



Elemental Energy Renewables Inc.

Brooks Solar II Power Plant

Costs Award

April 29, 2020

Alberta Utilities Commission

Decision 25241-D01-2020

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Alberta Utilities Commission
Calgary, Alberta

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers an application by the Brooks Residents for approval and payment of its costs of participation in Proceeding 24573¹ (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
Brooks Residents								
Huckvale LLP	\$54,134.00	\$1,916.39	\$2,794.05	\$58,844.44	\$52,141.00	\$1,916.39	\$2,694.40	\$56,751.79
Cottonwood Consultants Ltd.	\$12,352.50	\$297.32	\$632.23	\$13,282.05	\$12,352.50	\$297.32	\$632.23	\$13,282.05
Intervener Honoraria	\$1,300.00	\$0.00	\$0.00	\$1,300.00	\$1,300.00	\$0.00	\$0.00	\$1,300.00
Total	\$67,786.50	\$2,213.71	\$3,426.28	\$73,426.49	\$65,793.50	\$2,213.71	\$3,326.63	\$71,333.84

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

4. The original proceeding was convened by the Commission to consider whether to approve an application from Elemental Energy Renewables Inc. to construct and operate a solar power plant designated as the Brooks Solar II Power Plant, and to interconnect the power plant to the FortisAlberta Inc. electric distribution system. The proceeding consisted of intervener evidence and rebuttal evidence, information requests (IRs) and responses to IRs, and an oral hearing held from December 3, 2019 to December 4, 2019 in Brooks, Alberta. The close of record for the original proceeding was December 19, 2019, and the Commission issued Decision 24573-D01-2020,² on January 16, 2020.

5. The Brooks Residents submitted its costs claim application on December 17, 2019, within the 30-day timeline permitted by the Commission's rules. The Commission assigned Proceeding 25241 and application 25241-A001 to the costs claim application. Elemental Energy filed a letter on January 7, 2020 stating that it had no comments on the costs claim application. The Commission considers the close of record for this proceeding to be February 6, 2020, the date on which the Brooks Residents' responses to IRs were filed.

¹ Proceeding 24573: Elemental Energy Renewable Inc.'s Brooks Solar II Power Plant.

² Decision 24573-D01-2020: Elemental Energy Renewables Inc. Brooks Solar II Power Plant, Proceeding 24573, January 16, 2020.

2 Commission's authority to award costs and intervenor eligibility

6. 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 and the Scale of Costs found in Appendix A of Rule 009.

7. Section 22 of the *Alberta Utilities Commission Act* defines "local intervenor" 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.

8. In the Commission's ruling on standing in the original proceeding,³ the Commission granted standing to nine individuals who formed a group under the name the Brooks Residents. The Brooks Residents was later joined by other individuals residing in the community surrounding the proposed Brooks Solar II Power Plant.⁴ A full list of the members of the Brooks Residents is found at Appendix A.

9. 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.

10. The Commission has decided that the Brooks Residents is eligible for costs as a local intervenor group and has applied Rule 009 to its costs application.

³ Exhibit 24573-X00047, AUC Ruling on Standing.

⁴ The Brooks Residents also referred to themselves as the Objectors in Exhibit 24573-X0059.01.

3 Brooks Residents

11. The following table summarizes the Brooks Residents' costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Brooks Residents							
Huckvale LLP	146.9	22.0	10.0	\$54,134.00	\$1,916.39	\$2,794.05	\$58,844.44
Cottonwood Consultants	31.0	12.75	0.0	\$12,352.50	\$297.32	\$632.23	\$13,282.05
Intervener Honoraria	0.0	0.0	0.0	\$1,300.00	\$0.00	\$0.00	\$1,300.00
Total	177.9	34.75	10.0	\$67,786.50	\$2,213.71	\$3,426.28	\$73,426.49

12. The Commission finds that the Brooks Residents 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 Huckvale LLP for the reasons set out below.

3.1 Huckvale LLP

13. The Brooks Residents was represented by Huckvale LLP in the original proceeding. The fees claimed by the Brooks Residents for the legal services provided by Cameron MacLennan, Mariko Constable, Colin Koerselman and Belinda Tanner relate to reviewing the application, making efforts to retain experts, undertaking legal research, preparing written submissions, preparing oral questioning and argument, and attending the hearing. The disbursements claimed by Huckvale LLP relate to long distance telephone calls, photocopying fees, transcripts, accommodation and meals during the hearing, and mileage.

14. While the Commission finds that the services performed by Huckvale LLP were directly and necessarily related to the Brooks Residents' participation in the original proceeding, it finds that the fees claimed for these services were excessive for the following reasons.

15. Mr. MacLennan and Ms. Constable each claimed 3.4 hours at their respective hourly rates under the *Scale of Costs* relating to roundtrip travel between Lethbridge, Alberta and Brooks, Alberta. Pursuant to the *Scale of Costs*, the Commission allows professionals only half of their eligible hourly rate for travel time. Accordingly, the Commission has reduced these time entries by 50 per cent.

