



**Alberta PowerLine Limited Partnership**

**Fort McMurray West 500-kV Transmission Project**

**Interim Costs and Advance Funding Award to the Wong  
Group and Roy Ernst**

**September 26, 2016**



**Alberta Utilities Commission**

Decision 21882-D01-2016

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Fort McMurray West 500-kV Transmission Project

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Proceeding 21882

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## Introduction

1. In this decision the Alberta Utilities Commission considers a joint application for interim costs and advance funding filed by two interveners in Proceeding 21030 (the application), the Wong Group and Mr. Roy Ernst (the applicants). For the reasons that follow, the Commission has approved interim costs and advance funding for the Wong Group in the amount of \$19,666.13 and for Mr. Ernst in the amount of \$18,957.38.

2. Proceeding 21030 was assigned by the Commission to consider an application by Alberta PowerLine Limited Partnership (Alberta PowerLine) to build new power transmission facilities in north central Alberta from the Wabamun area to Fort McMurray, and to build and operate three optical repeater sites, expand the Livock 939S substation and construct the Thickwood Hills 951S substation (the project).

3. The applicants submitted the application on August 9, 2016. The Commission assigned Proceeding 21882 and Application 21882-A001 to the application.

4. Alberta PowerLine submitted comments with respect to the application on August 23, 2016, to which the applicants replied on August 29, 2016. The Commission considers the close of record for this proceeding to be August 29, 2016.

## 1 Interim costs and advance funding application

5. In the application, the applicants stated that each had retained an expert consultant, Mr. Pablo Argenal of NICAN International Consulting Ltd. (Nican) to provide evidence on all areas relating to routing of the project. The applicants requested interim costs and advance funding pursuant to Rule 009: *Rules on Local Intervener Costs* (Rule 009) and the Scale of Costs set out in Appendix A thereto. The table below summarizes the interim costs claim of the applicants:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
The Wong Group							
NICAN International Consulting	87.00	0.00	0.00	\$19,575.00	\$0.00	\$978.75	\$20,553.75
Mr. Roy Ernst							
NICAN International Consulting	77.00	0.00	0.00	\$17,325.00	\$0.00	\$866.25	\$18,191.25

6. Each applicant also filed a budget requesting advance funding for Nican in the amount of \$45,000.00, which included the interim costs set out in the above table.

### **1.1 Views of Alberta PowerLine**

7. Alberta PowerLine opposed the application because it did not comply with sections 2 and 4 of Rule 009, in that the applicants had not made any submissions demonstrating their financial need for the interim costs or advance funding.

8. However, in the event that the Commission were to consider the application, Alberta PowerLine made submissions regarding the quantum to be awarded in relation to interim costs or advance funding.

9. Alberta Powerline argued that the Nican fees claimed for interim costs were excessive because the Nican invoices to both the Wong Group and Mr. Ernst contained identical time entries for the same dates. It added that, in the case where the same consultant is representing multiple parties, the Commission must require that the parties demonstrate that the consultant's fees have been appropriately allocated amongst the represented parties. It further submitted that an award of no more than 50 per cent of the interim costs requests should be awarded to the applicants because the Commission has not yet determined the degree to which Nican's expert reports may contribute to a better understanding of the issues before the Commission. Such an award would be in keeping with past Commission decisions.

10. Alberta PowerLine contended that the amounts claimed as advance funding were excessive and unreasonable in light of the limited amount of remaining work proposed to be undertaken by Nican, which involves preparing for and sitting on an expert witness panel. It noted the Commission's historical practice of granting 30 per cent to 60 per cent of an advance funding request, but argued that in this case no advance funding should be granted because the amounts claimed are not reasonable and excessive, and lack justification.

