



**TransAlta MidAmerican Partnership.
Errata to Decision 20405-D01-2015**

Sundance 7 Power Plant

Costs Award

November 12, 2015

Alberta Utilities Commission

Decision 20405-D01-2015 (Errata)
TransAlta MidAmerican Partnership
Sundance 7 Power Plant
Costs Award
Proceeding 20405
Applications 20405-A001, 20405-A002, 20405-A003.

November 12, 2015

Published by

Alberta Utilities Commission
Fifth Avenue Place, Fourth Floor, 425 First Street S.W.
Calgary, Alberta
T2P 3L8

Telephone: 403-592-8845
Fax: 403-592-4406

Website: www.auc.ab.ca

Alberta Utilities Commission

Calgary, Alberta

**TransAlta MidAmerican Partnership
Sundance 7 Power Plant
Costs Award**

**Decision 20405-D01-2015 (Errata)
Proceeding 20405**

1. On October 26, 2015, the Alberta Utilities Commission issued Decision 20405-D01-2015¹
2. On November 5, 2015, McLennan Ross LLP on behalf of TransAlta MidAmerican Partnership (TAMA Power) filed a post-disposition submission notifying the Commission that the Paul First Nation has recently ended its association with Messrs. Neal Barnes and Joel Melanson, representatives of the Paul First Nation at the hearing. TAMA Power requested that the Commission's order in Paragraph 108 (3) of Decision 20405-D01-2015 be amended to permit TAMA Power to make the approved honoraria payments directly to the relevant Paul First Nation members.
3. Pursuant to Section 48 of Rule 001: *Rules of Practice*, the Commission may correct typographical errors, errors of calculation and similar errors made in any of its orders, decisions or directions. The Commission corrects errors of this nature through the issuance of an errata to the original decision.
4. In this Decision 20405-D01-2015 (Errata), Paragraph 108 (3) has been amended to reflect the change which directs TAMA Power to make attendance honoraria payments directly to Paul First Nation members and to pay awarded costs to Mr. Neil Barnes.

Dated on November 12, 2015.

Alberta Utilities Commission

(Original signed by)

Tudor Beattie, QC
Panel Chair

(Original signed by)

Anne Michaud
Commission Member

(Original signed by)

Kate Coolidge
Acting Commission Member

¹ Decision 20405-D01-2015: TransAlta MidAmerican Partnership, Sundance 7 Power Plant, Costs Award. Proceeding 20405, Application 20405-A001, 20405-A002, 20405-A003, October 26, 2015.



TransAlta MidAmerican Partnership.

Sundance 7 Power Plant

Costs Award

October 26, 2015

Alberta Utilities Commission

Decision 20405-D01-2015: TransAlta MidAmerican Partnership

Sundance 7 Power Plant

Costs Award

Proceeding 20405

Applications 20405-A001, 20405-A002, 20405-A003.

October 26, 2015

Published by

Alberta Utilities Commission

Fifth Avenue Place, Fourth Floor, 425 First Street S.W.

Calgary, Alberta

T2P 3L8

Telephone: 403-592-8845

Fax: 403-592-4406

Web site: www.auc.ab.ca

Contents

1	Introduction	1
2	Commission’s authority to award costs	3
3	Views of Parties	3
	3.1 TransAlta MidAmerican Partnership (TAMA).....	3
4	Commission findings	4
	4.1 Gunn Métis Local No. 55.....	5
	4.2 David, Ferne and Philip Cymbaluk (Cymbaluks).....	9
	4.3 Paul First Nation.....	9
5	GST	15
6	Order	16

1 Introduction

1. On April 23, 2014, TransAlta MidAmerican Partnership (TAMA Power) filed an application with the Alberta Utilities Commission to construct and operate the Sundance 7 Power Plant (the project). The Commission assigned Application 1610492-1 and Proceeding 3183 to the application (the Sundance 7 proceeding).

2. On September 10, 2014, the Commission issued a notice of the application and advised any persons who had concerns or objections to the application to submit a statement of intent to participate (SIP). The Commission also held an information session on October 2, 2014, in Stony Plain, Alberta.

3. The Commission received SIPs from:

- Ferne Cymbaluk
- Philip Cymbaluk
- David Cymbaluk
- Tammi Cymbaluk Breymann
- Summer Village of Kapasiwin
- Linda Duncan
- Donna Thomas
- Barbara Henderson
- Mewassin Community Council
- Samson Cree Nation
- Alexis Nakota Sioux Nation
- Gunn Métis Local 55 on behalf of the Lac St. Anne Métis (Gunn Métis)

4. On December 1, 2014, the Commission issued its ruling with respect to standing before the Commission and a notice of hearing.

5. By letter dated February 20, 2015, the Paul First Nation requested permission to participate in the proceeding, and expressed concern about, among other things, the project's cumulative impacts on its aboriginal and treaty rights from increased traffic, noise and activity.

6. On February 27, 2015, the Commission issued a ruling with respect to the standing of the Paul First Nation and also granted the Paul First Nation a one-week extension for the filing of its evidence. In its standing rulings, the Commission assumed, without deciding, that both the Gunn Métis and the Paul First Nation were entitled to exercise the rights they asserted and found that

each had demonstrated a potential direct and adverse effect as a result of the construction and operation of the project.

7. The hearing commenced on April 13, 2015, in Stony Plain, adjourned on April 17, 2015 and resumed in Edmonton from April 20 to 21, 2015.

