



ENMAX Sheppard Inc.

Advance Funding



ALBERTA UTILITIES COMMISSION

Utility Cost Order 2010-003: ENMAX Sheppard Inc.

Advance Funding

Application No. 1605340

Published by

Alberta Utilities Commission

Fifth Avenue Place, 4th Floor, 425 - 1 Street SW

Calgary, Alberta

T2P 3L8

Telephone: (403) 592-8845

Fax: (403) 592-4406

Web site: www.auc.ab.ca

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Calgary, Alberta

**ENMAX Shepard Inc
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**Utility Cost Order 2010-003
Application No. 1605340**

1 INTRODUCTION

1. ENMAX Shepard Inc. (ESI) filed Application No. 1605340 (Application) with the Alberta Utilities Commission (AUC or the Commission) on August 4, 2009, pursuant to section 11 of the Hydro and Electric Energy Act, to construct and operate an 800-megawatt (MW) natural gas-fired combined-cycle power plant (Power Plant).

2. The Commission held the pre-hearing meeting in Calgary on December 1, 2009, before Thomas McGee (Chair) and N. Allen Maydonik, Q.C. (Commissioner). The pre-hearing meeting was held at the Holiday Inn South located at 4206 Macleod Trail South, Calgary, Alberta.

3. On December 7, 2009, the Commission issued Decision [2009-244](#) with respect to the pre-hearing meeting. Decision 2009-244 established a filing schedule for the proceeding and set December 14, 2009 as the deadline for applications for advance funding, pursuant to section 2 of *AUC Rule 009, Rules on Local Intervener Costs*, (Rule 009).

2 APPLICATIONS FOR ADVANCE FUNDING

4. On December 14, 2009 the Commission received applications for advance funding from Shakers Family Fun Centre (Shakers) and Leanne and Dwight Coopersmith (Coopersmiths).

5. Shakers requested advance funding for legal assistance and three experts; their budget for these services was as follows:

- Loss of property Value – Gettel Appraisals \$11,000.00
- Emergency preparedness – Doug McCutcheon \$25,534.50
- Noise Assessment - FDI Acoustics \$14,000.00
- Legal Representation – Ackroyd LLP \$65,000.00

6. The Coopersmiths requested advance funding for legal assistance and one expert; their budget for these services was as follows:

- Noise \$40,500.00
- Legal Representation- Wilson Laycraft \$80,900.00

7. The Coopersmiths specifically requested advance funding of \$40,000.00 for Wilson Laycraft and \$15,000.00 for an unnamed noise expert. The Coopersmiths stated that they were also exploring the possibility of using the same noise expert as Shakers.

8. On December 22, 2009, the Coopersmith's provided additional information regarding their need for advance funding. The Coopersmith's confirmed that they do not have the financial ability to fund the lawyer and experts required to adequately prepare for the hearing. On January 4, 2010, Shakers provided confirmation of their need for financial assistance.

3 VIEWS OF ENMAX SHEPARD INC.

9. On December 21, 2009, ESI filed a response to the advance funding requests filed by Shakers and the Coopersmiths. ESI acknowledged that both of these parties may be entitled to advance funding but expressed some concern regarding the funding requests as submitted.

10. ESI asserted that the budgeted hourly rates for the consultants and lawyers identified by both parties exceeded that allowed in the Commission's Scale of Costs. ESI also expressed concern regarding the scope of review and the potential for duplication of effort between the two parties.

11. ESI noted that the Coopersmith's advance funding request does not set out information regarding the scope of work that their experts will undertake. ESI stated that until the scope of work is identified, it is not possible for it to comment on the reasonableness of the proposed budget.

12. ESI observed that both parties intend to hire a siting expert. ESI noted that the Alberta Energy and Utilities Board has previously directed, that, when a power plant application does not include any alternative sites, the application stands or falls on the applied for site. In light of this determination, ESI argued that the opinion of a siting expert would not be relevant.

13. ESI concluded that any advance funding awarded by the Commission should represent no more than 50 per cent of the Budget accepted by the Commission.

