



**ENMAX Power Corporation  
Highway 8 Transmission Line 138-7.82L Relocation Project**

**Costs Award**

**June 12, 2020**

**Alberta Utilities Commission**

Decision 25364-D01-2020

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**Alberta Utilities Commission**  
**Calgary, Alberta**

**ENMAX Power Corporation**

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**1 Introduction**

1. In this decision, the Alberta Utilities Commission considers applications by Discovery Ridge Community Association (DRCA), the Mortimer Pinebrook Group, Pratap Varshney and the Slopes and Springbank Hill Community Associations (SCA/SBHCA group) for approval and payment of their costs of participation in Proceeding 24831<sup>1</sup> (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
<b>DRCA</b>								
McLennan Ross LLP	\$64,103.00	\$3,615.25	\$3,385.92	\$71,104.17	\$64,103.00	\$3,615.25	\$3,385.92	\$71,104.17
Veritas Litigation Support	\$10,872.00	\$6,472.26	\$867.22	\$18,211.48	\$6,916.80	\$2,624.77	\$443.77	\$9,985.34
Intervener honoraria and disbursements	\$800.00	\$37.26	\$0.90	\$838.16	\$800.00	\$17.94	\$0.90	\$818.84
<b>Total</b>	<b>\$75,775.00</b>	<b>\$10,124.77</b>	<b>\$4,254.04</b>	<b>\$90,153.81</b>	<b>\$71,819.80</b>	<b>\$6,257.96</b>	<b>\$3,830.59</b>	<b>\$81,908.35</b>
<b>Mortimer Pinebrook Group</b>								
Carscallen LLP	\$70,921.00	\$3,027.47	\$3,697.43	\$77,645.90	\$60,282.85	\$2,977.47	\$3,163.02	\$66,423.34
Nican International Consulting Ltd.	\$55,080.00	\$0.00	\$2,754.00	\$57,834.00	\$22,032.00	\$0.00	\$1,101.60	\$23,133.60
Intervener honoraria and disbursements	\$700.00	\$106.00	\$5.30	\$811.30	\$700.00	\$106.00	\$5.30	\$811.30
<b>Total</b>	<b>\$126,701.00</b>	<b>\$3,133.47</b>	<b>\$6,456.73</b>	<b>\$136,291.20</b>	<b>\$83,014.85</b>	<b>\$3,083.47</b>	<b>\$4,269.92</b>	<b>\$90,368.24</b>
<b>Pratap Varshney</b>								
Pratap Varshney	\$16,605.00	\$0.00	\$830.25	\$17,435.25	\$400.00	\$0.00	\$0.00	\$400.00
<b>Total</b>	<b>\$16,605.00</b>	<b>\$0.00</b>	<b>\$830.25</b>	<b>\$17,435.25</b>	<b>\$400.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$400.00</b>
<b>SCA/SBHCA group</b>								
Nancy J. McKenzie Legal & Consulting Services	\$52,920.00	\$2,219.91	\$2,756.05	\$57,895.96	\$52,920.00	\$932.91	\$2,679.05	\$56,531.96
Grid Power Development and Design Inc.	\$53,190.00	\$622.83	\$2,690.64	\$56,503.47	\$21,276.00	\$117.83	\$1,069.69	\$22,463.52
<b>Total</b>	<b>\$106,110.00</b>	<b>\$2,842.74</b>	<b>\$5,446.69</b>	<b>\$114,399.43</b>	<b>\$74,196.00</b>	<b>\$1,050.74</b>	<b>\$3,748.74</b>	<b>\$78,995.48</b>
<b>Total costs claimed by parties</b>				<b>\$358,279.69</b>	<b>Total costs awarded to parties</b>			<b>\$251,672.06</b>

<sup>1</sup> Proceeding 24831: ENMAX Power Corporation Highway 8 Transmission Line 138-7.82L Relocation Project.

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 ENMAX Power Corporation (transmission) to alter and operate Transmission Line 138-7.82L near Highway 8 in the southwest quadrant of the city of Calgary. The proceeding consisted of evidence, rebuttal evidence, information requests (IRs) and responses to IRs and an oral hearing held January 20, to January 23, 2020, in Calgary, including oral argument and reply argument. The close of record for the original proceeding was January 29, 2020, and the Commission issued Decision 24831-D01-2020,<sup>2</sup> on April 22, 2020.

5. The following table sets out the dates on which the cost claim applications were registered and their respective application numbers. The Commission assigned Proceeding 25364 to the applications.

Date	Applicant	Application Number
February 11, 2020	Discovery Ridge Community Association	25364-A001
February 20, 2020	Mortimer Pinebrook Group	25364-A002
February 21, 2020	Pratap Varshney	25364-A003
February 24, 2020	Slopes Community Association and Springbank Hill Community Association	25364-A004

6. All costs claim applications were received within the timeline established by the Commission.

7. On March 4, 2020, ENMAX filed comments on the costs claim applications. On March 12, 2020, and March 16, 2020, respectively, reply comments were filed by the Mortimer Pinebrook Group and the SCA/SBHCA group. The Commission considers the close of record for this proceeding to be March 16, 2020, the final date reply comments were received.

## **2 Commission's authority to award costs and intervenor eligibility**

8. 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.