8. The Commission considered the close of record for the Sundance 7 proceeding to be April 21, 2015, which corresponds to the completion of the oral hearing.

9. On May 4, 2015, Woodward & Co. LLP submitted a costs claim application on behalf of the Gunn Métis to the Commission in respect of the Sundance 7 proceeding. The Commission assigned Application 20405-A001 and Proceeding 20405 to the costs claim application.

10. On May 20, 2015, Ackroyd LLP submitted a costs claim application on behalf of David, Philip and Ferne Cymbaluk to the Commission in respect of the Sundance 7 proceeding. The Commission assigned Application 20405-A002 the costs claim application.

11. The Commission circulated a summary of the costs claimed to interested parties on May 27, 2015. 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 June 9, 2015.

12. In a letter dated May 29, 2015, Ackroyd LLP notified the Commission that it had inadvertently not included the costs for transcripts from Amicus Reporting Group to its clients' costs claim application and submitted a revised costs claim application to the Commission.

13. On June 2, 2015, the Paul First Nation made a late costs filing with the Commission with respect to its participation in the Sundance 7 proceeding. It explained that the late filing was due to a misunderstanding on the close of record date of the Sundance 7 proceeding and because certain Paul First Nation elders were not available due to health issues.

14. On June 9, 2015, the Commission received comments from TAMA Power with respect to costs claimed by interveners in the Sundance 7 proceeding.

15. On June 9, 2015 the Commission issued Decision [3183-D01-2015](#)¹ in respect of the Sundance 7 proceeding.

16. On June 18, 2015, the Commission made a ruling regarding the Paul First Nation's late costs filing in which it allowed the late filing based on the reasons provided. The Commission also issued Information Requests (IRs) to the Paul First Nation with respect to certain consulting costs claimed in the costs application with a deadline for IR responses of June 26, 2015.

17. On July 3, 2015, the Commission circulated a revised summary of costs claimed 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 July 17, 2015.

18. The Paul First Nation submitted a response to the Commission's IRs accompanied with revised Commission U Forms on July 17, 2015, and the Commission issued correspondence

¹ Decision 3183-D01-2015: TransAlta MidAmerican Partnership. Sundance 7 Power Plant, Proceeding 3183, Application 1610492-1, June 9, 2015.

asking parties who wished to file any additional comments to do so by July 28, 2015. No additional comments were received from parties.

19. The Commission considers the close of record for this costs proceeding to be July 28, 2015.

2 Commission's authority to award costs

20. When assessing costs claims pursuant to Section 21 of the *Alberta Utilities Commission Act*, the Commission applies AUC [Rule 009: Rules on Local Intervener Costs](#) (Rule 009). In section 7, Rule 009 prescribes a *Scale of Costs* applicable to all costs claimed.

21. In exercising its discretion to award costs, the Commission, in accordance with Section 7 of Rule 009, will consider whether an eligible participant's costs are reasonable and directly and necessarily related to the proceeding and whether the eligible participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Commission.

3 Views of Parties

3.1 TransAlta MidAmerican Partnership

22. TAMA Power raised concerns with respect to the costs claimed by the Gunn Métis' experts. TAMA Power requested that the Commission disallow the entire costs claim or substantially apply a reduction to the amount claimed for these experts. TAMA Power submitted that:

.....the evidence of all three of GML's expert witnesses was largely if not entirely irrelevant. Therefore, TAMA [Power] submits they failed to meet the threshold criterion of being "reasonable" and "directly and necessarily related to the hearing". Further, they failed to meet the criterion of having "contributed to a better understanding of the issues before the Commission".²

23. It further requested that the honoraria claimed by the Gunn Métis be denied because the Gunn Métis had legal representation.

24. TAMA Power also opposed both categories of costs claimed by the Paul First Nation: honoraria claimed by members of the Paul First Nation beyond the amounts permissible in the *Scale of Costs*, and consultant fees.

25. The specific concerns raised for the fees claimed will be further discussed in the following sections.

26. TAMA Power also noted that some of the fees claimed for both Ackroyd LLP and Woodward & Co. LLP were incurred before the notice of hearing was issued. TAMA Power stated that it understood that it was the Commission's practice to have legal fees restricted to those incurred after the issuance of the notice of hearing.

² 20405-X0029 page 3.

