



Pattern Development Lanfine Wind ULC
Lanfine Wind Power Project

Costs Award

May 7, 2020

Alberta Utilities Commission

Decision 25334-D01-2020

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers an application by the Oyen Landowners Group for approval and payment of its costs of participation in Proceeding 22736¹ (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
Oyen Landowners Group								
McLennan Ross LLP	\$60,311.50	\$6,231.90	\$3,402.55	\$69,945.95	\$57,004.00	\$6,082.90	\$3,211.36	\$66,298.26
dBA Noise Consultants Ltd.	\$47,925.00	\$3,786.97	\$2,651.67	\$54,363.64	\$47,655.00	\$3,786.97	\$2,588.00	\$54,029.97
Cottonwood Consultants Ltd.	\$21,870.00	\$613.04	\$1,108.72	\$23,591.76	\$21,870.00	\$613.04	\$1,108.72	\$23,591.76
Species Inc.	\$26,010.00	\$1,345.92	\$1,438.37	\$28,794.29	\$21,690.00	\$1,264.70	\$1,222.37	\$24,177.07
Intervener honoraria	\$2,100.00	\$1,192.63	\$78.68	\$3,371.31	\$1,600.00	\$1,192.63	\$78.68	\$2,871.31
Total	\$158,216.50	\$13,170.46	\$8,679.99	\$180,066.95	\$149,819.00	\$12,940.24	\$8,209.13	\$170,968.37
Total amount claimed				\$180,066.95	Total amount awarded			\$170,968.37

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

4. The original proceeding was convened by the Commission to consider applications from Pattern Development Lanfine Wind ULC for approval to construct and operate the power plant and substations, collectively designated as the Lanfine Wind Power Project (the project). The proceeding consisted of two rounds of information requests (IRs) and responses to IRs, written evidence, an oral hearing held December 10 to 12, 2019 in Oyen, Alberta including oral argument, and a third round of IRs and responses.

5. The Commission issued Decision 22736-D01-2020,² on January 27, 2020 and the Oyen Landowners Group submitted its costs claim application on February 4, 2020. In its filing announcement for the costs claim, the Commission stated that the application was filed after the time limit prescribed by the Commission's rules. Upon further review of the record of the original proceeding, the Commission is satisfied that the close of record for the original proceeding was January 6, 2020, the date the last IR response was received that advanced the

¹ Proceeding 22736: Pattern Development Lanfine Wind ULC Lanfine Wind Power Project.

² Decision 22736-D01-2020: Pattern Development Lanfine Wind ULC Lanfine Wind Power Project, Proceeding 22736, January 27, 2020.

substantive record of the proceeding. Accordingly, the Commission considers the costs claim application submitted by the Oyen Landowners Group to be filed within the 30-day timeline permitted by its rules. The Commission assigned Proceeding 25334 and Application 25334-A001 to the costs claim application.

6. On February 11, 2020, Pattern filed its comments on the Oyen Landowners Group's costs claim application. The Commission considers the close of record for this proceeding to be February 11, 2020.

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 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. The Commission granted standing to the following individuals who own or reside upon land within two kilometres of the proposed project and have legal rights that may be directly and

adversely affected by the Commission's decision in the original proceeding:³ Brad Kuich, Leslie Girletz, Ray and Wendy Girletz, Dennis Fischbuch, John Murray, Jaclyn Murray, Richard Fischbuch, Kathleen Butler, Leonard Parenteau, Tom Carroll and Jerry Svatos.⁴ The potential effects described by these persons included proximity of the project, decreased property values, visual effects, increased energy costs, interference with agricultural operations, environmental concerns, negative health effects and safety concerns.⁵ The Commission finds that those members of the Oyen Landowners 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 Oyen Landowners Group qualifies to claim local intervener costs.