9. The Commission granted standing in the original proceeding to a number of individuals living north and south of Highway 8, including Mr. Varshney and Donald Mortimer, as well as

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<sup>2</sup> Decision 24831-D01-2020: ENMAX Power Corporation Highway 8 Transmission Line 138-7.82L Relocation Project, Proceeding 24831, April 22, 2020.

members of SCA, SBHCA, DRCA, and Pinebrook Estates Homeowners Association.<sup>3</sup> Pinebrook Estates Homeowners Association joined Mr. Mortimer to form the Mortimer Pinebrook Group. SCA and SBHCA participated together as the SCA/SBHCA group.

10. The individuals and groups granted standing were found to own or occupy land in proximity to the proposed facilities, and therefore were found to have demonstrated land-based rights that may be directly and adversely affected by the facility application. Each of those individuals and groups are “local interveners” within the definition provided in Section 22 of the *Alberta Utilities Commission Act*. The Commission has therefore applied Rule 009 to the costs applications filed in this proceeding.

### 3 Discovery Ridge Community Association

11. The following table summarizes DRCA’s costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
<b>DRCA</b>							
McLennan Ross LLP	208.10	0.00	0.00	\$64,103.00	\$3,615.25	\$3,385.92	\$71,104.17
Veritas Litigation Support	90.60	0.00	0.00	\$10,872.00	\$6,472.26	\$867.22	\$18,211.48
Intervener honoraria and disbursements	0.00	0.00	0.00	\$800.00	\$37.26	\$0.90	\$838.16
Total	298.70	0.00	0.00	\$75,775.00	\$10,124.77	\$4,254.04	\$90,153.81

12. DRCA stated that since ENMAX’s application in the original proceeding had the potential to affect its members’ lands and their ongoing use and enjoyment of their lands, the Commission should consider the principles of expropriation law when assessing DRCA’s costs claim. DRCA requested that its members “be kept economically whole and not be put in a position where they are ‘out of pocket’ as a result of exercising their right to participate in the Commission's proceeding.”<sup>4</sup>

#### 3.1 Comments from ENMAX

13. ENMAX stated that although it did not necessarily agree that the total costs claimed by the interveners were warranted or justified in the circumstances, it recognized the value of meaningful intervener participation in the regulatory process and the function that local intervener costs serve in supporting this outcome.<sup>5</sup> It also stated that in the interest of regulatory efficiency, it is not challenging the bulk of the costs claimed but it does have concerns about costs claimed by the Mortimer Pinebrook Group for one consultant, and by the SCA/SBCA for

<sup>3</sup> Exhibit 24831-X0108, AUC ruling on standing; Exhibit 24831-X0166, AUC ruling on standing of Pinebrook Estates Homeowners Association.

<sup>4</sup> Exhibit 25364-X0002, DRCA Transmittal Letter to the AUC re Local Intervener Cost Claim of the DRCA, PDF page 2.

<sup>5</sup> Exhibit 25364-X0018, EPC\_Cost\_Claim\_Response\_(WCRR\_Hwy\_8), PDF pages 1 and 2.

another consultant. As a result, ENMAX did not specifically comment on DRCA's costs claim application.

### **3.2 Commission findings**

14. The Commission finds that DRCA 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 Veritas Litigation Support for the reasons set out below.

15. The Commission notes that DRCA asked the Commission to consider applying expropriation law principles and ensure DRCA's members are not "out of pocket" as a result of their participation in the original proceeding. When the Commission makes decisions on local intervener costs claims, it applies Rule 009 and the principles embodied in the rule. Guaranteed full cost recovery is not one of those principles. Moreover, the original proceeding was not an expropriation proceeding and none of the participants were at risk of having their lands or an interest in them expropriated by a public authority. The Commission must follow its own established costs requirements and principles when it considers the claims in this proceeding.

#### **3.2.1 McLennan Ross LLP**

16. DRCA was represented by McLennan Ross in the original proceeding. The fees claimed by DRCA for the legal services provided by Gavin Fitch, QC and for Madyson Dietrich, student-at-law, and the support fees claimed for library services provided by Dolores Noga, relate to reviewing the application, reviewing and filing individual statements of intent to participate, drafting IRs, reviewing responses to IRs, drafting submissions on the adjournment request, preparing supplementary IRs, reviewing Veritas's draft drone video evidence, reviewing draft written submissions, reviewing rebuttal evidence, preparing draft opening statements and reviewing direct evidence and preparing for and attending the oral hearing.

17. The Commission finds that the services performed by McLennan Ross were directly and necessarily related to DRCA'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 of \$2,715.75 for transcripts and of \$899.50 for photocopying, which were claimed in accordance with the Scale of Costs, are reasonable. Accordingly, the Commission approves DRCA's claim for legal fees for McLennan Ross in the amount of \$64,103.00, disbursements of \$3,615.25 and GST of \$3,385.92 for a total of \$71,104.17.

#### **3.2.2 Veritas Litigation Support**

18. Veritas Litigation Support was retained by DRCA to perform consulting services in the original proceeding. DRCA claimed fees in the amount of \$10,872.00 for the services provided by Eric Wilson and Hayden Wilson of Veritas in relation to them creating drone video evidence and presenting that evidence during the hearing. DRCA also claimed disbursements for Veritas of \$412.50 for drone and camera operating expenses, \$4,407.50 for specialized graphics processing computer expenses, \$616.00 for specialized graphics processing and video playback computer expenses, \$200.00 for regulatory approvals, \$140.00 for accommodations, \$30.00 for meals and \$666.26 for mileage.

19. The Commission is aware that aerial drone video can be useful in depicting remote areas or terrain that is difficult to access. However, the project considered by the Commission in the original proceeding was entirely within the Calgary transportation and utility corridor and ENMAX filed aerial photographs in evidence that fairly represented the two routes within which it proposed to relocate the transmission line.<sup>6</sup> The Commission must therefore determine whether the fees and disbursements claimed are reasonable, having regard for the video evidence's contribution to the Commission's understanding of the issues in the original proceeding and the costs to create and present the video evidence.