4 Commission findings

General issues

27. The application that led to Decision 3183-D01-2015 was filed on April 23, 2014.
28. Mr. David Cymbaluk was registered by his legal counsel on June 18, 2014 and the first invoices for legal fees were dated May 28, 2014. Woodward & Co. LLP registered on behalf of the Gunn Métis on October 24, 2014, and the first charges were incurred on October 14, 2014.
29. The Commission issued a notice of hearing on December 1, 2014.
30. A party's ability to claim costs is tied to being classified as a local intervener pursuant to AUC Rule 009. A "local intervener" as defined in Section 22 of the *Alberta Utilities Commission Act* includes those persons who have an interest in, and are in actual occupation of or are entitled to occupy land that may be directly and adversely affected by a decision or order of the Commission. A person who demonstrates the potential for direct and adverse effect is said to have "standing". Pursuant to the *Alberta Utilities Commission Act*, if it appears to the Commission that its decision or order on an application may directly and adversely affect the rights of a person, the Commission is required to, among other things, hold a hearing. However, a person who is not granted standing may not claim costs.
31. Further, AUC Rule 009 sets out the criteria for awarding costs. It states:
 - 7.1 The Commission may award costs, in accordance with the scale of costs set out in Appendix A, to a local intervener 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
32. Although it has been the Commission's past practice to only permit cost recovery after the notice of hearing is issued, in this case, the Commission is awarding costs for legal fees incurred after the application was filed but prior to the issuance of the notice of hearing, for the reasons set out below.
33. The legal fees incurred by the Gunn Métis were reasonably necessary to assist the Gunn Métis to prepare its intervention. Woodward & Co. LLP was engaged to, among other things, file a motion for confidentiality for documents filed in support of the Gunn Métis' statement of intent to participate. The documents filed prior to the notice of hearing on behalf of the Gunn Métis addressed legal issues. Accordingly, the Commission has reviewed the charges and determines that the legal work performed was directly and necessarily related to the application considered in the Sundance 7 proceeding and was reasonable in the circumstances.
34. With respect to the legal charges incurred by the Cymbaluks prior to the notice of hearing being issued, an important factor for the Commission was the Cymbaluks' prior history with the applicant and the fact that their lands are located immediately adjacent to the project site. Further, the Commission finds that the legal work performed was directly and necessarily related to the application considered in the Sundance 7 proceeding. The Commission will consequently allow those fees incurred prior to the issuance of the notice of hearing that were necessary to

engage counsel to assist in their intervention. Subject to the findings below, such costs are therefore approved in full.

4.1 Gunn Métis Local 55

35. Woodward & Co. LLP submitted a costs claim on behalf of the Gunn Métis for recovery of costs totalling \$162,840.14. The claim requested approval of the following costs:

- \$114,435.85 for Woodward & Co. LLP comprised of legal fees of \$97,662.75, disbursements of \$11,337.89 and GST of \$5,435.21,
- \$8,127.26 for Dr. Joseph Vipond, comprised of \$7,275.00 in consulting fees, disbursements of \$479.52 and GST of \$372.74,
- \$13,469.09 for Dragonfly Ecological Services, comprised of consulting fees for Ms. Karen Kubiski of \$12,600.00, disbursements of \$237.00 and GST of \$631.61,
- \$22,208.41 for the Pembina Institute, comprised of consulting fees for Mr. Andrew Read, Mr. Benjamin Thibault and Roberta Franchuk of \$21,110.00, disbursements of \$42.31 and GST of 1,056.10,
- \$4,599.53 for the Gunn Métis comprised of \$2,500.00 for preparation honoraria, \$1,500.00 for attendance honorarium and disbursements of \$599.53.

36. Woodward & Co. LLP advised that on April 17, 2015, TransAlta Canadian Gas Development LP, an affiliate of TAMA Power, made an advance payment of \$75,276.75 to Woodward & Co. LLP but that this amount was not reduced from the global amount claimed.

Woodward & Co. LLP

37. The costs claim for Woodward & Co. LLP relates to 438.45 hours of legal services. The firm claimed 288.25 hours for preparation, which included drafting and filing of confidentiality motions, replying to motions, drafting of supplemental information responses from the Commission and TAMA Power, and preparing written evidence; 117.5 for attendance at the oral hearing; and 32.7 hours related to argument.

38. The Commission considers that retaining four counsel to assist the Gunn Métis to participate in the Sundance 7 proceeding was excessive considering the number of people involved and the similarity of issues raised by individual members. Further, there were a limited number of experts involved. Also, Ms. Biem and Ms. Israel prepared for and appeared at the hearing and were involved throughout the Sundance 7 proceeding. The need for additional counsel was not demonstrated and the fees have been reduced accordingly.

39. In addition, the Commission considers that the hours claimed for argument are not reasonable because the argument was general in nature and overbroad in that it was not limited to the issues arising from the application. Accordingly, the Commission has reduced the hours claimed for argument by 50 per cent.

40. The Commission has reviewed the Gunn Métis' costs claim application relating to its retention of Woodward & Co. LLP, and finds that the remaining hours claimed for legal related

work are reasonable given the tasks described and that the costs incurred are in accordance with the *Scale of Costs*.

41. The Commission has also reviewed the claim for disbursements on behalf of Woodward & Co. LLP, incurred during the oral hearing in the amount of \$11,337.89 comprised of transcript fees from the Amicus Reporting Group, air travel, accommodation, meals, taxi fares and other office disbursements and finds that all the claims for recovery of disbursements are reasonable and in accordance with the *Scale of Costs*. The Commission approves full recovery of the disbursements claimed in the amount of \$11,337.89.

42. The Commission therefore approves recovery of legal costs for Woodward & Co. LLP in the total amount of \$110,368.79, which is composed of legal fees in the amount of \$93,775.25, disbursements in the amount \$11,337.89, and GST in the amount of \$5,255.65

Dr. Joseph Vipond

43. The fees for Dr. Vipond relate to 52.00 hours of consulting services in the amount of \$7,275.00. The hours incurred included 40 hours for review of the application, preparation of the air quality report and preparation for the hearing. The remaining 12 hours were incurred for Dr. Vipond's attendance at the oral hearing.

44. TAMA Power submitted that Dr. Vipond explained little about the project itself and instead simply discussed existing emissions levels in the Capital Airshed. According to TAMA Power, Dr. Vipond acknowledged that he is an advocate for phasing out coal-fired generation and TAMA Power submitted that his testimony at the hearing provided him an opportunity to advance that position.

