and sufficient detail of the time incurred with respect to the work undertaken by Solas to complete the glare report. Accordingly, the Commission is prepared to approve the disbursement in the amount claimed.

48. Aura submitted that Solas claimed \$480.00 for travel time for Ms. Paula McGarrigle and Mr. Olien that was not hearing-related. The SOP explained that these witnesses did not expect to give evidence on more than one day of the hearing and could not stay overnight in Drumheller, so they travelled from Calgary to Drumheller and back to Calgary on two of the hearing days: March 6 and 7, 2019.

49. The Commission reviewed Form U2 filed by the SOP in relation to Solas and the Solas Invoice 1756, which includes the details of the travel charges for Ms. Paula McGarrigle and Mr. Olien. It appears that on March 6, 2019 they travelled from Calgary to the project site to meet with Mr. Murray, and then travelled 0.5 hours from the project site to the hearing venue in Drumheller. The initial trip from Calgary appears as two hours' travel time for each of them under the "Preparation" column of Form U2. The remainder of the travel time between Calgary and Drumheller appears as 6.20 hours for each of them under the "Attendance" column of Form U2.

50. The Commission allows an expert witness to claim travel time at one-half the rate charged by the witness for professional fees, however, the Commission's practice is to award travel time only if the travel is for the purpose of attending the Commission's hearing. In this case, Ms. Paula McGarrigle and Mr. Olien travelled from Calgary to Drumheller on the morning of March 6, 2019 to attend the hearing, but included a side-trip to the project site to meet with Mr. Murray prior to the start of the hearing. Consistent with the Commission's practice in administering the Scale of Costs, the 0.5 hour claimed for each of Ms. Paula McGarrigle and Mr. Olien for travel from the project site to the hearing venue in Drumheller has been deducted from the travel time awarded. As a result, the Commission approves each of Ms. Paula McGarrigle and Mr. Olien fees based on 7.7 hours of travel to attend the hearing, and no amount is awarded for preparation travel.

51. Except for the reduction in fees claimed for travel addressed above, the Commission finds that the services performed by Solas were directly and necessarily related to the SOP'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. In addition, the Commission finds the claim for disbursements for meals (\$55.24) and mileage (\$276.00) and the "Glare Report-Fixed Fee" (\$7,900.00)¹⁸ to be reasonable. Accordingly, the Commission approves the SOP's claim for consulting fees for Solas Energy in the amount of \$23,715.00, disbursements of \$8,231.24 and GST of \$1,583.51 for a total of \$33,529.75.

¹⁸ The Commission notes the fixed-fee of \$7,900.00 for the glare report was supported by detailed timesheets describing daily activities and times incurred by the consultants to develop the report, among other activities, per Exhibit 24476-X0001, PDF pages 57-65.

3.3.4 FDI Acoustics Inc.

52. FDI was retained by the SOP to perform consulting services in the original proceeding. The fees claimed by the SOP for the consulting services provided by Mr. Farquharson and Mr. Davis relate to reviewing the applications, providing an expert report on noise impacts, preparing IRs and providing responses to IRs, assisting counsel with cross-examination questions on noise and providing expert evidence at the oral hearing.

53. The Commission considered Aura's comments that it was unreasonable for two very senior experts to spend a total of 43 hours preparing FDI's report that, ultimately, contributed only minimally to a better understanding of the noise issues in the original proceeding. The Commission also considered the SOP's reply that FDI identified problems with Aura's noise assessment and conclusions, including that an adjoining bitcoin mine that was a noise source was not addressed in Aura's evidence.