20. In Decision 25195-D02-2020, issued after the close of record in this proceeding, the Commission addressed concerns it had about costs that were being claimed by local interveners for drone video evidence. It stated:

25. ... it appears that the trend of escalating fees is attributable to the additional services needed to produce video evidence that Veritas stated is a higher quality product that is more realistic and has enhanced functionality. Veritas explained that enhanced features, such as 3D animation, are not included in the initial draft videos that are reviewed by Veritas's clients or their counsel; enhanced features are provided only when they are requested.

...

28. ... In the Commission's experience, the drone videos filed in evidence in previous proceedings that were "freeze-frame, basic annotations" are sufficient for the Commission's purposes. Intervenors should therefore be reluctant to ask video service providers to incorporate enhanced features unless they are prepared to bear the entire cost of those enhancements.<sup>7</sup>

21. The Commission finds that although the services performed by Veritas were directly related to DRCA's participation in the original proceeding, the fees and disbursements claimed are not commensurate with the contribution that the drone video evidence made to the Commission's understanding of the issues in the original proceeding. The drone video evidence duplicated some of the photographic evidence that was filed in the original proceeding. In addition, it does not appear that DRCA considered using less costly aerial image alternatives, such as basic freeze-frame drone video or Google maps, to create overhead views of the area for filing in evidence.

22. Given the foregoing, the Commission has decided to reduce the award for the fees claimed to create DRCA's initial draft video, and for Veritas's participation in the oral hearing, by 20 per cent. The Commission has also decided to limit the award for fees claimed to have Veritas revise the video after the draft video evidence was created and reviewed by DRCA's legal counsel to five hours, or \$600.00, which the Commission believes is a reasonable period of time for Veritas to make minor changes or corrections to the draft video evidence.

23. The Commission reiterates what it stated in Decision 25195-D02-2020, that in imposing these fee reductions it does not intend to criticize the services provided by Veritas, the quality of

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<sup>6</sup> Exhibit 24831-X0015, Appendix D - Project Maps and Diagrams.

<sup>7</sup> Decision 25195-D02-2020: Alberta Electric System Operator Needs Identification Document Application EPCOR Distribution & Transmission Inc. Facility Applications West Edmonton Transmission Upgrade Project Costs Award, Proceeding 25195, June 9, 2020, paragraphs 25 and 28.



its product or the conduct of its personnel. It understands that Veritas offers a range of services for a fee and other charges, and that its clients decide which services to purchase. The Commission is instead expressing its concern that not all proceedings can benefit from drone video evidence and that reasonable costs discipline must be exercised when interveners consider including that kind of evidence in their intervention.

24. Veritas's invoice 15-796 indicates that fees claimed by DRCA for Eric Wilson and Hayden Wilson to and including "[a]ttend Frankie online video review session, review first draft of video"<sup>8</sup> total 47.3 hours or \$5,676.00. In addition, Veritas's invoice 15-806 indicates that fees claimed for Veritas's hearing preparation, travel time to the hearing, video display assistance during the hearing and Eric Wilson's participation as a witness total 18.5 hours or \$2,220.00. In accordance with the findings above, the Commission grants 80 percent of those fees, for a total of \$6,316.80.

25. Veritas's invoice 15-796 also indicates that fees for Eric Wilson and Hayden Wilson after the initial draft of the video evidence was prepared total 24.8 hours or \$2,976.00. In accordance with the findings above, the Commission grants \$600.00 of the fees claimed for that portion of the work.

26. The DRCA claimed a disbursement charge of \$412.50 for drone, camera, lens and computing equipment costs relating to Veritas's aerial drone operations. DRCA also claimed a disbursement charge of \$4,407.50, calculated as either \$80.00 or \$95.00 per hour (depending on the computer used) for a total of 47.8 hours, for the use of specialized graphics processing computer equipment and software.

27. Consistent with the findings in Decision 25195-D02-2020, the Commission considers that the amount claimed for the drones, cameras and other equipment used by Veritas in the field to collect the aerial video footage is reasonable and the Commission grants the full \$412.50 disbursement claimed. However, the Commission considers that the inhouse specialized computers and software for which the hourly equipment charge is claimed are akin to tools of the trade that Veritas uses to create the products for which it is paid fees. The Commission normally considers that compensation for the use of such equipment is subsumed in the fees that are awarded to service providers. The Commission is nevertheless prepared to consider granting the claim in this proceeding if the amount is reasonable, but cautions participants that in future costs proceedings the Commission may not grant a claim for the same kind of equipment charge.

28. The Commission notes that the \$4,407.50 equipment charge represents a substantial portion of the costs claimed by DRCA for Veritas: it equates to approximately 40 per cent of the professional fees that were claimed and 25 per cent of the total amount claimed for Veritas. The Commission does not consider the amount claimed for this equipment charge to be reasonable and it is not prepared to grant the full amount. The Commission will instead grant a lesser amount that it believes more reasonably represents the necessary and responsible use of the specialized computer equipment for which the charge was claimed. The Commission will award DRCA \$760.00 of the hourly equipment charges claimed, which represents eight hours' use of the specialized equipment and software for which Veritas charged \$95.00 per hour.

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<sup>8</sup> Exhibit 25364-X0001, PDF page 19, time entry for Hayden Wilson 2019-11-27.