45. For the reasons that follow, the Commission finds that Dr. Vipond's contribution and evidence did little in advancing a better understanding of whether approval of the project might create adverse health effects. In Decision 3183-D01-2015 the Commission stated:

Dr. Vipond has experience and expertise in human health as an emergency room physician. He also provided an opinion about the general health effects of the project on Gunn Métis members and stated that his conclusions in this regard were based on his review of literature. Dr. Vipond did not, however, appear to have specialized knowledge of, or experience with air emissions and their health effects specifically. Consequently, the Commission finds that Dr. Vipond lacks the necessary skills, experience and training to comment on the interpretation of epidemiologic studies or air modelling. This apparent unfamiliarity was taken into account by the Commission when it weighed Dr. Vipond's evidence on the general health impacts of the project.³

46. As such, the Commission did not find Dr. Vipond's interpretation of the literature helpful and gave the literature cited by Dr. Vipond no weight. Further, the Commission found:

Dr. Vipond's report discussed the health impacts of PM2.5 and NOx, such as respiratory

³ Decision 3183-D01-2015 TransAlta MidAmerican Partnership, Sundance 7 Power Plant, Proceeding 3183, Application 1610492-1, June 9, 2015, at para 298.

and cardiovascular disease, morbidity and mortality. His evidence does not demonstrate that Sundance 7 is a significant source of these emissions or that the net increase in emissions would result in these health effects. Dr. Vipond did not correlate the levels predicted by Golder's air modelling with the health effects that would result. In addition, he provided little rationale for his predictions on the number of people who would experience health effects from the project.⁴

47. The report prepared by Dr. Vipond focused on the air quality impacts of the greater Capital Region and did not provide a cogent connection between emissions from the project and associated health impacts. Accordingly, this evidence was of limited assistance to the Commission in making a finding of any incremental change in air quality having potential health effects for those living in the region. Further, Dr. Vipond appeared unfamiliar with the emissions levels from the project. For example, in his report, Dr. Vipond indicated that SOX levels would be significant but when questioned at the hearing stated that SOX was not a concern for the project. The Commission therefore considers that a reduction of 50 per cent for preparation fees is warranted with respect to the consulting fees claimed for Dr. Vipond.

48. The Commission has also reviewed the disbursements claimed by Dr. Vipond in the amount of \$479.52 and finds that the disbursements claimed are in accordance with the *Scale of Cost* and therefore approves the full claim for disbursements.

49. Accordingly, the Commission approves recovery of costs claimed by Dr. Vipond for consulting fees in the total amount of \$4,992.25, which is composed of consulting fees in the amount of \$4275.00, disbursements in the amount of \$479.52 and GST in the amount of \$237.73.

Dragonfly Ecological Services

50. The costs claim for recovery of fees for Dragonfly Ecological Services relates to 109.00 hours of consulting services performed by Ms. Karen Kubiski in the amount of \$12,600.00. The hours incurred were for field assessments, report writing, hearing preparation and travel; and 8 hours incurred for attendance at the oral hearing.

51. TAMA Power submitted that Ms. Kubiski was not able to demonstrate that sweetgrass would be impacted by the project and that such evidence did not contribute to a better understanding of the evidence before the Commission.

52. The Commission has assessed the costs claim for Ms. Kubiski and finds that the hours claimed for preparation are excessive given that the evidence presented by Ms. Kubiski was general in nature.

53. The core of Ms. Kubiski's evidence focussed on the loss of sweetgrass, a sensitive species that is ethnobotanically important to the Gunn Métis, including its loss due to fragmentation. The Commission found that Ms. Kubiski's report was insufficient to support the proposition that the project would increase fragmentation. Further, the Commission has reviewed the evidence that was the subject of a confidentiality ruling and finds that Ms. Kubiski's evidence was of limited assistance.

⁴ Ibid at para 304.

54. With regard to health impacts, which Ms. Kubiski's discussed in in her report, the Commission found as follows:

While Ms. Kubiski's report comments on the health impacts associated with PAHs, consideration of the emission levels from Sundance 7 was absent. In this regard, the evidence submitted by TAMA Power indicates that the project will be an insignificant source of PAHs. The Commission therefore finds that there is insufficient evidence before it to support the conclusion that there will be any adverse health effects to Gunn Métis members who may ingest or otherwise contact plants growing in the project area.⁵

55. In light of the above-noted findings, the Commission reduces the preparation fees claimed by 40 per cent and approves recovery of \$6,840.00 in consulting fees.

56. The Commission has also assessed the costs claim for disbursements and notes that all the fees claimed for meals and mileage are in accordance with the *Scale of Costs*. The Commission therefore approves total disbursements claimed for Ms. Kubiski in the amount of \$237.48.

57. Given the above findings, the Commission approves recovery of consulting fees for Ms. Kubiski in the total amount of \$8,313.35, which is composed of consulting fees of \$6,840.00, disbursements of \$237.48, and GST in the amount of \$395.87.

Pembina Institute

58. The costs claim set out 104 hours of consulting services performed by Mr. Andrew Read, Mr. Benjamin Thibault and Ms. Roberta Franchuk of the Pembina Institute in the amount of \$21,110.00. The hours incurred included 96.00 hours for review of the TAMA Power application, data collection and assessment, report writing, and preparation of cross examination. The remaining hours were claimed for attendance at the oral hearing.

59. TAMA Power submitted that Mr. Read's evidence did not relate to the project but rather consisted of a general discussion of air quality issues in the city of Edmonton (also referred to as the Capital Airshed). While this discussion may have been of general interest, it was not of any specific relevance to the project.

