



AltaLink Management Ltd.

**South and West of Edmonton Area Transmission Development
Cooking Lake, Saunders Lake, Wabamun and
Leduc Developments**

Costs Award

December 20, 2016

Alberta Utilities Commission

Decision 21715-D01-2016

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Alberta Utilities Commission
Calgary, Alberta

AltaLink Management Ltd.
South and West of Edmonton Area Transmission Development Cooking Lake
Saunders Lake, Wabamun and Leduc Developments **Decision 21715-D01-2016**
Costs Award **Proceeding 21715**

1 Introduction

1. In this decision the Alberta Utilities Commission considers applications (the costs claim applications) by the Cooking Lake Opposition Group (CLOG), the Cooking Lake Alternate Route Resisters Group (CLARR), the Strathcona County Intervener Group (Strathcona) and the Leduc/Strathcona County Concerned Residents Group (LSCCR) for approval and payment of their costs of participation in Proceeding 20924¹ (the original proceeding). The costs claimed and awarded are provided in the following table:

Claimant	Total Fees Claimed	Total Disbursements Claimed	Total GST Claimed	Total Amount Claimed	Total Fees Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
CLOG								
Ackroyd LLP	\$139,852.50	\$5,236.50	\$7,254.46	\$152,343.46	\$139,852.50	\$5,236.50	\$7,254.46	\$152,343.46
Cottonwood Consultants Ltd.	\$22,275.00	\$960.95	\$1,160.74	\$24,396.69	\$22,275.00	\$960.95	\$1,160.74	\$24,396.69
Berrien Associates Ltd.	\$21,547.50	\$839.76	\$1,119.36	\$23,506.62	\$21,547.50	\$839.76	\$1,119.36	\$23,506.62
FDI Acoustics Inc.	\$11,875.00	\$344.00	\$610.95	\$12,829.95	\$10,093.75	\$344.00	\$521.89	\$10,959.64
Smart Drones Inc.	\$1,350.00	\$0.00	\$67.50	\$1,417.50	\$1,350.00	\$0.00	\$67.50	\$1,417.50
Harrison Bowker Real Estate Appraisers	\$22,425.00	\$479.00	\$1,145.20	\$24,049.20	\$17,940.00	\$479.00	\$920.95	\$19,339.95
Intervener Honorarium	\$350.00	\$36.80	\$0.00	\$386.80	\$350.00	\$36.80	\$0.00	\$386.80
Advance funding awarded								\$112,003.50
Total	\$219,675.00	\$7,897.01	\$11,358.21	\$238,930.22	\$213,408.75	\$7,897.01	\$11,044.90	\$120,347.16
CLAAR								
Prowse Chowne LLP	\$118,584.00	\$7,378.80	\$6,275.65	\$132,238.45	\$118,584.00	\$6,662.15	\$6,239.81	\$131,485.96
Gettel Appraisals Ltd.	\$14,110.00	\$59.05	\$708.45	\$14,877.50	\$11,288.00	\$59.05	\$567.35	\$11,914.40
SmartDrones Inc.	\$12,400.00	\$3,100.00	\$775.00	\$16,275.00	\$12,400.00	\$3,100.00	\$775.00	\$16,275.00
Honorarium	\$5,550.00	\$1,988.19	\$89.37	\$7,627.47	\$5,550.00	\$1,988.19	\$89.37	\$7,627.47
Total	\$150,644.00	\$12,526.04	\$7,848.47	\$171,018.51	\$147,822.00	\$11,809.39	\$7,671.53	\$167,302.92
LSCCR								
Randall Jarvis Law Office	\$89,180.00	\$8,106.83	\$4,793.98	\$102,080.81	\$75,722.50	\$8,106.83	\$4,121.11	\$87,950.44
Honorarium	\$700.00	\$0.00	\$0.00	\$700.00	\$700.00	\$0.00	\$0.00	\$700.00
Total	\$89,880.00	\$8,106.83	\$4,793.98	\$102,780.81	\$76,422.50	\$8,106.83	\$4,121.11	\$88,650.44

¹ Proceeding 20924, applications by AltaLink Management Ltd. for approval of the South and West of Edmonton Area Transmission Development Cooking Lake, Saunders Lake, Wabamun and Leduc Developments.

