



Direct Energy Regulated Services

2009/2010/2011 Default Rate Tariffs and
Regulated Rate Tariffs

Cost Awards



ALBERTA UTILITIES COMMISSION

Utility Cost Order 2010-004: Direct Energy Regulated Services
2009-2010/2011 Default Rate Tariffs and Regulated Rate Tariffs
Application No. 1600749
Cost Application No. 1605521
Proceeding ID. 149

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1 INTRODUCTION

1. On December 24, 2008, Direct Energy Regulated Services (DERS) filed an Application (Application) with the Alberta Utilities Commission (AUC or Commission).
2. On March 30, 2009, DERS filed an updated benchmarking study prepared by First Quartile Consulting LLC. DERS indicated that it had noted an error in the original benchmarking study and considered it appropriate for completeness to file an updated study. DERS stated that the only change made to the updated benchmarking study from the original benchmarking study was to correct the currency conversion highlighted in the response to UCA-DERS-023(j).
3. The Commission dealt with the Application by way of an oral hearing held in Calgary, Alberta on July 27 and July 28, 2009 before Commission Members Willie Grieve (Chair), Mark Kolesar (Commissioner), and Anne Michaud (Commissioner). The Commission set dates of August 21, 2009 and September 4, 2009 respectively for the submission of written argument and written reply argument.¹
4. On December 3, 2009, the Commission issued Decision [2009-238](#) in respect of the Application.
5. On October 9, 2009, a summary of the costs being claimed was circulated to interested parties. Parties were advised that any comments regarding the figures listed in the summary or the merits of the total costs claimed were to be filed by October 23, 2009. The Commission did not receive any comments. Accordingly, the Commission considers, for the purposes of this Cost Order, the cost process to have closed on October 23, 2009.

2 VIEWS OF THE COMMISSION – AUTHORITY TO AWARD COSTS

6. When assessing a cost claim pursuant to Section 21 of the *Alberta Utilities Commission Act* (AUC Act), the Commission applies Rule 022, *Rules on Intervener Costs in Utility Rate Proceedings* (Rule 022). Rule 022 was revised on September 30, 2008. As the filing of this Application with the Commission was on December 24, 2008, the Commission has assessed the costs claimed in accordance with the provisions of revised Rule 022.
7. In exercising its discretion to award costs, the Commission will, in accordance with section 11 of Rule 022, consider whether an eligible participant acted responsibly and contributed to a better understating of the issues before the Commission, and whether the costs

¹ Decision 2009-238: DERS 2009/2010/2011 DRT and RRT (Application 1600749) (Released: December 3, 2009)

claimed are reasonable and directly and necessarily related to the proceeding. The Commission considers these factors in light of the scope and nature of the issues in question.

8. In the Commission's view, the responsibility to contribute positively to the process is inherent in the choice to intervene in a proceeding. The Commission expects that those who choose to participate will prepare and present a position that is reasonable in light of the issues arising in the proceeding and necessary for the determination of those issues. To the extent reasonably possible, the Commission will be mindful of participants' willingness to co-operate with the Commission and other participants to promote an efficient and cost-effective proceeding.

9. As the costs of a utility proceeding are generally passed on to customers, it is the Commission's duty to ensure that customers receive fair value for a party's contribution. As such, the Commission only approves those costs that are reasonable and directly and necessarily related to the party's participation in the proceeding.

3 VIEWS OF THE COMMISSION – ASSESSMENT

3.1 Direct Energy Marketing Limited

10. On September 28, 2009, the Commission received a cost claim from Direct Energy Marketing Limited (DEML) in the amount of \$201,423.35. The claim was comprised of legal fees incurred by Burnet, Duckworth & Palmer in the amount of \$46,515.00, together with disbursements of \$366.80; consulting fees incurred by First Quartile Consulting in the amount of \$148,045.96, together with disbursements of \$2,593.47; and disbursements incurred by DERS in the amount of \$3,902.12.

11. The Commission has reviewed DEML's cost claims and considers the claims to be reasonable and finds that the claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission approves the claims for fees and disbursements in the amount of \$201,423.35.

3.2 Consumers' Coalition of Alberta

12. The Commission received a cost claim on October 6, 2009 from the Consumers' Coalition of Alberta (CCA) in the amount of \$64,698.06. The claim was comprised of legal fees incurred by Wachowich & Company in the amount of \$17,820.00, together with disbursements and GST of \$1,797.34 and \$980.87, respectively; consulting fees incurred by Regulatory Services Inc. in the amount of \$41,200.00, together with disbursements and GST of \$799.86 and \$2,099.99, respectively.

13. The Commission has reviewed the CCA's cost claims and considers the amounts claimed to be reasonable. The Commission also notes that the claims for professional fees and other claims were in accordance with the *Scale of Costs*. Accordingly, the Commission approves the claims for fees, disbursements and applicable GST in the total amount of \$64,698.06.

4 GST

14. In accordance with the Commission's treatment of the GST on cost awards, DERS is required to pay only that portion of the GST paid by interveners that may not be recoverable through the GST credit mechanism. Accordingly, where parties are eligible for a GST credit, the Commission has reduced this particular portion of their claim. The Commission approved eligible GST in the amount of \$3,080.86. The GST approved by the Commission may also be charged against DERS's Hearing Cost Reserve Account.

15. The Commission emphasizes that its treatment of the GST claimed in no way relieves participants or their lawyers and consultants from their GST obligations pursuant to the *Excise Tax Act*, R.S.C. 1985, c. E-15.

5 ORDER

IT IS HEREBY ORDERED:

1. Direct Energy Regulated Services shall pay intervener costs in the amount of \$64,698.06.
2. Direct Energy Regulated Services external costs in the amount of \$201,423.35 are approved.
3. Direct Energy Regulated Services shall record in its Hearing Cost Reserve Account the allowed external applicant and intervener costs in the amount of \$266,121.41.

Dated in Calgary, Alberta on this 20th day of January, 2010.

ALBERTA UTILITIES COMMISSION

(Original signed by)

Willie Grieve
Chair

(Original signed by)

Mark Kolesar
Commissioner

(Original signed by)

Anne Michaud
Commissioner