29. The DRCA claimed a \$200.00 regulatory compliance charge in relation to Veritas's costs of insurance, regulatory charges and certification fees. Consistent with Decision 25195-D02-2020, the Commission finds that Veritas's general insurance costs and any regulatory or certification fees that it must pay in order to carry on its business are subsumed in the service fees paid to it and are not recoverable as a disbursement. Therefore, the Commission does not grant that disbursement.

30. DRCA claimed a disbursement of \$616.00 for Veritas's charge for providing a specialized computer to display the aerial video evidence during the oral hearing. The Commission considers that the equipment provided was needed to properly display the video evidence created by Veritas and that all participants in the hearing benefited as a result. The Commission finds that the amount claimed is reasonable and grants the \$616.00 claimed.

31. In addition, the DRCA claimed personal disbursements for Veritas of \$140.00 for accommodations, \$30.00 for meals, \$666.26 for mileage. The Commission finds these amounts, which were claimed in accordance with the Scale of Costs, to be reasonable and approves them. DRCA also claimed GST on mileage in the amount of \$33.31. As the mileage rate of \$0.46 per kilometre allowed in the Scale of Costs is inclusive of GST, this amount is disallowed.

32. For the reasons provided above, the Commission approves the DRCA's claim for consulting fees for Veritas Litigation Support in the amount of \$6,916.80, disbursements of \$2,624.77 and GST of \$443.77 for a total of \$9,985.34.

### **3.2.3 Intervener costs**

33. DRCA claimed attendance honoraria of \$400.00 for each of Ben Lee and Scott Archibald, for four full days attendance at the oral hearing. The Commission finds these claims, and Mr. Lee's disbursement claim of \$17.94 for parking, to be reasonable and grants those amounts. The Commission does not grant Mr. Lee's claim of \$19.32 for mileage because Rule 009 states that only intercity travel distances of 50 kilometres or greater are eligible for a mileage claim.

34. Accordingly, the Commission approves DRCA's claim for intervener honoraria in the total amount of \$800.00, disbursements of \$17.94 and GST of \$0.90 for a total of \$818.84.

### **3.2.4 Total awarded to the Discovery Ridge Community Association**

35. For the reasons provided above, the Commission approves the Discovery Ridge Community Association's claim for recovery of costs in the total amount of \$81,908.35. This amount is composed of legal fees of \$64,103.00, consulting fees of \$6,916.80, intervener honoraria of \$800.00, disbursements of \$6,257.96 and GST of \$3,830.59.

#### 4 Mortimer Pinebrook Group

36. The following table summarizes the Mortimer Pinebrook Group's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
<b>Mortimer Pinebrook Group</b>							
Carscallen LLP	184.40	28.00	9.20	\$70,921.00	\$3,027.47	\$3,697.43	\$77,645.90
Nican International Consulting Ltd.	194.50	9.50	0.00	\$55,080.00	\$0.00	\$2,754.00	\$57,834.00
Intervener honoraria and disbursements	0.00	0.00	0.00	\$700.00	\$106.00	\$5.30	\$811.30
<b>Total</b>	<b>378.90</b>	<b>37.50</b>	<b>9.20</b>	<b>\$126,701.00</b>	<b>\$3,133.47</b>	<b>\$6,456.73</b>	<b>\$136,291.20</b>

#### 4.1 Comments from ENMAX

37. ENMAX submitted that the Mortimer Pinebrook Group's claim for Pablo Argenal of Nican International Consulting Ltd. was disproportionately high relative to the scope and content of Mr. Argenal's evidence in the original proceeding. ENMAX stated that it did not believe that approximately 150 hours were reasonably required for Mr. Argenal to prepare his written evidence, which ENMAX noted was a 19-page report (excluding attachments). ENMAX also stated that the approximately 50 hours of hearing preparation and attendance time claimed were not supported by the nature and scope of the matters at issue or Mr. Argenal's involvement in and contribution to the original proceeding.

38. ENMAX submitted that Mr. Argenal's evidence did not contribute to a better understanding of the issues before the Commission. It stated that Mr. Argenal's written and oral evidence was wholly contingent on the assumption that Substation No. 45 would be required. It submitted that ENMAX's written reply evidence and evidence during oral cross-examination made it clear there was no such requirement, and that Mr. Argenal's dismissal of and disregard for this fact was unreasonable and added unnecessary time and cost to the original proceeding.

#### 4.2 Reply from the Mortimer Pinebrook Group

39. The Mortimer Pinebrook Group stated that Mr. Argenal's costs were necessarily incurred to enable the group to fully participate in the original proceeding, and that it was not until ENMAX's reply evidence was filed that ENMAX took the position that Substation No. 45 was not needed. The Mortimer Pinebrook Group also stated that ENMAX's witnesses admitted that future plans could change with respect to the substation and that ENMAX would not want to eliminate options on the future use of that location. It submitted that this was probative evidence that was relevant to the Commission's decision.

40. The Mortimer Pinebrook Group submitted that Mr. Argenal's preparation costs were reasonable, adding that he was required to review the proceeding record and a significant amount of historical and technical documentation with respect to the distribution system. It stated that Mr. Argenal was also required to review planning documentation on the potential for load growth. The group submitted that this work resulted in his expert report, which predicted that a new substation would be required in the future and preserving the location for that was one benefit of the alternate route.

41. The Mortimer Pinebrook Group stated that the amount of costs claimed for Mr. Argenal's hearing preparation and attendance time were reasonable and justified. It submitted that Mr. Argenal's report was technical in nature and that he assisted the group's counsel in the preparation of cross-examination and argument, which required him to review multiple versions of cross-examination notes and final argument drafts.