### **1.2 Reply of the applicants**

11. The Wong Group and Mr. Ernst replied to Alberta PowerLine's comments, arguing that the costs claims were in compliance with Rule 009. The applicants noted that the project has been, and will continue to be, a lengthy process, and that the fees incurred so far have been reasonable and necessary. The applicants added that they are landowners who are forced to respond to issues in Proceeding 21030, and the costs incurred to participate would not have been incurred if not for Alberta PowerLine's applications for approval to construct the project. The applicants stated that the fees incurred are not regular costs that ordinary citizens can bear, and that given the length of time that Proceeding 21030 has taken to date, it is reasonable to make an interim costs claim.

12. The applicants acknowledged that while there should be costs savings for representing multiple parties in the same proceeding, this fact did not change the analysis required to produce competent, thoroughly investigated evidence. The applicants submitted that where possible, and where there were common costs, the costs have been split 50/50 between the Wong Group and Mr. Ernst.

13. The applicants further argued that Alberta PowerLine should be fully aware that there is a significant amount of preparation required to testify at a public hearing as an expert. The

applicants submitted that the quantum of fees incurred, and the anticipated fees to be incurred, are reasonable given the scope of the project and the work still to be done.

## 2 Commission's authority to award advance funding or interim costs

14. In assessing an interim costs claim or an advance funding request, pursuant to Sections 21 and 22 of the *Alberta Utilities Commission Act*, SA 2007, c. A-37.2, the Commission applies Rule 009.

15. Section 2 of Rule 009 specifically addresses advance funding request and provides:

2.1 A local intervener who intends to take part in a hearing or other proceeding may, at any time during the hearing or other proceeding, make a request to the Commission for an advance of funds in accordance with the scale of costs set out in Appendix A and submit a budget in accordance with Appendix B.

2.2 The Commission may award an advance of funds to a local intervener if the local intervener demonstrates a need for financial assistance to address relevant issues in the hearing or other proceeding.

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

2.3.1 advance the funds to the local intervener and

(i) set out the terms for repayment of the advance to the Commission by the local intervener, or

(ii) direct the applicant to reimburse the Commission for the funds advanced to the local intervener,

or

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

16. Section 4 of Rule 009 specifically addresses interim costs and provides:

4.1 A local intervener may apply to the Commission for an award of interim costs incurred in a hearing or other proceeding by filing an interim costs claim

4.2 A local intervener may only claim interim costs in accordance with the Scale of Costs set out in Appendix A

4.3 The Commission may award interim costs to a local intervener if the Commission is of the opinion that

4.3.1 the costs are reasonable and directly and necessarily related to the hearing or other proceeding,

4.3.2 The hearing or other proceeding in which interim costs are claimed is lengthy, and

4.3.3 the local intervener has demonstrated a need for financial assistance to continue to address relevant issues in the hearing or other proceeding.

4.4 If the Commission awards interim costs to a local intervener under Subsection 4.3, the Commission may

4.4.1 pay the interim costs to the local intervener and

(i) set out terms for repayment of the interim costs to the Commission by the local intervener if the Commission varies or denies costs on a claim for costs filed by the local intervener at the close of the proceeding, or

(ii) direct the applicant to reimburse the Commission for the interim costs paid to the local intervener,

or

4.4.2 direct the applicant to pay the interim costs to the local intervener and set out terms for repayment of the interim costs to the applicant by the local intervener if the Commission varies or denies costs on the claim for costs filed by the local intervener at the close of the hearing or other proceeding.

17. Pursuant to Section 2 of Rule 009, the Commission may award an advance of funds if the local intervener demonstrates a need for financial assistance to address relevant issues in the hearing or other proceeding.

18. Pursuant to Section 4 of Rule 009, the Commission may exercise its discretion to award interim costs if the local intervener has demonstrated that the costs are reasonable and directly and necessarily related to the proceeding, the proceeding in which the interim costs are claimed is lengthy and that there is a need for financial assistance to continue to address the issues in the proceeding. All interim costs claimed also must be in accordance with the Scale of Costs set out in the rule.

