



Fortuna GP, Inc.

Advance Funding



ALBERTA UTILITIES COMMISSION

Utility Cost Order 2010-008: Fortuna GP, Inc.

Advance Funding

Application No. 1602573, 1602574

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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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**Fortuna GP, Inc.
Advance Funding**

**Utility Cost Order 2010-008
Application No. 1602573
Application No. 1602574
Proceeding ID. 236**

1 INTRODUCTION

1. On January 14, 2009, Fortuna GP, Inc. (Fortuna) filed Application No. 1602573 and Application No. 1602574, Proceeding ID. 236 (the Proceedings), with the Alberta Utilities Commission (AUC or Commission). The applications were filed, pursuant to sections 11, 14 and 15 of the *Hydro and Electric Energy Act*, to construct and operate an 81-megawatt (MW) wind power plant and substation (Project).

2. On December 3, 2009, the Commission received a letter from Mr. Gavin Fitch, on behalf of his clients: Dale and Dianne Moran, Darrel and Jean Gogel, Carl and Tanya Scheunert, Kevin Nixon, Dean Hastie, Nola and Kenneth Ginther, Dolores and David Jeffares, and Joan and Douglas Motz (collectively, “the Interveners”). The letter requests an advance of funds pursuant to Commission *Rule 009: Rules on Local Intervener Costs*, prior to the Commission issuing the Notice of Hearing.

3. On December 22, 2009, the Commission issued a letter to the Interveners requesting additional information on the need for financial assistance. The Commission received a response from Mr. Fitch on behalf of the Interveners on January 7, 2010.

4. On January 7, 2010, the Commission issued a letter to the parties and established a schedule for a response and reply regarding the advance of funds request. As set out in the schedule, the Commission received a response from Fortuna on January 15, 2010.

2 INTERVENERS’ APPLICATION FOR ADVANCE OF FUNDS

5. The Interveners requested advance funding for legal assistance and expert fees. Their budget for these services was as follows:

- Legal Representation – McLennan Ross \$80,000.00
- Noise Assessment – HFP Acoustical Consultants \$20,000.00

6. On January 7, 2010, the Interveners provided additional information regarding their need for advance funding. The Interveners submitted that they are farmers and ranchers engaged in grain production and livestock production. They further submitted that last year was a difficult year for the agricultural sector, and hence, do not have the funds to hire legal counsel and experts needed for the Proceeding.

3 FORTUNA'S VIEWS ON THE FUNDING REQUEST

7. In its response to the advance funding request filed by the Interveners, Fortuna acknowledged that the Interveners may be entitled to the advancing of funds. Fortuna, however, expressed some concern regarding the funding requests as submitted.

8. Fortuna indicated that the Interveners had not provided sufficient information to demonstrate that all of the Interveners need financial assistance. Hence, Fortuna argued that the requirement of subsection 2(2) of Commission *Rule 009* had not been met.

9. With respect to legal fees, Fortuna indicated that the Interveners' request did not provide an estimated time for activities to be performed by senior and junior counsel. Fortuna further noted that with regard to consultant fees, the advance funding request did not provide the scope of work that the experts will undertake, including the estimated time and hourly rates for their work.

10. Fortuna also argued the Commission, if it decided to approve the advance funding request, should do so on a refundable basis and the amount of the advance should represent no more than 50 per cent of the budget accepted by the Commission.

4 COMMISSION FINDINGS

11. Local interveners seeking advance funding must comply with Section 2 of Commission *Rule 009*. Section 2 requires those seeking advanced funding to submit a request that complies with certain filing and substantive requirements.

12. The filing requirements are detailed in section 2(1), and include the filing of a detailed budget that is in accordance with a specified scale of costs. These budget and scale requirements can be found in Appendix A and Appendix B of the rule.

13. Once the interveners have properly filed their request, the Commission may approve the request "if the local intervener demonstrates a need for financial assistance to address relevant issues in the hearing or other proceeding" (Commission *Rule 009*, section 2(2)).

14. If the Commission approves the request, the Commission may direct the party who filed the application, in this case Fortuna, "to advance the funds to the local intervener and set out the terms for repayment of the advance to the applicant by the intervener" (Commission *Rule 009*, section 2(3)).

15. The Commission is satisfied that the Interveners have demonstrated a need for financial assistance to address relevant issues in the hearing. The categories of expected costs appear to be reasonable given the scope of the hearing and the nature of the project.

16. The Commission, however, is only prepared to approve 50% of the requested funding. The Commission has traditionally only partially funded such requests and the present situation

merits no departure from past practice. If the interveners require more funding in advance of the final cost order, they can reapply to the Commission.

17. The Commission therefore approves advance funding of \$50,000 to be allocated as follows:

•	Legal Representation – McLennan Ross	\$40,000.00
•	Noise Assessment – HFP Acoustical Consultants	\$10,000.00
	TOTAL	\$50,000.00

18. As Fortuna noted, the request for funding was lacking some details. The Commission does not consider these missing details fatal to the request, but in making its final cost award, the Commission must be satisfied that all fees and disbursements claimed relate to the Proceeding and conform to the scale of costs set out in Appendix A of *Rule 009*.

19. The Intervenors have not provided an anticipated hourly rate for expert fees. The Commission expects to see this information at some point in the future.

20. With respect to the legal fees, the hourly rates for Mr. Fitch, Ms. Montgomery and Ms. Jahraus will be assessed according to the hourly rates in the scale of costs set out in Appendix A of *Rule 009*.

21. In approving the funding request, the Commission makes no determination respecting the value of any intervenors' participation.

22. Any intervenors who accept advance funding pursuant to this Order accept the risk that, if the final cost award relating to the Proceeding is less than the amount of the funding advanced pursuant to this Order, the intervenors will be required to repay the difference to the applicant.

23. When making the final cost award, the Commission will consider, amongst other criteria, the effectiveness of the intervenors' participation, the relevance of the intervenors' evidence and argument to the issues of the Proceeding, and whether the costs of the participation were necessary and reasonable.

5 ORDER

IT IS HEREBY ORDERED:

- Fortuna GP Inc. shall pay advance intervener costs in the amount of \$50,000.00 to Dale and Dianne Moran, Darrel and Jean Gogel, Carl and Tanya Scheunert, Kevin Nixon, Dean Hastie, Nola and Kenneth Ginther, Dolores and David Jeffares, and Joan and Douglas Motz. This payment shall be made to McLennan Ross, Attention Gavin Fitch, as legal counsel to these intervenors at 1600 Stock Exchange Tower, 300 – 5 Avenue SW, Calgary, Alberta T2P 3C4.

Dated in Calgary, Alberta on this 26th day of January, 2010.

ALBERTA UTILITIES COMMISSION

(Original signed by)

Thomas McGee
Panel Chair

(Original signed by)

Moin Yahya
Commissioner

(Original signed by)

Tutor Beattie
Commissioner