



EDP Renewables SH Project GP Ltd.
Sharp Hills Wind Project Amendments

Costs Award

March 12, 2020

Alberta Utilities Commission

Decision 25141-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 Clearview Group for approval and payment of its costs of participation in Proceeding 24401¹ (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
Clearview Group								
McLennan Ross LLP	\$16,625.00	\$980.40	\$880.27	\$18,485.67	\$14,735.00	\$980.40	785.77	\$16,501.17
dBa Noise Consultants	\$31,927.50	\$3,473.36	\$1,737.86	\$37,138.72	\$31,522.50	\$3,365.97	\$1,717.29	\$36,605.76
Total	\$48,552.50	\$4,453.76	\$2,618.13	\$55,624.39	\$46,257.50	\$4,346.37	\$2,503.06	\$53,106.93
Total amount claimed				\$55,624.39	Total amount awarded			\$53,106.93

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

4. The original proceeding was convened by the Commission to consider applications from EDP Renewables SH Project GP Ltd. for amendments to a power plant and substation, collectively designated as the Sharp Hills Wind Project, as well as a request for permission to advance a late-filed application for a review and variance of Condition 20 in Approval 22665-D02-2018.² Following the bifurcation of the review application to a separate proceeding,³ the original proceeding consisted of intervenor evidence and rebuttal evidence, multiple rounds of information requests (IRs) and responses to IRs and an oral hearing held from October 21, 2019 to October 23, 2019, in Calgary, Alberta. The close of record of the original proceeding was November 15, 2019, and the Commission issued Decision 24401-D01-2019⁴ on December 20, 2019.

¹ Proceeding 24401: EDP Renewables SH Project GP Ltd. Sharp Hills Wind Project Amendments.

² Power Plant Approval 22665-D02-2018, Proceeding 22665, Applications 22665-A001 and 22665-A002, September 21, 2018.

³ Proceeding 24819: EDP Renewables SH Project GP Ltd. Decision on Request for Review and Variance of AUC Decision 22665-D01-2018 Sharp Hills Wind Project.

⁴ Decision 24401-D01-2019: EDP Renewables SH Project GP Ltd. Sharp Hills Wind Project Amendments, Proceeding 24401, December 20, 2019.

5. The Clearview Group submitted its costs claim application on December 2, 2019, within the 30-day timeline permitted by the Commission's rules. The Commission assigned Proceeding 25141 and Application 25141-A001 to the costs claim application.

6. On December 11, 2019, EDP filed comments on the Clearview Group's costs claim application. No reply comments were filed, and the Commission considers the close of record for this proceeding to be December 18, 2019, the deadline for filing reply comments.⁵

2 Commission's authority to award costs and intervenor eligibility

7. 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.

8. Section 7 of Rule 009 states 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:

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 "local intervenor":

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 the following members of the Clearview Group: Cory and Nicole Blair, Kristine Fossum, Randy Hayworth, Darren and

⁵ Exhibit 25141-X0004, Filing Announcement.

Kathy Simpson and Lloyd Wagstaff.⁶ These parties were granted standing on the basis that they all own, occupy or reside upon land in close proximity to noise receptors that may have a different noise profile than that previously approved and that increased noise (over that predicted for the turbines previously approved) may be experienced at those receptors. The Commission limited the scope of their standing to addressing potential increased noise impacts. The Commission further determined that those members of the Clearview Group 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, the Clearview Group qualifies to claim local intervener costs.

3 Comments of EDP Renewables SH Project GP Ltd.

11. EDP submitted that the Clearview Group failed to comply with the requirements of Rule 009 by not filing a submission of justification. EDP stated that as a result, there is insufficient information for the Commission to effectively assess the reasonableness of the costs claim. EDP also noted that the Clearview Group’s affidavit of fees and disbursements was executed by a legal assistant, rather than its counsel or a Clearview Group member, in further non-compliance of Rule 009. EDP submitted that the Clearview Group’s failure to comply with Rule 009 should form the basis of an overall reduction to the costs awarded in relation to legal fees.

12. EDP also identified legal fees claimed for reviewing, discussing and drafting submissions related to evidence prepared by Cliff Wallis in respect of the review and variance application. In EDP’s view, these costs do not relate to the amendment proceeding and should therefore be disallowed. EDP further submitted that the legal fees claimed by the Clearview Group should be reduced on the basis that its legal counsel, Gavin Fitch Q.C. (counsel with over 25 years of experience), completed a significant amount of work that could have been allocated to a junior lawyer.

