



AUC

Alberta Utilities Commission

E.ON Climate & Renewables Canada Ltd.

Grizzly Bear Creek Wind Power Project

Costs Award

July 21, 2016

Alberta Utilities Commission

Decision 21513-D01-2016

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Alberta Utilities Commission
Calgary, Alberta

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers an application by the Grizzly Bear Coulee Protection Group (GBCPG) for approval and payment of its costs to participate in Proceeding 3329 (the costs claim application). The following table sets out the costs claimed and the amounts awarded:

Claimant	Total Fees/Honoraria Claimed	Total Disbursements Claimed	Total GST Claimed	Total Amount Claimed	Total Fees/Honoraria Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
GBCPG								
Ackroyd LLP	\$184,018.75	\$16,518.41	\$9,979.94	\$210,517.10	\$149,014.56	\$15,288.03	\$8,166.95	\$172,469.54
FDI Acoustics Inc.	\$15,010.00	\$458.16	\$773.41	\$16,241.57	\$15,010.00	\$458.16	\$773.41	\$16,241.57
E-Coustic Solutions	\$19,890.00	\$0.00	\$0.00	\$19,890.00	\$13,923.00	\$0.00	\$0.00	\$13,923.00
The Acoustic Group Pty Ltd.	\$28,215.00	\$0.00	\$0.00	\$28,215.00	\$19,750.00	\$0.00	\$0.00	\$19,750.00
Dr. Michael Nissenbaum	\$13,635.00	\$0.00	\$0.00	\$13,635.00	\$9,544.50	\$0.00	\$0.00	\$9,544.50
Cottonwood Consultants Ltd.	\$36,348.75	\$1,052.74	\$1,844.77	\$39,246.26	\$36,348.75	\$1,052.74	\$1,844.77	\$39,246.26
Kim Clark	\$450.00	\$59.80	\$0.00	\$509.80	\$450.00	\$0.00	\$0.00	\$450.00
Ward Clark	\$150.00	\$35.88	\$0.00	\$185.88	\$150.00	\$0.00	\$0.00	\$150.00
Laura Tapley	\$450.00	\$99.36	\$0.00	\$549.36	\$450.00	\$0.00	\$0.00	\$450.00
Total	\$298,167.50	\$18,224.35	\$12,598.12	\$328,989.97	\$244,641.31	\$16,798.93	\$10,785.13	\$272,225.37
Advanced Costs Awarded								\$100,469.25
Total Amount Awarded								\$171,756.12

2. The Commission has awarded reduced costs to the GBCPG for the reasons set out below.

3. Proceeding 3329 (the original application) was convened by the Commission to consider an application filed by E.ON Climate & Renewables Canada Ltd. (E.ON) for the construction and operation of the Grizzly Bear Creek Wind Power 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 project). The original proceeding involved information requests (IRs) and responses, written and oral evidence, an oral hearing, cross-examination, oral argument and reply argument. The close of record for the original proceeding was March 18, 2016, and the Commission issued Decision 3329-D01-2016¹ on May 19, 2016.

¹ Decision 3329-D01-2016: E.ON Climate & Renewables Canada Ltd. Grizzly Bear Creek Wind Power Project, Proceeding 3329, Applications 1610717-1, 1610717-2, May 19, 2016.

4. The Commission granted an advance funding award to the GBCPG in Decision 21021-D01-2015.² In that decision the Commission awarded an advance funding award of 30 per cent of the estimated legal and consultant fees because:

...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.³

5. The GBCPG submitted its costs application on April 14, 2016, within the 30 day timeline permitted by the Commission's rules. The Commission assigned Proceeding 21513 and Application 21513-A001 to the costs claim application.

6. On May 6, 2016, E.ON submitted comments with respect to the costs claimed and the GBCPG filed its response on May 20, 2016. The Commission considers the close of record for this proceeding to be May 20, 2016, the date on which the final submissions on the costs claim were received.

