



EPCOR Energy Alberta GP Inc.

2018-2021 Energy Price Setting Plan

Costs Award

July 5, 2018

Alberta Utilities Commission

Decision 23275-D01-2018

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Alberta Utilities Commission
Calgary, Alberta

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1 Summary

1. In this decision, the Alberta Utilities Commission considers applications (the costs claim applications) by EPCOR Energy Alberta GP Inc. (EEA) and the Consumers' Coalition of Alberta (CCA) for approval and payment of their costs of participation in Proceeding 22357¹ (the original proceeding).

2. The following table sets out the costs claimed and the amounts awarded:

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
EEA								
Fasken Martineau DuMoulin LLP	\$516,042.00	\$3,235.66	\$0.00	\$519,277.66	\$459,492.30	\$3,235.66	\$0.00	\$462,727.96
NERA Economic Consulting	\$376,213.18	\$2,995.82	\$0.00	\$379,209.00	\$371,623.18	\$2,995.82	\$0.00	\$374,619.00
ScottMadden Management Consultants	\$783,402.50	\$7,909.16	\$0.00	\$791,311.66	\$199,509.38	\$7,909.16	\$0.00	\$207,418.54
Sussex Economic Advisors ²	\$14,635.00	\$0.00	\$0.00	\$14,635.00	N/A	N/A	N/A	N/A
EPCOR Energy Alberta GP Inc.	\$0.00	\$7,542.07	\$0.00	\$7,542.07	\$0.00	\$7,542.07	\$0.00	\$7,542.07
Total	\$1,690,292.68	\$21,682.71	\$0.00	\$1,711,975.39	\$1,030,624.86	\$21,682.71	\$0.00	\$1,052,307.57
CCA								
Wachowich & Company	\$43,662.50	\$3,365.40	\$2,351.40	\$49,379.30	\$43,662.50	\$3,365.40	\$2,351.40	\$49,379.30
Regulatory Services Inc.	\$104,187.50	\$395.71	\$5,229.16	\$109,812.37	\$56,390.25	\$395.71	\$2,839.30	\$59,625.26
Total	\$147,850.00	\$3,761.11	\$7,580.56	\$159,191.67	\$100,052.75	\$3,761.11	\$5,190.70	\$109,004.56
Total of all amounts claimed and awarded				\$1,871,167.06				\$1,161,312.13

3. Reduced costs have been awarded to Fasken Martineau DuMoulin LLP, NERA Economic Consulting (NERA), ScottMadden Management Consultants, including its predecessor Sussex Economic Advisors (ScottMadden) and Regulatory Services Inc. The Commission has approved full costs for EEA's disbursements and for Wachowich & Company.

¹ Proceeding 22357: EPCOR Energy Alberta GP Inc. 2018-2021 Energy Price Setting Plan.

² ScottMadden Management Consultants acquired Sussex Economic Advisors on June 1, 2016. Mr. James Stephens, Dr. Ryan Davies, Ms. Heather Pekarovich, Mr. Samuel Eaton, and Mr. Ryan Kucan were the consultants for Sussex Economic Advisors for whom costs were claimed in EEA's costs claim application. All of these consultants continued work in the original proceeding after Sussex Management Consultants was acquired by ScottMadden.

2 Introduction

4. The original proceeding was convened by the Commission to consider EEA's application requesting approval of a proposed energy price setting plan (EPSP) for the term of May 1, 2018 to April 30, 2021. The original proceeding included a technical meeting, a request to initiate a negotiated settlement,³ information requests (IRs), responses to IRs, written evidence, an oral hearing, argument, a CCA motion to strike portions of EEA's argument, and reply argument. The oral hearing was held in Edmonton, Alberta on October 25, 2017, October 26, 2017, October 31, 2017, November 1, 2017, and November 2, 2017.

5. The close of record for the original proceeding was December 19, 2017 and the Commission issued Decision 22357-D01-2018⁴ on March 16, 2018. In Decision 22357-D01-2018, the Commission approved EEA's descending clock auction format for the procurement of energy and the components of its 2018-2021 EPSP. In awarding risk compensation, the Commission approved commodity risk compensation based on competitive-market-determined prices; i.e., commodity risk compensation is the difference between the weighted-average procurement price of the full-load portfolio and the weighted-average procurement price of the fixed block portfolio.

6. EEA submitted its costs claim application on January 18, 2018 within the 30 day timeline permitted by the Commission's rules. The Commission assigned Proceeding 23275 and Application 23275-A001 to the costs claim application.

7. The CCA submitted its costs claim application on January 31, 2018. The costs claim application was filed 12 days outside of the required 30 day timeline permitted by the Commission's rules, specifically, Rule 022: *Rules on Costs in Utility Rate Proceedings* (Rule 022). The CCA's application was assigned Application 23275-A002. Costs not received within the specified timeframe may be rejected without further process. The CCA also filed responses to IRs on May 28, 2018, after the close of record. The Commission uses its discretion to accept the CCA's late filings. The CCA's application and IRs will be considered in this decision.

8. On January 25, 2018, the Office of the Utilities Consumer Advocate (UCA) filed a statement of intent to participate. The UCA stated that given the potential effect on customer rates from the original application, it expected to review the record and test the application through IRs.

9. In a February 2, 2018 letter, the Commission set out the process for filing IRs, responses to IRs, submissions and reply submissions. Both the UCA and the Commission asked IRs of EEA and the Commission asked IRs of the CCA.

10. Submissions and reply submissions on the substance of EEA's costs claimed were received within the timelines set out in the process schedule. The Commission considers that the close of record for the costs claim proceeding is June 6, 2018, which was the date for filing comments on the CCA's responses to IRs.

³ After receiving comments from parties, EEA withdrew its request to negotiate on June 22, 2017.

⁴ Decision 22357-D01-2018: EPCOR Energy Alberta GP Inc. 2018-2021 Energy Price Setting Plan, Proceeding 22357, March 16, 2018.

3 Commission findings

11. The Commission's authority to award costs for participation in a utility rates proceeding is found in Section 21 of the *Alberta Utilities Commission Act*. When considering a claim for costs for a utility rates proceeding, the Commission is also guided by the factors set out in Section 11 of Rule 022. These factors include, among other things, whether eligible participants' 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 022 prescribes a Scale of Costs applicable to all costs claimed.

3.1 EPCOR Energy Alberta GP Inc.

12. The following table summarizes EEA's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
EEA							
Fasken Martineau DuMoulin LLP	1,097.30	102.80	467.40	\$516,042.00	\$3,235.66	\$0.00	\$519,277.66
NERA Economic Consulting	1,868.00	37.00	9.50	\$376,213.18	\$2,995.82	\$0.00	\$379,209.00
ScottMadden Management Consultants ⁵	3,313.00	129.75	41.00	\$798,037.50	\$7,909.16	\$0.00	\$805,946.66
EPCOR Energy Alberta GP Inc.	0.00	0.00	0.00	\$0.00	\$7,542.07	\$0.00	\$7,542.07
Total	6,278.30	269.55	517.90	\$1,690,292.68	\$21,682.71	\$0.00	\$1,711,975.39

13. The Commission finds that, generally, EEA acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues. The Commission has approved the total costs for EEA's disbursements. However, the Commission is unable to approve the full amount of the costs claimed in respect of the services performed by Fasken Martineau DuMoulin, NERA and ScottMadden for the reasons set out below.