60. The Commission finds that the evidence provided by the Pembina Institute was of limited assistance to the Commission. In his evidence, Mr. Read gave an explanation of the air quality in the area, including current air modelling stations. He also gave an explanation of air quality standards in force in Alberta as well as greater air policy issues. However, Mr. Read did not provide site-specific data related to construction and operation of the project. As a result, the Commission finds that Mr. Read's evidence was general in nature and was not helpful in determining whether the project might result in adverse impacts on air quality.

61. The Commission has also reviewed the invoices by the Pembina Institute and is not satisfied that the fees related to a second consultant, Mr. Thibault, were warranted given the nature of the report.

⁵ Ibid at para 312.

62. For this reason, the Commission considers that a reduction of 70 percent of the preparation time is warranted. Consulting fees are approved in the amount of \$7,460.00

63. The Commission determines that the fees claimed for meals and mileage are reasonable and in accordance with the *Scale of Costs*. The Commission therefore approves disbursements claimed in the amount of \$42.31. Based on the above assessment, the Commission approves recovery of consulting fees for the Pembina Institute in the total amount of \$7,877.42, which is composed of consulting fees of \$7,460.00, disbursements of \$42.31 and GST in the amount of \$375.12.

Gunn Métis Local 55

64. In assessing the costs claim of the members of the Gunn Métis, the Commission must consider Section 7 of Rule 009. Under this section, interveners who prepare a submission without the assistance of legal counsel or a consultant may claim up to \$2,500.00 for a preparation honorarium. In this case, the Gunn Métis was represented by legal counsel; therefore, the Commission denies the preparation honorarium claimed.

65. With respect to the claims for attendance honorarium, the Commission finds that not all the honoraria claimed for the members of the Gunn Métis are reasonable and in accordance with Section 7 of Rule 009 and within the Commission's *Scale of Costs*. The Gunn Métis retained two lawyers in relation to Proceeding 3183. As such, Ms. Crossen's and Dr. Friedel's remote monitoring of the hearing on April 15, 16, 17 and 20, 2015, is not recoverable. The Commission considers that the members of the Gunn Métis attended some portions of the hearing and therefore approves the amount of \$800.00 for attendance honoraria. The claim for disbursements for meals, mileage and parking in the amount of \$599.53 is also reduced to \$239.93 to account for disbursements claimed during monitoring of the hearing on the dates indicated.

Accordingly, the Commission approves recovery of costs claimed for attendance honorarium in the amount of \$800.00 and disbursement in the amount of \$239.93

Gunn Métis Summary

66. The Commission has considered the costs submitted by the Gunn Métis in its entirety and, following the above assessment, approves costs recovery in the total amount of \$132,603.74, composed of \$93,775.25.00 in legal fees, \$19,415.00 in consulting fees, \$800.00 in honoraria, \$12,337.13 in disbursements, and GST in the amount of \$6,276.36.

67. In approving the final costs to be awarded with respect to the costs claim for the Gunn Métis, the Commission must consider the funding amount of \$75,276.75 advanced to Woodward & Co. LLP on April 17, 2015. Accordingly, the Commission approves the final amount to be recovered by Gunn Métis in the total amount of \$57,326.99.

4.2 David, Ferne and Philip Cymbaluk (Cymbaluks)

68. Ackroyd LLP (Ackroyd) submitted a costs claim on behalf of the Cymbaluks for recovery of costs totalling \$196,602.64. The claim requested approval of the following costs:

- \$147,934.92 for Ackroyd LLP, comprised of legal fees of \$134,197.50, disbursements of \$6,706.47 and GST of \$7,030.95,

- \$22,841.70 for FDI Acoustics Inc., comprised of \$21,280.00 in consulting fees, disbursements of \$474.00 and \$ GST of \$1,087.70,
- \$4,288.37 for Design Services, Inc., comprised of consulting fees of \$4,233.15 and disbursements,
- \$19,860.75 for Zelt Professional Services Inc., comprised of consulting fees of \$18,915.00 and GST of 945.75,
- \$1,676.90 for attendance honoraria comprised of \$400.00 for Ferne Cymbaluk, \$350.00 for David Cymbaluk and \$150.00 for Philip Cymbaluk, disbursements of \$772.07 and GST of 4.83.

Ackroyd LLP

69. The costs claim for Ackroyd LLP relates to 551.30 hours of legal services. The hours claimed include 282.80 hours for preparation and are comprised of a review of the application, reviewing and drafting of information requests, drafting of information responses, filing of a motion, 126.40 hours in attendance at the oral hearing; and 42.10 hours related to argument.

70. The Commission considers that retaining two junior counsel and one senior counsel to assist the Cymbaluks in participating in the proceeding was not reasonable because the issues raised related to their residence. Further, the group had a limited number of experts, and one junior counsel prepared for and appeared at the hearing and was involved throughout the proceeding. The need for two junior counsel was not demonstrated. The Commission has consequently disallowed 35.40 hours which relates to \$7,434.00 in legal fees. The Commission approves the remaining hours claimed for legal related work and finds the costs claimed reasonable for the tasks performed in the Sundance 7 proceeding.