#### **4.3 Commission findings**

42. The Commission finds that the Mortimer Pinebrook Group generally acted responsibly in the original proceeding, however, some of the evidence it filed and the issues it raised did not contribute materially to the Commission's understanding of the relevant issues and the consulting fees claimed are excessive. The Commission is therefore unable to approve the full amount of the costs claimed by the Mortimer Pinebrook Group in respect of the services performed by Carscallen LLP and Nican, for the reasons set out below.

##### **4.3.1 Carscallen LLP**

43. The Mortimer Pinebrook Group was represented by Carscallen LLP in the original proceeding. The fees claimed by the Mortimer Pinebrook Group for the legal services provided by Nicholas Ramessar and Michael Niven, QC of Carscallen LLP relate to reviewing the application materials, meeting with clients, drafting and filing written submissions, drafting IRs, drafting responses to IRs, reviewing responses to IRs, reviewing Nican's expert report, finalizing intervenor evidence, reviewing rebuttal evidence, preparing draft opening statements and direct evidence and preparing for and attending the oral hearing.

44. While the Commission finds that the services performed by Carscallen LLP were directly and necessarily related to the Mortimer Pinebrook Group's participation in the original proceeding, it finds that the fees claimed for these services were unreasonable for the following reasons.

45. The Commission considers that an excessive amount of hearing time was spent by the Mortimer Pinebrook Group in evidence and in cross-examination of ENMAX's witnesses on the matter of future Substation No. 45. In its response to ENMAX's comments filed in this proceeding, the Mortimer Pinebrook Group acknowledged that ENMAX had confirmed in its reply evidence that it had abandoned plans to construct the substation and had put in place other plans to manage load growth in the area. It would have been responsible and prudent for the Mortimer Pinebrook Group, at that time, to reconsider its position on that matter and concede the point or substantially revise its approach. That did not occur and as a result the hearing was unnecessarily prolonged with largely irrelevant evidence about the plans and need for the substation that did not contribute to the Commission's understanding of the issues actually arising from the application.

46. For the foregoing reason, the Commission will reduce the costs awarded to the Mortimer Pinebrook Group for Carscallen LLP's fees by 15 per cent. The Commission therefore awards the Mortimer Pinebrook Group \$60,282.85 of the fees claimed for Carscallen LLP's services.

47. The Mortimer Pinebrook Group claimed disbursements for Carscallen LLP of \$2,715.75 for transcripts, \$29.12 for courier, \$215.60 for photocopying, \$10.00 for a USB stick, \$50.00 for

“LTO-Other Services”<sup>9</sup> and \$7.00 for Corporation/Non-Profit Search. On its Form U2,<sup>10</sup> the latter two charges are described at “Miscellaneous ... Carscallen LLP – Searches.” The Commission notes that a costs claimant bears the onus to demonstrate the reasonableness of any cost claimed. When a costs claimant uses a service that requires an access fee, the claimant must demonstrate why it was necessary to use that service. With respect to the search fee claim of \$50.00, the Mortimer Pinebrook Group has not provided an explanation of the nature of the search or why it was considered necessary. The Commission cannot conclude that the cost is reasonable and therefore the claim for the search fee is denied.

48. The Commission finds that the remaining disbursements, which were claimed within the Scale of Costs, are reasonable. Accordingly, the Commission approves the Mortimer Pinebrook Group’s claim for legal fees for Carscallen LLP in the amount of \$60,282.85, disbursements of \$2,977.47 and GST of \$3,163.02 for a total of \$66,423.34.

#### **4.3.2 Nican International Consulting Ltd.**

49. Nican was retained by the Mortimer Pinebrook Group to perform consulting services in the original proceeding. The fees claimed by the Mortimer Pinebrook Group for the services provided by Pablo Argenal of Nican relate to him reviewing the application, visiting the site, researching, compiling, drafting and revising expert evidence report, reviewing IRs, reviewing prior AUC filings in order to review ENMAX’s planning approach, assisting counsel with cross-examination material, developing, editing and commenting on direct evidence, providing technical support to counsel, and participating in the hearing as an expert witness.

50. The Commission finds that the amount of fees claimed for Nican’s services are excessive in comparison to the scope and duration of the proceeding and Nican’s role in the Mortimer Pinebrook Group’s intervention. The Commission also finds that the fees claimed are unreasonable because Nican’s evidence focused on a matter that was not relevant to the issues arising from ENMAX’s application.

51. The Commission accepts ENMAX’s submission that the amount claimed by the Mortimer Pinebrook Group for Nican is excessive. The group claimed fees of \$55,080.00, calculated as 204 hours at \$270.00 per hour. Of that amount, 194.50 hours are claimed for preparation, 6.5 hours are claimed for assisting counsel during his cross-examination of ENMAX’s witnesses, and 3.0 hours are claimed for Mr. Argenal’s participation on the Mortimer Pinebrook Group’s witness panel. The Commission finds that the 194.50 hours claimed by the group for Nican’s preparation are excessive, given Nican’s role in the proceeding as a consultant and the work that would reasonably have been required to prepare the written report filed as evidence in the proceeding.<sup>11</sup> As a comparison, the hours claimed for Nican’s preparation are approximately 80 per cent more than the 108.7 hours claimed by the group for all of its legal counsel’s services in the proceeding, including during the hearing.