3.1.1 Fasken Martineau DuMoulin LLP

14. EEA was represented by Fasken Martineau DuMoulin LLP in the original proceeding. The fees claimed by EEA for the legal services provided by Mr. Jonathan Liteplo, Mr. Jordan Hulecki, Mr. Christopher Bystrom and three articling students relate to:

- Assisting in the preparation of the application and responses to IRs
- Providing representation regarding the technical meeting held on March 7, 2017
- Providing advice on expert evidence, intervener evidence and rebuttal evidence. This included assisting EEA's experts on the legal, regulatory and procedural requirements in

⁵ Due to the acquisition of Sussex Economic Advisors by ScottMadden Management Consultants, the Commission has reflected the costs of Sussex Economic Advisors in the total costs claimed by ScottMadden. For the separate costs incurred, please refer to the table in the summary section of this decision.

Commission proceedings and responding to questions on the statutory and regulatory regime applicable to EPSPs and the RRO

- Advising on procedural submissions and responses to interrogatories
- Addressing legal issues that arose during the course of the proceeding and oral hearing
- Undertaking strategic planning, preparing witnesses and attending the oral hearing
- Conducting direct examination and cross-examination at the oral hearing
- Advising on the contents of argument and final argument.

15. EEA stated that Mr. Liteplo's and Mr. Hulecki's legal services accounted for 99 per cent of the hours claimed. The Commission asked an IR⁶ to clarify the responsibilities of counsel, and particularly for the number of preparation hours claimed. EEA responded that Mr. Liteplo was responsible for advising EEA in all stages of the design of the EPSP, preparing the application, and working with NERA and ScottMadden. Throughout the original proceeding, his work accounted for approximately 55 per cent of the total legal hours billed. Mr. Hulecki liaised with EEA personnel on the initial draft application and the written materials filed. He prepared for the oral hearing and assisted with the drafting of argument and reply argument. His work accounted for approximately 44 per cent of the total legal hours billed.

The UCA's submissions

16. The UCA requested further information on the hours and costs incurred for Fasken Martineau Dumoulin and NERA for activities that arose due to an inadvertent confidentiality breach of information in IRs.⁷ As a result of the confidentiality breach, Fasken Martineau Dumoulin spent an additional 16.3 hours, with an associated cost of \$5,495.00, to advise on legal matters relevant to EEA's confidentiality breach. In addition to the legal hours incurred, NERA spent 17 hours preparing supplemental evidence, with an associated cost of \$4,590.00.⁸

17. The UCA argued that EEA's breach of confidential information and submission of supplemental evidence resulted in unnecessary costs being incurred by all parties. The UCA argued further that it was unreasonable for EEA to seek costs from customers that were incurred as a result of its failure to abide by a Commission confidentiality ruling. The UCA recommended that EEA's request to recover costs associated with the preparation and submission of supplemental evidence be denied.⁹

EEA's submissions

18. EEA argued that its supplemental evidence had minimal effect on the original proceeding and the costs to prepare the supplemental evidence were comparatively small. The supplemental evidence did not, in any material sense, unnecessarily lengthen the duration of the hearing nor

⁶ Exhibit 23275-X0015, EEA-AUC-2018FFEB16-001(b).

⁷ The nature of this breach is described in Section 6.5.1.3 of Decision 22357-D01-2018.

⁸ Exhibit 23275-X0016, EEA-UCA-2018FEB16-006(a) and (b).

⁹ Exhibit 23275-X0018, UCA's submissions, paragraphs 21 and 23.

result in unnecessary costs to EEA or any other participant, in a manner that would cause the Commission to exercise its discretion to reduce EEA's costs claim.¹⁰

Commission findings

19. The Commission considers that the recovery of costs due to a confidentiality breach should be evaluated on a case-by-case basis and, in this instance, the effect of the confidentiality breach was quickly remedied and the resulting costs were small. The Commission, however, considers that EEA had control over its confidential information and the additional costs incurred in the original proceeding arose from EEA's disclosure of its own confidential information. This breach resulted in additional resources and increased hours that were required from parties' counsel and experts that otherwise would not have been incurred in the proceeding. In accordance with Section 11.2(h) of Rule 022, the Commission considers that EEA's inadvertent breach of confidential information resulted in costs that were unnecessary and would not have been incurred but for the confidentiality breach. These additional costs should not be borne by customers.

20. Accordingly, the Commission denies the \$5,495.00 in legal fees associated with legal advice to remedy the confidentiality breach. For the same reasons, the Commission also denies the \$4,590.00 in NERA's consulting fees associated with the filing of supplemental evidence required as a consequence of the confidentiality breach. The NERA fees have been removed from the costs award for NERA in Section 3.1.2 below.

21. While the Commission finds generally that the remainder of the services performed by Fasken Martineau DuMoulin were directly and necessarily related to EEA's participation in the original proceeding, it finds that the hours claimed for the legal counsel are excessive for preparation of the application and for providing legal advice to consultants in preparing their initial evidence. In making this determination, the Commission is mindful that EEA relied extensively on its external legal counsel in the preliminary stages before the application was filed for these activities and other activities, such as advising on the technical meeting documentation, attending meetings and conference calls. The number of hours spent on all of these activities was significant.

22. Although the Commission considers that one or more external counsel may be required for matters that arise before an application is filed, the number of hours spent by external counsel on these activities was significant, some 613 hours of the 1,667 hours claimed. The summary of professional fees and disbursements claimed show a disproportionate number of hours were claimed for preparation and meeting time, \$342,942.00 out of \$516,042.00.¹¹ Out of the \$342,942.00 claimed for preparation and meeting time, \$192,857.00,¹² or 56 per cent of preparation costs, was incurred before EEA's application was filed on January 24, 2017.

23. In preparing to file an application, the Commission notes that the majority of the application and supporting documents are prepared by EEA staff or by expert witnesses, and are

¹⁰ Exhibit 23275-X0019, EEA's reply submission, paragraph 47.

¹¹ Exhibit 23275-X0001, EEA's costs claim application, PDF page 14.

¹² Exhibit 23275-X0001, EEA costs claim invoices document #1, PDF pages 1-55. Invoices from January 1, 2016 to January 23, 2017 were added to derive the \$192,857.00. The corresponding invoice numbers are: 989557, 1000620, 1013220, 1044963, 1054064, 1063017, 1070388, 1078057, and 1089604 (to January 23, 2017).

largely technical in nature. Legal counsel provided support in assisting with the preparation of the application and the costs for counsel's assistance in the filing of the application should reflect this allocation of work between internal EEA staff and the use of external counsel.