2 GBCPG costs claimed

7. The GBCPG was represented Ackroyd LLP, legal counsel. More specifically, Mr. Richard Secord and Mr. Yuk-Sing Cheng of Ackroyd LLP provided legal services in the original proceeding. The GBCPG also retained the following experts: Mr. James Farquharson of FDI Acoustics Inc., Mr. Rick James of E-Coustic Solutions, Mr. Steven Cooper of The Acoustic Group Pty Ltd., Dr. Michael Nissenbaum, and Mr. Cliff Wallis of Cottonwood Consultants Ltd. The GPCPG set out its submissions justifying its costs claim in its costs claim application.⁴

8. The following table summarizes the GBCPG costs claim for Proceeding 3329:

Claimant	Hours			Fees/Honoraria	Disbursements	GST	Total
	Preparation	Attendance	Argument				
GBCPG							
Ackroyd LLP	332.40	284.10	0.00	\$184,018.75	\$16,518.41	\$9,979.94	\$210,517.10
FDI Acoustics Inc.	80.00	4.00	0.00	\$15,010.00	\$458.16	\$773.41	\$16,241.57
E-Coustic Solutions	71.50	7.50	0.00	\$19,890.00	\$0.00	\$0.00	\$19,890.00
The Acoustic Group Pty Ltd.	79.00	25.50	0.00	\$28,215.00	\$0.00	\$0.00	\$28,215.00
Dr. Michael Nissenbaum	39.00	11.50	0.00	\$13,635.00	\$0.00	\$0.00	\$13,635.00

² Decision 21021-D01-2015: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, Proceeding 21021, December 11, 2015.

³ Decision 21021-D01-2015, paragraph 20.

⁴ Exhibit 21513-X0001.

Cottonwood Consultants Ltd.	117.50	23.50	0.00	\$36,348.75	\$1,052.74	\$1,844.77	\$39,246.26
Kim Clark	0.00	0.00	0.00	\$450.00	\$59.80	\$0.00	\$509.80
Ward Clark	0.00	0.00	0.00	\$150.00	\$35.88	\$0.00	\$185.88
Laura Tapley	0.00	0.00	0.00	\$450.00	\$99.36	\$0.00	\$549.36
Total	719.40	356.10	0.00	\$298,167.50	\$18,224.35	\$12,598.12	\$328,989.97

3 E.ON Comments

9. In its comments, E.ON expressed concerns about the costs claimed by legal counsel, expert witness, and interveners of the GBCPG.

Concerns with legal counsel costs

10. E.ON submitted that the conduct of the GBCPG counsel during cross-examination, direct examination and final argument unnecessarily lengthened the duration of the proceeding without contributing to a better understanding of the issues. It contended that GBCPG’s counsel asked cross-examination questions that were similar to questions previously answered by E.ON witnesses during the hearing or that had been addressed through IR responses or reply evidence. E.ON also submitted that cross-examination questions had been developed by the GBCPG’s expert witnesses without any input from legal counsel, leading to legal counsel being unfamiliar with the content or context of the questions. Finally, E.ON noted that counsel’s cross-examination involved the unnecessary repetition of long excerpts of evidence that were already on record, resulting in unnecessary lengthening of the hearing. E.ON contended that costs claimed by Ackroyd LLP for preparing cross-examination questions and for attendance at the hearing should be substantially reduced.

11. E.ON further argued that the costs claimed by Ackroyd LLP were disproportionate having regard for the scope of issues. E.ON added that the issues in the original proceeding were substantially similar to those in the Bull Creek Wind Power Project⁵, wherein Ackroyd LLP acted as legal counsel. As such, the issues were not novel. E.ON noted that counsel for the GBCPG was required to manage a significantly smaller group of interveners and expert witnesses in the original proceeding compared to the Bull Creek proceeding. E.ON submitted that the preparation time claimed by the GBCPG counsel should be reduced.