4 COMMISSION FINDINGS

14. Section 2 of Commission Rule 009 states:

“2(1) A local intervener who intends to take part in a hearing or other proceeding may, at any time during the hearing or other proceeding, make a request to the Commission for an advance of funds in accordance with the scale of costs set out in appendix A and submit a budget in accordance with Appendix B.

(2) The Commission may award an advance of funds to a local intervener if the local intervener demonstrates a need for financial assistance to address relevant issues in the hearing or other proceeding.

(3) If the Commission awards an advance of funds to a local intervener under subsection (2), the Commission may

(a) advance the funds to the local intervener and

(i) set out the terms for repayment of the advance to the Commission by the local intervener, or

(ii) direct the applicant to reimburse the Commission for the funds advanced to the local intervener,

or

(b) direct the applicant to advance funds to the local intervener and set out the terms for repayment of the advance to the applicant by the intervener.”

15. The Commission is satisfied that Shakers has demonstrated a need for financial assistance to address relevant issues in the hearing. The estimated fees for counsel and the proposed experts are in accordance with the Commission’s *Scale of Costs*, and appear to be reasonable given the scope of the hearing and the nature of the project. The Commission therefore approves advance funding of \$58,767.25, to be allocated as follows:

•	Loss of property Value – Gettel Appraisals	\$5,500.00
•	Emergency preparedness – Doug McCutcheon	\$12,767.25
•	Noise Assessment - FDI Acoustics	\$7,000.00
•	Legal Representation – Ackroyd LLP	\$32,500.00

16. The Commission is also satisfied that the Coopersmiths have demonstrated a need for financial assistance to address relevant issues at the hearing. Regarding the advance funding requested for legal assistance, the Commission notes that the estimated fees for Wilson Laycraft are approximately \$15,000.00 greater than those estimated by counsel for Shakers. As both parties intend to address similar issues, the Commission is of the view that the legal fees for both parties should not differ substantially. Accordingly, the Commission approves advance funding for legal assistance to the Coopersmiths in the amount of \$32,500.00. Regarding advance funding for a noise expert, the Commission is not prepared to make such an award until the uncertainty regarding who the Coopersmith’s intend to hire is resolved. However, the Commission is prepared to consider a further application for advance funding if the Coopersmith’s finalize arrangements with a noise expert. In this respect the Commission encourages the Coopersmith’s to follow up on using the same noise expert as that retained by Shakers.

17. In giving this advance funding, the Commission makes no determination respecting the value of any interveners' participation. Any intervener organization which accepts advance funding pursuant to this Order accepts the risk that, if its final cost award relating to the Proceedings is less than the amount of the advance funding advanced pursuant to this Order, it will be required to repay the difference.

18. In making its final cost award, the Commission will expect to be satisfied that all fees and disbursements claimed relate to the Proceedings and conform to the *Scale of Costs* adopted by the Commission. The Commission will also consider the effectiveness of the participation, its relevance to the issues, and whether the costs of the participation were necessary and reasonable.

5 ORDER

IT IS HEREBY ORDERED:

1. ENMAX Shepard Inc. shall pay advance intervener costs in the amount of \$57,767.25 to Shakers Family Fun Centre. Payment shall be made to Ackroyd LLP, Attention Richard Secord at 1500 First Edmonton Place, 10665 Jasper Avenue, Edmonton, Alberta T5J 3S9.
2. ENMAX Shepard Inc. shall pay advance intervener costs in the amount of \$32,500.00 to Wilson Laycraft Barristers and Solicitors, Attention: James B. Laycraft at Suite 1601, 333-11th avenue SW, Calgary, AB T2R 1L9.

Dated in Calgary, Alberta on this 7th day of January, 2010.

ALBERTA UTILITIES COMMISSION

(Original signed by)

N. Allen Maydonik, Q.C.
Commissioner

(Original signed by)

Carolyn Dahl Rees
Vice-Chair

(Original signed by)

Thomas McGee
Commissioner