



Alberta PowerLine Limited Partnership

Fort McMurray West 500-kV Transmission Project

**Advance Funding Request from the
East Route Landowner Opposition Group**

Advance Funding Award

April 20, 2016

Alberta Utilities Commission

Decision 21398-D01-2016

Alberta PowerLine Limited Partnership
Fort McMurray West 500-kV Transmission Project
Advance Funding Request from the
East Route Landowner Opposition Group
Advance Funding Award
Proceeding 21398

April 20, 2016

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

Contents

Introduction.....	1
1 Advance funding application	1
1.1 Views of Alberta PowerLine.....	2
2 Commission’s authority to award advance funding	3
3 Advance funding application	4
4 Order	5

Introduction

1. In this decision the Alberta Utilities Commission considers an application for advance funding by the East Route Landowner Opposition Group (ERLOG) for Proceeding 21030 (the advance funding application). The Commission has approved advance funding for ERLOG in the amount of \$242,016.40 for the reasons that follow.
2. Proceeding 21030 was assigned by the Commission to consider an application by Alberta PowerLine Limited Partnership to build new power transmission facilities in north central Alberta from the Wabamun area to Fort McMurray, as well as build and operate three optical repeater sites, expand the Livock 939S substation and construct the Thickwood Hills 951S substation (the project).
3. ERLOG submitted the advance funding application on March 3, 2016. The Commission assigned Proceeding 21398 and Application 21398-A001 to the advance funding application. ERLOG filed an amendment to the advance funding application on April 4, 2016.
4. Alberta Powerline submitted comments with respect to ERLOG's advance funding application on April 5, 2016. The Commission considers the close of record for this proceeding to be April 5, 2016.

1 Advance funding application

5. In its advance funding application, ERLOG advised that it had retained experts in four different subject matters to address issues identified by that group as being relevant to Proceeding 21030. In its advance funding application, ERLOG proposed a budget for amounts totalling \$605,041.10, in accordance with Rule 009: *Rules on Local Intervener Costs* (Rule 009) and the Scale of Costs set out in Appendix A thereto. The table below summarizes the experts retained by ERLOG, the issues that each expert will address, and the total budget for their respective services inclusive of fees, disbursements and GST:

Expert	Issue	Budget
Berrien Associates Ltd.	Routing	\$80,850.00
1584615 Alberta Ltd. (Marciak/Fuller)	Agriculture Impacts	\$11,222.00

Cottonwood Consultants Ltd.	Environment	\$38,409.00
Gettel Appraisals Ltd.	Property Values	\$18,039.00

6. Berrien Associates Ltd. was retained to provide expert evidence on the routing of the project. 1584615 Alberta Ltd. was retained to provide analysis related to the agricultural impacts of the project. Cottonwood Consultants Ltd. was retained to provide an expert opinion on the effect of the project on environmentally significant areas. Gettel Appraisals Ltd. was retained to evaluate the project's potential impacts on ERLOG's property values.

7. ERLOG also estimated Ackroyd LLP's legal costs to be \$456,521.10 for its assistance in ERLOG's intervention in Proceeding 21030. ERLOG advised that it is an intervener group comprised of individuals, families and business interests located along the alternate route of the project. ERLOG emphasized its financial need for assistance in order to fully participate in Proceeding 21030 given the scope of fees and costs involved in retaining the necessary legal counsel and experts to address the issues in Proceeding 21030.

8. ERLOG requested that the Commission order an advance of 50 per cent of the proposed legal and consultant fees, disbursements and GST in the sum of \$302,520.

1.1 Views of Alberta PowerLine

9. Alberta PowerLine opposed ERLOG's advance funding application 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 set out in Appendix A to Rule 009.

10. Alberta PowerLine submitted that the budget proposed by Berrien Associates Ltd. does not comply with the requirements of Rule 009 because the estimate was calculated on a per-day basis and not on an hourly basis as detailed in the Scale of Costs. In addition, the costs estimated by Mr. Berrien are disproportionately high having regard to the scope of the issues to be addressed.

11. Alberta PowerLine also submitted that ERLOG has failed to substantiate an award of advance costs for 158465 Alberta Ltd. Neither Dr. Fuller nor Mr. Marciak will be filing evidence or testifying at the hearing and their role will be limited to assisting counsel throughout Proceeding 21030. Further, the advance funding application provides no justification for retaining two separate experts to assess the issue of agricultural impacts. Accordingly, the necessity of these services has not been established and this portion of the advance funding application should be denied.

12. With regard to Cottonwood Consultants Ltd., Alberta PowerLine submitted that the description of the work to be performed by Mr. Cliff Wallis is general in nature and lacks detail. Therefore, ERLOG has not substantiated its claim for the advance funding requested for Mr. Wallis.