3 Comments on the costs claim application

3.1 Comments from Pattern

11. Pattern submitted that it would not be reasonable for the Commission to award the costs claim in full and suggested that a number of deductions were warranted.⁶

12. In respect of the legal fees claimed by McLennan Ross LLP, Pattern stated that these should be reduced on the basis of inefficient allocation of tasks between junior and senior counsel. In addition, Pattern submitted that a number of time entries were not in accordance with the Scale of Costs or were otherwise inappropriate including travel time for legal counsel to attend a pre-hearing meeting in the project area on September 3, 2019, seven hours of one-way travel time claimed for legal counsel to travel from Calgary to Oyen on December 9, 2020, and accommodation claimed by legal counsel that was not required for the hearing.

13. Regarding the costs claimed for dBA Noise Consultants Ltd., Pattern stated that pre-hearing costs for meals, accommodation and travel in connection with the field program undertaken to prepare the Ambient Sound Level Survey were not incurred during a hearing and therefore not entitled to reimbursement pursuant to the Scale of Costs. Pattern submitted that travel time of 4.5 hours per one-way trip in connection with both travel to the project area for pre-hearing work and the hearing itself is unreasonable and should be reduced to 3.5 hours to reflect the time it takes to travel between Calgary and Oyen. Pattern also took issue with disbursements claimed for modelling costs and instrumentation in the amount of \$2,116.75 and a GST overcharge in the amount of \$50.17, which in its view, should be disallowed.

14. With respect to costs claimed by Species Inc., Pattern submitted that insufficient detail was provided in the statement of account to enable the Commission to understand the date activities were undertaken and the time incurred with respect to each described service as required by the Scale of Costs and that 96 hours claimed for report preparation is unreasonable and disproportionate to the time claimed by other Oyen Landowners Group witnesses. Moreover, Pattern stated that \$101.34 claimed for a single meal on December 11, 2019 is inconsistent with the Scale of Costs and should be denied.

³ Exhibit 22736-X0113, AUC ruling on standing, June 19, 2019.

⁴ Exhibit 22736-X0113, Schedule A – Persons with standing in Proceeding 22736.

⁵ Exhibit 22736-X0113, paragraph 7.

⁶ Exhibit 25334-X0007, Response_to_OLG_Cost_Claim, February 11, 2020.

15. Lastly, Pattern took issue with certain interveners claiming honoraria for four full days despite the hearing spanning three days. In addition, Pattern stated that travel and accommodation disbursements in respect of Mr. Kuich's claim are disproportionately high relative to the extent of his participation in the hearing and could have been reduced or eliminated by requesting the AUC to arrange for testimony to be provided via video or teleconference.

4 Commission findings

4.1 Oyen Landowners Group

16. The following table summarizes the Oyen Landowners Group's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Oyen Landowners Group							
McLennan Ross LLP	211.60	0.00	0.00	\$60,311.50	\$6,231.90	\$3,402.55	\$69,945.95
dBA Noise Consultants Ltd.	186.50	0.00	0.00	\$47,925.00	\$3,786.97	\$2,651.67	\$54,363.64
Cottonwood Consultants Ltd.	84.50	0.00	0.00	\$21,870.00	\$613.04	\$1,108.72	\$23,591.76
Species Inc.	153.00	0.00	0.00	\$26,010.00	\$1,345.92	\$1,438.37	\$28,794.29
Intervener honoraria	0.00	0.00	0.00	\$2,100.00	\$1,192.63	\$78.68	\$3,371.31
Total	635.60	0.00	0.00	\$158,216.50	\$13,170.46	\$8,679.99	\$180,066.95

17. The Commission finds that the Oyen Landowners Group 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 McLennan Ross LLP, dBA Noise Consultants Ltd. and Species Inc. and honoraria claim by certain interveners for the reasons set out below.

4.1.1 McLennan Ross LLP

18. The Oyen Landowners Group was represented by McLennan Ross LLP in the original proceeding. The fees claimed by the Oyen Landowners Group for the legal services provided by Gavin Fitch, QC, Marco Baldasaro, Marika Cherkawsky and Madyson Dietrich relate to reviewing the application, bringing and responding to motions, filing and responding to IRs, researching and addressing questions of law and statutory interpretation, presenting expert and lay evidence, cross examining parties and providing oral final argument.