24. For these reasons, the Commission considers the legal hours for assisting with the application, appendices, technical meeting documents and for meetings and conference calls was excessive. The Commission accordingly reduces the number of hours claimed by 10 per cent.

25. The Commission reviewed Fasken Martineau DuMoulin's disbursements claimed for accommodation, taxi charges, telephone charges, and photocopying, and the fees are claimed in accordance with the Scale of Costs. The Commission finds that the disbursements were reasonably incurred for Fasken Martineau DuMoulin's involvement in the original proceeding.

26. Accordingly, the Commission approves EEA's claim for legal fees for Fasken Martineau DuMoulin in the amount of \$459,492.30 and disbursements of \$3,235.66 for a total of \$462,727.96.

3.1.2 NERA Economic Consulting

27. EEA retained NERA to perform consulting services in the original proceeding. The fees claimed were for the consulting services of Dr. Chantale LaCasse, Mr. Eugene Meehan and twelve other consultants. NERA's hours related to drafting evidence on simultaneous procurement, auction formats, auction rules, market-based CRC and auction information from different jurisdictions. NERA also assisted in developing EEA's presentation used at the technical meeting. NERA consultants drafted responses to IRs, reviewed intervenor evidence and responses to IRs, drafted rebuttal evidence, prepared for and attended the oral hearing, reviewed intervenor submissions, assisted with the preparation of cross-examination and drafted argument and reply argument.

Commission findings

28. The Commission generally finds that the services performed by NERA were directly and necessarily related to EEA's participation in the original proceeding, and that the fees and disbursements, which were claimed in accordance with the Scale of Costs for those services, are reasonable. Further, the number of NERA consultants who researched and prepared evidence and responses to IRs was justified in the costs claim application. In the information gathering stage of the costs claim proceeding, the Commission requested further information from NERA on why 14 consultants were required. The table below shows the evidence, process steps, and the involvement of each NERA consultant in the original proceeding:¹³

¹³ Exhibit 23275-X0015, EEA's response to EEA-AUC-2018FEB16-003, PDF page 30.

	A Direct Evidence	B Respond to IRs	C Review Intervener Evidence	D Draft Rebuttal Evidence	E Hearing Prep	F Final and Reply Evidence
1 C. LaCasse	All aspects	All aspects	All aspects	All aspects	All aspects	All aspects
2 E. Meehan	Market Readiness, Unit Size Drafting	Drafting	Review Evidence	Outline		
3 K. Orlandi	Market Readiness			Review data for rebuttal		
4 P. Cardona	Decrements		Review and research	Compile tables; check references		
5 W. Mann	Other jurisdictions Bidder cap drafting	Research Analyze data				
6 E. Elcan	Document sources for Exhibits	Research Analyze data		Research	Gather and organize backup materials	
7 S. Collins	Data/Document Management					
8 M. Glandon	Examples					
9 R. Northcutt		Drafting			Transcript corrections	
10 D. Han		Calculations				
11 P. Ye				Check on Data and exhibits		
12 N. Scharlow				Database on generation ownership		
13 K. Marcoux	Data/Document Management					
14 J. Zhang		Research Analyze data				

29. The Commission found this table informative in demonstrating why the 14 consultants were required and provided assurance that the activities performed by the consultants were not duplicative. With the exception noted below, the Commission finds that NERA's hours and fees were directly and necessarily related to the original proceeding.

30. The Commission reviewed NERA's disbursements claimed for airfare, accommodation, taxi charges and meals, and the fees are claimed in accordance with the Scale of Costs. The

Commission finds that the disbursements were reasonably incurred for NERA's involvement in the original proceeding.

31. For the reasons set out in paragraphs 19 and 20 above, the Commission reduces NERA's fees by \$4,590.00 for the hours related to filing supplemental evidence arising from a breach of confidential information. Accordingly, the Commission approves EEA's claim for consulting fees for NERA in the amount of \$371,623.18 and disbursements of \$2,995.82 for a total of \$374,619.00.

3.1.3 ScottMadden Management Consultants

32. ScottMadden Management Consultants and its predecessor Sussex Economic Advisors were retained to perform consulting services in the original proceeding. ScottMadden's report¹⁴ related to a review of Decision 2941-D01-2015, the RRO provider's obligations, an overview of the Alberta market, commodity risk compensation (CRC), risk aversion, the methodologies for determining EEA's CRC, customer class risk, recurring cost forecasting risk and a recommendation on an alternative methodology for backstop supply. The fees claimed for consulting services were provided by Mr. Robert Hevert, Mr. James Stephens, Dr. Ryan Davies and nine other consultants. The consultants performed the following activities: research, preparing evidence, drafting responses to IRs, reviewing intervenor evidence and intervenor responses to IRs, drafting rebuttal evidence, preparing for and attending the oral hearing, responding to undertakings, assisting with the preparation of cross-examination and drafting argument and reply argument. In addition to the 11 consultants, hours were claimed for administrative services of Ms. Molly Karg and Ms. Sara Derstine.

33. The primary team members of Dr. Davies, Mr. Hevert, Mr. Stephens and Mr. Bowen accounted for 77 per cent of the hours submitted. The other consultants represented 18 per cent of hours and the administrative staff accounted for the remaining five per cent. EEA stated that Mr. Stephens and Dr. Davies coordinated the work of other consultants to ensure that no tasks were duplicative.¹⁵

The UCA's submissions

34. The UCA submitted that ScottMadden's evidence was a "secondary alternative" to NERA's evidence, but it noted that the fees claimed for ScottMadden were almost double that of the fees claimed for NERA. The UCA argued that it was not reasonable for EEA to have incurred some \$805,946.66 in fees associated with the development of a secondary alternative proposal. The UCA added:

If EEA was truly confident in the 'soundness of the descending clock auction proposal,' there would be no need to engage ScottMadden to craft an 'alternative methodology,' particularly where the costs of developing such are double the costs to retain NERA to develop and support the primary descending clock auction proposal.¹⁶ (emphasis removed)

35. The UCA argued that EEA failed to put in place any cost control measures for the ScottMadden engagement. EEA did not request a budget from ScottMadden. The UCA asserted

¹⁴ The conclusions of the ScottMadden report are summarized in Decision 22357-D01-2018, Appendix 4, paragraphs 3 and 4.

¹⁵ Exhibit 23275-X0015, EEA's response to EEA-AUC-2018FEB16-002.

¹⁶ Exhibit 23275-X0018, UCA's submissions, paragraph 13.

that ScottMadden was provided with a blank cheque and limited direction, neither of which is reasonable. Section 11.1 of Rule 022 requires the Commission to consider whether the costs are reasonable and whether the claimant acted responsibly. EEA's claimed external consultant costs failed to satisfy either prong of the test. The UCA submitted that the costs for the alternative proposal should be denied. Customers should not be expected to fund costs associated with the development of an alternative proposal and the ScottMadden costs should be to the account of the shareholder.

36. If the Commission approves alternative proposal costs, EEA should not be able to recover any costs with Mr. Bowden "attending" the oral hearing because he was not a witness and was listening in. Also, Mr. Hevert's costs should be denied because EEA had not properly justified the need for him to attend the oral hearing.