13. EDP submitted that Henk de Haan, an expert witness, claimed costs for a number of disbursements that are not recoverable pursuant to the Scale of Costs. These include costs for meals, accommodation and travel with respect to the field program he undertook in connection with preparing his evidence for the hearing and costs claimed for travel and associated mileage between his office in Okotoks and Mr. Fitch’s office in downtown Calgary on October 17, 2019. EDP submitted that these costs were not incurred during the hearing, and are therefore not entitled to reimbursement.

14. EDP also submitted that without a submission of justification, it is not clear that Mr. de Haan’s disbursements for modelling costs, instrumentation and GIS Services are appropriate or reasonable. EDP stated that it appears that these disbursements were incurred in connection with preparing Mr. de Haan’s report and that it is unreasonable for these costs to be claimed in addition to Mr. de Haan’s hourly rate. EDP stated that the invoice from Becky Stoesser for GIS Services does not indicate that she has any specialized expertise and that this portion of the claim should be disallowed or in the alternative, reduced to align with the secretarial fee permitted pursuant to Rule 009.

⁶ Exhibit 24401-X0049, Ruling - Standing on amendment application, paragraphs 20-21.

4 Commission findings

4.1 Clearview Group

15. The following table summarizes the Clearview Group's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument and Reply				
Clearview Group							
McLennan Ross LLP	47.50	0.00	0.00	\$16,625.00	\$980.40	\$880.27	\$18,485.67
dba Noise Consultants	127.75	0.00	0.00	\$31,927.50	\$3,473.36	\$1,737.86	\$37,138.72
Total	175.25 ⁷	0.00	0.00	\$48,552.50	\$4,453.76	\$2,618.13	\$55,624.39

16. While it recognizes EDP's concern that the Clearview Group's cost claim does not comply with Rule 009 by not including a submission of justification, the Commission has reviewed the supporting documentation and is satisfied that, when viewed in its entirety, the costs claim is sufficiently detailed for the Commission to make a determination on its reasonableness and whether the costs claimed are directly and necessarily related to the original proceeding. Moreover, the Commission does not consider the fact that Mr. Fitch's legal assistant executed the affidavit of fees and disbursements to warrant a reduction to the Clearview Group's costs claim.

17. The Commission finds that the Clearview Group generally acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues. However, it is unable to approve the full amount of the costs claimed in respect of the services performed and disbursements claimed by McLennan Ross LLP and dba Noise Consultants Ltd. for the reasons set out below.

4.1.1 McLennan Ross LLP

18. The Clearview Group was represented by McLennan Ross in the original proceeding. The fees claimed by the Clearview Group for the legal services provided by Gavin Fitch Q.C. relate to reviewing Rule 012 and noise reports from dba Noise Consultants, corresponding with Mr. de Haan, preparing for and attending the oral hearing and reviewing information requests and responses.

19. While the Commission finds that the services performed by McLennan Ross were generally reasonable and directly and necessarily related to the Clearview Group's participation in the original proceeding, it finds that some of the fees claimed for these services were unrelated to the original proceeding. Specifically, the McLennan Ross statement of account includes 5.4 hours related to the review and variance application that was bifurcated to a separate

⁷ All hours claimed for McLennan Ross LLP and dba Noise Consultants Ltd. were included under the "Preparation" heading on Form U2 despite some of these hours being incurred in respect of "Attendance" and "Argument and Reply."

proceeding.⁸ Since these costs are unrelated to the original proceeding, the claim for these services is denied.

20. With respect to EDP's submission that Mr. Fitch's inefficient use of junior counsel warrants a reduction to the costs awarded, the Commission is satisfied that Mr. Fitch's election not to use junior counsel in this proceeding was reasonable. On review of Mr. Fitch's statement of account, the Commission is not convinced that certain activities were better suited to junior counsel and notes that much of the legal services claimed relate to preparation for and attendance at the oral hearing. Moreover, the Commission considers noise-related issues to be relatively complex and emphasizes that the original proceeding was the first opportunity for the Commission to interpret recent amendments to Rule 012. In this circumstance, it was not unreasonable for experienced counsel to perform the legal services claimed and accordingly, the Commission makes no reduction in this regard.

21. The Commission finds the remaining hours for legal services for McLennan Ross (42.1 hours for Mr. Fitch), which were claimed in accordance with the Scale of Costs for those services, to be reasonable, resulting in total approved legal fees of \$14,735.00.

22. The Commission finds that disbursements claimed for McLennan Ross for transcripts (\$663.85) and for photocopying (\$316.55), which were claimed in accordance with the Scale of Costs, are reasonable and approves them.

23. Accordingly, the Commission approves the Clearview Group's claim for legal fees for McLennan Ross in the amount of \$14,735.00, disbursements of \$980.40 and GST of 785.77 for a total of \$16,501.17.

4.1.2 dBA Noise Consultants Ltd.