Strathcona								
Strathcona County								
Brownlee LLP	\$115,778.62	\$2,240.08	\$5,900.94	\$123,919.64	\$0.00	\$0.00	\$0.00	\$0.00
Honorarium	\$900.00	\$179.04	\$5.12	\$1,084.16	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$116,678.62	\$2,419.12	\$5,788.93	\$125,003.80	\$0.00	\$0.00	\$0.00	\$0.00
Friends of Elk Island								
Brownlee LLP	\$3,515.10	\$0.00	\$175.76	\$3,690.86	\$0.00	\$0.00	\$0.00	\$0.00
Honorarium	\$100.00	\$26.67	\$1.33	\$128.00	\$0.00	\$0.00	\$0.00	\$0.00
Total	\$3,616.10	\$26.67	\$177.09	\$3,818.86	\$0.00	\$0.00	\$0.00	\$0.00
Cooking Lake Cemetery								
Brownlee LLP	\$13,436.58	\$5,157.27	\$929.69	\$19,523.54	\$13,436.58	\$5,157.27	\$929.69	\$19,523.54
Honorarium	\$200.00	\$245.02	\$4.42	\$449.44	\$200.00	\$245.02	\$4.42	\$449.44
Total	\$13,636.58	\$5,402.29	\$934.11	\$19,972.98	\$13,636.58	\$5,402.29	\$934.11	\$19,972.98
Group Total	\$133,930.30	\$7,848.08	\$7,017.26	\$148,795.64	\$13,636.58	\$5,402.29	\$934.11	\$19,972.98
Total amount claimed and awarded				\$661,525.18				\$396,273.50

2. The Commission has awarded reduced costs to each of the claimants for the reasons set out below.

3. The original proceeding was convened by the Commission to consider an application by AltaLink Management Ltd. (AltaLink) for the approval of five developments to reinforce the 138-kilovolt (kV) and 240-kV transmission system in the Leduc, Strathcona, and Parkland County areas. The original proceeding involved information requests (IRs) and IR responses, written evidence, an oral hearing, cross-examination, argument and reply argument. The close of record for the original proceeding was June 8, 2016, and the Commission issued Decision 20924-D01-2016² on July 15, 2016.

4. CLOG submitted its costs application on June 13, 2016, within the 30 day timeline permitted by the Commission's rules. The Commission assigned Proceeding 21715 and Application 21715-A001 to the costs claim application.

5. CLARR submitted its costs claim application on June 23, 2016, and LSCCR and Strathcona submitted costs claim applications on June 24, 2016, within the 30 day timeline permitted by the Commission's rules. Within Proceeding 21715, the costs claim applications were assigned Application 21715-A002, Application 21715-A003 and Application 21715-A004 respectively.

6. On July 14, 2016, AltaLink submitted comments with respect to the costs claimed. Strathcona filed its response on July 26, and LSCCR submitted its response on July 28, 2016. No responses were filed by CLOG or CLARR.

7. The Commission issued an information request to Strathcona on September 19, 2016.

² Decision 20924-D01-2016: AltaLink Management Ltd., South and West of Edmonton Area Transmission Development, Proceeding 20924, July 15, 2016.

8. The Commission considers the close of record for this proceeding to be September 26, 2016, the date on which the final submissions on the costs claim were received.

2 Commission findings

9. 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 for a transmission line under the *Hydro and Electric Energy Act* is found in sections 21 and 22 of the *Alberta Utilities Commission Act*. When considering a claim for costs for a facilities proceeding, the Commission is also guided by the factors set out in Section 7 of Rule 009: *Rules on Local Intervener Costs* (Rule 009) which allows the Commission to consider, among other things, whether costs claims are reasonable and directly and necessarily related to the original proceeding, and whether the participants acted responsibly and contributed to a better understanding of the issues before the Commission. Appendix A of Rule 009 prescribes a Scale of Costs applicable to all costs claimed.

10. Section 22 of the *Alberta Utilities Commission Act* defines what a “local intervener” is 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.

2.1 Cooking Lake Opposition Group

11. The members of CLOG own or reside on property located within 800 metres of the proposed preferred Cooking Lake transmission line route. Given the proximity of these properties to the project, the Commission is satisfied that CLOG members have an interest in, and are entitled to occupy, land that may be directly and adversely affected by the Commission’s decision on AltaLink’s application. Accordingly, the Commission finds that the members of CLOG are local interveners.

12. The following table summarizes CLOG’s costs claim for Proceeding 20924:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CLOG							
Ackroyd LLP	273.90	112.00	72.60	\$139,852.50	\$5,236.50	\$7,254.46	\$152,343.46
Cottonwood Consultants Ltd.	66.75	20.25	0.00	\$22,275.00	\$960.95	\$1,160.74	\$24,396.69
Berrien Associates Ltd.	91.40	7.50	0.00	\$21,547.50	\$839.76	\$1,119.36	\$23,506.62
FDI Acoustics Inc.	61.00	5.00	0.00	\$11,875.00	\$344.00	\$610.95	\$12,829.95
Smart Drones Inc.	8.80	2.00	0.00	\$1,350.00	\$0.00	\$67.50	\$1,417.50
Harrison Bowker Real Estate Appraisers	116.71	8.00	0.00	\$22,425.00	\$479.00	\$1,145.20	\$24,049.20
Intervener Honorarium	0.00	0.00	0.00	\$350.00	\$36.80	\$0.00	\$386.80
Total	618.56	154.75	72.60	\$219,675.00	\$7,897.01	\$11,358.21	\$238,930.22

13. The Commission finds that CLOG 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 FDI Acoustics Inc. and HarrisonBowker Real Estate Appraisers for the reasons set out below.