54. The Commission accepts that potential noise from the project was a genuine concern for the SOP members residing near the project site. However, the Commission considers that it should have been evident to the SOP and FDI, early in FDI's engagement, that the project and its components would not be a significant source of noise for area residents, and FDI's scope of work should have been gauged accordingly. Further, notwithstanding FDI's identified concerns with Aura's noise measurements, assigned noise values for third-party facilities, and failure to consider other noise sources such as an adjoining bitcoin mine, the Commission notes that the applicant's noise expert re-modelled noise from the project using topography values recommended by FDI, and the results showed that the project would still not be a major noise contributor at affected receptors.¹⁹ Mr. Farquharson did not take issue with this conclusion during the hearing, although he maintained that he would have done a more thorough investigation of third-party noise sources than what was done by the applicant's noise expert. In view of the foregoing, the Commission agrees with Aura that FDI's participation in the original proceeding provided limited assistance to the Commission's understanding of the issues. While the Commission finds that with the exception of the travel fees claimed for Mr. Davis (discussed below), the services performed by FDI were directly and necessarily related to the SOP's participation in the original proceeding, for the reasons identified, the Commission is not satisfied that all of the fees claimed for FDI's participation are reasonable. The Commission has therefore decided to reduce the award for FDI's costs by 20 per cent of the fees claimed for FDI.

55. The Commission notes, as Aura did in its comments, that Mr. Davis claimed "Preparation" travel fees in the amount of \$320.00. Mr. Davis did not participate in the hearing and therefore his travel could not have been necessarily incurred for hearing purposes. The Commission therefore excludes that part of the SOP's claim for FDI.

56. The Commission finds the claim for disbursements for accommodations (\$217.16) and mileage (\$362.94) to be reasonable. Accordingly, the Commission approves the SOP's claim for consulting fees for FDI in the amount of \$9,408.00, disbursements of \$580.10 and GST of \$481.26 for a total of \$10,469.36.

¹⁹ Decision 23951, paragraphs 255 and 263.

3.3.5 Intervener honoraria

57. Attendance honoraria in the total amount of \$1,700.00 was claimed for the 11 interveners appearing on the SOP witness panel at the oral hearing: Peter Cardamone (\$300.00), Debbie Cardamone (\$300.00), Gordon Denzler (\$150.00), Mr. Murray (\$300.00), Colin Jensen (\$100.00), Dave Burroughs (\$100.00), Bruce Thompson (\$100.00), Roy Smith (\$100.00), Dave Dedul (\$100.00), Bob Graham (\$50.00) and Albert Jensen (\$100.00). With the exception of Mr. Burroughs, the interveners claiming honoraria were granted standing in the Commission's standing ruling in the original proceeding.²⁰ However, Mr. Burroughs is the husband of Wendy Braun who was granted standing in the original proceeding, and together they filed evidence that demonstrates they share the same interests and concerns with the project.²¹

58. In the case of large local intervener groups, the Scale of Costs allows up to six participants to claim attendance honoraria unless exceptional circumstances are found. Aura stated that it was amenable to the Commission granting all of the claims associated with intervener honoraria. Based on the nature of the SOP's participation in the hearing, the diversity of the interests represented by the group and the value of the information provided by each of the 11 intervener witnesses, the Commission is exercising its discretion to award honoraria to more than six members of the SOP group, and approves the attendance honoraria as claimed. In addition, the Commission finds the claims for disbursements for mileage (\$168.73), meals (\$52.56) and meeting room rental (\$139.00) are reasonable and within the Scale of Costs and are approved. The SOP's claim for a preparation honorarium of \$500.00 for Ms. Kleinschroth and Mr. Murray is also found to be within the Scale of Costs and to be reasonable. Accordingly, the Commission approves the claim for intervener costs in the total amount of \$2,567.48. This amount is composed of honoraria of \$2,200.00, disbursements of \$360.29 and GST of \$7.19.

3.3.6 Total awarded – Final costs claim

59. For the reasons provided above, the Commission approves the SOP's claim for recovery of costs in its final costs claim in the total amount of \$157,314.72. This amount is composed of legal fees of \$87,150.50, consulting fees of \$46,184.25, disbursements of \$14,456.30, honorarium of \$2,200.00 and GST of \$7,323.67.