16. In addition, the Commission notes that the services performed by Huckvale LLP include work undertaken by Ms. Tanner and claimed at a rate of \$240.00 per hour. In its submission of justification and IR responses in support of its costs claim application, the Brooks Residents explained that Ms. Tanner is a member of the Idaho State Bar and is in the process of becoming accredited to practice law in Alberta.⁵ As Ms. Tanner was not yet a member of the Law Society of Alberta at the time of the original proceeding, the Commission has determined that Ms. Tanner's eligible hours are properly claimed at the rate of an articling student. The Commission has adjusted Ms. Tanner's allowable hours to a rate of \$140.00 per hour, as set out in the *Scale of Costs*.

⁵ Exhibit 25241-X0002, Complete Costs Claim Submission – December 17, 2019 at PDF page 2; Exhibit 25241-X0008, Response to Information Request at PDF page 1.

17. The Commission finds the claim for disbursements for accommodation (\$694.14), meals (\$61.95), mileage (\$142.60), transcripts (\$830.70), telephone (\$97.00) and photocopying (\$90.00) fees to be reasonable.

18. Accordingly, the Commission approves the Brooks Residents' claim for legal fees for Huckvale LLP in the amount of \$52,141.00, disbursements of \$1,916.39 and GST of \$2,694.40 for a total of \$56,751.79.

3.2 Cottonwood Consultants Ltd.

19. Cottonwood was retained by the Brooks Residents to perform consulting services in the original proceeding. The fees claimed by the Brooks Residents for the consulting services provided by Cliff Wallis relate to performing a field evaluation, preparing an expert report, preparing reply evidence, preparing an opening statement, and attending the hearing.

20. The Commission finds that the services performed by Cottonwood were directly and necessarily related to the Brooks Residents' 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 disbursements for accommodation (\$143.11) and mileage (\$154.21), which were claimed in accordance with the *Scale of Costs*, are reasonable. Accordingly, the Commission approves the Brooks Residents' claim for consulting fees for Cottonwood in the amount of \$12,352.50, disbursements of \$297.32 and GST of \$632.23 for a total of \$13,282.05.

3.3 Intervener Honoraria

21. The Brooks Residents claimed attendance honoraria in the total amount of \$800.00 for six of its members, as well as \$500.00 for forming a group.

22. Attendance honoraria was claimed for the following interveners: Elsie Strach (\$200.00); Robert Strach (\$100.00); Jay deJong (\$200.00); Ashley Becker (\$100.00); Nicole Schmidt (\$100.00); and Cathy MacDonald (\$100.00). Each of the interveners claiming honoraria was either granted standing in the Commission's standing ruling in the original proceeding,⁶ or resides at the same property as an individual granted standing and shares the same interests and concerns. Each of the interveners claiming honoraria filed evidence in support of the Brooks Residents' submissions⁷ and, with the exception of Mr. Strach, each appeared on the Brooks Residents' witness panel at the oral hearing. The Commission has reviewed these costs and determined that they are reasonable and claimed in accordance with the *Scale of Costs*.

23. The *Scale of Costs* provides that an honorarium for forming a group may be claimed by organizers in an amount of up to \$500.00, as Rule 009 recognizes that organizing a group of local interveners may require time, effort or expense. The Commission finds the claim for an honorarium for forming the group is reasonable and within the *Scale of Costs*.

24. Accordingly, the Commission approves the claim for intervener costs in the total amount of \$1,300.00.

⁶ Exhibit 24573-X00047, AUC Ruling on Standing.

⁷ Exhibit 24573-X0059.01, submissions.

3.4 Total awarded to the Brooks Residents

25. For the reasons provided above, the Commission approves the Brooks Residents' claim for recovery of costs in the total amount of \$71,333.84. This amount is composed of legal fees of \$52,141.00, consulting fees of \$12,352.50, intervener honoraria of \$1,300.00, disbursements of \$2,213.71 and GST of \$3,326.63.

4 Order

26. It is hereby ordered that:

- (1) Elemental Energy Renewables Inc. shall pay intervener costs to the Brooks Residents in the amount of \$71,333.84.

Dated on April 29, 2020.

Alberta Utilities Commission

(original signed by)

Kristi Sebalj
Commission Member

Appendix A – Members of the Brooks Residents

A. Becker
K. Becker
D. (Dennis) Boyd
D. (Dina) Boyd
K. Brown
M. Brown
J. (Jay) deJong
J. (Joanne) deJong
S. Gray
W. Gray
C. Huber
G. Huber
C. MacDonald
D. MacDonald
J. (Jack) Osadczuk
J. (Janice) Osadczuk
N. Schmidt
E. Strach
R. Strach
E. Webb
S. Webb