Comments from AltaLink

14. In their comments, AltaLink expressed concerns with the fees claimed by CLOG for SmartDrones Inc. AltaLink argued that the use of SmartDrone’s technology was not entirely objective, as the videos provided were taken at different times, under different light and ambient conditions, and were produced or edited under instructions by different parties.

15. AltaLink further noted that while intervener groups may prepare and direct their own cases, it raised a concern about multiple costs orders being awarded to a consultant producing evidence for both CLOG and CLARR, given that they may be adverse in interest.

Ackroyd LLP

16. CLOG was represented by Ackroyd LLP in the original proceeding. The fees claimed by CLOG for the legal services provided by Mr. Richard Secord, Mr. Yuk-Sing Cheng, and Ms. Ifeoma M. Okoye relate to reviewing the application, conducting research, corresponding with landowners and consultants, reviewing draft IRs, reviewing IR responses, preparing cross-examination, preparing for and attending the oral hearing, and preparing argument and reply argument.

17. The Commission finds that that the services performed by Ackroyd were directly and necessarily related to CLOG’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. Accordingly, the Commission approves CLOG’s claim for legal fees for Ackroyd in the amount of \$139,852.00, disbursements for meals, transcripts, postage, courier fees, photocopying, online research and scanning of \$5,236.50 and GST of \$7,254.46 for a total of \$152,343.46.

Cottonwood Consultants Inc.

18. Cottonwood Consultants Inc. was retained by CLOG to perform consulting services in the original proceeding. The fees claimed by CLOG for the consulting services provided by Mr.

Cliff Wallis relate to reviewing the application, drafting IRs, preparing a report on the environmental and biodiversity effects of the project, drafting IR responses, preparing cross-examination, and preparing for and attending the hearing as an expert witness. Of the 86 hours claimed, 7 hours for travel were billed at half of Mr. Wallis' usual rate.

19. The Commission finds that that the services performed by Cottonwood Consultants Inc. were directly and necessarily related to CLOG'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. Accordingly, the Commission approves CLOG's claim for consulting fees for Cottonwood Consultants Inc. in the amount of \$22,275.00, disbursements for accommodation, meals and mileage of \$960.95 and GST of \$1,160.74 for a total of \$24,396.69.

Berrien Associates Ltd.

20. Berrien Associates Ltd. was retained by CLOG to perform consulting services in the original proceeding. The fees claimed by CLOG for the consulting services provided by Mr. Robert Berrien relate to reviewing the application, preparing a report on the impacts of the preferred and alternate routes, drafting IRs to AltaLink, reviewing IR responses, and preparing for and attending the oral hearing as an expert witness. Of the 98.90 hours claimed, 3.40 hours for travel were claimed at half of Mr. Berrien's usual rate. 15.50 hours were claimed for services performed by support staff.

21. The Commission finds that that the services performed by Berrien Associates were directly and necessarily related to CLOG'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. Accordingly, the Commission approves CLOG's claim for consulting fees for Berrien Associates in the amount of \$21,547.50, disbursements for accommodation, mileage and parking of \$839.76 and GST of \$1,119.36 for a total of \$23,506.62.

FDI Acoustics Inc.

22. FDI Acoustics Inc. (FDI) was retained by CLOG to perform consulting services in the original proceeding. FDI prepared a short report on project noise and one section of that report related to AltaLink's Noise Impact Assessment for the proposed Saunders Lake substation. No member of CLOG objected to AltaLink's application for this substation; it is not located anywhere near the CLOG members' land. FDI acknowledged this when questioned by AUC staff but explained that when it began its work it was not aware of where the CLOG members' lands were located.³

23. The fees claimed by CLOG for the consulting services provided by FDI relate to reviewing the application, performing a noise impact assessment, drafting IRs, reviewing IR responses, and preparing for and attending the oral hearing as an expert witness. Of the 66 hours claimed, 7 hours for travel were claimed at half of Mr. Farquharson's usual rate.

24. The Commission finds that the services performed by FDI Acoustics relating to the proposed Saunders Lake substation were not directly and necessarily related to CLOG's

³ Proceeding 20924, Transcript, Volume 3, pages 641-642

participation in the original proceeding because no CLOG member objected to that application. Having regard to the work performed by FDI on the Saunders Lake substation, the Commission finds that a 15 per cent reduction to the fees claimed by FDI is warranted. The Commission finds that the remaining services performed by FDI on behalf of CLOG were directly and necessarily related to its participation in the hearing and that the fees and disbursements claimed in accordance with the Scale of Costs for those services were reasonable. Accordingly, the Commission approves CLOG's claim for consulting fees for FDI Acoustics in the amount of \$10,093.75, disbursements for mileage and parking of \$344.00 and GST of \$521.89 for a total of \$10,959.64.

SmartDrones Inc.

25. SmartDrones Inc. was retained by CLOG to perform consulting services in the original proceeding. The fees claimed by CLOG for the consulting services provided by Mr. Eric Wilson, Mr. Mitch Murray and Mr. Hayden Wilson relate to drone flyovers of the proposed route, video editing, and attending the oral hearing.