4 Solar Opposition Participants – Supplemental costs claim

60. The following table summarizes the SOP's supplemental costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
SOP - Supplemental costs claim							
Ackroyd LLP	52.40	0.00	0.00	\$13,712.50	\$95.70	\$690.42	\$14,498.62
JetPro Consultants	13.80	0.00	0.00	\$2,415.00	\$0.00	\$120.75	\$2,535.75
Total	66.20	0.00	0.00	\$16,127.50	\$95.70	\$811.17	\$17,034.37

²⁰ Exhibit 23951-X0067, AUC letter – Ruling on standing, Schedule A.

²¹ Exhibit 23951-X0076, A1 - Submissions of SOP members at PDF page 43, including submissions of David Burroughs and Wendy Braun.

61. The Commission finds that the SOP 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 for the reasons set out below.

4.1 Comments from Aura

62. Aura submitted that only costs incurred for and related to the Commission's request for additional information, issued on May 31, 2019, should be considered eligible for a supplemental costs claim. Aura identified that the SOP's supplemental costs claim included legal fees for services provided before May 31, 2019 that could not have been related to the Commission's request. It also identified that legal fees were claimed for services provided after July 15, 2019, which was the final date for the SOP to file a reply to Aura's response to the Commission's request. Aura stated that those services were provided outside the timeframe of the Commission's additional information request process and could not have been related to that process. It requested that the claim for legal fees for such services, equal to \$448.00, be denied.

63. Aura stated that some of the legal services claimed involved the SOP's counsel corresponding with individuals who were not members of the SOP and whose identities were unknown or otherwise unrelated to airport safety issues. This included communications with Ms. Paula McGarrigle, Sean Sutherland, Ed McDonald and Ms. Wray. Aura submitted that an eight per cent reduction in legal fees, in the amount of \$1,097.00, would be a reasonable reduction for these out of scope services.

64. Aura submitted that the \$70.00 claimed for services provided by Mr. Secord should be excluded because there was no evidence of his involvement anywhere in the record in the original proceeding. Aura stated that the SOP did not provide an explanation why multiple counsel were needed to respond to the Commission's request for additional information, and that the allocation of work between Ms. Okoye and Ms. Beyko was inefficient and inappropriate. Aura noted that numerous invoice line items consisted of Ms. Okoye and Ms. Beyko corresponding with each other, and that the distribution of work between counsel was inappropriate because Ms. Okoye, the senior counsel, did the majority of the work. Aura suggested that a further 30 per cent reduction in legal fees be imposed due to improper and inefficient task allocation between legal counsel.

65. Aura stated that the claim for photocopying by Ackroyd amounted to 230 pages of copying, which it submitted was an unreasonable amount of printing for the limited scope of the request for additional information. It recommended reducing these costs by half, to \$11.50. Aura also questioned why the SOP claimed search fees for three land titles searches, when the Drumheller Municipal Airport easement document was only filed against one title. It submitted that only one land titles search fee, in the amount of \$10.00, should be awarded.

66. Aura stated that the expert fees claimed in relation to JetPro Consultants Inc. were reasonable.

4.2 Reply comments from the SOP

67. The SOP explained that the legal services provided by Ms. Okoye on April 12 and 16, 2019, related to her reviewing the Town of Drumheller's written objection (filed on April 12, 2019) and Aura's response to the Town of Drumheller, and her informing the

SOP members of those developments. The SOP also stated that the work done by Ms. Okoye on and after July 31, 2019 “was the result of further correspondence with Commission counsel and SOP members regarding information stemming from the hearing and the May 31 Information Request process.”²² The SOP submitted that the legal services provided on those dates were all directly and necessarily incurred in relation to the original proceeding. The SOP also submitted that the Commission did not state that the process related to the request for additional information would end when responses were filed, and so July 15, 2019 should not be treated as the end date for the post-hearing process.