### **3 Interim Costs and Advance Funding Award**

19. The Commission granted the members of the Wong group and Mr. Ernst standing in Proceeding 21030. These persons are local interveners in accordance with Section 22 of the *Alberta Utilities Commission Act* and are eligible to claim costs.

20. Although the application for interim costs claim and advance funding was not made in accordance with section 2 or 4 of Rule 009 because the need for financial assistance was not identified by the applicants and the attached budget did not make it clear that both interim costs and advance funding was being requested, the Commission considers that the applicants' reply submissions rectified these deficiencies. In their reply, the applicants made submissions on the need for financial assistance to participate in Proceeding 21030, and clarified that interim costs were being claimed and a request for advance funding had been submitted. Given these submissions, the Commission accepts the application.

21. The fees claimed for Nican are in accordance with the Scale of Costs. Because the hearing has not taken place and argument has not yet been filed, the Commission is not able to determine the degree to which Nican's expert report will contribute to a better understanding of the issues before the Commission and to assess the reasonableness of the interim costs claimed in

light of the assistance provided. Further, the Nican invoices contained identical time entries for the same dates for the Wong Group and Mr. Ernst. For these reasons, the Commission awards 60 percent of the interim costs claimed for each of the applicants. Accordingly, the Wong group is awarded \$12,332.25 and Mr. Ernst is awarded \$10,914.75 in interim costs. The applicants are encouraged to provide additional details about the services provided by Nican to the Wong Group and Mr. Ernst and which services were divided equally between the two applicants in their respective final costs claim.

22. Given the interim costs award to each of the applicants to continue their participation in Proceeding 21030, the Commission is not satisfied that the amounts claimed for advance funding for the Wong Group of \$24,446.25 and for Mr. Ernst of \$26,808.75 are justified. Considering that the applicants have filed the Nican expert reports, and the remaining participation of Nican may be more limited at the hearing phase of the proceeding, the Commission awards 30 percent of these amounts as advance funding. Accordingly the Wong Group is awarded \$7,333.88 and Mr. Ernst is awarded \$8,042.63 in advance funding.

23. The Wong Group is awarded a total of \$19,666.13 and Mr. Ernst is awarded a total of \$18,957.38 in interim costs and advance funding in Proceeding 21030.

24. The Commission emphasizes that the interim costs award and advance funding approved in this decision are subject to adjustment when final costs applications are made and a costs decision is issued following completion of Proceeding 21030. As noted above, in making the interim costs and advance funding awards, the Commission makes no determination on the value of the applicants' participation in the proceeding, the weight that may be attributed by the Commission to the evidence given by their consultant, the merits of legal arguments that may be made, or the amount of any final costs award that the Commission may issue.

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

26. All fees and disbursements eventually claimed by any local intervener following the conclusion of a proceeding must conform to the Scale of Costs adopted by the Commission. Any local intervener claiming costs exceeding the Scale of Costs will be required to provide evidence that the scale is inadequate. In assessing costs, the Commission will consider the effectiveness of the participation by each local intervener and whether the costs of the participation were reasonable and directly and necessarily related to Proceeding 21030.

#### 4 Order

27. It is hereby ordered that:

- 1) Alberta PowerLine Limited Partnership shall pay interim costs in the total amount of \$12,332.25 and advance funding in the total amount of \$7,333.88 for a combined total of \$19,666.13 to the Wong Group. Payment shall be made to Carscallen LLP, attention Mr. Michael Niven, 1500, 407-2 Street SW, Calgary, AB T2P 2Y3.
- 2) Alberta PowerLine Limited Partnership shall pay interim costs in the total amount of \$10,914.75 and advance funding in the total amount of \$8,042.63 for a combined total of \$18,957.38 to Mr. Roy Ernst. Payment shall be made to Carscallen LLP, attention Mr. Michael Niven, 1500, 407-2 Street SW, Calgary, AB T2P 2Y3.

Dated on September 26, 2016.

#### Alberta Utilities Commission

*(original signed by)*

Anne Michaud  
Commission Member