26. While the retention of the same consultant by opposing parties would generally create a conflict of interest for the consultant, the Commission does not regard that such a conflict has arisen here given that the service SmartDrones performed for CLOG and CLARR was the creation of drone video footage of the two proposed routes.

27. The Commission finds that the services performed by SmartDrones were directly and necessarily related to CLOG's participation in the original proceeding, and that the fees claimed in accordance with the Scale of Costs for those services were reasonable. The Commission finds that the video evidence prepared by SmartDrones was helpful in that it provided effective context for CLOG's evidence. Accordingly, the Commission approves CLOG's claim for consulting fees for SmartDrones in the amount of \$1,350.00 and GST of \$67.50 for a total of \$1,417.50.

HarrisonBowker Real Estate Appraisers Ltd.

28. HarrisonBowker Real Estate Appraisers Ltd. (HarrisonBowker) was retained by CLOG to prepare a valuation report. In its report, HarrisonBowker analyzed the potential property value impacts of the proposed transmission line on ten properties located on Range Road 220, which was a relatively small section of the preferred route. The fees claimed by CLOG for the services provided by HarrisonBowker related to preparing a value impact assessment report, drafting IR responses, and preparing for and attending the oral hearing as an expert witness.

29. The Commission found as follows with respect to HarrisonBowker's evidence in Decision 20924-D01-2016:

193. HarrisonBowker's analysis also suffered from shortcomings. None of its paired sales analysis related to 138-kV lines. Two of the four subdivisions examined by HarrisonBowker in its paired sales analysis were adjacent to a transmission corridor that contained a 500-kV line and two 240-kV lines. Further, HarrisonBowker's limited paired sales analysis of the four subdivisions in Parkland County provided insufficient data to support its conclusions about property value discounts. For example, HarrisonBowker's conclusion that a five per cent discount will arise for properties located 30 to 60 metres from a transmission line valued at less than \$300,000 appears to be based solely on its

review of three property sales in the West 80 Estates. The Commission finds that this is an insufficient sample size to support the conclusion.

194. A third shortcoming identified by the Commission in HarrisonBowker's analysis was its decision to calculate property value discounts for transmission lines and loss of shelterbelt separately and then apply both discounts to some properties. The Commission is concerned that this approach may overestimate the impact of a transmission line because observed discounts for adjacent transmission lines already take into account the visual impacts of the transmission line.⁴

30. The Commission also found that HarrisonBowker's analysis was not helpful for determining which route would be most impacted from a property value perspective.⁵

31. The Commission is satisfied that the services performed by HarrisonBowker were directly and necessarily related to CLOG's participation in the original proceeding. However, having regard to the shortcoming in the work performed by HarrisonBowker described above, the Commission finds that a 20 per cent reduction to the fees claimed is warranted. The Commission finds that the disbursements claimed on behalf of HarrisonBowker were reasonable and in accordance with the Scale of Costs. Accordingly, the Commission approves CLOG's claim for consulting fees for HarrisonBowker in the amount of \$17,940.00, disbursements of \$479.00 and GST of \$920.95 for a total of \$19,339.95.

Intervener honoraria and disbursements

32. CLOG's costs claim application also included a claim for attendance honoraria for seven participants totalling \$350.00 and disbursements for mileage of \$36.80.

33. The Commission finds that the claims for attendance honoraria and disbursements for mileage are reasonable and within the Scale of Costs, and are approved by the Commission.

Total costs awarded

34. Accordingly, the Commission approves the claim by CLOG for recovery of costs in the total amount of \$232,350.66. This amount is composed of legal fees of \$139,852.50, consulting fees of \$73,206.25, honorarium of \$350.00, disbursements of \$7,897.01 and GST of \$11,044.90, less the \$112,003.50 awarded as advance funding in Decision 21368-D01-2016,⁶ leaving a balance of \$120,347.16 to be paid by AltaLink.

2.2 Cooking Lake Alternate Route Resisters Group

35. Members of CLARR own or reside on property located within 800 meters of AltaLink's alternate route. Given the proximity of this property 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

⁴ Decision 20924-D01-2016, AltaLink Management Ltd., South and West of Edmonton Area Transmission Development, July 15, 2016, paragraphs 193 and 194.

⁵ *Ibid*, paragraph 198.

⁶ Decision 21368-D01-2016: AltaLink Management Ltd. South and West of Edmonton Area Transmission Development Advance Funding Request of the Cooking Lake Opposition Group Advance Funding Award, Proceeding 21368, March 14, 2016.

affected by the Commission’s decision on AltaLink’s application. Accordingly, the Commission finds that CLARR are local interveners.

36. The following table summarizes CLARR’s costs claim for Proceeding 20924:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CLARR							
Prowse Chowne LLP	265.85	87.70	82.50	\$118,584.00	\$7,378.80	\$6,275.65	\$132,238.45
Gettel Appraisals Ltd.	44.00	17.00	0.00	\$14,110.00	\$59.05	\$708.45	\$14,877.50
SmartDrones Inc.	86.90	12.30	0.00	\$12,400.00	\$3,100.00	\$775.00	\$16,275.00
Honorarium	0.00	0.00	0.00	\$5,550.00	\$1,988.19	\$89.37	\$7,627.47
Total	396.75	117.00	82.50	\$150,644.00	\$12,526.04	\$7,848.47	\$171,018.51

37. The Commission finds that CLARR 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 Prowse Chowne LLP and Gettel Appraisals for the reasons set out below.