EEA's submissions

37. EEA submitted ScottMadden's evidence was central and necessary to EEA's EPSP proposal. EEA responded to the UCA that the principle of RRO providers being risk averse was a central topic to which ScottMadden devoted sections of its report. ScottMadden's evidence addressed that the level of EEA's risk aversion could be approximated. ScottMadden's methodology was used to demonstrate the inadequacy of the currently approved CRC method and acted "as the basis for several integral components of EEA's primary proposal."¹⁷ EEA referred to customer class risk, recurring cost forecasting risk and the backstop mechanism as items addressed in evidence. EEA noted the Commission devoted a 19 page appendix to ScottMadden's evidence and this shows the value of the ScottMadden evidence to the Commission.

38. Although it did not request a budget from ScottMadden, EEA stated that the broad scope and complex, largely undefined nature of ScottMadden's assignment and cost control measures gave an adequate check on the reasonableness of ScottMadden's hours and fees. The forecast costs for ScottMadden to complete its engagement were based on the assumptions and information available at the time. The deviations from forecast largely materialized because of the change from a written process to an oral hearing and the extent of intervener opposition. These drivers could not have reasonably been contemplated. The UCA has also failed to identify costs that, in its view, are excessive or that could have been controlled had a budget been prepared.

39. With respect to the costs of Mr. Hevert and Mr. Bowden, EEA stated that it considered it to be most efficient to seat the team of witnesses who were best able to speak to the technical information and best able to contribute to a better understanding before the Commission. Mr. Bowden was "relatively junior" and provided support to Dr. Davies. However, he was extensively involved in the preparation of ScottMadden's evidence and provided the witness panel support during the hearing.

40. EEA submitted that the UCA's proposal to have the Commission disallow ScottMadden costs should be rejected in its entirety.

¹⁷ Exhibit 23275-X0019, EEA reply submission, paragraph 19.

Commission findings

41. While the Commission finds that a limited portion of ScottMadden’s services were directly and necessarily related to EEA’s participation in the original proceeding, it finds that the fees claimed for these services were unreasonable. The Commission applies Section 21 of the *Alberta Utilities Commission Act* and the factors in Section 11 of Rule 022 to determine if costs are reasonable and should be recovered through rates.

42. Chief Justice Fraser in *ATCO Gas and Pipelines Ltd. v Alberta (Utilities Commission)*, 2014 ABCA 397, confirmed that the Commission has the discretion to determine whom it will award costs and if so, what the amount of costs awarded should be. Chief Justice Fraser stated:

[82] The reality is this. For at least the last 91 years, the Legislature of this province has conferred on the Commission and its predecessors, including the PUB, the express statutory authority to determine whether to award participants in proceedings or hearings before it, their legal costs, if any, and, if so, the amount of those legal costs. This grant represents a deliberate legislative choice.

[83] Section 21, the current statutory provision on this subject, has been in the Act since the Act came into force January 1, 2008. Since then, the Commission has consistently relied on this section in deciding when and if costs should be awarded to participants in proceedings or hearings before it, and if so, the amount of those costs...

...

[98] Further, a general discretion to award costs necessarily implies the discretion to decline to award costs: *Northern Engineering & Dev. Co. v Philip*, [1930] 3 DLR 387, [1930] 1 WWR 615 (Man CA). Indeed, this Court has held that it will not interfere simply because a Board exercises its discretion to deny costs for participating in a hearing, even in the absence of reasons: *Wood Buffalo (Regional Municipality) v Alberta (Energy and Utilities Board)*, 2007 ABCA 192 at paras 9-10, 417 AR 222.

[99] While not directly in issue here, the Commission’s discretion in awarding costs must be exercised in a principled fashion: *Green, Michaels and Associates Ltd., City of Edmonton and Consumers’ Association of Canada (Alberta Branch) v Public Utilities Board (1979)*, 13 AR 574 at paras 20-23, 94 DLR (3d) 641 (Alta SC(AD)) [*Green*]; *Consumers’ Association of Canada (Alberta) and Edmonton v Public Utilities Board* (1985), 58 AR 72 at paras 18-28 (CA). However, where, as here, a statute grants a tribunal discretion and the ability to pass regulations (which includes guidelines) regarding the exercise of that discretion, “the tribunal is able to mold the exercise of the discretion in any reasonable way that is not inconsistent with the statute”: *Kelly v Alberta (Energy Resources Conservation Board)*, 2012 ABCA 19 at para 17, 519 AR 284. In this regard, as this Court’s decision in *Green* itself illustrates, a utility board can exercise its discretion on legal costs in a principled manner by following its own guidelines. Moreover, guidelines passed by tribunals under their grant of jurisdiction to do so are themselves entitled to deference when they are within that grant framework: see *Parada v Alberta (Appeals Commission for Alberta Workers’ Compensation)*, 2011 ABCA 44 at paras 26-28, 499 AR 169; and *Martin v Alberta (Workers’ Compensation Board)*, 2014 SCC 25 at para 11, [2014] 1 SCR 546 [*Martin*].

[100] The exercise of discretion can include such considerations as convenience, utility, and savings of expense: *Green*, supra at para 21. That is exactly what the Commission, as the successor to the PUB, provided for here. It set out in s. 11.2 of Rule 022 an extensive list of the

considerations that the Commission may take into account in making a costs award... (emphasis in original) (footnotes removed)

43. In exercising its discretion to award costs, the Commission seeks to ensure that, where possible, responsibility for the decision to incur costs and the amount of costs incurred is placed with those for whom the costs were incurred and the benefits realized.

44. The Commission finds that there is insufficient support for the total costs and the total number of hours claimed for ScottMadden's evidence and other involvement in the original proceeding. The Commission's determination is based on the following: 1) that some of the content of the ScottMadden report¹⁸ was irrelevant or unnecessary to the proceeding, and 2) EEA did not effectively manage ScottMadden's consulting activities and costs incurred. The Commission exercises its discretion to award 25 per cent of the costs claimed for the consulting services of ScottMadden.

1) ScottMadden's report contents

45. Pursuant to certain requirements in Section 11 of Rule 022, the evidence submitted must reduce duplication,¹⁹ be relevant,²⁰ and contribute to a better understanding of the issues before the Commission.²¹

46. The ScottMadden proposal for calculating CRC was a simulated model approach that was in part, proposed as an alternative if EEA's market-based CRC proposal was rejected by the Commission. The Commission noted in the introduction of Section 7 of Decision 22357-D01-2018:

275. The ScottMadden report provided a CRC proposal. EEA stated the ScottMadden CRC proposal was to be considered as an alternative, if EEA's main CRC proposal was not accepted by the Commission. The only aspect of EEA's proposed 2018-2021 EPSP that utilizes the ScottMadden CRC methodology is the backstop mechanism. This ScottMadden CRC, as it relates to the backstop, has been addressed above, in Section 6.4.3.1 of the decision. Because of the Commission's subsequent finding that EEA's market-based CRC proposal is accepted, the Commission will not address the CRC aspect of the ScottMadden report as part of the main body of this decision. However, the CRC aspect of the ScottMadden report was quite detailed, and generated a significant amount of interest from interveners as well as from the Commission. In addition, the theoretical basis underlying the CRC aspect of the ScottMadden report was also used by ScottMadden to develop its recommendations for customer class risk and recurring cost forecasting risk. Consequently, the Commission has commented on the CRC aspect of the ScottMadden report in Appendix 4 of this decision.