12. E.ON indicated that the statement of account submitted by Ackroyd LLP includes time billed for correspondence with individuals who were neither registered members of the GBCPG nor involved in the original proceeding. E.ON again referenced the Bull Creek Proceeding and the related costs decision⁶, wherein the Commission found that the level of communication between Ackroyd LLP and these outside individuals, such as Ms. Carmen Krogh and Ms. Storch, was not necessary to prepare for the Bull Creek project hearing. E.ON submitted that all time related to discussion with Ms. Krogh should be dismissed by the Commission.

⁵ Proceeding 1955: 1646658 Alberta Ltd-Facilities Application for 1646658 Alberta Bull Creek Wind Project and associated substation, Applications 1608556-1 and 1608556-2.

⁶ Decision 2014-116: 1646658 Alberta Ltd., Bull Creek Wind Project Costs Award, Proceeding 2999, Application 1610210-1, April 23, 2014.

13. Finally, E.ON contended that Ackroyd LLP did not effectively fulfill its role as gatekeeper with respect to the evidence submitted by the expert witnesses because the evidence provided by several of the GBCPG's expert witnesses was often neither applicable to the original application nor to the Alberta regulatory context. As a result, the costs claimed by Ackroyd LLP for time related to the expert witnesses and their reports should be reduced or significantly reduced.

Concerns with expert witnesses costs

14. In regard to the expert witnesses, E. ON argued that the evidence provided was general in nature and did not contribute to the Commission's understanding of the issues. E.ON submitted that Mr. James, Mr. Cooper and Dr. Nissenbaum relied heavily on examples of wind power projects located outside Alberta and did not prepare studies related to the project.

15. E.ON added that the written and oral evidence of Mr. James, Mr. Cooper and Dr. Nissenbaum related to the adequacy of Rule 012, rather than whether the project satisfied the requirements of Rule 012. E.ON stated that the proceeding was not about the efficacy or appropriateness of Rule 012, but whether the project, as applied-for, satisfied the requirements of Rule 012.

16. E.ON also noted that Mr. James provided opinions on the health impacts of wind turbine noise, although he lacked the necessary skills, experience and training to comment on the subject matter. E.ON further argued that Mr. James' evidence demonstrated a lack of objectivity. It requested that Mr. James' costs should be substantially reduced.

17. In regard to Dr. Nissenbaum, E.ON submitted that he did not offer an opinion on how the project might affect certain members of the GBCPG who expressed health concerns. E.ON questioned the need for disbursement for medical records of members of the GBCPG and requested that portion of the costs claim be disallowed. E.ON added that Dr. Nissenbaum relied on his Mars Hill and Vinalhaven study, which the Commission found in the Bull Creek Proceeding was not compelling evidence. Finally, E.ON submitted that Dr. Nissenbaum's expert report included statements and conclusions that 'appear to have gone well beyond his qualifications' and did not include a reference list or bibliography. E.ON submitted that Dr. Nissenbaum's costs should be dismissed or substantially reduced.

18. In regard to Mr. Cooper, E.ON stated that Mr. Cooper acknowledged that the expert report he relied on was neither a health study nor a scientific study⁷, and during his cross-examination numerous shortcomings within the report were identified. E.ON further submitted that during cross-examination, Mr. Cooper was often unresponsive to the questions, and that his conduct during cross-examination unnecessarily lengthened the duration of the hearing. E.ON submitted that the costs claimed by Mr. Cooper should be substantially reduced.

19. E.ON noted that the statements of account of Mr. James Farquharson provided insufficient detail for the Commission to understand the nature of the activity and how it relates to the issues being advanced. However, E.ON acknowledged that the amount claimed appeared to be reasonable.

⁷ Exhibit 3329-X0049, pdf page 18; Transcript, Volume 7, 1647-1648.