19. While the Commission finds that the services performed by McLennan Ross were directly and necessarily related to the Oyen Landowners Group's participation in the original proceeding, it finds that some of the fees claimed for these services were unreasonable. Specifically, 14 hours of travel time for two legal counsel to attend a pre-hearing meeting in the project area on September 3, 2019, is not in accordance with the Scale of Costs as that time was not incurred in the context of attendance at a hearing and is accordingly disallowed. In addition, McLennan Ross claimed seven hours of one-way travel time for each of two legal counsel to travel from Calgary to Oyen on December 9, 2019. The Commission considers this to be excessive and without any explanation provided, reduces the travel time to 3.5 hours each to

reflect the approximate time it takes to travel from Calgary to Oyen. As a result, Mr. Fitch's travel hours and Mr. Baldasaro's travel hours are each reduced by 10.5 hours.

20. With respect to Pattern's submission that Mr. Fitch made inefficient use of junior counsel warranting a reduction to the costs awarded, the Commission is satisfied that the use of junior counsel in this proceeding was reasonable. On review of Mr. Fitch's statement of account, the Commission considers that a significant amount of work was completed by junior counsel (i.e., 74.8 hours) compared to work completed by senior counsel (i.e., 91.3 hours). Moreover, the Commission is not convinced that certain activities performed by Mr. Fitch were better suited to junior counsel and, accordingly, the Commission makes no reduction in this regard. As a result, the Commission finds the remaining hours claimed by McLennan Ross, which were claimed in accordance with the Scale of Costs, to be reasonable and approves them.

21. Mr. Fitch and Mr. Baldasaro claimed an accommodation disbursement for five nights and four nights respectively. The Commission considers that because the hearing in the original proceeding spanned three days (December 10-12, 2019) and concluded later in the evening on the final day, four nights of accommodation disbursement is reasonable in the circumstances. The Commission accordingly disallows Mr. Fitch's accommodation expense (\$149.00 room rate and \$25.81 GST and fees) for December 8, 2019.

22. The Commission notes that the accommodation disbursement claimed for McLennan Ross exceeds the maximum \$140.00 per night set out in the Scale of Costs. Since Pattern acknowledged that accommodation in Oyen was not available for the \$140.00 per night authorized by the Scale of Costs and did not object to the \$149.00 per night rate claimed,⁷ the Commission finds the accommodation claims for the participants in this proceeding⁸ to be reasonable in the circumstances, and approves them. The Commission finds the remaining disbursements claimed by McLennan Ross for meals, mileage, parking, transcripts, photocopying and corporate registry searches to be reasonable and approves them.

23. Accordingly, the Commission approves the Oyen Landowners Group's claim for legal fees for McLennan Ross in the amount of \$57,004.00, disbursements of \$6,082.90 and GST of \$3,211.36 for a total of \$66,298.26.

4.1.2 dBA Noise Consultants Ltd.

24. dBA Noise Consultants Ltd. was retained by the Oyen Landowners Group to perform consulting services in the original proceeding. The fees claimed by the Oyen Landowners Group for the consulting services provided by Henk de Haan relate to reviewing the application, conducting a field program including modelling, measuring and recording data, drafting an expert report, assisting with responses to IRs, and preparation for and attending the oral hearing.

25. While the Commission finds that the services performed by dBA Noise Consultants were directly and necessarily related to the Oyen Landowners Group's participation in the original proceeding, it finds that some of the fees claimed for these services were unreasonable. Mr. de Haan claimed time for travel of 4.5 hours for each of four one-way trips in connection with travel to the project area for pre-hearing work and for the hearing itself. Noting that

⁷ Exhibit 25334-X0007, Response_to_OLG_Cost_Claim, PDF page 4.

⁸ That is, for dBA Noise Consultants Ltd., Cottonwood Consultants Ltd., Species Inc. and intervener Brad Kuich.