24. dBA Noise Consultants was retained by the Clearview Group to perform consulting services in the original proceeding. The fees claimed by the Clearview Group for the consulting services provided by Henk de Haan relate to reviewing the application, drafting a report, modelling, measuring and recording data, preparing evidence, reviewing reply evidence, preparing for and attending the oral hearing and assessing responses to information requests.

25. While the Commission finds that the services performed by dBA Noise Consultants were directly and necessarily related to the Clearview Group's participation in the original proceeding, it finds that three hours of travel time on October 17, 2019 to meet with Mr. Fitch, including associated mileage (78 km) and transit passes (\$6.80), was not incurred in connection with attendance at the hearing. The Commission denies these amounts because its general practice is to allow travel time and personal disbursements only in connection with attendance at a hearing.

26. The Clearview Group also claimed travel time (13 hours) and personal disbursements related to accommodation (\$447.00), hotel levy and fees (\$31.83), meals (\$62.38) and mileage (\$553.38) for Mr. de Haan's pre-hearing trip to the project area to conduct a field program. While these costs are not explicitly allowed within the Scale of Costs and, as indicated above, the Commission's practice is to allow travel time and personal disbursements only in connection with attendance at a hearing, the Commission finds that it is reasonable that a consultant

⁸ Exhibit 25141-X0001, Local Intervener Cost Claim of the Clearview Group, December 2, 2019, PDF page 3: Mr. Fitch's time entries for October 2, 2019, October 7, 2019 and October 16, 2019.

conducting ambient sound level measurements would require a trip to the project area to effectively prepare their evidence. In addition, the original proceeding was the first opportunity for the Commission to interpret recent amendments to Rule 012 related to ambient sound level measurements; therefore it was reasonable for Mr. de Haan to conduct an ambient sound level survey. As a result, the Commission will exercise its discretion to allow dBA Noise Consultants to recover the costs of its pre-hearing travel and related disbursements in connection with the field program subject to the following paragraphs.

27. Two receipts from 316 Main Street in Oyen, Alberta were provided in support of Mr. de Haan's meal disbursement claim for the pre-hearing trip. One receipt in the amount of \$34.13 is dated September 20, 2019, while the other receipt in the amount of \$18.90 does not display a legible date, contrary to the requirements of the Scale of Costs. Neither receipt was itemized or sufficiently detailed to indicate the number of individuals eating or if alcohol was included. Accordingly, the Commission approves \$15.00 in relation to the receipt dated September 20, 2019, to align with the maximum allowable dinner claim under the Scale of Costs, and denies \$18.90 reflected on the undated receipt.

28. The receipt provided in support of Mr. de Haan's accommodation disbursement reflects a per day room charge of \$149.00 before taxes, which exceeds the \$140.00 maximum daily rate allowed in the Scale of Costs. As a result, the Commission has determined that a reduction in the daily rate for accommodation from the claimed rate of \$149.00 to \$140.00 for three days is warranted.

29. Disbursements were also claimed for dBA Noise Consultants for modelling cost (\$550.00), instrumentation (\$1,120.00) and GIS services (\$620.00). The Commission considers that the GIS services performed by Ms. Stoesser are related to identifying and mapping third party facilities in the project area. While Ms. Stoesser's invoice does not contain details of her qualifications and expertise, the Commission is satisfied that these costs are reasonable and directly and necessarily related to the Clearview Group's participation in the proceeding. Similarly, the Commission finds the disbursements related to modelling and instrumentation to be reasonable and directly and necessarily related to Mr. de Haan's data collection and processing. Accordingly, the Commission approves the disbursements related to modelling cost, instrumentation and GIS services in full.

30. The Commission finds that the remaining hours for consultant services (108.75 regular hours and three travel hours for Mr. de Haan) and the remaining personal disbursements including meals (\$4.15), mileage (\$35.88) and Calgary Transit (\$6.80), which were claimed in accordance with the Scale of Costs, are reasonable and approves them.

31. Accordingly, the Commission approves the Clearview Group's claim for consulting fees for dBA Noise Consultants in the amount of \$31,522.50, disbursements of \$3,365.97 and GST of \$1,717.29 for a total of \$36,605.76.

4.1.3 Total awarded to the Clearview Group

32. For the reasons stated above, the Commission approves the Clearview Group's claim for recovery of costs in the total amount of \$53,106.93. This amount is composed of legal fees of \$14,735.00, consulting fees of \$31,522.50, disbursements of \$4,346.37 and GST of \$2,503.06.

5 Order

33. It is hereby ordered that:

- (1) EDP Renewables SH Project GP Ltd. shall pay intervener costs to the Clearview Group in the total amount of \$53,106.93. Payment shall be made to McLennan Ross LLP on behalf of the Clearview Group.

Dated on March 12, 2020.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Vice Chair