20. E.ON further submitted that Mr. Cliff Wallis claimed attendance, meal and accommodation costs for the entire Mannville portion of the hearing. E.ON noted that Mr. Wallis only testified during the morning of March 11, 2016, and assisted GBCPG counsel with cross-examination for a limited portion of time. E.ON argued that it was not clear how his attendance was beneficial, as his assistance could have been provided remotely.

Concerns with intervener costs

21. Finally, E.ON noted that Ms. Laura Tapley, Ms. Kim Clark and Mr. Ward Clark each claimed disbursements for travel to and from the hearing despite the Scale of Costs requirement that claims for mileage related to intercity travel distances of 50 km or more. However, E.ON did not object to this aspect of the costs claim.

4 GBCPG Response

22. The GBCPG responded to E.ON's comments. It stated that it disagreed with E.ON's comments, and argued that its costs claim was reasonable given the scope and nature of issues raised. Further, it submitted that the costs claimed were directly and necessarily related to the hearing.

23. The GBCPG argued that E.ON misused the costs claim process by reproducing some of its final oral argument in its comments, which went to the merits of the evidence tendered by the GBCPG in the proceeding and ought to be discounted.

24. The GBCPG contended that the hearing, including the cross-examination process, was necessary to thoroughly air and test the issues that arose from the original application. They further submitted that E.ON should bear a large responsibility for contributing to the length of the hearing. The GBCPG noted that the proceeding was adjourned and suspended at the request of E.ON, which created delays and inefficiencies in the process leading up to the actual hearing. The GBCPG added that the hearing was delayed due to the "poor, uncooperative, or unhelpful" responses from E.ON's witnesses during cross-examination from the GBCPG's counsel. Further, the GBCPG, the only intervener in the proceeding, made efforts to ensure that its evidence was not repetitive, submitted evidence and argument on issues relevant to the proceeding, and cooperated with E.ON and the Commission. It added that the duration and timing of the hearing was reasonable given the scope of issues that arose during the proceeding.

Legal costs

25. The GBCPG argued that its cross-examination questions were relevant to the issues raised and not repetitive. The GBCPG noted that the Commission did not rule any of the GBCPG's cross-examination questions as irrelevant or unhelpful. The GBCPG argued that the manner in which its closing argument was presented was not one that lengthened the hearing, or somehow detracted from providing a better understanding of the issues and matters before the Commission.

26. In regard to the time billed for correspondence with individuals that were not registered members of the GBCPG, the GBCPG argued that this correspondence was not extensive, and that the time entries were directly related to the proceeding and the issues raised within it. The GBCPG noted that the conversations with Ms. Krogh provided useful background and briefing

information on updates on wind project matters. The GBCPG submitted that the costs associated with the discussions with Ms. Krogh and Ms. Storch were in line with the requirement of AUC Rule 009, and were relevant, appropriate, and reasonably incurred.

Expert costs

27. The GBCPG submitted that its experts provided evidence that was relevant and directly related to the project. The noise and health experts provided useful information to the Commission, and did not opine on irrelevant matters. The GBCPG contended that the Commission should award the costs claimed for its experts in full.

28. The GBCPG argued that the evidence presented by Mr. James was informative, relevant, and useful. The GBCPG submitted that Dr. Nissenbaum was the only qualified medical doctor in attendance at the proceeding. The GBCPG added that Dr. Nissenbaum provided the Commission with useful information regarding health impacts. The GBCPG further submitted that the medical records were relevant and necessary for Dr. Nissenbaum to review, and that the disbursement claimed for them should be allowed. The GBCPG contended that Mr. Cooper provided helpful evidence regarding acoustic, vibration and sensation impacts.

29. In response to E.ON's comments regarding Mr. Farquharson, the GBCPG argued that the documentation and invoices provided by Mr. Farquharson are compliant with Rule 009 and that E.ON acknowledged that the total amount claimed by Mr. Farquharson was reasonable.

