



**AltaLink Management Ltd.**

**Southwest Calgary Ring Road Transmission Project**

**Costs Award**

**November 4, 2016**

**Alberta Utilities Commission**

Decision 21818-D01-2016

AltaLink Management Ltd.

Southwest Calgary Ring Road Transmission Project

Costs Award

Proceeding 21818

November 4, 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](http://www.auc.ab.ca)

## Contents

<b>1</b>	<b>Introduction</b> .....	<b>1</b>
<b>2</b>	<b>Qualifications for local intervener costs</b> .....	<b>2</b>
<b>3</b>	<b>Lakeview Concerned Residents costs claim</b> .....	<b>2</b>
<b>3.1</b>	AltaLink comments on LVCR costs claim .....	2
<b>3.1.1</b>	LVCR response.....	3
<b>3.1.2</b>	Commission Findings .....	4
<b>4</b>	<b>Order</b> .....	<b>6</b>

**Alberta Utilities Commission**  
**Calgary, Alberta**

---

**AltaLink Management Ltd.**  
**Southwest Calgary Ring Road Transmission Project**  
**Costs Award**

**Decision 21818-D01-2016**  
**Proceeding 21818**

---

## 1 Introduction

1. In this decision the Alberta Utilities Commission considers an application by the Lakeview Concerned Residents group (LVCR) for approval and payment of its costs of participation in Proceeding 20986 (the costs claim application). The costs claimed and awarded are provided in the following table:

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
LVCR								
Randal Jarvis Law Office	\$90,510.00	\$439.67	\$4,533.18	\$95,482.85	\$39,648.00	\$439.67	\$1,990.08	\$42,077.75
Mr. Raymond Mesluk	\$600.00	\$0.00	\$0.00	\$600.00	\$600.00	\$0.00	\$0.00	\$600.00
Total	\$91,110.00	\$439.67	\$4,533.18	\$96,082.85	\$40,248.00	\$439.67	\$1,990.08	\$42,677.75

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

3. Proceeding 20986 (the original proceeding) was convened by the Commission to consider AltaLink Management Ltd.'s (AltaLink) applications to relocate transmission lines in and around the area of Sarcee Trail S.W. and Glenmore Trail in Calgary in connection with the development of the southwest Calgary ring road. The original proceeding involved information requests (IRs), IR responses, intervener evidence, rebuttal evidence, an oral hearing, cross-examination, argument and reply argument. The close of record for the original proceeding was June 15, 2016 and the Commission issued Decision 20986-D01-2016<sup>1</sup> on August 31, 2016.

4. The LVCR submitted its costs claim application on July 14, 2016, within the 30 day timeline permitted by the Commission's rules. The Commission assigned Proceeding 21818 and Application 21818-A001 to the costs claim application.

5. AltaLink submitted comments regarding the costs claim application on August 8, 2016. On August 22, 2016, the LVCR filed its response to the comments filed by AltaLink. The Commission considers the close of record for this proceeding to be August 22, 2016, the date upon which the final submissions on the costs claim application were received.

---

<sup>1</sup> Decision 20986-D01-2016: AltaLink Management Ltd. Southwest Calgary Ring Road Transmission Project, Proceeding 20986, August 31, 2016.

## 2 Qualifications for local intervenor costs

6. Only “local intervenors” are eligible to claim costs in facility related applications. The Commission’s authority to award costs for the participation of a local intervenor in an application to review a decision 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 for a review on a facilities decision, the Commission is also guided by the factors set out in Section 7 of Rule 009 and the Scale of Costs found in Appendix A of Rule 009.

7. Section 22 of the *Alberta Utilities Commission Act* defines what a “local intervenor” is and states:

22(1) For purposes of this section, “local intervenor” 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.

8. The members of the LVCR own or reside on property located within 800 meters of the proposed project. Given the proximity of members’ 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 affected by the Commission’s decision on AltaLink’s application. Accordingly, the Commission finds that the LVCR group members are local intervenors.