Mr. de Haan's office is located in Okotoks, the Commission considers 4.5 hours each way for travel to and from Oyen to be excessive and reduces each one-way trip by 0.5 hours to more accurately reflect the time it takes to complete this trip. As a result, the Commission approves a total of 16 hours for travel time for Mr. de Haan. The Commission finds the remaining hours claimed for Mr. de Haan (168.5 hours), which were claimed in accordance with the Scale of Costs, to be reasonable and approves them,

26. The Oyen Landowners Group claimed personal disbursements for Mr. de Haan in the total amount of \$3,786.97. The disbursements included accommodations, hotel levy and fees, meals and mileage 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 conducting ambient sound level measurements would require a trip to the project area to effectively prepare their evidence. In addition, the original proceeding was one of the first opportunities for the Commission to interpret recent amendments to Rule 012⁹ 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 reduction for travel time described in paragraph 25 above.

27. Disbursements were also claimed by dBA Noise Consultants for "modelling costs" and "instrumentation" amounting to \$2,035.00. 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 and instrumentation in full.

28. Lastly, disbursements were claimed by dBA Noise Consultants for photocopying and for accommodations, meals and mileage related to Mr. de Haan's attendance at the oral hearing. The Commission finds these costs to be reasonable and approves them.

29. With respect to all of the disbursements claimed by dBA Noise Consultants, however, there appears to be an error in the recording of GST for disbursements. On page 1 of its Form U2,¹⁰ total disbursements of \$3,786.97 and GST of \$205.25 are listed. When the GST for disbursements (\$205.25) is added to the GST for consulting fees (\$2,396.25), the total for GST should be \$2,601.50. However, on its Form U1,¹¹ a total of \$2,651.67 was claimed for GST. This represents an overcharge of \$50.17 for GST on disbursements. The Commission disallows this GST overcharge.

30. Accordingly, the Commission approves the Oyen Landowners Group's claim for consulting fees for dBA Noise Consultants in the amount of \$47,655.00, disbursements of \$3,786.97 and GST of \$2,588.00 for a total of \$54,029.97.

⁹ Rule 012: *Noise Control*, March 2, 2020.

¹⁰ Exhibit 25334-X0001, PDF page 42.

¹¹ Exhibit 25334-X0001, PDF page 1.

4.1.3 Cottonwood Consultants Ltd.

31. Cottonwood Consultants Ltd. was retained by the Oyen Landowners Group to perform consulting services in the original proceeding. The fees claimed by the Oyen Landowners Group for the consulting services provided by Cliff Wallis relate to reviewing the application, drafting an expert report, assisting with responses to IRs, and preparation for and attending the oral hearing including providing assistance with cross examination.

32. The Commission finds that the services performed by Cottonwood were directly and necessarily related to the Oyen Landowners Group'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 disbursements totalling \$613.04, for accommodations and mileage, to be reasonable and approves them.

33. Accordingly, the Commission approves the Oyen Landowners Group's claim for consulting fees for Cottonwood in the amount of \$21,870.00, disbursements of \$613.04 and GST of \$1,108.72 for a total of \$23,591.76.

4.1.4 Species Inc.

34. Species Inc. was retained by the Oyen Landowners Group to perform consulting services in the original proceeding. The fees claimed by the Oyen Landowners Group for the consulting services provided by Michael Anissimoff relate to reviewing the application, drafting an expert report, assisting with responses to IRs, preparing evidence, and preparation for and attendance at the oral hearing.

35. While the Commission finds that the services performed by Species Inc. were directly and necessarily related to the Oyen Landowners Group's participation in the original proceeding, it finds that some of the fees claimed for these services were excessive. In particular, 96 hours were claimed for report preparation.¹² The Commission recognizes that Mr. Anissimoff has claimed an hourly rate of \$180.00 rather than the \$230.00 per hour that would typically apply to his years of experience, however even under this reduced hourly rate it considers \$17,280.00 to prepare his report to be disproportionate to the fees claimed by other Oyen Landowners Group's witnesses for the same activity. The Commission notes that Mr. Wallis claimed 27 hours or \$7,290.00 for preparation of his report while Mr. de Haan claimed approximately 84 hours or \$22,680.00 for report preparation which included a field program. Accordingly, the Commission reduces the Mr. Anissimoff's fees by 25 per cent (24 hours) in respect of report preparation.