30. The GBCPG submitted that Mr. Wallis was in attendance at the hearing to assist counsel with the cross-examination of the E.ON witness panel, and to monitor testimony and cross-examination responses with regard to issues relevant to his area of expertise. The GBCPG added that his attendance at the hearing was reasonable because of the hearing schedule. The GBCPG further submitted that his costs disbursements should not be reduced.

Intervener costs

31. In response to E.ON's comments regarding the mileage claimed by Ms. Tapley, Ms. Clark and Mr. Clark, the GBCPG noted that E.ON did not object to the costs requested. The GBCPG requested the Commission use its discretion to grant mileage costs even if travel did not exceed 50 km distances.

5 Commission findings

32. Only "local interveners" are eligible to claim costs in facility related applications. The Commission's authority to award costs for the participation of a local intervener in an application on a hydro development, power plant or transmission line under the *Hydro and Electric Energy Act* or a gas utility pipeline under the *Gas Utilities Act* is found in sections 21 and 22 of the *Alberta Utilities Commission Act*. When considering a claim for costs in a facilities related application, the Commission is guided by the factors set out in Section 7 of Rule 009 and the Scale of Costs found in Appendix A of Rule 009.

33. Section 22 of the *Alberta Utilities Commission Act* defines a "local intervener" and states:

22(1) For purposes of this section, "local intervener" means a person or group or association of persons who, in the opinion of the Commission,

- (a) has an interest in, and
- (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision or order of the Commission in or as a result of a hearing or other proceeding of the Commission on an application to construct or operate a hydro development, power plant or transmission line under the Hydro and Electric Energy Act or a gas utility pipeline under the Gas Utilities Act, but unless otherwise authorized by the Commission does not include a person or group or association of persons whose business interest may include a hydro development, power plant or transmission line or a gas utility pipeline.

5.1 The Grizzly Bear Coulee Protection Group

34. Members of the GBCPG own and reside on property located within two kilometers of the project. Given the proximity of the properties to the project, the Commission is satisfied that they have an interest in, and are entitled to occupy, land that may be directly and adversely affected by the Commission's decision on E.ON's application. Accordingly, the Commission finds that the GBCPG are local interveners.

35. For ease of reference, the table summarizing the GBCPG cost claim for Proceeding 3329 is reproduced below:

Claimant	Hours			Fees/Honoraria	Disbursements	GST	Total
	Preparation	Attendance	Argument				
GBCPG							
Ackroyd LLP	332.40	284.10	0.00	\$184,018.75	\$16,518.41	\$9,979.94	\$210,517.10
FDI Acoustics Inc.	80.00	4.00	0.00	\$15,010.00	\$458.16	\$773.41	\$16,241.57
E-Coustic Solutions	71.50	7.50	0.00	\$19,890.00	\$0.00	\$0.00	\$19,890.00
The Acoustic Group Pty Ltd.	79.00	25.50	0.00	\$28,215.00	\$0.00	\$0.00	\$28,215.00
Dr. Michael Nissenbaum	39.00	11.50	0.00	\$13,635.00	\$0.00	\$0.00	\$13,635.00
Cottonwood Consultants Ltd.	117.50	23.50	0.00	\$36,348.75	\$1,052.74	\$1,844.77	\$39,246.26
Kim Clark	0.00	0.00	0.00	\$450.00	\$59.80	\$0.00	\$509.80
Ward Clark	0.00	0.00	0.00	\$150.00	\$35.88	\$0.00	\$185.88
Laura Tapley	0.00	0.00	0.00	\$450.00	\$99.36	\$0.00	\$549.36
Total	719.40	356.10	0.00	\$298,167.50	\$18,224.35	\$12,598.12	\$328,989.97

36. The Commission finds that the GBCPG acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues. However, the Commission is unable to approve the full amount of the costs claimed in respect of the services performed by Ackroyd LLP and the expert consultants, for the reasons set out below.

Ackroyd LLP

37. The GBCPG was represented by Ackroyd LLP in the original proceeding. The fees claimed by the GBCPG for the legal services provided by Mr. Secord, Mr. Cheng, and Ms.

