



**ENMAX Power Corporation
Home Road Transmission Lines 69-15.62L/21.61L
Replacement Project**

Costs Award

January 22, 2020

Alberta Utilities Commission

Decision 24973-D01-2020

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Calgary, Alberta

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers an application by the No Montgomery Monopoles group (NMM) for approval and payment of its costs of participation in Proceeding 23981¹ (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
No Montgomery Monopoles								
Carscallen LLP	\$31,857.00	\$871.25	\$1,636.41	\$34,364.66	\$31,042.50	\$516.30	\$1,577.95	\$33,136.75
Total amount claimed				\$34,364.66	Total amount awarded			\$33,136.75

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

4. The original proceeding was convened by the Commission to consider applications from ENMAX Power Corporation to alter two existing transmission lines and replace seven transmission structures along Home Road in the city of Calgary (collectively, the project). The original proceeding consisted of three notices of application, multiple rounds of information requests (IRs) and responses to IRs, written intervenor evidence, ENMAX's written reply evidence and an oral hearing held in Calgary on September 10 and 11, 2019. The close of record for the original proceeding was September 11, 2019, and the Commission issued Decision 23981-D01-2019² on October 16, 2019.

5. NMM submitted its costs claim application on October 8, 2019, within the 30-day timeline permitted by the Commission's rules. The Commission assigned Proceeding 24973 and Application 24973-A001 to the costs claim application.

6. There were no comments filed on the costs claim application, and the Commission considers the close of record for this proceeding to be November 4, 2019, the deadline for filing comments.³

¹ Proceeding 23981: ENMAX Power Corporation, Home Road Transmission Lines 69-15.62L/21.61L Replacement Project.

² Decision 23981-D01-2019: ENMAX Power Corporation, Home Road Transmission Lines 69-15.62L/21.61L Replacement Project, Proceeding 23981, October 16, 2019.

³ Exhibit 24973-X0003, Filing Announcement.

2 Commission's authority to award costs and intervenor 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 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.

8. 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.

9. Section 22 of the *Alberta Utilities Commission Act* defines what a "local intervenor" is and states:

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.

10. In the original proceeding, the Commission granted standing to John Quinton, Robert Johnston and David Baker;⁴ to the Montgomery Community Association and Marilyn Wannamaker;⁵ and to Karim Shaarbafi, Masoumeh Saiyer and Michael Algra.⁶ These parties subsequently formed the NMM group. The Commission also granted standing to Linda and Bruce McDonald and Hana Malek.⁷ The above parties all own, occupy or reside upon land in the first row of development surrounding the project (or otherwise adjacent to the project), and described potential effects of the project that included decreased property values, visual effects, negative health effects and safety concerns. On the basis of the foregoing, these parties were

⁴ Exhibit 23981-X0040, Ruling on standing and request for additional information, 23981-X0052.

⁵ Exhibit 23981-X0052, Further ruling on standing.

⁶ Exhibit 23981-X0071, Third ruling on standing.

⁷ Exhibit 23981-X0040, Ruling on standing and request for additional information, 23981-X0052.

considered by the Commission to have legal rights that may be directly and adversely affected by the Commission's decision on the applications in the original proceeding. The Commission further determined that those members of NMM granted standing fall within the definition of a "local intervener" as the term is defined in Section 22(1) of the *Alberta Utilities Commission Act*. Accordingly, NMM qualifies to claim local intervener costs.

3 Commission findings

3.1 No Montgomery Monopoles

11. The following table summarizes NMM's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
No Montgomery Monopoles							
Carscallen LLP	141.40	12.00	8.00	\$31,857.00	\$871.25	\$1,636.41	\$34,364.66

12. The Commission finds that NMM generally 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 Carscallen LLP for the reasons set out below.

3.1.1 Carscallen LLP

13. The fees claimed by NMM for the legal services provided by Michael Niven, Zubair Hussain and Nicholas Ramessar relate to reviewing the applications, reviewing IRs and responses to IRs, reviewing ENMAX's reply evidence, coordinating the submission of an expert report regarding property values, meeting and corresponding with NMM, preparing intervener evidence, attending the public hearing, cross-examining the ENMAX panel, presenting the direct evidence of NMM and presenting final argument.

14. While the Commission finds that the services performed by Carscallen were generally reasonable and directly and necessarily related to NMM's participation in the original proceeding, it finds insufficient support for certain legal services. Specifically, the legal invoices indicate what appears to be a duplicate time entry for Mr. Hussain of 2.50 hours for activities on July 18, 2019.⁸ Accordingly, the Commission disallows 2.50 of the 5.00 hours claimed for these activities.

15. In addition, the Commission notes that its practice is to allow travel time only in connection with attendance at a hearing. The July 24, 2019 time entry for Mr. Niven shows 2.60 hours claimed for activities which include time for travel to Mr. Johnston's house for a meeting and to drive the project route. Since the time entry also includes time for a meeting with Mr. Johnston and to provide instructions to Mr. Hussain, the Commission allows 50 per cent of the hours claimed (1.30 hours) for Mr. Niven for that time entry.

16. The August 22, 2019 time entry for Mr. Hussain describes a telephone call to book a room for a meeting; the associated time claimed is 0.10 hours. The Commission finds the

⁸ Exhibit 24973-X0002, PDF page 7.

described activity to be in the nature of administrative support services and notes that the Scale of Costs allows for administrative support fees at the rate of \$45.00 per hour. Accordingly, the Commission reduces the allowed fee for that time entry from the claimed rate of \$140.00 per hour to \$45.00 per hour.

17. The Commission finds the remaining hours for legal services for Carscallen (42.40 hours for Mr. Niven, 114.70 hours for Mr. Hussain and 0.40 hours for Mr. Ramessar), which were claimed in accordance with the Scale of Costs for those services, to be reasonable, resulting in total approved legal fees of \$31,042.50.

18. The disbursements claimed for Carscallen totalled \$871.25 and included: courier fees (\$19.60); a USB stick (\$10.00); copies of the Alberta Electrical Code (\$17.00) and the Canadian Electrical Code (\$180.00); database search - Westlaw Canada (\$65.25); and internal photocopying (\$579.40).

19. With respect to the disbursement for the legal database search – Westlaw Canada, the Commission notes that there are free search services, such as CanLII, available to parties and that the onus is on the cost claimant to demonstrate the reasonableness of costs claimed. As the costs of a utility are generally passed on to customers, where a cost applicant chooses to use services that require an access fee, that cost applicant is expected to demonstrate why it was necessary to use that service. In this case, no justification was provided for the use of Westlaw and therefore these costs are disallowed.

20. In addition, Carscallen's internal photocopying disbursement, at \$0.10 per copy, was listed as \$579.40, which amounts to over 5,790 pages of photocopying for the original proceeding. The Commission considers this disproportionate to the total size of the record in the original proceeding and accordingly reduces the photocopying disbursement by 50 per cent, for a total of \$289.70 for internal photocopying charges. The Commission finds the remaining disbursements, which were claimed within the Scale of Costs, to be reasonable and approves them.

3.1.2 Total awarded to NMM

21. For the reasons provided above, the Commission approves NMM's claim for recovery of costs in the total amount of \$33,136.75. This amount is composed of legal fees of \$31,042.50, disbursements of \$516.30 and GST of \$1,577.95.

4 Order

22. It is hereby ordered that:

- (1) ENMAX Power Corporation shall pay intervener costs to the No Montgomery Monopoles group in the total amount of \$33,136.75. Payment shall be made to Carscallen LLP.

Dated on January 22, 2020.

Alberta Utilities Commission

(original signed by)

Carolyn Hutniak
Commission Member