52. The Commission also considers that Nican’s evidence and Mr. Argenal’s participation made a limited contribution to the Commission’s understanding of the issues arising in the original proceeding. The Nican report and Mr. Argenal’s evidence were focused on the future

<sup>9</sup> Exhibit 25364-X0006, PDF page 9.

<sup>10</sup> Exhibit 25364-X0006, PDF page 5.

<sup>11</sup> Exhibit 24831-X0185, Expert Report of Nican International Consulting Ltd.

need for Substation No. 45, when ENMAX's evidence was clear that it had abandoned its plans for a substation in that location. This fact undermined the premise of Nican's evidence and limited its usefulness to the Commission.

53. Having regard for the foregoing, the Commission will award 40 per cent of the fees claimed for Nican's services. The Commission therefore approves the Mortimer Pinebrook Group's claim for consulting fees for Nican in the amount of \$22,032.00 and GST of \$1,101.60 for a total of \$23,133.60.

### 4.3.3 Intervener costs

54. The Mortimer Pinebrook Group claimed a \$500.00 honorarium for Donald Mortimer for forming the Mortimer Pinebrook Group, a \$200.00 attendance honorarium for Mr. Mortimer and a \$106.00 disbursement for parking fees. The Commission finds these claims to be reasonable and within the Scale of Costs and approves them.

55. Accordingly, the Commission approves the Mortimer Pinebrook Group's claim for intervener honoraria in the total amount of \$700.00, a disbursement of \$106.00 and GST of \$5.30 for a total of \$811.30.

### 4.3.4 Total awarded to the Mortimer Pinebrook Group

56. For the reasons provided above, the Commission approves the Mortimer Pinebrook Group's claim for recovery of costs in the total amount of \$90,368.24. This amount is composed of legal fees of \$60,282.85, consulting fees of \$22,032.00, intervenor honoraria of \$700.00, disbursements of \$3,083.47 and GST of \$4,269.92.

## 5 Pratap Varshney

57. The following table summarizes Pratap Varshney's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
<b>Pratap Varshney</b>							
Pratap Varshney	61.50	0.00	0.00	\$16,605.00	\$0.00	\$830.25	\$17,435.25
Total	61.50	0.00	0.00	\$16,605.00	\$0.00	\$830.25	\$17,435.25

### 5.1 Commission findings

58. The Commission finds that Mr. Varshney 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 costs claimed for the reasons set out below.

59. Mr. Varshney was granted standing in the original proceeding based on his ownership of a parcel of land located within the Springbank Hill community. Although he participated on the SCA/SBHCA's witness panel, he was not part of that group's intervention, and participated as an independent intervener. Mr. Varshney stated that he has a P.Eng. designation and more than 35 years of experience in that field of work, although he has been retired since 2010. Mr. Varshney

claimed 61.50 hours in professional fees at \$270.00 per hour, comprised of 33 hours attendance at the hearing and the remainder for preparation. He listed the professional services he provided as: attending open houses, reviewing application material, IR responses and evidence, preparing IRs and attending the hearing.

60. The Commission permits qualified interveners to claim professional fees for their own services, provided that the services are directly and necessarily provided to support the intervention, are within the scope of the individual's professional qualifications and have the quality of being technical or expert evidence, and the intervention contributes to the Commission's understanding of the issues arising in the proceeding.

61. The Commission notes that Mr. Varshney claimed eight hours in fees for preparing evidence, however, the only evidence he filed in the proceeding was a photograph and a one-page spreadsheet summarizing his understanding of the costs and impacts of the two routes proposed by ENMAX. Mr. Varshney also issued IRs to ENMAX in which he asked about the location, size, cost and number of poles and other support structures and for information about ground faults in relation to a gas utility pipeline. Mr. Varshney did not file an expert or technical report, and did not cross-examine ENMAX or any other party who participated in the hearing.

62. The Commission finds that Mr. Varshney did not provide professional services in support of his own intervention that are eligible for an award of fees. In the Commission's view, his participation in the proceeding stayed within the role of a local intervener. The Commission therefore awards Mr. Varshney a preparation honorarium in the amount of \$200.00 in recognition of the IRs he issued to ENMAX, and an attendance honorarium of \$200.00.

## 5.2 Total awarded to Pratap Varshney

63. The Commission awards preparation and attendance honoraria to Mr. Varshney in the total amount of \$400.00

## 6 Slopes Community Association and Springbank Hill Community Association

64. The following table summarizes the SCA/SBHCA's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
<b>SCA/SBHCA group</b>							
Nancy J. McKenzie Legal & Consulting Services	114.40	21.50	15.30	\$52,920.00	\$2,219.91	\$2,756.05	\$57,895.96
Grid Power Development and Design Inc.	160.20	24.80	12.00	\$53,190.00	\$622.83	\$2,690.64	\$56,503.47
Total	274.60	46.30	27.30	\$106,110.00	\$2,842.74	\$5,446.69	\$114,399.43

### 6.1 Comments from ENMAX

65. ENMAX submitted that the time claimed by the SCA/SBHCA for Trevor Cline of Grid Power Development and Design Inc. did not bear any reasonable connection to the scope of his

evidence, the matters at issue or his contribution to the Commission's understanding of the issues arising in the original proceeding. ENMAX stated that the following considerations should inform the Commission's decision on the costs claimed for Grid Power:

- Mr. Cline developed several alternative proposals despite the fact that the SCA/SBHCA supported ENMAX's preferred route, adding unnecessary time and cost to the original proceeding.
- Mr. Cline's alternative proposals, which formed the bulk of his evidence, were shown to be imprudent and unreasonable, in part because they were not informed by relevant information from ENMAX or third parties.
- Mr. Cline admitted that his temporary alternatives were of limited value. In addition, his ADSS proposal was rejected by the Commission in Decision 24828-D01-2020.<sup>12</sup>
- Much of the evidence presented by Mr. Cline in the original proceeding was similar to his evidence in Proceeding 24828 for which Grid Power's costs were awarded. ENMAX questioned why Mr. Cline should be allowed his full costs in both proceedings, given the overlap of the work and the evidence.
- Mr. Cline was shown to not have expertise in many of the subjects on which he provided opinion evidence in the original proceeding, for example: project routing and siting, construction costs, property value impacts and environmental impacts.<sup>13</sup>

## **6.2 Reply from the SCA/SBHCA**

66. The SCA/SBHCA acknowledged that it supported ENMAX's preferred route but stated that the purpose of Grid Power's evidence was to demonstrate the potential to further reduce the overall costs and impacts of the project by providing options that would maintain the current alignment and configuration to the greatest extent possible. It added that Mr. Cline did not know that the timing of his options was challenging due to ring road construction pressures.

67. The SCA/SBHCA indicated that Mr. Cline's ADSS proposal was relevant because it addressed the number of poles and the changes that would be required for both the proposed and alternate routes. The group submitted that the amount of time spent on this matter was not material in comparison to the other issues addressed in evidence during the hearing and in final argument by it and other participants. It added that Decision 24828-D01-2020 was not issued until after the conclusion of the hearing in the original proceeding, and so it was reasonable and necessary to raise the ADSS proposal in both proceedings, which ran concurrently, because it affected interveners in both proceedings.

68. The SCA/SBHCA submitted that Mr. Cline's expertise regarding line design, potential for by-pass, line clearances, fiber optics, transmission project management and construction,

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<sup>12</sup> Decision 24828-D01-2020: ENMAX Power Corporation 101 Street Transmission Line 138-7.82L Relocation Project, Proceeding 24828, February 13, 2020.

<sup>13</sup> Exhibit 25364-X0018, EPC\_Cost\_Claim\_Response\_(WCRR\_Hwy\_8), PDF pages 3 and 4.



costing and pipeline/transmission mitigation was supported by his education and work experience.

### **6.3 Commission findings**

69. The Commission finds that the SCA/SBHCA 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 Grid Power for the reasons set out below.

#### **6.3.1 Nancy J. McKenzie Legal & Consulting Services**

70. The SCA/SBHCA was represented by Nancy McKenzie Legal & Consulting Services in the original proceeding. The fees claimed by the SCA/SBHCA for the legal services provided by Nancy McKenzie relate to her reviewing the application, communicating and coordinating with the client, developing SIPs, carrying out an initial impact assessment with the consultant and the clients, developing the case, drafting and/or revising all documents, submissions and filings, carrying out legal research, consulting with witnesses, reviewing direct evidence, representing the group at the hearing, conducting cross-examination and drafting and revising final argument.

71. The Commission finds that the services performed by Nancy McKenzie were directly and necessarily related to the SCA/SBHCA 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. The Commission also finds that the disbursement claims of \$489.33 for accommodations and \$190.58 for parking are reasonable and are approved. However, the Commission finds that the disbursement claim of \$1,540.00 for mileage plus \$77.00 GST thereon was not claimed in accordance with the Scale of Costs.

72. The Scale permits mileage to be claimed for intercity travel for the purpose of attending a hearing and GST is not applied to awards for mileage. The mileage claim for Nancy McKenzie is for 3500 kilometres of vehicle travel, however, the return-trip distance from Thorsby to Calgary is approximately 550 kilometres. The Commission therefore awards the SCA/SBHCA \$253.00 for mileage for Nancy McKenzie, calculated as 550 kilometres at \$0.46 per kilometre.

73. Accordingly, the Commission approves the SCA/SBHCA group's claim for legal fees for Nancy McKenzie in the amount of \$52,920.00, disbursements in the amount of \$932.91 and GST of \$2,679.05 for a total of \$56,531.96.

#### **6.3.2 Grid Power Development and Design Inc.**

74. Grid Power Development and Design Inc. was retained by the SCA/SBHCA to perform consulting services in the original proceeding. The fees claimed by the SCA/SBHCA for the consulting services provided by Trevor Cline relate to him reviewing the application, assisting in preparing IRs, reviewing responses to IRs, preparing a written report for filing as evidence, appearing as a witness, assisting with cross-examination and assisting in preparing written argument and reply argument.

75. While the Commission finds that the services performed by Grid Power were directly and necessarily related to the SCA/SBHCA's participation in the original proceeding, it finds that the fees claimed for these services are unreasonable and excessive for the following reasons.

76. The Commission found that the two alternatives proposed by Grid Power to further reduce the costs to relocate the line in the south-central route were misguided and not viable. The Commission stated in relation to the temporary line and temporary supply proposals:

43. Both temporary alternatives identified by Mr. Cline would require portions of the permanent line route, including structures, to be located in the exclusion zone within which Alberta Transportation specifically stated transmission structures are not permitted. The result is that the temporary measures intended to preserve the existing line route for the long term are misguided because the existing alignment is not viable in either the short or the long term. In the Commission's view, it would not be in the public interest to approve either temporary solution when the permanent solution upon which each is premised is not viable.