Ifeoma Okoye relate to reviewing the application, corresponding with landowners and experts, reviewing expert reports, preparing IRs to E.ON, reviewing IR responses, preparing evidence, preparing information responses to IRs from E. ON, and reviewing rebuttal evidence. Legal fees were also claimed for preparing witnesses and landowners for the hearing, preparing argument, and preparing for and attending the hearing. Mr. Secord and Mr. Cheng claimed 31.70 hours for travel at half of their respective hourly rate. The hourly rate of the legal fees claimed was in accordance with the Scale of Costs.

38. While the Commission considers that that the services performed by Mr. Secord, Mr. Cheng and Ms. Okoye were related to the GBCPG's participation in the original proceeding, it finds that the fees claimed for these services were not reasonable for the following reasons. Given the number of residents which make up the GBCPG, the Commission finds that employing a junior counsel to assist with the representation of the large number of residents was necessary. However, the need for two junior counsels was not shown given the scope of the issues raised, that the issues were not novel, and the extensive expertise of Mr. Secord in relation to wind farm proceedings and other AUC proceedings. As a result, the Commission disallows the legal fees claimed for Ms. Okoye of 38.7 hours at an hourly fee of \$225.00.

39. In addition, a review of the invoices submitted indicates that legal fees were charged for communications with persons who were not members of the GBCPG. The Commission is not satisfied that such communication was necessary for the participation of the GBCPG in the proceeding. The invoices also show that there was some duplication in the legal services provided by junior and senior legal counsel. As well, legal fees were charged for the preparation of the advance funding application. Therefore, the Commission reduces the legal fees claimed for Ackroyd LLP by a further 15 per cent.

40. The Commission has reviewed the disbursements claimed by Ackroyd and finds that not all the amounts claimed for disbursements are in accordance with the Scale of Costs. The claim made for accommodation by Mr. Secord and Mr. Cheng for March 13 to March 17 is not in accordance with the rates permitted by the Scale of Costs. The Commission has therefore determined that a reduction in the daily rate for accommodation is warranted from the claimed rates to \$140.00 for five days.

41. The Commission approves the remaining disbursements claimed for mileage, meals, parking, transcripts, postage, photocopies, online searches, and medical records in the amount of \$12,391.21. Consequently, the Commission approves total disbursements for Ackroyd in the amount of \$15,288.03, inclusive of the accommodation costs approved.

42. Accordingly, the Commission approves the GBCPG's claim for legal fees for Ackroyd in the amount of \$149,014.56, disbursements of \$15,288.03 and GST of \$8,166.95 for a total of \$172,469.54.

FDI Acoustics Inc.

43. FDI Acoustics Inc. (FDI) was retained by the GBCPG to perform consulting services in the original proceeding. The fees claimed by the GBCPG for the consulting services provided by Mr. Farquharson relate to reviewing the application, preparing an expert report on noise impact, drafting IRs to the applicant, drafting IR responses to IRs from the applicant, performing site visits, and preparing for and attending the oral hearing as an expert witness. Mr. Farquharson claimed 10 hours of travel time at half of his regular rate of \$190.00 per hour.

44. The Commission finds that that the services performed by Mr. Farquharson were directly and necessarily related to the GBCPG's participation in the original proceeding, and that the fees and disbursements for mileage, which were claimed in accordance with the Scale of Costs for those services, are reasonable. Accordingly, the Commission approves the GBCPG's claim for consulting fees for FDI in the amount of \$15,010.00, disbursements of \$458.16 and GST of \$773.41 for a total of \$16,241.57.

E-Coustic Solutions

45. E-Coustic Solutions (E-Coustic) was retained by the GBCPG to perform consulting services in the original proceeding. The fees claimed by the GBCPG for the consulting services provided by Mr. Rick James relate to reviewing the application, drafting IRs, preparing evidence, preparing for and attending the hearing as an expert witness, and monitoring oral testimony. The 16 hours claimed by Mr. James for monitoring oral testimony were charged at \$180.00 per hour instead of \$270.00 per hour.