71. The Commission has also reviewed the claims for disbursements in the amount of \$6,706.47, comprised of fees for transcript from the Amicus Reporting Group, meals, car rental and mileage and other office related disbursements. The Commission finds that the claim for recovery of disbursements is reasonable and in accordance with the *Scale of Costs*, and approves full recovery of the disbursements claimed in the amount of \$6,706.47.

72. Accordingly, the Commission approves recovery of legal costs for Ackroyd in the total amount of \$140,515.17, which is composed of legal fees in the amount of \$127,117.50, disbursements in the amount \$6,706.47, and GST in the amount of \$6,691.20.

FDI Acoustics Inc.

73. The costs claim for recovery of fees to FDI Acoustics Inc. relates to 114.00 hours of consulting services performed by Mr. James Farquharson in the amount of \$22,841.70. The hours incurred included 108.00 hours for review of the application, review of TAMA Power's noise impact assessment report, preparation of information requests and response to information requests, review of rebuttal evidence, preparation of an expert report, and 6 hours for attendance at the oral hearing.

74. The Commission has reviewed the costs claim for consulting fees and finds that the hours claimed are reasonable given the tasks described in the costs claim and finds the fees are in

accordance with the *Scale of Costs*. The Commission approves recovery of consulting fees claimed for FDI Acoustics Inc. in the amount of \$21,280.00.

75. The Commission further finds the claims for disbursements in the amount of \$474.00 for air travel, car rental and parking during the oral hearing to be reasonable and in accordance with the *Scale of Costs*.

76. Accordingly, the Commission approves recovery of consulting fees for FDI Acoustics Inc. in the total amount of \$22,841.70, which is composed of consulting fees of \$21,280.00, disbursements of \$474.00 and GST in the amount of \$1,087.70.

Design Services, Inc.

77. The costs claim for recovery of fees to Design Services, Inc. relates to 18.00 hours of consulting services performed by Mr. James Robert Benya in the amount of \$4,288.37. The hours incurred included review of the application, developing a report on light and the presentation of evidence at the hearing.

78. The Commission finds that the hours claimed are reasonable given the tasks described in the costs claim and that the fees claimed are in accordance with the *Scale of Costs*. The Commission approves recovery of consulting fees claimed for Design Services, Inc. in the amount of \$4,233.15.

79. The Commission further finds the claims for disbursements in the amount of \$55.22 for a foreign transaction and a wire transfer fee to be reasonable.

80. Accordingly, the Commission approves recovery of consulting fees for Design Services, Inc. in the total amount of \$4,288.37, which is composed of consulting fees of \$4,233.15 and disbursements of \$55.22.

Zelt Professional Services Inc. (Zelt PSI)

81. The costs claim for recovery of fees to Zelt PSI relates to 97 hours of consulting services performed by Mr. Brian Zelt in the amount of \$19,860.75. The hours incurred included a review of the application, a review of TAMA Power's risks assessment report, the preparation of information requests regarding anhydrous ammonia risks, and the preparation of evidence for the oral hearing.

82. The Commission finds that the hours claimed are reasonable given the tasks described in the costs claim and that the fees are in accordance with the *Scale of Costs*. The Commission approves recovery of consulting fees claimed for Zelt PSI in the amount of \$18,915.00.

83. Accordingly, the Commission approves recovery of consulting fees for Zelt PSI in the total amount of \$19,860.75, which is composed of consulting fees of \$18,915.00 and GST in the amount of \$945.75.

David, Ferne and Philip Cymbaluk honoraria fees

84. In considering the Cymbaluks' costs claim, the Commission finds that the fees for the attendance honoraria are reasonable, in accordance with Section 7 of Rule 009 and within the

Scale of Costs. The Commission approves the amount of \$900.00 for attendance honoraria. The claim for disbursements for meals, mileage and parking in the amount of \$775.57 is in accordance with the *Scale of Costs* and is also approved.

85. The Commission therefore approves the total amount of \$1,675.57: \$737.99 for David Cymbaluk, \$788.91 for Ferne Cymbaluk and \$150.00 for Philip Cymbaluk.

Cymbaluks Summary

86. The Commission has considered the costs claim submitted by the Cymbaluks in its entirety and, following the above assessment, approves costs recovery in the total amount of \$189,181.55, composed of \$127,117.50 in legal fees, \$44,428.15 in consulting fees, honoraria fees of \$900.00, and \$8,011.26, in disbursements and GST in the amount of \$8,724.64.

4.3 Paul First Nation

87. K & R 2014 Inc. submitted a costs claim on behalf of the Paul First Nation for recovery of costs totalling \$60,567.50⁶. The claim requested approval of the following costs:

- \$40,330.50 for Larr Management Corporation, comprised of consulting fees of \$20,010.00 for Mr. Joel Melanson, \$18,400.00 for Mr. Neal Barnes, and GST of \$1,920.50,
- \$11,025.00 for Four Medicines Consulting, comprised of consulting fees for Mr. Barry Hockstein of \$10,500.00, and GST of \$525.00,
- \$8,750.00 for the Paul First Nation members, comprised of \$6,700.00 for preparation honoraria, \$2,050.00 for attendance honoraria fees comprised of \$700.00 for Chief Casey Bird, \$200.00 each for Rudy Bird and Myrna Rabbit, \$150.00 for each of Geordy Nelson, Nelson Adams, Lloyd Saulteaux, Gordon Saulteaux, Percy Rain and Arthur Rain, and \$50.00 for Marlene Rain.