## 3 Lakeview Concerned Residents costs claim

### 3.1 AltaLink comments on LVCR costs claim

9. In its comments, AltaLink expressed concern at the quantum of legal costs claimed. AltaLink observed that it was not aware of any other facility application hearing lasting only one day where more than 250 hours were claimed for legal services. AltaLink also noted that all of the legal costs claimed by the LVCR were claimed at the highest rate permitted by the Scale of Costs.

10. AltaLink observed that the LVCR was a small landowner group and was not expected to have incurred legal fees more than six times the amount claimed in the Springbank Radio 9273R Telecommunication Upgrade<sup>2</sup> proceeding.

11. AltaLink further submitted that the LVCR costs claim states that legal time was incurred to locate experts who could assist with the alternate delineation as a result of AltaLink's information request. AltaLink noted that the decision to retain experts typically occurs before interveners' evidence is due. AltaLink argued that the LVCR's decision not to retain an expert may have resulted in a larger costs claim, as it precluded the opportunity to leverage an expert's technical knowledge and experience.

12. AltaLink submitted that its counsel had proposed meeting with the LVCR on February 9, 2016 and on February 18, 2016, but that the LVCR declined to meet. AltaLink submitted that had the LVCR group members met with AltaLink, outstanding issues and the LVCR's legal fees may have been reduced.

13. AltaLink further submitted that the LVCR costs claim includes legal fees related to three procedural matters brought in advance of the hearing:

- An April 8, 2016 motion seeking production of AltaLink's agreement with Alberta Transportation
- A May 20, 2016 motion to request an adjournment of the hearing; and
- A June 10, 2016 motion to respond to AltaLink's June 1, 2016 consultation meeting minutes

14. AltaLink argued that the legal costs associated with these procedural steps may not have been necessary. With regard to the April 8, 2016 motion, the Commission ruled that the relevant aspects of AltaLink's agreement with Alberta Transportation were already filed on the record and the balance of the agreement was not relevant to the issues raised in the proceeding. With regard to the May 20, 2016 motion, AltaLink submitted that the LVCR did not attempt to obtain AltaLink's agreement for a new hearing date prior to filing the motion, did not propose alternative dates, and did not explain why members of the LVCR could not attend the hearing. Finally, AltaLink argued that the June 10, 2016 motion was not necessary because the LVCR group consultation record could have been addressed orally as a preliminary matter at the hearing.

### 3.1.1 LVCR response

15. The LVCR responded to AltaLink's comments. The LVCR objected to AltaLink 'benchmarking' the costs claimed against those claimed in the Springbank proceeding and argued that costs should be assessed in individual proceedings on the basis of what parties have actually done.

---

<sup>2</sup> Decision 20246-D01-2015: AltaLink Management Ltd. Springbank Radio 9273R Telecommunication Upgrade Costs Award, Proceeding 21246, June 12, 2015.

16. The LVCR argued that the size of an intervener group has little to no effect on many aspects of hearing representation. The LVCR submitted that matters such as reviewing the application, identifying issues, composing IRs and hearing attendance generally take the same amount of time regardless of group size. The LVCR similarly argued that the length of a hearing has no effect on time expended.

17. The LVCR submitted that it was not aware it had to retain experts to provide evidence to the Commission that AltaLink should have provided in its application. The LVCR further submitted that had it been able to retain experts, the costs claim would have been larger and the hearing would have been delayed.

18. The LVCR objected to AltaLink’s suggestion that the LVCR’s procedural steps may not have been necessary. The LVCR submitted that all three motions were filed in accordance with AUC rules.

### 3.1.2 Commission Findings

19. The following table summarizes the LVCR costs claim for Proceeding 20986:

Claimant	Hours			Fees/Honoraria	Disbursements	GST	Total
	Preparation	Attendance	Argument				
LVCR							
Randal Jarvis Law Office	242.20	7.50	8.90	\$90,510.00	\$439.67	\$4,533.18	\$95,482.85
Mr. Raymond Mesluk	0.00	0.00	0.00	\$600.00	\$0.00	\$0.00	\$600.00
Total	242.20	7.50	8.90	\$91,110.00	\$439.67	\$4,533.18	\$96,082.85

20. The Commission finds that the LVCR generally 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 Randal Jarvis Law for the reasons set out below.