46. While the Commission considers that that the services performed by Mr. James were related to the GBCPG's participation in the original proceeding, it finds that the fees claimed for these services were unreasonable for the following reasons. The Commission considers that the GBCPG employed more noise expert consultants than necessary. Mr. James' evidence also overlapped with the evidence of Mr. Cooper. The Commission had cautioned the GBCPG that it had retained a number of experts on substantially similar subjects in awarding advance funding in Decision 21021-D01-2015.

47. Further, Mr. James testimony was not specific to the project and related to the adequacy of Rule 012, rather than whether the project satisfied the requirements of Rule 012. The Commission also notes the following finding in Decision 3329-D01-2016:

... Further, the Commission did not consider useful the views expressed by Mr. James and Mr. Cooper relating to adverse health impacts from low frequency noise and infrasound because such opinions were outside the scope of their expertise and were not borne out by the evidence in this proceeding.⁸

48. Therefore, given the limitations observed with respect to Mr. James' evidence, the Commission reduces the fees claimed by E-Coustic by 30 per cent and approves the GBCPG's claim for consulting fees for E-Coustic in the amount total amount of \$13,923.00.

The Acoustic Group Pty Ltd.

49. The Acoustic Group Pty Ltd. (Acoustic Group) was retained by the GBCPG to perform consulting services in the original proceeding. The fees claimed by the GBCPG for the consulting services provided by Mr. Cooper relate to reviewing the application, drafting an expert report, reviewing IRs and drafting IR responses, reviewing evidence, preparing cross-examination, and preparing for and attending the oral hearing.

50. While the Commission considers that that the services performed by Mr. Cooper were related to the GBCPG's participation in the original proceeding, it finds that the fees claimed for

⁸ Decision 3329-D01-2016, paragraph 179.

these services were unreasonable for the following reasons. The Commission considers that the GBCPG employed more noise expert consultants than necessary. As noted above, the Commission had cautioned the GBCPG that it had retained a number of experts on substantially similar subjects, in awarding advance funding in Decision 21021-D01-2015.

51. Further, Mr. Cooper's testimony was not specific to the project and related to the adequacy of Rule 012. Mr. Cooper commented on the noise impact assessment in light of Australian noise requirements rather than those of Rule 012. In Decision 3329-D01-2016, the Commission made the following findings:

... However, Mr. Cooper's views about the gaps in Rule 012 and in the noise impact assessment were not useful because the comments were based on the Australian requirements for noise impact assessments which differ from those in Rule 012. Further, the Commission did not consider useful the views expressed by Mr. James and Mr. Cooper relating to adverse health impacts from low frequency noise and infrasound because such opinions were outside the scope of their expertise and were not borne out by the evidence in this proceeding.⁹

52. Mr. Cooper's evidence also overlapped with the evidence of Mr. James. Therefore, given the observed shortcomings in Mr. Cooper's evidence, the Commission reduces the fees claimed by Acoustic Group by 30 per cent and approves the GBCPG's claim for consulting fees for Acoustic Group in the amount total amount of \$19,750.50.

Dr. Michael Nissenbaum

53. Dr. Nissenbaum was retained by the GBCPG to perform consulting services in the original proceeding. The fees claimed by the GBCPG for the consulting services provided by Dr. Nissenbaum relate to drafting IR responses, preparing an expert witness report, drafting cross-examination questions, preparing for the hearing, and attendance at the hearing.