47. EEA stated that the Commission dedicated Appendix 4, a 19 page Appendix, to ScottMadden's report and evidence and, therefore, it considered this evidence in its deliberations. The Commission disagrees. As demonstrated by the findings above, the Commission did not make any determinations with respect to the ScottMadden report as it related to EEA's approved 2018-2021 EPSP because it accepted EEA's descending clock auction

¹⁸ Exhibit 22357-X0003, EEA's application, Appendix B, ScottMadden, Commodity-related Risk Compensation Assessment, January 2017.

¹⁹ Section 11.2(c) of AUC Rule 022.

²⁰ Section 11.2(f) of AUC Rule 022.

²¹ Section 11.1(b) of AUC Rule 022.

and market-based CRC. In Appendix 4, the Commission provided some comments on the report to be considered in a future application but no inference can be made about the probative value of the report given that the Commission did not make findings on the CRC proposed by ScottMadden. ScottMadden's alternative proposal was rendered moot because of the acceptance of EEA's market-based CRC proposal.

48. The Commission will now consider the costs claimed for ScottMadden's report and its contribution to the Commission in understanding the issues before it. Section 8 of the ScottMadden report reviews the advantages of EEA's proposal to rely on a market-based approach to determining CRC.²² ScottMadden provided comments on NERA's market-based approach for CRC in its direct evidence and this review was not required to support ScottMadden's submissions on its simulated model for calculating an administrative CRC.²³ The Commission considers that these portions of ScottMadden's evidence were duplicative because NERA provided the analysis and recommendation for a market-based CRC and, therefore, the work undertaken by ScottMadden on market-based risk compensation was unnecessary.

49. In addition, the Commission finds that there is insufficient evidence to confirm that efforts were made to avoid duplication on issues such as the review of the Alberta market and the state of the Alberta market. NERA's evidence sufficiently addressed how the conditions of the Alberta market were considered in its evidence. There was no need for ScottMadden to provide history and narrative on the state of the Alberta market in order for it to provide direct evidence on CRC. This duplication of evidence was not necessary and did not contribute to a better understanding of the issues before the Commission.

50. Other areas of the ScottMadden report were unnecessary for the Commission's determination of the issues or did not contribute to a better understanding of the issues. The number of hours spent on review of past decisions - Decision 2941-D01-2018 and Decision 20416-D01-2015,²⁴ the review of findings or issues raised in those decisions, the current corporate structure of EEA and its parent, the general concept of risk aversion, the existing RRO energy charge components, and the summary of the Beblow Method were similarly unhelpful or irrelevant to the specific issues to be decided. The costs incurred related to ScottMadden's evidence on the statement of known facts in Commission decisions did not contribute to a better understanding of the salient issues to be decided and were not reasonably incurred.

51. The Commission agrees with EEA that ScottMadden's report and testimony was provided in support of its application, and was to a degree, of assistance in providing context on administrative approaches to calculate CRC. Therefore, it is reasonable to award some amount of costs for ScottMadden's evidence. The Commission also acknowledges EEA's stated use of the ScottMadden evidence included other matters such as the calculation of customer class risk, recurring forecast risk and an alternative backstop methodology. These considerations support that some portion of ScottMadden's costs should be awarded.

²² Exhibit 22357-X0003, EEA's Application, Appendix B, ScottMadden report, Section VIII, Market Determination of Commodity-Risk Compensation, PDF pages 79-80.

²³ For example, see paragraph 283 of Decision 22357-D01-2018.

²⁴ Decision 20416-D01-2015: Direct Energy Regulated Services and EPCOR Energy Alberta GP Inc. Review and Variance of Decision 2941-D01-2015: Regulated Rate Tariff and Energy Price Setting Plans-Generic Proceeding: Part B - Final Decision, September 3, 2015.

2) *EEA's management of the consulting activities and the hours incurred*

52. In its costs claim, EEA submitted that the “delegation of tasks within ScottMadden ensure that quality analysis and testimony were prepared at a reasonable overall cost.”²⁵ EEA stated that legal and consulting costs were subject to EEA review. The Senior Manager, Regulatory, was responsible for reviewing, scrutinizing and approving invoices from consultants. EEA added “These reviews are designed to ensure that the invoices are accurate and, further, that the hours and fees billed are reasonable in light of the scope and complexity of the work undertaken.”²⁶ If required, the Senior Manager, Regulatory asked for clarification or more details and requested revisions to invoices. Any identified discrepancies were investigated and reconciled to ensure the reasonableness of the costs and compliance with Rule 022.²⁷

53. The Commission considers that the costs of ScottMadden’s evidence and contributions to the record should have been managed more closely by EEA, especially given EEA’s heavy reliance on NERA’s evidence on the auction format, auction design and market-based CRC for its EPSP. The Commission considers that EEA’s efforts to manage its consulting costs were impaired by the fact there was no budget or formalized scope of work for services between EEA and ScottMadden. The Commission considers that the RRO provider is at risk for consultant services, particularly in the absence of a budget or any other formal analysis of the benefits and costs associated with the consulting work, the scope of that work or the changing scope of that work.

54. Counsel for the UCA cross-examined Mr. Stephens on whether any budgets were prepared and the expected costs for ScottMadden’s services:

Q. Okay. What would that be, about?

A. MR. STEPHENS: Well, given my estimating capabilities, I'm a little reluctant to provide that, but probably in the range of, say, 80,000, sir.

Q. Okay. Did you provide an initial budget to EPCOR for the work that you were supposed to be doing?

A. MR. STEPHENS: I believe it was time, materials.

Q. Okay. But there wasn't any type of an estimate as to what the ultimate cost might be?

A. MR. STEPHENS: I don't believe so.

Q. They didn't ask you for one?

A. MR. STEPHENS: I have to go back and look, but I don't think so. I would look at the contract. I believe it was just time -- it was just time, materials.

²⁵ Exhibit 23275-X0001, EEA’s cost claim application, paragraph 20.

²⁶ Exhibit 23275-X0015, EEA’s response to EEA-AUC-2018FEB16-004.

²⁷ Decision 2013-444: Alberta Urban Municipalities Association Decision on Request for Review and Variance of AUC Decision 2013-108: Town of Hinton Franchise Agreement with FortisAlberta Inc. and Town of Fairview Franchise Agreement with ATCO Electric Ltd. Costs Award at paragraph 31; and Decision 23056-D01-2018, Alberta Utilities Commission, Alberta Electric Distribution System - Connected Generation Review, Costs Award, Proceeding 23056, May 17, 2018 at paragraph 87.