44. Given the shortcomings of the proposed temporary alternatives described above and the Commission's finding that neither is a viable proposal, the Commission rejects the options and will not consider them further in this decision.<sup>14</sup>

77. The Commission also found that Grid Power's ADSS proposal was not acceptable and that the cost estimates provided in support of the proposal were unreliable. The Commission stated:

52. Mr. Cline's estimate of the cost to bury the ADSS cable, which is less than 10 per cent of the cost estimated by ENMAX, was not supported by a detailed cost breakdown. In addition, he did not consult with Shaw about the feasibility of his proposal or the cost to underground the ADSS cable. Consequently, the Commission cannot reasonably rely on Mr. Cline's estimate.

53. In any event, the Commission considers that the relatively modest savings suggested by Mr. Cline would not justify the increase in risk to customer reliability that would result if the ADSS cable were buried. In the context of the WCRR construction and resulting changes to the viewscape, the Commission does not consider the reductions in height to the structures estimated by either Mr. Cline or ENMAX to represent a material change in the visual impacts of the project.

54. Given the shortcomings of the ADSS option described above, the Commission rejects the proposal and will not consider it further in this decision.<sup>15</sup>

78. The Commission finds that Grid Power's participation did not contribute materially to the Commission's understanding of the relevant issues arising in the original proceeding. In addition, by advancing alternative proposals for the line relocation that were not viable from inception, or were not supported with reliable cost information and input from affected third parties, SCA/SBHCA unnecessarily prolonged the proceeding for all the participants. Mr. Cline conceded during cross-examination by ENMAX that the expected benefits of the temporary line proposal were reduced after ENMAX revised its original route along the south boundary of the TUC to the south-central route, and that the option itself may not be warranted.<sup>16</sup> The

<sup>14</sup> Decision 24831-D01-2020: ENMAX Power Corporation Highway 8 Transmission Line 138-7.82L Relocation Project, Proceeding 24831, April 22, 2020, paragraphs 43 and 44.

<sup>15</sup> Decision 24831-D01-2020: ENMAX Power Corporation Highway 8 Transmission Line 138-7.82L Relocation Project, Proceeding 24831, April 22, 2020, paragraphs 52 to 54.

<sup>16</sup> Proceeding 24831, Transcript Vol\_03\_2020\_01-22, page 434, line 14 to page 435, line 13.

Commission considers that Mr. Cline should have reassessed his temporary line proposal after ENMAX adjusted its preferred route and removed the proposal from consideration before the hearing commenced, rather than allowing the proposal to stand and having its shortcomings revealed during the hearing. Having regard to the foregoing, the Commission awards the SCA/SBHCA 40 per cent of the fees claimed for Grid Power's services, in the amount of \$21,276.00. The disbursements claimed for Grid Power of \$39.33 for meals, \$69.00 for parking and \$9.50 for photocopying, which were claimed in accordance with the Scale of Costs, are reasonable and are approved.

79. The SCA/SBHCA also claimed a disbursement for Grid Power in the amount of \$505.00 for "technical papers and references." The Grid Power invoice that was filed indicated that material was two publications: "CSA C22.3 NO. 6-13 (R2017) Pipeline coordination" and "C22.3 NO. 1-15 Overhead systems." The group did not explain what those materials were or why Grid Power's acquisition of the material was directly and necessarily related to the proceeding. Without that further justification, the Commission is not prepared to permit an expert consultant to add to its collection of technical and reference material at the expense of the applicant in a proceeding. The Commission therefore denies the \$505.00 claimed as a disbursement by Grid Power for the two publications.

80. Accordingly, the Commission approves the SCA/SBHCA group's claim for consulting fees for Grid Power in the amount of \$21,276.00, disbursements of \$117.83 and GST of \$1,069.69 for a total of \$22,463.52.

### **6.3.3 Total awarded to the SCA/SBHCA**

81. For the reasons set out above, the Commission approves the SCA/SBHCA's claim for recovery of costs in the total amount of \$78,995.48. This amount is composed of legal fees of \$52,920.00, consulting fees of \$21,276.00, disbursements of \$1,050.74 and GST of \$3,748.74.

## **7 Order**

82. It is hereby ordered that:

- (1) ENMAX Power Corporation (transmission) shall pay intervener costs to the Discovery Ridge Community Association in the amount of \$81,908.35. Payment shall be made to McLennan Ross LLP on behalf of the Discovery Ridge Community Association.
- (2) ENMAX Power Corporation (transmission) shall record in its Hearing Cost Reserve Account approved intervener costs in the amount of \$81,908.35.
- (3) ENMAX Power Corporation (transmission) shall pay intervener costs to the Mortimer Pinebrook Group in the amount of \$90,368.24. Payment shall be made to Carscallen LLP on behalf of the Mortimer Pinebrook Group.
- (4) ENMAX Power Corporation (transmission) shall record in its Hearing Cost Reserve Account approved intervener costs in the amount of \$90,368.24.

- (5) ENMAX Power Corporation (transmission) shall pay intervener costs to Pratap Varshney in the amount of \$400.00.
- (6) ENMAX Power Corporation (transmission) shall record in its Hearing Cost Reserve Account approved intervener costs in the amount of \$400.00.
- (7) ENMAX Power Corporation (transmission) shall pay intervener costs to the Slopes Community Association and Springbank Hill Community Association in the amount of \$78,995.48. Payment shall be made to Nancy J. McKenzie Legal & Consulting Services on behalf of the Slopes Community Association and Springbank Hill Community Association.
- (8) ENMAX Power Corporation (transmission) shall record in its Hearing Cost Reserve Account approved intervener costs in the amount of \$78,995.48.

Dated on June 12, 2020.

**Alberta Utilities Commission**

*(original signed by)*

Anne Michaud  
Vice-Chair