54. While the Commission considers that that the services performed by Dr. Nissenbaum were related to the GBCPG's participation in the original proceeding, it finds that the fees claimed for these services were unreasonable for the following reasons. The Commission notes the following findings in Decision 3329-D01-2016:

The Commission accepts Dr. Nissenbaum as an expert in radiology. The Commission acknowledges that Dr. Nissenbaum was one of the authors of the Mars Hill and Vinalhaven study which considered potential health effects of wind farms and that he has some specialized knowledge about studies on potential adverse health effects from noise. The Commission is of the view that Dr. Nissenbaum provided evidence that was not always within his expertise. He attempted to apply the Mars Hill and Vinalhaven study to the proposed project without giving due consideration to the specifics of the proposed wind farm project and the requirements of Rule 012. Further, Dr. Nissenbaum presented potential health risks of noise from other studies that were not related to noise from wind farms. Moreover, the causal connection between the noise levels predicted at the proposed wind farm and the adverse health impacts claimed by Dr. Nissenbaum were not

⁹ Decision 3329-D01-2016, paragraph 179.

supported by the preponderance of other health studies referred to in this proceeding. For these reasons, the Commission finds it can give little weight to Dr. Nissenbaum's specific conclusions regarding the project's health effects on nearby residents.¹⁰

55. Based on these identified shortcomings in Dr. Nissenbaum's evidence, the Commission reduces the fees claimed by 30 per cent. Accordingly, the Commission approves the GBCPG's claim for consulting fees for Dr. Nissenbaum in the total amount of \$9,544.50.

Cottonwood Consultants Ltd.

56. Cottonwood Consultants Ltd. (Cottonwood) was retained by the GBCPG to perform consulting services in the original proceeding. The fees claimed by the GBCPG for the consulting services provided by Mr. Wallis relate to reviewing the application, conducting field studies, drafting IRs, preparing the expert report on the environmental impact of the original application, drafting IR responses and preparing for and attending the oral hearing. Mr. Wallis claimed 12.75 hours for travel at half of regular rate of \$270.00 per hour.

57. The Commission finds that that the services performed by Mr. Wallis were directly and necessarily related to the GBCPG's participation in the original proceeding, and that the fees and disbursements claimed in accordance with the Scale of Costs for those services were reasonable. The Commission accepts the submissions of the GBCPG that the attendance of Mr. Wallis was needed during the Mannville portion of the hearing. Accordingly, the Commission approves the GBCPG's claim for consulting fees for Cottonwood in the amount of \$36,348.75, disbursements of \$1,052.74 and GST of \$1,844.77 for a total of \$39,246.26.

Intervener costs

58. The costs claim included a claim for attendance honoraria for Ms. Kim Clark, Mr. Ward Clark, and Ms. Laura Tapley totalling \$1,050.00 and disbursements of \$195.04 for mileage.

59. The claim for attendance honoraria is in accordance with the Scale of Costs and is approved by the Commission.

60. According to Appendix A of Rule 009, mileage is restricted to intercity travel distances of 50km or greater. The claim made by the GBCPG for mileage is not in accordance with the Scale of Costs and has been disallowed.

61. Accordingly, the Commission approves the claim for honoraria in the total amount of \$1,050 for attendance at the oral hearing.

Total amount awarded

62. Accordingly, the Commission approves the GBCPG's claim for recovery of costs in the total amount of \$171,756.12. This amount is composed of legal fees of \$149,014.56, consulting

¹⁰ Decision 3329-D01-2016, paragraph 247.

fees of \$94,576.75, honoraria of \$1,050.00, disbursements of \$16,798.93 and GST of \$10,785.13, less the \$100,469.25 awarded as advance funding in Decision 21021-D01-2015.¹¹

6 Order

63. It is hereby ordered that:

- 1) E.ON Climate & Renewables Canada Ltd. shall pay costs to the Grizzly Bear Coulee Protection Group in the amount of \$171,756.12.

Dated on July 21, 2016.

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

¹¹ Decision 21021-D01-2016: E.ON Climate & Renewables Canada Ltd. Grizzly Bear Creek Wind Power Project, Advance Funding Request from the Grizzly Bear Coulee Protection Group, Proceeding 21021, Application 21021-A001, December 11, 2015.