Q. I read through the contract, and there was nothing in there about having to provide a budget, sir.

A. MR. STEPHENS: Okay.²⁸

55. Given the above, there is insufficient evidence to support that EEA actively reduced or managed the overall ScottMadden hours of work. In addition, there were multiple consultants who could bill for services, without any budgetary constraints or estimates for the ultimate services to be provided. There were insufficient checks and balances in EEA's evaluation and approval of the overall cost of \$798,037.50 for ScottMadden's CRC methodology, which was not primarily relied-upon by EEA in its main EPSP proposal. Despite EEA's submissions that the process and the nature of the proceeding changed, the Commission agrees with the UCA that there were insufficient cost control measures for ScottMadden's participation.

56. Noting the UCA's concerns about individual consultants and given the above findings, the Commission does not consider that further reductions are required to address the hours of Mr. Hevert and Mr. Bowen for their involvement in the original proceeding.

57. With respect to ScottMadden's disbursements, the Commission reviewed the disbursements claimed for airfare, accommodation, taxi charges, meals, and printing, and the fees are claimed in accordance with the Scale of Costs. The Commission finds that the disbursements were reasonably incurred for ScottMadden's involvement in the original proceeding.

58. Accordingly, the Commission approves EEA's claim for consulting fees for ScottMadden in the amount of \$199,509.38 and disbursements of \$7,909.16 for a total of \$207,418.54.

3.1.3.1 EPCOR Energy Alberta GP Inc. auction design costs and oral hearing disbursements

59. The last matter to be addressed by the Commission is related to a commitment made by Mr. Baraniecki, on behalf of EEA, in the oral hearing. Mr. Baraniecki commented:

However, in the highly unlikely case that for some reason the auctions were not successful over time, EEA would feel that would be appropriate, that the costs related to designing this auction that are approved by the Commission as a part of the Commission's cost-claim process shouldn't form part of what we would collect from customers on an ongoing basis.

...And in the highly unlikely case that something -- that over time the auction design and process wouldn't work, yes, EPCOR's shareholder would eat those additional costs that weren't -- that are approved by the Commission as part of EEA's cost claim in this process and not collect them from customers.²⁹

60. The Commission requested further information about the recovery of the costs for development of the descending clock auction, if the auction process ultimately proved unsuccessful. EEA clarified that the costs for recovery in its costs claim that are related to designing the descending clock auction and its total recoverable consulting fees for NERA were \$376,213.18. EEA stated that NERA's costs were prudently incurred and related to NERA's

²⁸ Transcript, Volume 1, page 36, lines 8 to 25.

²⁹ Proceeding 22357, Transcript Volume 3, page 400 lines 17-23 and page 401 lines 2-8.

involvement in the original proceeding. EEA stated with respect to its confidence in the descending clock auction:

...in order to provide the Commission and customers with the surest possible confirmation of EEA's good faith in this regard, EEA will not engage in a nickel-and-diming exercise with respect to its recoverable costs for NERA's engagement. For the purposes of EEA's proposal to forego the costs related to designing the descending clock auction and process in the event of the proposed auctions fail, therefore, EEA considers the costs in its costs claim that are related to designing the descending clock auction and process to equal its total recoverable consultant fees for NERA, which EEA has calculated as \$376,213.18.³⁰ (footnotes removed)

61. EEA added that the costs associated with developing the auction platform, including NGX development costs, would be considered auction design costs. The expected costs that the NGX would charge for developing the auction format is up to a maximum of \$250,000 plus tax.

62. In the event the descending clock auction is not successful, EEA noted that it would be amenable to the Commission considering in a future application the collection or recovery of costs associated with the auction's design.³¹

63. In this costs claim proceeding, no intervener provided submissions on this issue.

64. For disbursements incurred in the course of the oral hearing, EEA requested recovery of disbursements for transcript fees, Realtime Connection fees, parking and meals in the amount of \$7,542.07.

Commission findings

65. In regard to the issue of whether the auction design costs are recoverable, the Commission found in Decision 22357-D01-2018:

232. EEA stated in the "highly unlikely event" that it is unable to develop modifications to the descending clock auction format or the product mix, to achieve competitive auctions, consistently, and must revert back to acquiring fixed block products in a random close auction, then the costs approved by the Commission related to designing the descending clock auction format would not be recovered from its RRO customers.

...

234. However, at this time, the Commission will not make a determination on EEA's proposal not to collect the auction development costs from customers. The Commission finds that this proposal was only introduced during the oral hearing, and the details of the proposal were not fully developed. For example, the amount and description of the costs were not provided, and the mechanism for how these costs would be "non-recovered" was not explored.

235. The Commission has requested further clarification of these details in EEA's cost claim associated with this proceeding, and further direction on cost approval matters relevant to this proceeding will be provided as part of the cost claim decision.

³⁰ Exhibit 23275-X0015, EEA's response to EEA-AUC-2018FEB16-007 (a).

³¹ Exhibit 23275-X0015, EEA's response to EEA-AUC-2018FEB16-007 (b) and (c).

236. As described in Section 9.6 of this decision, the Commission has approved EEA's proposal for the inclusion of external EPSP development and regulatory costs as part of the monthly energy charge. Once approved in the cost claim decision to this proceeding, these costs would include the approved amounts for the design of the descending clock auction format. Therefore, unless otherwise directed, EEA will start collecting the approved costs in the first month the rates developed under the 2018-2021 EPSP are in effect. (footnotes removed)

66. NERA participated in the original proceeding and its costs were incidental to the original proceeding under Section 21 of the *Alberta Utilities Commission Act*, and have been approved in paragraph 31 of this decision. Therefore, contrary to EEA's proposal to classify all of NERA's costs as auction design costs for the purposes of EEA's commitment made during the oral hearing by Mr. Baraniecki, the Commission finds that NERA's costs will not be subject to this commitment because these costs were directly and necessarily related to the hearing.

67. In contrast, the NGX development costs, to a maximum of \$250,000 plus tax, is an expected external development cost related to the implementation of EEA's EPSP approved in Decision 22357-D01-2018. The Commission considers that the NGX development costs have not been included in the costs claimed by EEA for recovery in this proceeding and are expected costs; i.e., the final NGX development costs are not yet known. The Commission finds that the NGX development costs, once known and finalized, are better assessed as auction design costs related to the operation of the EPSP. Because of these findings, the Commission directs EEA to notify the Commission of the final NGX development costs that it intends to recover as part of the monthly energy charges, as part of EEA's EPSP first monthly filing when the rates developed under the EPSP are effective. The Commission will allow for the recovery of the actual NGX development costs, assuming these costs are under or at the expected value of \$250,000 plus tax, for inclusion in its EPSP monthly filing, on a pro-rata monthly basis, starting in the first month the rates developed under the 2018-2021 EPSP are in effect. If the final NGX development costs are not available for the first month that the rates developed under the EPSP are in effect, EEA must file the NGX costs as part of its EPSP monthly filing, the first month after the final NGX development costs are known.