Comments from AltaLink

38. In its letter, AltaLink also raised concerns with the participation of SmartDrones. AltaLink noted that given the potential conflict between CLOG and CLARR, issuing multiple costs awards to the same consultant would be of concern to AltaLink.

Prowse Chowne LLP

39. CLARR was represented by Prowse Chowne LLP in the original proceeding. The fees claimed by CLARR for the legal services provided by Ms. Debbie Bishop and Mr. Ryan Henriques relate to reviewing the application, drafting IRs, meeting with landowners, reviewing IR responses, preparing for and attending the oral hearing, and drafting final argument.

40. The Commission has reviewed the disbursements claimed by Prowse Chowne and notes that not all the claims for recovery of disbursements are in accordance with the Scale of Costs. The claim of \$716.65 made for meals for a pre-hearing meeting held April 23, 2016 falls outside of the hearing dates and has been disallowed.

41. The Commission approves the remaining claims for disbursements for meals, mileage, parking, transcripts, postage, courier fees, photocopying, hall rental and land title searches of \$6,662.15.

42. The Commission finds that that the services performed by Prowse Chowne were directly and necessarily related to CLARR’s participation in the original proceeding, and that the fees claimed in accordance with the Scale of Costs for those services were reasonable. Accordingly, the Commission approves CLARR’s claim for legal fees for Prowse Chowne in the amount of \$118,584.00, disbursements of \$6,662.15 and GST of \$6,239.81 for a total of \$131,485.96.

Gettel Appraisals Ltd.

43. Gettel Appraisals Ltd. (Gettel) was retained by CLARR to perform consulting services in the original proceeding. The fees claimed by CLARR for the consulting services provided by Gettel relate to reviewing the application, performing property reviews, drafting IR responses and preparing for and attending the oral hearing.

44. Gettel provided property value analysis of homes along the preferred and alternative route. Its analysis was undertaken in two stages. First, it established a range of transmission line related property value discounts based on studies that it carried out in Alberta and BC. Second, it applied those discounts to homes along the preferred and alternate route to calculate a monetary impact from property valuation for each route.

45. Gettel included three case studies in its report that it used to calculate property value impacts: the Heartland case study, the Tsawwassen case study and the Parkland case study. In Decision 20924-D01-2016, the Commission found there to be shortcomings associated with the applicability of each study to the project at issue.⁷ The Commission also concluded that Gettel's estimate of negative property value impacts for the proposed line in excess of 15 per cent was unreasonable and unsupported by the evidence.⁸ (paragraph 195).

46. The Commission found Gettel's comparative analysis to be helpful when comparing the potential impacts of the two routes on property values. However, the Commission also found that Gettel overestimated the likely property value impacts of the proposed project.

47. The Commission finds that that the services performed by Gettel Appraisals were directly and necessarily related to CLARR's participation in the original proceeding and that the fees claimed on its behalf comply with the Scale of Costs. However, having regard to the shortcomings in Gettel's evidence identified above, the Commission finds that a 20 per cent reduction in the fees claimed for the services provided is warranted in the circumstances. The Commission finds that the disbursements claimed on behalf of Gettel Appraisals were reasonable and in accordance with the Scale of Costs. Accordingly, the Commission approves CLARR's claim for consulting fees for Gettel Appraisals in the amount of \$11,288.00, disbursements of \$59.05 and GST of \$567.35 for a total of \$11,914.40.

SmartDrones Inc.

48. SmartDrones Inc. was retained by CLARR to perform consulting services in the original proceeding. The fees claimed by CLARR for the consulting services provided by Mr. Eric Wilson, Mr. Mitch Murray and Mr. Hayden Wilson relate to performing drone flyovers of the proposed alternate route, video editing, and attending the oral hearing.

49. SmartDrones provided a similar service to CLOG and AltaLink expressed concern about a possible conflict of interest given that CLOG and CLAR were adverse in interest. While the retention of the same consultant by opposing parties would generally create a conflict of interest for the consultant, the Commission does not regard that such a conflict has arisen here given that

⁷ *Ibid*, paragraphs 190-192.

⁸ *Ibid*, paragraph 195.

the service SmartDrones performed for each party was the creation of drone video footage of the two proposed routes.

50. The Commission finds that the services performed by SmartDrones were directly and necessarily related to CLARR's participation in the original proceeding. In particular, the Commission finds that the video evidence provided by SmartDrones was of considerable assistance in providing context for the evidence of individual landowners which was given simultaneously. The Commission considers that the fees and disbursements claimed in accordance with the Scale of Costs for those services were reasonable. Accordingly, the Commission approves CLARR's claim for consulting fees for SmartDrones in the amount of \$12,400.00, disbursements for equipment of \$3,100.00 and GST of \$775.00 for a total of \$16,275.00.