36. Pattern submitted that Mr. Anissimoff's statement of account contained insufficient detail for the Commission to understand the date activities were undertaken and the time incurred with respect to each described service as required by the Scale of Costs. The Commission has reviewed Mr. Anissimoff's statement of account and finds that while exact dates and clearer descriptions of activities undertaken should have been provided, there is sufficient detail for the Commission to determine what activities were performed and when. No reduction is made in this regard.

¹² Exhibit 25334-X0001, PDF page 63.

37. Accordingly, the Commission finds the remaining hours, which were claimed in accordance with the Scale of Costs, to be reasonable and approves consulting fees for Species Inc. in the total amount of \$21,690.00.¹³

38. Mr. Anissimoff claimed disbursements in the total amount of \$1,345.92 for airfare, accommodations, meals, car rental and fuel, and hotel levy/destination marketing fee. He submitted a receipt for \$96.22 for a single meal on December 11, 2019. The Commission finds that this claim is not within the Scale of Costs and reduces this amount to reflect the maximum per diem amount for a dinner of \$15.00. The Commission finds the remaining disbursements to be reasonable and approves them.

39. Accordingly, the Commission approves the Oyen Landowners Group's claim for consulting fees for Species Inc. in the amount of \$21,690.00, disbursements of \$1,264.70 and GST of \$1,222.37 for a total of \$24,177.07.

4.1.5 Intervener honoraria

40. The Oyen Landowners Group claimed attendance honoraria for four days¹⁴ for each of Dennis Fischbuch, Ray Girletz, Wendy Girletz, Wyatt Girletz, and Leslie Girletz (totalling \$400.00 each) and claimed attendance honoraria for one day¹⁵ for Brad Kuich (\$100.00). Since the oral hearing spanned three days (i.e., December 10, 11 and 12, 2019), the claim for attendance honoraria for the first 5 attendees is reduced to \$300.00 each and the claim for Brad Kuich is approved as claimed. This results in a total award of \$1,600.00 for attendance honoraria.

41. In addition, disbursements were claimed for Brad Kuich totalling \$1,170.55, for airfare, accommodations, car rental and fuel, and for Dennis Fischbuch for \$22.08 for mileage. While the Commission finds the disbursements to be reasonable and approves them, it emphasizes that in future applications, interveners requiring significant travel to attend a hearing should file a budget of their anticipated costs, including travel costs. Additionally, consideration should be given to participating through electronic means such as teleconferencing or videoconferencing.

4.1.6 Total awarded to the Oyen Landowners Group

42. For the reasons provided above, the Commission approves the Oyen Landowners Group's claim for recovery of costs in the total amount of \$2,871.31. This amount is composed of intervener honoraria of \$1,600.00, disbursements of \$1,192.63 and GST of \$78.68.

¹³ 112 hours *\$180 + 17 hours *\$90 = \$21,690.00.

¹⁴ Per Exhibit 25334-X0001, PDF page 86, "Summary of Intervener Honoraria Claimed," four full days attendance honoraria was claimed for each 5 interveners for "... December 10, 11, 12 and 13, 2019 ..."

¹⁵ Exhibit 25334-X0001, PDF page 86, "... December 12, 2019 ..."

5 Order

43. It is hereby ordered that:

- (1) Pattern Development Lanfine Wind ULC shall pay intervener costs to McLennan Ross LLP on behalf of the Oyen Landowners Group in the amount of \$170,968.37.

Dated on May 7, 2020.

Alberta Utilities Commission

(original signed by)

Tracee Collins
Commission Member