



E.ON Climate & Renewables Canada Ltd.

Grizzly Bear Creek Wind Power Project

**Advance Funding Request from the
Grizzly Bear Coulee Protection Group**

Advance Funding Award

December 11, 2015

Alberta Utilities Commission

Decision 21021-D01-2015: E.ON Climate & Renewables Canada Ltd.

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Proceeding 21021

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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

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1 Introduction

1. On July 10, 2014, E.ON Climate & Renewables Canada Ltd. (E.ON) filed an application with the Alberta Utilities Commission requesting to construct and operate the Grizzly Bear Creek Wind Power Project (GBC Wind Power Project or the project), consisting of a 120-megawatt wind power plant, a 34.5-kilovolt collector system, and the Grizzly Bear 708S substation in the Vermilion area. The Commission assigned Proceeding 3329 to the application (Proceeding 3329).

2. On July 11, 2014, the Commission issued notice of the application and requested parties to register their interest in the application by way of statement of intent to participate (SIP) by September 19, 2014. The Commission received SIPs from a number of parties. In their submissions, these parties advised the Commission that they had retained Ackroyd LLP and had formed the Grizzly Bear Coulee Protection Group (GBCPG).

3. October 16, 2014, the Commission issued its ruling on standing and granted standing to some of the members of the GBCPG.

4. On November 12, 2015, Ackroyd LLP filed a request for advance funding on behalf of the GBCPG. The Commission assigned Proceeding 21021 to the advance funding request.

5. On November 16, 2015 the Commission issued a summary of the advance funding claimed to interested parties and requested comments on the merits of the costs claimed by November 27, 2015. In correspondence dated November 27, 2015, the Commission received comments from E.ON with respect to the GBCPG's advance funding.¹

2 Advance funding application

6. In its November 12, 2015 advance funding application, GBCPG advised that it had retained five experts to address issues identified by that group as being relevant to the proceeding. The application included a proposed budget in accordance with the Commission's *Scale of Costs* under AUC [Rule 009: Rules on Local Intervener Costs](#) (AUC Rule 009) for amounts totalling \$334,897.50. The table below summarizes the experts retained by the GBCPG, the issues that each expert will address and the total budget for their respective services inclusive of fees, disbursements and GST:

¹ Exhibit 21021-X0007: E.ON Response to Advance Funding Request

Expert	Issue	Budget
E-Coustic Solutions/ Rick James	Noise	\$20,520.00
The Acoustic Group Pty Ltd./ Steven Cooper	Noise/sensation	\$24,840.00
FDI Acoustics Inc./James Farquharson	Noise	\$31,080.00
Dr. Michael Nissenbaum	Human health	\$20,790.00
Cottonwood Consultants Ltd./ Cliff Wallis	Environment	\$37,117.50

7. The GBCPG submitted that the evidence of E-Coustic Solutions, The Acoustic Pty Group Ltd., and FDI Acoustics Inc. is intended to show the unacceptable impacts the GBC Wind Power Project will have on area residents and the environment. The GBCPG further submitted that the evidence of Dr. Nissenbaum will show the health impacts on the residents inside and outside of the project area. Cottonwood Consultants Inc. has been retained to evaluate the environmental effects the project will have.

8. The GBCPG also estimated Ackroyd LLP's legal costs to be \$200,550.00. The GBCPG advised that it is an intervener group that consists of landowners who are farmers, and that some of the members of the group have young children or are elderly. The GBCPG emphasized its financial need for assistance in order to fully participate in the Proceeding 3329 given the scope of fees and costs involved in retaining the necessary legal counsel and experts necessary to address the relevant issues. The GBCPG further advised that it would be unable to effectively and efficiently participate in the proceeding unless the Commission approved the advance funding request.

9. The GBCPG requested the Commission order an advance of 50 per cent of the projected legal and consultant fees, disbursements and GST in the sum of \$167,448.75.

2.1 Views of E.ON

10. E.ON opposed the GBCPG's request for advance funding and submitted that if the Commission were inclined to order advance funding, it should award no more than 30 per cent of the costs permitted under the Commission's *Scale of Costs*.

11. E.ON submitted that the three noise experts retained by the GBCPG were repetitive and not consistent with making reasonable efforts to reduce duplication of evidence. E.ON further submitted that, based on the description of evidence to be provided, the GBCPG could satisfy the requirement by retaining only two of the proposed noise experts. E.ON submitted that the advance funding request as it relates to either the Acoustic Pty Group Ltd., or FDI Acoustics Inc. be dismissed, or the cumulative total for all three experts be substantially reduced.

12. E.ON also argued that it was unclear whether the scope of work proposed by both E-Coustics Solutions and Dr. Nissenbaum in the advance funding request will be specific to Proceeding 3329 and therefore contribute to a better understanding of the issues before the Commission. In the case of Dr. Nissenbaum, E.ON submitted that the advance funding request be dismissed both on the grounds that it is unclear whether his work will directly relate to Proceeding 3329 and on the grounds various regulatory tribunals have found Dr. Nissenbaum and his publications of limited assistance.