68. Noting EEA's commitment to provide a future application to address the collection or recovery of auction design costs if the auction proves unsuccessful and cannot continue, the Commission directs EEA to cease recovery of the NGX development costs immediately, if this event occurs, and to file an application proposing how any remaining outstanding costs not previously collected from customers for NGX development costs will be removed from rates or otherwise addressed on a go-forward basis.

69. The Commission finds that EEA's disbursements claimed are reasonable because they are directly and necessarily related to the original proceeding and witness attendance at the oral hearing. The disbursements claimed are in accordance with the Scale of Costs.

70. The transcript fees were related to EEA's involvement in the oral hearing and the costs were claimed in accordance with the Scale of Costs. With respect to Realtime Connection fees, these are optional transcription service fees that allow for an off-site subscriber to view the text of a proceeding in real time. The Commission evaluates the need for Realtime Connection fees that are claimed in addition to the live-feed transcript services for the parties who are

participating in the hearing room, on a case-by-case basis.³² The Commission determines that although a live feed of the public hearing was available, there was a portion of the hearing that was not broadcast by live feed due to technical difficulties. Further, the Commission finds that the issues in the original proceeding were complex and required multiple undertaking responses during the four days over which both of the EEA panels³³ provided evidence. For these reasons, the Commission finds that the disbursements claimed are reasonable because they are directly and necessarily related to the original proceeding. The Commission, therefore, grants recovery of the Realtime Connection fees.

71. The entire EEA disbursements claimed are in accordance with the Scale of Costs. Accordingly, the Commission approves EEA's claim for disbursements in the amount of \$7,542.07.

3.1.4 Total amount awarded

72. For the reasons provided above, the Commission approves EEA's claim for recovery of costs in the total amount of \$1,052,307.57. This amount is composed of legal fees of \$459,492.30, consulting fees of \$571,132.56 and disbursements of \$21,682.71.

3.2 Consumers' Coalition of Alberta

73. The following table summarizes the CCA's costs claim:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
CCA							
Wachowich & Company	76.10	27.25	21.40	\$43,662.50	\$3,365.40	\$2,351.40	\$49,379.30
Regulatory Services Inc.- Jan Thygesen	144.15	15.90	66.70	\$61,222.50	\$0.00	\$3,061.13	\$64,283.63
Regulatory Services Inc.- Raj Retnanandan	138.25	6.50	20.50	\$42,965.00	\$395.71	\$2,168.04	\$45,528.75
Total	358.50	49.65	108.60	\$147,850.00	\$3,761.11	\$7,580.56	\$159,191.67

74. The Commission finds that, generally, the CCA 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 Regulatory Services Inc. for the reasons set out below.

³² See Decision 20761-D01-2015: EPCOR Distribution and Transmission Inc.'s (EDTI) 2015-2017 Transmission Facility Owner Tariff, Costs Award, Proceeding 20761, December 22, 2015 where the Commission denied Realtime Connection fees because a live feed of the public hearing was available and provided adequate support for EDTI's staff and the witness panel's activities related to the oral hearing. See also Decision 23056-D01-2018, Alberta Utilities Commission, Alberta Electric Distribution System-Connected Generation Review, Costs Award, Proceeding 23056, May 17, 2018, where Realtime Connection fees were approved as part of EDTI's transcript fees because the fees were found to be reasonably related to the original proceeding.

³³ EEA's first panel was composed of EEA's company witnesses and ScottMadden. Panel 1 provided their testimony on October 25 and October 26, 2017. Panel 2 was composed of EEA's company witnesses and Dr. LaCasse on behalf of NERA. The second panel provided their testimony on October 31 and November 1, 2017.

3.2.1 Wachowich & Company

75. The CCA was represented by Wachowich & Company in the original proceeding. The fees claimed by the CCA for the legal services provided by Mr. James Wachowich relate to reviewing the application, the CCA's evidence, the CCA's IRs, evidence or submissions from other parties, argument and reply argument. Hours were claimed for preparation and attendance at the oral hearing.

76. The Commission issued an IR to the CCA on February 16, 2018, relating to the format used to account for the time claimed by Wachowich & Company. In its response, the CCA described the manner in which time is tracked using Microsoft Exchange or Outlook. The CCA acknowledged that its timekeeping method "...contains limited descriptions of the activity undertaken by counsel. Counsel will attempt to include more in the area of descriptions in future time recording."³⁴

Commission findings

77. Upon the review of the application, the hours claimed, and the additional explanation provided in IRs, the Commission finds that the services performed by Wachowich & Company were directly and necessarily related to the CCA's participation in the original proceeding. The fees and disbursements were claimed in accordance with the Scale of Costs for those services and are reasonable. Accordingly, the Commission approves the CCA's claim for legal fees for Wachowich & Company in the amount of \$43,662.50, disbursements for transcripts of \$3,365.40 and GST of \$2,351.40 for a total of \$49,379.30.

78. In accordance with sections 3 and 4 Appendix C of Rule 022, which requires an explanation of the tasks that have been undertaken by an eligible participant, Wachowich & Company is directed to include additional details of the tasks undertaken in its costs application when Microsoft Exchange or Outlook does not provide adequate descriptors of counsel's activities in the proceeding. This will assist the Commission in determining the costs directly and necessarily related to the legal activities undertaken.

3.2.2 Regulatory Services Inc.

79. Regulatory Services Inc. was retained by the CCA to perform consulting services in the original proceeding. The fees claimed by the CCA were for the consulting services provided by Mr. Jan Thygesen and Mr. Raj Retnanandan related to reviewing the application, drafting IRs, preparing responses to IRs, drafting evidence, reviewing evidence or submissions from other parties, attending the oral hearing and drafting argument and reply argument.

3.2.2.1 Jan Thygesen

80. The majority of the evidence provided by Mr. Thygesen related to the auction format approved by the Commission. During the course of the oral hearing, Mr. Thygesen admitted his evidence was "high level" and did not get into the details³⁵ of EEA's proposal. He also

³⁴ Exhibit 23275-X0021, CCA's response to AUC-CCA-02.

³⁵ Transcript, Volume 4, page 675, lines 5 to 7; Transcript, Volume 4, page 698, lines 20 to 23.

acknowledged the confusion of differences in the terminology between the CRC and return, which was addressed by the Chair in the hearing.³⁶

Commission findings

81. The Commission considered the qualifications of Mr. Thygesen in assessing the weight to be accorded to his evidence in issuing its decision in the original proceeding.³⁷ The costs claimed for Mr. Thygesen's services are also assessed given the weight attributed to the evidence and the other factors identified in Section 11 of Rule 022.

82. While the Commission finds that a portion of the services performed by Mr. Thygesen was directly and necessarily related to the CCA's participation in the original proceeding, it finds that the fees claimed for these services were unreasonable and excessive for the following reasons: a) Mr. Thygesen was a general witness and did not show sufficient understanding of the principles at issue in the proceeding, and b) the evidence presented lacked the level of detail required to contribute meaningfully to the Commission's understanding of the issues.