13. Alberta PowerLine further indicated that the relevance of Gettel Appraisals Ltd.'s evidence regarding property values has not yet been established and the granting of advance funding to ERLOG to retain Gettel Appraisals Ltd. would be premature.

14. In addition, Alberta PowerLine asserted that the proposed costs for Ackroyd LLP are excessive. ERLOG did not specify the estimated hours attributable to activities anticipated to be undertaken by legal counsel, and instead estimated the legal costs by multiplying the projected hearing time by 6.5. Alberta PowerLine stated that this method of calculation does not conform with Rule 009. Further, even if that calculation method were legitimate, legal counsel would not be expected to actively participate in each hearing day, which contributes to the high legal estimate.

15. The advance funding application indicates that in addition to Mr. Secord, an associate lawyer, Mr. Cheng of Ackroyd LLP will provide legal services at a rate of \$275 per hour, which conforms to the Scale of Costs. However, the advance funding application indicates that other associate lawyers will perform work “as required.” Alberta PowerLine asserted that the advance funding application does not specify the level of experience the other potential associate lawyers may have, making it impossible for the Commission to determine the appropriate rate for these lawyers.

2 Commission’s authority to award advance funding

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

17. Sections 2 and 3 of 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 Advance funding application

18. In its standing ruling in Proceeding 21030, the Commission determined that some members of ERLOG have rights that may be directly and adversely affected by the Commission's decision on the project. The Commission finds ERLOG qualifies as a "local intervener" pursuant to Section 22 of the *Alberta Utilities Commission Act* and may therefore claim costs and is eligible for advance funding, on behalf of its respective members who own or reside upon lands within 800 metres of the project under Rule 009.

19. In accordance with Section 2 of Rule 009, the Commission has considered the nature of Proceeding 21030, the submissions of ERLOG, including the description of proposed expert evidence and legal assistance, the associated budget and submissions on the need for financial assistance. The Commission has also considered the submissions of Alberta PowerLine.

20. The Commission has not been persuaded by the submissions of Alberta Powerline that an award of advanced funding should be denied or reduced in the manner suggested. The Commission is satisfied that ERLOG 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 21030 without advance funding. Accordingly, the Commission considers that an award of advance funding is warranted in order for ERLOG to present its interests adequately before the Commission.

21. In approving past awards for advance funding, the Commission has historically awarded between 30 and 60 per cent of an intervener's projected costs. ERLOG has requested advance funding of 50 per cent of its budgeted costs of \$605,040.11.

22. The Commission has reviewed the budget and scope of work for Berrien Associates Ltd., 1584615 Alberta Ltd., Cottonwood Consultants Ltd., and Gettel Appraisals Ltd. The Commission finds that the budgets provided are disproportionately high given the nature of the issues raised in Proceeding 21030 and the scope of these consultants' intended participation in ERLOG's intervention.

23. Based on the above, the Commission finds an advance funding award of 40 per cent of the estimated consultant fees for Berrien Associates Ltd., 1584615 Alberta Ltd., Cottonwood Consultants Ltd., and Gettel Appraisals Ltd. is warranted.

24. The Commission recognizes that Ackroyd LLP represents many landowners within ERLOG and that ERLOG has retained experts on four different subject areas. However, Ackroyd LLP has worked with Berrien Associates Ltd., Cottonwood Consultants Ltd., and Gettel Appraisals Ltd. previously. The Commission expects that this past experience would afford some efficiencies with witness preparation. This, in turn, should be reflected in the budget. Furthermore, the information provided in the advanced funding application and the issues raised in Proceeding 21030 suggests that the budgeted amount may be excessive. On balance, the Commission considers that an advance funding award of 30 per cent of the estimated legal fees is warranted.

25. Accordingly, for the above reasons, the Commission awards advance funding to ERLOG in the total amount of \$196,364.33.

26. 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 21030. In making an advance funding award, the Commission makes no determination on the value of ERLOG's participation in the proceeding, the weight that may be attributed by the Commission to the evidence given by its consultants, the merits of legal arguments that may be made, or the amount of any final costs award that the Commission may issue.

27. If ERLOG accepts the advance funding awarded pursuant to this decision and the final costs award for ERLOG relating to Proceeding 21030 is less than the amount of the advance funding directed in this decision, ERLOG will be required to repay the difference.

28. 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 Proceeding 21030.

4 Order

29. It is hereby ordered that:

- 1) Alberta PowerLine Limited Partnership shall pay advance funding in the amount of \$196,364.33 to the East Route Landowner Opposition Group. 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 April 20, 2016.

Alberta Utilities Commission

(original signed by)

Anne Michaud
Commission Member