Intervener Costs

51. The costs claim application also included a claim for attendance honoraria for 32 participants totalling \$5,050.00, a claim of \$500 by Ms. Fay Nilson for forming an intervener group, disbursements for meals and mileage of \$1,988.19, and GST of \$89.37.

52. In the case of large local intervener groups, the Scale of Costs allows up to six participants to claim attendance honoraria unless exceptional circumstances are found. The Commission is exercising its discretion in assessing the claim for honoraria, and awards the claimed attendance honoraria to all of the claimants in the amount of \$5,050.00.

53. The claim by Ms. Fay Nilson of \$500 for forming an intervener group is in accordance with the Scale of Costs and is also approved by the Commission. Likewise, the claims for disbursements for mileage and meals of \$1,988.19 and GST of \$89.37 are within the Scale of Costs and are therefore approved.

Total costs awarded

54. Accordingly, the Commission approves the claim by CLARR for recovery of costs in the total amount of \$167,302.92. This amount is composed of legal fees of \$118,584.00, consulting fees of \$23,688.00, honorarium of \$5,550.00, disbursements of \$11,809.39 and GST of \$7,671.53.

2.3 Leduc and Strathcona County Concerned Residents Group

55. Members of the LSCCR own property located within 800 meters of the project. Given the proximity of these properties to the project, the Commission is satisfied that members have an interest in, and are entitled to occupy, land that may be directly and adversely affected by the Commission's decision on AltaLink's application. Accordingly, the Commission finds that the LSCCR are local interveners.

56. The following table summarizes the LSCCR's costs claim for Proceeding 20924:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
LSCCR							
Randall Jarvis Law Office	153.80	38.20	62.80	\$89,180.00	\$8,106.83	\$4,793.98	\$102,080.81
Intervener Honorarium	0.00	0.00	0.00	\$700.00	\$0.00	\$0.00	\$700.00
Total	153.80	38.20	62.80	\$89,800.00	\$8,106.83	\$4,793.98	\$102,780.81

57. The Commission finds that LSCCR 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 Randall Jarvis Law Office for the reasons set out below.

Comments from AltaLink

58. In its letter, AltaLink raised concerns with the quantum of legal fees claimed by the LSCCR. AltaLink noted that the LSCCR was comprised of less than 20 landowners, which is less than one-third of the members of either CLOG or CLARR, and would therefore require less preparation time.

59. AltaLink argued that the issues raised by the LSCCR group were not complex, and the LSCCR group’s participation in the hearing was limited. AltaLink noted that the LSCCR did not undertake any cross-examination of CLOG or Strathcona, which were parties adverse in interest, did not retain any experts, and that only two of its members testified at the hearing.

60. AltaLink further submitted that Randal Jarvis Law Office did not utilize articling or junior counsel to reduce legal costs.

61. Finally, AltaLink noted that Mr. Campbell’s travel time was claimed at the full billable rate, instead of at 50 per cent in accordance with Rule 009.

LSCCR Response

62. In its reply to AltaLink’s comments, the LSCCR submitted that costs should be assessed based on work done and the contributions made to the process, not in comparison to other parties. The LSCCR argued that the size of an intervenor group has little to no effect on many aspects of hearing representation.

63. The LSCCR noted that, as the third group to cross-examine AltaLink’s panel, they had time to tailor cross-examination questions to avoid duplication. The LSCCR further argued that there is no general requirement in Canadian law that a party has to cross-examine everyone, and that cross-examining CLOG or Strathcona would not have served any purpose.

64. The LSCCR submitted that they did not retain experts as they expected the expert evidence from the other parties to be unbiased, and that the LSCCR would be able to make its points at the hearing by reference to that evidence in cross-examination, evidence and argument.

65. Finally, the LSCCR agreed that Mr. Campbell's travel time was mistakenly claimed at the full billable rate.

Randall Jarvis Law

66. The LSCCR was represented by Randall Jarvis Law Office in the original proceeding. The fees claimed by the LSCCR for the legal services provided by Mr. David Campbell relate to reviewing the application, corresponding with interveners, drafting IRs, reviewing IR responses, drafting evidence, preparing for and attending the oral hearing, drafting argument, reviewing the arguments of other parties, and drafting reply argument.

67. The Commission finds that that the services performed by Mr. Campbell were directly and necessarily related to the LSCCR's participation in the original proceeding and that the fees claimed were in accordance with the Scale of Costs. However, the Commission finds that the fees claimed for these services were disproportionate to the group's contribution to the Commission's understanding of the issues in the proceeding.

68. The LSCCR group's intervention was not complex. The LSCCR filed no expert evidence and it engaged in only limited cross-examination of the applicant's witness panel, primarily on the issue of right-of-way widths. Further, the LSCCR sat only a single landowner panel of witnesses for approximately 1.5 hours. Notwithstanding this limited participation, the legal fees claimed on behalf of Randall Jarvis were only 25 to 33 per cent less than those claimed on behalf of CLOG and CLARR.