13. In addition, E.ON asserted that the proposed budget for FDI Acoustics Inc. is insufficiently detailed to demonstrate the requested costs are reasonable and necessary. E.ON stated that, having regard for the anticipated length of the proceeding and the scope of issues to be addressed, the proposed budgets for Cottonwood Consultants Inc. and Ackroyd LLP are disproportionately high.

3 Authority to award advance funding

14. In assessing a costs claim pursuant to Section 21 of the *Alberta Utilities Commission Act*, SA 2007, c. A-37.2, the Commission applies AUC Rule 009.

15. Sections 2 and 3 of AUC Rule 009, set out the Commission's authority to award advance funding.

2. Advance of Funds Request

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.

2.2 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.

2.3 If the Commission awards an advance of funds to a local intervener under Section 2.2, the Commission may

2.3.1 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

2.3.2 direct the applicant to advance funds to the local intervener and set out the terms of repayment for the advance to the applicant by the intervener

3. Budget to be Filed

The Commission may, at any time during a hearing or other proceeding, require a local intervener to file a budget of the intervener's anticipated costs in the proceeding in accordance with Appendix B.

4 Commission findings

16. The Commission has considered both the merits of the GBCPG's claim for advance funding and E.ON's response to the advance funding request. In accordance with Section 2 of AUC Rule 009, the Commission has determined that some amount of advance funding is warranted in this case given the nature of Proceeding 3329 and the description of the work and budget provided by GBCPG.

17. In its standing ruling in Proceeding 3329, the Commission determined that some members of the GBCPG have rights that may be directly and adversely affected by the Commission's decision on the project. The Commission finds that the GBCPG qualifies to claim local interveners costs on behalf of its respective members who own or reside upon lands within 2,000 metres of the project under AUC Rule 009.

18. The Commission is further satisfied that the GBCPG has demonstrated a need for financial assistance to address relevant issues in the hearing and that it may be unable to contribute effectively and efficiently in Proceeding 3329 without advance funding.

19. Accordingly, the Commission will approve an amount of advance funding for the retention of resources in order for the GBCPG to present its interests adequately before the Commission.

20. Historically, when the Commission has approved an award of advance funding it has awarded between 30 and 60 per cent of an intervener's projected costs. GBCPG has requested advance funding of 50 per cent of its budgeted costs of \$334,897.50. Given the number of experts retained on substantially similar subject matters, and the nature of the issues raised in Proceeding 3329, the Commission is not convinced that an award based on the higher end of the scale is warranted in the circumstances. The Commission notes that, at this time, the proceeding does not appear to contain novel issues and several of the experts retained by the GBCPG have appeared before the Commission in the past.

21. Having regard to the foregoing, the Commission finds an advance funding award of 30 per cent of the estimated legal and consultant fees for Ackroyd LLP, E-Coustic Solutions, The Acoustic Group Pty Ltd., FDI Acoustics Inc., Dr. Nissenbaum, and Cottonwood Consultants Ltd. in the amount of \$100,469.25 is warranted.

22. The Commission emphasizes that the advance funding approved in this decision is subject to adjustment when final costs applications are made and a costs decision is issued following completion of Proceeding 3329. In making an advance funding award, the Commission makes no determination respecting the value of GBCPG's participation, the value of evidence submitted by its consultants before the Commission or the amount of any final costs award that the Commission may issue.

23. If the GBCPG accepts the advance funding awarded pursuant to this decision and the final costs award for the GBCPG relating to Proceeding 3329 is less than the amount of the advance funding directed in this decision, the GBCPG will be required to repay the difference.

24. All fees and disbursements eventually claimed by any interested party following the conclusion of a proceeding must conform to the *Scale of Costs* adopted by the Commission. Any interested party claiming costs exceeding the Scale of Costs will be required to provide evidence that the scale is inadequate. In assessing costs, the Commission will consider the effectiveness of the participation by each interested party and whether the costs of the participation were reasonable and directly and necessarily related to the proceeding.

5 Order

25. It is hereby ordered that:

- (1) E.ON Climate & Renewables Canada Ltd. shall pay advance funding of \$100,469.25 to the Grizzly Bear Coulee Protection Group for the retention of Ackroyd LLP, E-Coustic Solutions, The Acoustic Group, FDI Acoustics Inc., Dr. Michael Nissenbaum, and Cottonwood Consultants Ltd. Payment shall be made to Ackroyd LLP, attention: Mr. Richard Secord at 1500 First Edmonton Place, 10665 Jasper Avenue, Edmonton, Alberta, T5J 3S9.

Dated on December 11, 2015.

Alberta Utilities Commission

(Original signed by)

Tudor Beattie, QC
Panel Chair

(Original signed by)

Kate Coolidge
Acting Commission Member

(Original signed by)

Neil Jamieson
Commission Member