Larr Management Corporation

88. The costs claim for Larr Management Corporation relates to 167.00 hours of consulting services provided by Mr. Joel Melanson and Mr. Neal Barnes. The hours claimed include 80.00 hours for preparation, meetings with the Paul First Nation, reviewing GIS mapping, summarizing the project's impacts, document review, evidence preparation, and 17 hours for the attendance of Mr. Melanson and Mr. Barnes at the oral hearing. The remaining 63 hours incurred corresponded to the provision of daily reporting to the Paul First Nation elders regarding the hearing, and the preparation of argument.

89. TAMA Power submitted that the costs claimed by Mr. Melanson and Mr. Barnes should either be disallowed in their entirety or substantially reduced. The involvement of Mr. Melanson and Mr. Barnes as representatives of the Paul First Nation was a hindrance to the process, not a help. Mr. Melanson and Mr. Barnes did not responsibly represent the Paul First Nation in the proceeding. For example, they failed to file any evidence by the deadlines stipulated by the

⁶ The Paul First Nation submitted revised U forms with an amended costs claimed on July 20, 2015, in their response to the Commission's Information Requests.

Commission.

90. Based on Mr. Melanson's and Mr. Barnes' participation in the proceeding, and taking into account their respective experience and education, the Commission does not consider it appropriate in this circumstance that Mr. Melanson and Mr. Barnes be awarded an hourly fee for their role in the Sundance 7 proceeding. During the oral hearing, Mr. Barnes indicated that the intent was for him and Mr. Melanson to form a part of, and lead the Paul First Nation witness panel which would be comprised of Paul First Nation elders.⁷ Subsequently, Mr. Melanson gave oral evidence on behalf of the Paul First Nation at the hearing, as a representative. At no time did Mr. Melanson or Mr. Barnes file any expert evidence or explain their respective roles as consultants to the Paul First Nation or the nature of their expertise. Mr. Melanson also questioned the TAMA Power witness panel and provided argument as a representative of the Paul First Nation.

91. Rule 009 provides that when assessing a cost claim, the Commission will take into account whether the participant acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission. The following excerpt from Rule 009 provides additional matters of conduct that the Commission may consider when assessing a costs claim:

- Presented in oral evidence significant new evidence that was available to it at the time it filed documentary evidence but was not filed at that time.
- Submitted evidence and argument on issues that was not relevant.
- Needed legal or technical assistance to take part in the hearing or other proceeding.
- Engaged in conduct that unnecessarily lengthened the duration of the hearing or other proceeding or resulted in unnecessary costs to the applicant or other participants.

92. The Paul First Nation registered in Proceeding 3183 on February 20, 2015, but it was only during the Sundance 7 proceeding hearing that Mr. Melanson sought to file additional evidence, which was comprised of will-say statements for some of its members. The Paul First Nation did not file this evidence in accordance with the process schedule. The Commission initially granted the motion to file new evidence but subsequently struck the proposed evidence from the record of the proceeding after it was determined that the individuals named in the will-say statements would not be appearing at the oral hearing.

93. The Commission also notes that other than its SIP, no other written evidence was filed on behalf of the Paul First Nation.

94. The Commission finds that some of the questions and argument such as those related to past projects concerned issues that were not relevant to the issues raised in the Sundance 7 proceeding. The Commission has also considered Mr. Melanson's and Mr. Barnes' effectiveness during the hearing and whether the costs claimed for their participation are necessary, reasonable, and directly related to the proceeding. The Commission has taken into account that

⁷ Proceeding 3183 Transcript, Volume 4, Page 675-676, Lines 15-23.

Mr. Melanson and Mr. Barnes needed extensive legal and technical assistance from AUC staff to take part in the hearing. Further, Mr. Melanson and Mr. Barnes engaged in conduct that unnecessarily lengthened the duration of the Sundance 7 proceeding, such as the scheduling of witnesses.

95. The Commission nonetheless recognizes that Mr. Melanson and Mr. Barnes assisted the Paul First Nation in its participation in the Sundance 7 proceeding. Accordingly, the Commission awards Mr. Melanson and Mr. Barnes, as representatives of the Paul First Nation, a preparation honorarium. The *Scale of Costs* allows for a preparation honorarium of between \$300.00 and \$2,500.00 to be claimed by local interveners for the preparation of a submission, depending on the complexity of the submission, as long as a legal counsel was not primarily responsible for the preparation of the submission. In this circumstance, the Commission considers it reasonable that Mr. Melanson and Mr. Barnes be awarded a preparation honorarium of \$2500 for the preparation and presentation of the Paul First Nation's intervention. It is open to Mr. Melanson and Mr. Barnes to allocate the honorarium as they see fit. The Commission also awards Mr. Melanson and Mr. Barnes an attendance honorarium of \$600 and \$500 respectively.

96. Accordingly, the Commission awards honoraria in the total amount of \$3,600.00 which is composed of \$2,500.00 for a preparation honorarium, \$1,100.00 for attendance honoraria.

Four Medicines Consulting Ltd.

97. The costs claim for recovery of fees for Four Medicines Consulting relates to 52.50 hours of consulting services performed by Mr. Barry Hockstein in the amount of \$11,025.00. The hours incurred were for the review of the application and the review of the 2010 Traditional Land Use study in conjunction with the 2005 CN rail spill to ascertain the impacts associated with the project.

98. TAMA Power submitted that the amount claimed for Mr. Hockstein should be disallowed in its entirety. Mr. Hockstein prepared no expert witness report for the Paul First Nation and did not give testimony at the hearing. Further, the tasks described in the invoices provided by Four Medicines Consulting Ltd. do not include either expert witness report preparation or hearing preparation.