69. The Commission also finds that there was some overlap between the interests of the LSCRR and CLARR as the members of both groups owned or occupied lands along the alternate route. In the Commission's view, the reasons provided by the LCRR for retaining separate counsel were not compelling.

70. Having regard to the foregoing, the Commission finds that a 25 per cent reduction to the preparation fees claimed on behalf of Randall Jarvis is warranted in the circumstances. The Commission finds that the disbursements claimed by Randall Jarvis were reasonable and consistent with the Scale of Costs and approves them in full. Accordingly, the Commission approves the LSCCR's claim for legal fees for Randall Jarvis Law in the amount of \$75,722.50, disbursements of \$8,106.83 and GST of \$4,121.11 for a total of \$87,950.44.

Intervener costs

71. The LSCCR requested honoraria for Mrs. Lorrell Yendall and Mrs. Louise Olsen totalling \$700.00. The claim for Mrs. Yendall is comprised of \$500.00 for forming a group and \$100.00 for attendance. The claim for Mrs. Olsen is comprised of \$100.00 for attendance. The claims for honoraria are in accordance with the Scale of Costs and are approved by the Commission.

Total costs awarded

72. Accordingly, the Commission approves the claim by the LSCCR for recovery of costs in the total amount of \$88,650.44. This amount is composed of legal fees of \$75,722.50, honoraria of \$700.00, disbursements of \$8,106.83 and GST of \$4,121.11.

2.4 Strathcona County Intervener Group

73. The Strathcona County Intervener group includes Strathcona County, the Cooking Lake Cemetery Company, and the Friends of Elk Island Society.

74. The following table summarizes the Strathcona group’s cost claim for Proceeding 20986:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Strathcona							
Brownlee LLP	356.02	82.90	48.65	\$132,730.30	\$7,397.35	\$7,006.39	\$147,134.04
Honoraria	0.00	0.00	0.00	\$1,200.00	\$450.73	\$10.87	\$1,661.60
Total	356.02	82.90	48.56	\$133,930.30	\$7,848.08	\$7,017.26	\$148,795.64

75. In response to an information request from the Commission, Strathcona County provided the following breakdown of legal fees claimed on behalf of each group member:

Group member	Legal fees claimed
Cooking Lake Cemetery Company	\$13,436.58
Friends of Elk Island Society	\$3,515.10
Strathcona County	\$115,778.62

2.4.1 Local intervener standing

Comments from AltaLink

76. AltaLink noted that in its January 12, 2016, standing decision, the Commission ruled that the Friends of Elk Island Society’s participation was permitted at its own expense. AltaLink argued that, while the Friends of Elk Island Society formed part of a broader group with standing, the time entries pertaining only to the Friends of Elk Island Society and the honoraria should not be included in the costs claim.

77. AltaLink further submitted that in previous proceedings, the Commission has decided not to exercise its discretion to award costs to municipalities, even where such municipalities owned land and satisfied the definition of ‘local intervener’. AltaLink noted that Leduc County was also granted standing in the proceeding, but had not filed a similar costs claim. Finally, AltaLink noted that the Strathcona witnesses were paid employees, not potentially affected landowners, and it would be unusual for them to be awarded honoraria for their attendance at the hearing.

Strathcona response

78. In its reply submission, Strathcona stated that it had sought local intervener status because, like cities and unlike smaller municipalities, it legally owns, controls and maintains its own roads. Strathcona noted that the preferred route would be “located almost entirely within the transportation utility corridor, highway right-of-way and government road allowance,” and would impact Strathcona’s management and use of its lands. Strathcona argued that its municipal

status should not disentitle it to the costs reasonably incurred in defending its position as a significantly impacted land owner.

79. Strathcona also noted that Dr. Brian Eaton participated in the hearing not only as a member of the Friends of Elk Island Society, but also as a wildlife expert. It also submitted that Strathcona County must be represented by its personnel, particularly those with particular subject matter expertise. Strathcona argued that the necessity to prepare for and attend the hearings was over and above the normal duties for which its personnel were paid.

2.4.2 Findings

80. The Commission finds that the Cooking Lake Cemetery Company is a local intervener, as that phrase is defined, and is eligible to recover its reasonable participation costs under AUC Rule 009.

81. The Commission finds that Strathcona County also meets the definition of local intervener because it owns or occupies land that is or may be directly and adversely affected by the Commission's decision to approve AltaLink's preferred route. However, the Commission's authority to award costs, even to those who meet the definition of local intervener, is discretionary and in previous costs decisions the Commission and its predecessors have decided not to award local intervener costs to municipal interveners.