68. The SOP stated that Ms. Okoye’s correspondence with Ms. Paula McGarrigle related to the Commission’s request for additional information and Ms. Okoye’s attempt to get information about potential aviation experts from Ms. Paula McGarrigle. The SOP also stated that Mr. Sutherland and Mr. McDonald are aviation experts who were consulted in connection with the Commission’s request. The SOP added that Mr. Sutherland was unable to assist due to the short timeframe imposed by the Commission, however, Mr. McDonald is the principal owner of JetPro Consultants Inc. and the person initially contacted by the SOP to retain that firm’s assistance in responding to the request for additional information. The SOP stated that Ms. Okoye was contacted by Ms. Wray of Solas for information about the original proceeding and Solas’s outstanding account.

69. In response to Aura’s comments regarding the allocation of work between legal counsel, the SOP stated that Mr. Secord’s limited assistance was still required for advice and direction and it submitted that his \$70.00 fee should be paid. The SOP also stated that work was not duplicated between Ms. Okoye and Ms. Beyko, and that both counsel were required due to the amount of work that needed to be done and their respective work schedules, which included managing their vacations and workloads. The SOP explained that correspondence between its counsel served to schedule tasks for each of them and avoid work being duplicated.

70. The SOP stated that it was mindful not to print documents unnecessarily and indicated that the amount of documentation, exhibits and expert information in the original proceeding necessitated Ackroyd’s printing and photocopying charges. The SOP explained that it searched the title to two additional parcels near the Drumheller Municipal Airport to determine if easements relating to the Airport Safety Zone were registered on those titles. It submitted that no reductions should be made to the amount claimed for Ackroyd’s disbursements.

4.3 Commission findings

4.3.1 Ackroyd LLP

71. The fees claimed by the SOP for the legal services provided by Ackroyd during the post-hearing portion of the original proceeding were for services provided by Mr. Secord, Ms. Okoye and Ms. Beyko. The fees claimed relate to reviewing and responding to the Commission’s request for additional information that was issued after the close of the oral hearing in the original proceeding, and include fees for seeking and retaining an aviation expert, corresponding with the SOP’s members, filing the SOP’s response to the Commission and filing a reply to Aura’s response to the Commission. The fees claimed also relate to the SOP’s counsel reviewing

²² Exhibit 24476-X0010, SOP Reply to Aura's Reply on Supplemental Cost Claim, page 2.

the letter filed by the Town of Drumheller on April 12, 2019 and Aura's written reply to that letter.

72. The Commission does not normally award costs for services provided after the close of a proceeding because such costs cannot be said to be incurred for the purposes of the proceeding. However, the letter filed by the Town of Drumheller, which addressed many of the same concerns related to the Drumheller Municipal Airport that were raised by the SOP, initiated a re-opening of the proceeding. Further, the Commission considers that the letter filed by the Town of Drumheller is related to the issues giving rise to the Commission's request for additional information. The Commission has therefore determined that the costs incurred on April 12 and 16, 2019 are eligible for recovery as part of the supplemental costs claim.

73. The Commission notes that the legal services provided after July 15, 2019 relate to email correspondence between the SOP's counsel and Tony Keller, and between the SOP's counsel and counsel for each of Aura and the Commission. The Commission also notes that the SOP was not required to do anything in relation to the original proceeding after July 15, 2019, which is the date the SOP filed its reply to Aura's response to the Commission's request for additional information. The SOP did not describe what was discussed in those emails so as to permit an assessment of whether the services were directly related to the Commission's request for additional information or any other aspect of the proceeding. The Commission considers that the record of the original proceeding closed on July 15, 2019, and that its normal practice of not awarding costs incurred after the close of record applies to the costs claimed for 1.3 hours of legal fees incurred by the SOP after July 15, 2019.

74. The Commission reviewed the SOP's explanation of the individuals that Ms. Okoye contacted, in attempting to retain an aviation expert to assist the SOP in responding to the Commission's request for additional information. The Commission is satisfied that the fees relating to Ms. Okoye's efforts in this regard were necessarily incurred for the purpose of responding to the Commission's request. The Commission also finds, as it did in relation to the SOP's final costs claim addressed above, that the fee claimed for Mr. Secord's advice and directions in relation to the Commission's supplemental information request is eligible for an award.