#### Randal Jarvis Law Office

21. The LVCR was represented by Randal Jarvis Law Office in the original proceeding. The fees claimed by the LVCR for the legal services provided by Mr. David Campbell relate to reviewing the application, researching for evidence, drafting IRs, reviewing IR responses, drafting evidence, reviewing AltaLink’s rebuttal evidence, drafting cross-examination questions, and preparing for and attending the oral hearing.

22. While the Commission finds that that the services performed by Mr. Campbell were directly and necessarily related to the LVCR’s participation in the original proceeding, it finds that the fees claimed for these services were excessive for the following reasons.

23. Pursuant to Rule 009, the Commission may award costs to local interveners if it is of the opinion that the costs are reasonable and directly and necessarily related to the hearing or other proceeding, and the local intervener acted responsibly and contributed to a better understanding of the issues before the Commission. One of the primary roles of counsel at a hearing before the Commission is to ensure that the information prepared and presented contributes to a better understanding of the issues.

24. The Commission finds that the total preparation hours claimed for legal services are excessive given the nature and the extent of the issues raised in the original proceeding and the LVCR's participation in the original proceeding.

25. Mr. Campbell charged the maximum allowable rate of recovery for his years of experience at a rate of \$350.00 per hour exclusive of GST. The Commission emphasized in the Scale of Costs that the maximum allowable hourly rates will not be awarded as a matter of course. Rather, the Commission will assess each claim upon its individual merits and will only approve the maximum fee when it has been demonstrated that such a charge is warranted by the work performed. The Commission is not persuaded that the maximum allowable fee should be awarded based on the volume of the record of the original proceeding, the submissions of the LVCR, and the cross-examination and argument presented at the hearing.

26. It is the Commission's view that the issues brought forward by the LVCR were not unusually complex. However, the preparation time incurred was approximately 32 hours for every hearing hour. Experienced counsel meriting the maximum allowable hourly rate should generally require less time to prepare for a hearing than junior counsel.

27. The Commission also considered the LVCR's degree of participation in the original proceeding and counsel's assistance in that intervention. The Commission is not convinced that the preparation time incurred was warranted in the circumstances. The LVCR's evidence filed in the original proceeding was primarily comprised of its members' statements of intent to participate and a 15 page group submission. The evidence also included maps and documents from third parties which were not prepared for the purpose of the original proceeding. It is incumbent upon legal counsel to provide support for the reasonability of the preparation hours incurred.

28. Given the above, and based on the records of this proceeding and the original proceeding, the Commission finds that the number of hours incurred for preparation in the original proceeding and the related costs claimed are not commensurate with the value and contribution made toward an understanding of the issues before the Commission

29. Given the above shortcomings, the Commission finds that a reduction of sixty per cent is warranted with respect to the preparation hours claimed.

30. Accordingly, the Commission approves the LVCR's claim for legal fees for Randal Jarvis Law Office in the amount of \$39,648.00, disbursements for mileage and photocopying of \$439.67 and GST of \$1,990.08 for a total of \$42,077.75.

### **Honoraria**

31. The costs claim application also included a claim for attendance honoraria of \$100.00 for Mr. Raymond Mesluk, and a claim of \$500.00 for Mr. Mesluk for forming an intervener group.

32. The Commission finds that the claims for attendance honoraria and group honoraria for Mr. Mesluk are reasonable and within the Scale of Costs and approves them.

### **Total costs awarded**

33. In accordance with the above reasons, the Commission approves recovery of costs for LVCR in the amount of \$42,677.75, comprised of legal fees of \$39,648.00, disbursements of \$439.67, honoraria of \$600.00 and GST of \$1,990.08.

### **4 Order**

34. It is hereby ordered that:

- 1) AltaLink Management Ltd. shall pay intervener costs to the Lakeview Concerned Residents group in the amount of \$42,677.75. Payment shall be made to Randal Jarvis Law Office, Attention: David Campbell, 110 304 Third Avenue, Strathmore, Alberta, T1P 1Z1.

Dated on November 4, 2016.

### **Alberta Utilities Commission**

*(original signed by)*

Anne Michaud  
Commission Member