82. In Decision 2011-489⁹, the Commission considered whether to exercise its discretion to award costs to the City of Spruce Grove and Parkland County for their interventions in the Heartland transmission project proceeding. The Commission reviewed the history of the local interveners cost provision and found that Hansard supported the notion that "local intervener funding would be provided only to those with land-based rights or interests that may be affected by the project and that such funding should be used to protect or safeguard those land based rights or interests."¹⁰ The Commission found that this interpretation would preclude those advancing a general interest in a project from recovering local intervener costs but would not preclude their participation in a hearing. The Commission concluded that the interventions of the Spruce Grove and Parkland County were general in nature and undertaken to promote the collective interests of their respective residents and thus were not the types of interventions that local intervener funding was intended to apply to.¹¹

83. The Commission continues to be of the view that the purpose of its local intervener funding scheme is to provide local landowners and occupants with the means to effectively participate in AUC proceedings to protect their land based rights.

84. The Commission finds that Strathcona County's intervention was similar in nature to those of the City of Spruce Grove and Parkland County in the Heartland proceeding in that it was pursuing general concerns on behalf of its residents. In these circumstances, the Commission has decided that it will not exercise its discretion to award local intervener costs to Strathcona County.

⁹ Decision 2011-489: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc. Heartland Transmission Project Local Intervener Costs Awards, December 14, 2011.

¹⁰ *Ibid*, paragraph 20.

¹¹ *Ibid*, paragraphs 25 and 26.

85. The Commission finds that the Friends of Elk Island Society do not meet the definition of local intervener because they do not own or occupy land that is or may be directly and adversely affected by the Commission's decision on AltaLink's application.

86. Having regard to the foregoing, the Commission is precluded from awarding local intervener costs for the Friends of Elk Island Society and has decided not to exercise its discretion to award costs to Strathcona County. Accordingly, the Commission will consider whether to approve the costs associated with the Cooking Lake Cemetery Company.

Brownlee LLP

87. The Strathcona group was represented by Brownlee LLP in the original proceeding. The fees claimed by Strathcona for the legal services provided by Mr. Thomas Marriot, Mr. Bryce Lawrence, Mr. Rodd Thorkelsson, Ms. Rebecca Kos and Mr. Michael Solowan relate to reviewing the application, drafting IRs, reviewing IR responses, drafting IR responses, drafting evidence, preparing for and attending the hearing, and drafting argument and reply argument.

88. The Commission finds that the services performed by Brownlee on behalf of the Cooking Lake Cemetery Company were directly and necessarily related to its participation in the original proceeding, consistent with the Scale of Costs and reasonable.

89. The Commission has reviewed the disbursements claimed by the Strathcona group and finds they are appropriate, reasonable and within the Scale of Costs. The Commission has used its discretion to approve the full costs for the transcripts, and 20 per cent of the remaining disbursements claimed for Brownlee. Therefore, the Commission approves disbursements for transcripts, photocopying, printing, scanning and land title searches in the amount of \$5,157.27.

90. Accordingly, the Commission approves the Cooking Lake Cemetery Company's claim for legal fees for Brownlee LLP in the amount of \$13,436.58, disbursements of \$5,157.27 and GST of \$929.69 for a total of \$19,523.54.

Intervener costs

91. The Commission finds that the claim for attendance honoraria for the members of the Cooking Lake Cemetery Company of \$200.00, disbursements for mileage and meals of \$245.02 and GST of \$4.42 are reasonable and within the Scale of Costs, and are approved by the Commission.

Total costs awarded

92. Accordingly, the Commission approves the claim by Strathcona insofar as it relates to the participation of the Cooking Lake Cemetery Company, for recovery of costs in the total amount of \$19,972.98. This amount is composed of legal fees of \$13,436.58, honorarium of \$200.00, disbursements of \$5,402.29 and GST of \$934.11.

3 Order

93. It is hereby ordered that:

- 1) AltaLink Management Ltd. shall pay intervener costs to the Cooking Lake Opposition Group in the amount of \$232,350.66, less the \$112,003.50 awarded as advance funding in Decision 21368-D01-2016, leaving a balance of \$120,347.16 to be paid by AltaLink Management Ltd. Payment shall be made to Ackroyd LLP, attention: Mr. Richard Secord at 1500 First Edmonton Place, 10665 Jasper Avenue, Edmonton, Alberta, T5J 3S9.
- 2) AltaLink Management Ltd. shall pay intervener costs to the Cooking Lake Alternate Route Resisters Group in the amount of \$167,302.92. Payment shall be made to Prowse Chowne LLP, Attention: Debbie Bishop, 10020-101A Avenue, Edmonton, Alberta, T5J 3G2.
- 3) AltaLink Management Ltd. shall pay intervener costs to Leduc/Strathcona County Concerned Residents group in the amount of \$88,650.44. Payment shall be made to Randall Jarvis Law Office, David L. Campbell Professional Corporation, Attention: David Campbell, 110 304 Third Avenue, Strathmore, Alberta T1P 1Z1.
- 4) AltaLink Management Ltd. shall pay intervener costs to the Strathcona County Intervener Group with respect to the participation of the Cooking Lake Cemetery Company, in the amount of \$19,972.98.

Dated on December 20, 2016.

Alberta Utilities Commission

(original signed by)

Neil Jamieson
Commission Member