83. The Commission recognizes that the market-based CRC format is new to Alberta. As commented on by EEA, the complexity involved in the procurement methodology and theoretical basis for the market-based CRC that results from the auction process was at issue in the proceeding. However, Mr. Thygesen's 13 pages of evidence was largely focused on areas of the application that were unclear to Mr. Thygesen. For example, the submissions in the "Obligation to Serve" section provides little analysis, but instead posed questions that could have been clarified through the IR process.³⁸ In the section on "Double Counting of Return," the evidence did not contain a meaningful analysis or a corresponding proposal on how the Commission could address a perceived double counting of return.³⁹ In addition, during the oral hearing and in response to questions from Commission counsel, Mr. Thygesen admitted his lack of a detailed understanding of key issues related to CRC or proposed solutions to these issues.⁴⁰ The general, high-level, nature of the evidence proffered by Mr. Thygesen was of limited value to the Commission in reaching its decision.

84. In addition, Mr. Thygesen, as a general witness, necessarily incurred costs in efforts to bring himself up to speed in a very specialized area. The Commission finds that the lack of clarity of Mr. Thygesen on the particulars of EEA's proposal in his evidence or his general evidence provided on risk, return, and EEA's obligation to serve did not contribute to a better understanding of the issues before the Commission. In other words, a more specialized knowledge, a deeper understanding and more detailed analysis of the specific proposals included in EEA's application would have been of assistance to the Commission rather than pointing out subject matter areas that were unclear.

85. Mr. Thygesen, however, did provide evidence on the potential of higher compensation under EEA's proposed auction process and CRC. These were areas of his evidence that were

³⁶ Transcript, Volume 4, page 706, lines 3 to 7.

³⁷ The qualifications of experts has been previously addressed in Decision 22655-D01-2018: ATCO Gas and Pipelines Ltd. and ATCO Electric Ltd., 2014-2018 Pension Application, Costs Award, Proceeding 22655, January 29, 2018, paragraphs 63-67.

³⁸ Exhibit 22357-X0147, CCA Evidence of Jan Thygesen, paragraphs 9-11.

³⁹ Exhibit 22357-X0147, CCA Evidence of Jan Thygesen, paragraphs 20-22.

⁴⁰ Transcript Vol 4, page 698, lines 20-23; Transcript Vol 4, page 699, lines 16-19.

relevant to the Commission's decision and would support a partial allowance of some of Mr. Thygesen's costs.

86. For these reasons, the Commission reduces Mr. Thygesen's fees claimed in the amount of \$64,283.63, inclusive of GST, by 50 per cent, which results in the approval of \$30,611.25 in fees and \$1,530.56 in GST for a total amount awarded of \$32,141.81.

3.2.2.2 Raj Retnanandan

87. Mr. Retnanandan has appeared before the Commission in prior regulated rate tariff applications. The evidence provided by Mr. Retnanandan in this proceeding addressed the term of the EPSP, inclusion of monthly full load products for 50% of the portfolio to procure energy, the approach to determining CRC, site forecasting method, and the ScottMadden evidence.

Commission findings

88. While the Commission finds that a portion of services performed by Mr. Retnanandan was directly and necessarily related to the CCA's participation in the original proceeding, it finds that the fees claimed for these services were unreasonable for the following reasons: a) the positions taken by Mr. Retnanandan were not supported by sufficient evidence, and b) a portion of the evidence submitted focussed on issues that did not contribute to the Commission's understanding of the issues before it.

89. Decision 22357-D01-2018 specifies three instances where the Commission illustrates contributions by Mr. Retnanandan that were not of assistance to the Commission, as discussed below.

90. Mr. Retnanandan suggested the possibility that acquiring products for a term of more than one month could result in lower prices, but provided no evidence in support of this position. In addition, the acquisition of products for more than a one month; i.e., longer-term-full load products are not permitted under the *Regulated Rate Option Regulation*.⁴¹ The Commission considers that the evidence on this issue was largely undeveloped, as shown by the Commission findings in Decision 22357-D01-2018:

145. ... The Commission considers that the CCA's suggestion about the price levels between longer-term full-load products and monthly full-load products was not fully developed by the CCA during the proceeding. EEA's proposal is to acquire monthly full-load product, and the CCA's submissions on this issue are not relevant or of assistance to the Commission in assessing the acquisition of monthly full-load product proposed in EEA's application.

91. Throughout the proceeding Mr. Retnanandan took the position that the EPSP was designed to maximize the CRC, without demonstrating how the design leant itself to maximizing the CRC. In Decision 22357-D01-2018, the Commission commented as follows:

290. While the CCA submitted that EEA has an incentive to maximize the CRC, and it stated that EEA's proposed 2018-2021 EPSP appears to be designed to maximize this CRC, the CCA failed to demonstrate how the design of the proposed 2018-2021 EPSP will maximize CRC for EEA.

⁴¹ Sections 7(3), 11(1) and 11(2) of the *Regulated Rate Option Regulation*.

92. Finally, Mr. Retnanandan advocated for maintaining CRC on an administrative basis, rather than a market-based method without describing why a market-based system is inferior. The Commission commented in Decision 22357-D01-2018 as follows:

294. While the CCA submitted that even if the Commission were to approve the acquisition of full-load product for EEA, the Commission should determine the CRC on an administrative basis, the CCA provided no meaningful support for this submission. The CCA did not explain why an administratively-determined CRC would be superior to a market based CRC methodology.

93. As described in Decision 22357-D01-2018, Mr. Retnanandan did not provide adequate evidentiary support for issues raised in evidence. Certain portions of his evidence did not contribute to a better understanding of the issues before the Commission and a cost reduction is warranted. Except for the portions of evidence cited above, the remainder of the evidence and testimony was directly and necessarily related to the proceeding.

94. For these reasons, the Commission reduces Mr. Retnanandan's fees claimed in the amount of \$45,113.25, inclusive of GST, by 40 per cent, which results in the approval of \$25,779.00 in fees and \$1,288.95 in GST for total fees awarded of \$27,067.95.

3.2.3 Total amount awarded

95. For the reasons provided above, the Commission approves the CCA's claim for recovery of costs in the total amount of \$109,004.56. This amount is composed of legal fees of \$43,662.50, consulting fees of \$56,390.25, disbursements of \$3,761.11 and GST of \$5,190.70.

4 Order

96. It is hereby ordered that:

- 1) EPCOR Energy Alberta GP Inc. shall pay external costs in the amount of \$1,052,307.57.
- 2) EPCOR Energy Alberta GP Inc. shall pay intervener costs to the Consumers' Coalition of Alberta in the amount of \$109,004.56.
- 3) EPCOR Energy Alberta GP Inc. shall record in its Hearing Cost Reserve Account approved external and intervener costs in the amount of \$1,161,312.13.

Dated on July 5, 2018.

Alberta Utilities Commission

(original signed by)

Henry van Egteren
Panel Chair

(original signed by)

Bill Lyttle
Commission Member