75. The Commission considered Aura's comments relating to the allocation of work between Ms. Okoye and Ms. Beyko. The Commission acknowledges that the time claimed for Ms. Okoye's services is almost double the time claimed for Ms. Beyko's services, and in the normal course this would raise concerns about the inefficient use of counsel. However, in these circumstances where the Commission imposed relatively short timelines for the filing of substantive information responses and reply submissions, during what is normally the early part of summer vacation season in Alberta, the Commission considers that additional latitude should be given in relation to the efficient sharing of workloads between co-counsel. The Commission is therefore not prepared, in this instance, to reduce the legal fees claimed by the SOP on the basis that there should have been a more efficient allocation of the work between Ms. Okoye and Ms. Beyko.

76. The Commission finds that the SOP's claim for photocopying 230 pages is reasonable, given the number of submissions (including appendices) filed by the SOP in response to the Commission's request for additional information. The Commission also finds that the search

charges to obtain copies of the titles for three properties in the area of the Drumheller Municipal Airport were reasonably incurred by the SOP.

77. Except for the 1.3 hours of legal fees incurred after July 15, 2019, the Commission finds that the services performed by Ackroyd were directly and necessarily related to the SOP's participation in the post-hearing portion of the original proceeding and are sufficiently related to the Commission's request for additional information. Further, the fees, which were claimed in accordance with the Scale of Costs for those services, are reasonable. In addition, the Commission finds the disbursements for postage (\$2.70), photocopying (\$23.00) and Alberta Land Titles Searches (\$70.00) to be reasonable. Accordingly, the Commission approves the SOP's claim for legal fees for Ackroyd in the amount of \$13,354.00, disbursements of \$95.70 and GST of \$672.49 for a total of \$14,122.19.

4.3.2 JetPro Consultants Inc.

78. JetPro Consultants Inc. was retained by the SOP to perform consulting services in the post-hearing portion of the original proceeding. The fees claimed by the SOP for the consulting services provided by JetPro and Henry Graham relate to reviewing the information filed in the original proceeding that was relevant to the Commission's request for additional information, developing digital maps applicable to the project site and preparing a report.

79. The Commission finds that the services performed by JetPro Consultants were directly and necessarily related to the SOP's participation in the post-hearing portion of 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 the SOP's claim for consulting fees for JetPro Consultants in the amount of \$2,415.00 and GST of \$120.75 for a total of \$2,535.75.

4.3.3 Total awarded – Supplemental costs claim

80. For the reasons the reasons provided above, the Commission approves the SOP's claim for recovery of costs in its supplemental costs claim in the total amount of \$16,657.94. This amount is composed of legal fees of \$13,354.00, consulting fees of \$2,415.00, disbursements of \$95.70 and GST of \$793.24.

5 Total awarded to the SOP

81. For the reasons provided above, the Commission approves the SOP's claim for recovery of costs for the original proceeding in the total amount of \$173,972.66. The total awarded amount is the sum of the total awarded for the final costs claim (\$157,314.72) and the total awarded for the supplemental costs claim (\$16,657.94). The total awarded amount, less the interim funding amount of \$75,080.61 awarded in Decision 24381-D01-2019, results in a balance payable of \$98,892.05. ($\$173,972.66 - \$75,080.61 = \$98,892.05$).

6 Order

82. It is hereby ordered that:

- (1) Aura Power Renewables Ltd. shall pay intervener costs to the Solar Opposition Participants group in the total amount of \$173,972.66, less the interim funding amount of \$75,080.61 awarded in Decision 24381-D01-2019 leaving a balance payable of \$98,892.05. Payment shall be made to Ackroyd LLP.

Dated on December 5, 2019.

Alberta Utilities Commission

(original signed by)

Carolyn Hutniak
Commission Member