99. The Commission observes that the submitted invoices showed little detail and had no description of the activities undertaken in relation to the consulting fees charged. The costs claim also refers to map information and a GIS overlay of a Traditional Land Use study. The above-mentioned traditional land use study was not submitted on the record of the Sundance 7 proceeding. Further, Mr. Hockstein did not file a report on the record of the Sundance 7 proceeding or prepare any evidence on behalf of the Paul First Nation and he did not provide evidence at the hearing. Therefore, the fees claimed for Mr. Hockstein are denied in full because the Paul First Nation has not demonstrated that the work performed was directly and necessarily related to the Sundance 7 proceeding.

100. Accordingly, the Commission denies in full the recovery of costs for consulting fees claimed by Four Medicines Consulting Ltd.

Paul First Nation

101. Regarding preparation honoraria, TAMA Power submitted that it is a matter of record that the Paul First Nation did not prepare a submission. Further, these claims for honoraria are inconsistent with the Paul First Nation also submitting a claim for costs for Mr. Melanson and Mr. Barnes. TAMA Power also took issue with attendance honoraria claimed for 12 Paul First Nation members when only five people (including Mr. Melanson) testified at the hearing.

102. In considering the claim for \$6700.00 for preparation honoraria by the Paul First Nation members, the Commission must take the directions set out in Section 7 of Rule 009, which makes provisions for local interveners who personally prepare submissions without expert help to claim maximum fees of \$2,500.00 for preparation honorarium. The Commission finds no basis upon which to award a preparation honorarium to the Paul First Nation members based on their participation in the Sundance 7 proceeding and observes that the Paul First Nation's participation was limited to filing its SIP and testifying at the oral hearing. The Paul First Nation did not file documentary evidence or ask any information requests of TAMA Power. The Commission also disallows the claims for preparation honorarium because Mr. Melanson and Mr. Barnes were responsible for the Paul First Nation's intervention in the Sundance 7 proceeding.

103. Furthermore, the Commission finds that not all of the attendance honoraria claimed for the twelve members of the Paul First Nation is recoverable. The Paul First Nation did not file the names of the witnesses it intended to call at the hearing in accordance with the process schedule and four of the twelve Paul First Nation members named in the costs application (Rudy Bird, Lloyd Saulteaux, Geordy Saulteaux and Edward Nelson Adams) testified at the hearing. Although the Paul First Nation had standing in the Sundance 7 proceeding, individual members of the Paul First Nation community who attended the hearing should not, in the Commission's view, be automatically entitled to an attendance honorarium. It was incumbent upon the Paul First Nation to indicate the names of the individuals who were involved in the Paul First Nation's intervention. In this case, the remaining individuals were not named in any of the documents filed by the Paul First Nation and did not provide oral evidence at the hearing. The Commission therefore reduces the amount claimed for attendance honoraria from \$2,050.00 to \$650.00 in accordance with the Commission's *Scale of Costs* for attendance honorarium. The claim for disbursements for meals incurred during preparation and at the oral hearing is also reduced from \$440.00 to \$180.00 for the elders in attendance at the oral hearing.

104. Accordingly, the Commission approves recovery of the costs claimed for the Paul First Nation totalling \$830.00 composed of \$650.00 for attendance honorarium and \$180.00 in disbursements.

Paul First Nation Summary

105. The Commission approves costs recovery in the total amount of \$4,430.00, composed of \$2,500.00 in preparation honoraria and \$1,930.00 in attendance honoraria and disbursements.

5 GST

106. In accordance with the Commission's treatment of GST on cost awards, TAMA Power is required to pay only that portion of GST paid by interveners that may not be recoverable through the GST credit mechanism. Accordingly, the Commission approves the eligible GST in the amount of \$15,001.00

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

6 Order

108. It is hereby ordered that:

- (1) TransAlta MidAmerican Partnership shall pay intervener costs to the Gunn Métis Local 55 in the amount of \$57,326.99. Payment shall be made to Woodward & Company Lawyers LLP: Attention Ms. Jenny Biem at 2nd Floor, 844 Courtney Street, Victoria, BC, V8W 1C4.
- (2) TransAlta MidAmerican Partnership shall pay intervener costs to the Cymbaluks in the amount of \$189,181.55. Payment shall be made to Ackroyd LLP: Attention Mr. Richard C. Secord at 1500 1st Edmonton Place, 10665 Jasper Ave, Edmonton, AB T5J 3S9.
- (3) TransAlta MidAmerican Partnership shall pay intervener costs to the Paul First Nation in the amount of \$4,430.00. Of this amount, \$830.00 in attendance honoraria and disbursements is to be paid to members of the Paul First Nation divided into the following amount: \$245.00 to Rudy Bird, \$195.00 to Lloyd Saulteaux, \$195.00 to Geordy Saulteaux and \$195.00 to Edward Nelson Adams. These payments are to be paid and delivered personally to the named individuals. The balance of \$3,600.00 is to be paid to Mr. Neal Barnes at PO Box 3838, Spruce Grove, AB T7X3B3.

Dated on October 26, 2015.

Alberta Utilities Commission

(Original signed by)

Tudor Beattie, QC
Panel Chair

(Original signed by)

Anne Michaud
Commission Member

(Original signed by)

Kate Coolidge
Acting Commission Member