



AUC

Alberta Utilities Commission

EDP Renewables SH Project GP Ltd.

Sharp Hills Wind Project

Costs Award

November 14, 2018

Alberta Utilities Commission

Decision 23761-D01-2018

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Proceeding 23761

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1 Decision Summary

1. In this decision the Alberta Utilities Commission considers an application by McLennan Ross LLP on behalf of the Clearview Group (the costs claim application) for approval and payment of its costs of participation in Proceeding 22665¹ (the original proceeding). The following table sets out the costs claimed and the amounts awarded:

Claimant	Total Fees Claimed	Total Disbursements Claimed	Total GST ² Claimed	Total Amount Claimed	Total Fees Awarded	Total Disbursements Awarded	Total GST Awarded	Total Amount Awarded
Clearview Group								
McLennan Ross LLP	\$147,827.50	\$11,711.09	\$7,976.93	\$167,515.52	\$143,262.50	\$9,711.24	\$7,656.51	\$160,630.25
Cottonwood Consultants Ltd.	\$24,637.50	\$919.04	\$1,277.83	\$26,834.37	\$24,637.50	\$919.04	\$1,277.83	\$26,834.37
dBA Noise Consultants Ltd.	\$58,927.50	\$2,979.86	\$3,095.37	\$65,002.73	\$50,088.38	\$2,979.86	\$2,626.80	\$55,695.04
Delta Waterfowl Foundation	\$30,780.00	\$779.00	\$0.00	\$31,559.00	\$14,512.50	\$779.00	\$0.00	\$15,291.50
RDI Resources Design Inc.	\$43,311.25	\$2,802.80	\$2,295.23	\$48,409.28	\$30,317.88	\$2,802.80	\$1,645.56	\$34,766.24
Mr. Conrad Hatcher Honorarium	\$4,995.00 \$6,800.00	\$1,493.62 \$7,913.03	\$780.10 \$266.87	\$7,268.72 \$14,979.90	\$4,995.00 \$3,250.00	\$1,493.62 \$6,949.55	\$780.10 \$119.10	\$7,268.72 \$10,318.65
Total	\$317,278.75	\$28,598.44	\$15,692.33	\$361,569.52	\$271,063.76	\$25,635.11	\$14,105.90	\$310,804.77

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

2 Introduction

3. The original proceeding was convened by the Commission to consider the applications filed by EDP Renewables SH Project GP Ltd. (EDP) for the construction and operation of the Sharp Hills Wind Project. The original proceeding involved information requests (IRs), IR responses, written evidence, an oral hearing held June 5 through 8, 2018, in Oyen and June 13, 2018, in Calgary, oral argument and written reply argument. The close of record for the original proceeding was June 15, 2018, and the Commission issued Decision 22665-D01-2018³ on September 21, 2018.

¹ Proceeding 22665: EDP Renewables SH Project GP Ltd., Sharp Hills Wind Project.

² Goods and services tax.

³ Decision 22665-D01-2018: EDP Renewables SH Project GP Ltd. Sharp Hills Wind Project, Proceeding 22665, September 21, 2018.

4. The Clearview Group submitted its costs claim application on July 23, 2018, within the 30 day timeline permitted by the Commission's rules. The Commission assigned Proceeding 23761 and Application 23761-A001 to the costs claim application.

5. On August 9, 2018, EDP filed its comments on the Clearview Group's costs claim application. On August 17, 2018, McLennan Ross LLP filed the Clearview Group's response to the comments filed by EDP. The Commission considers the close of record for this proceeding to be August 17, 2018, the date final submissions were made on the costs claim application.

3 The Commission's authority to award costs and intervener eligibility

6. Only local interveners are eligible to claim costs in facility related applications. The Commission's authority to award costs for the participation of a local intervener in a hearing or other proceeding on an application to construct or operate a power plant under the *Hydro and Electric Energy Act*, is found in sections 21 and 22 of the *Alberta Utilities Commission Act*. When considering a claim for costs for a facilities proceeding, the Commission is also guided by the factors set out in Section 7 of Rule 009: *Rules on Intervener Costs* (Rule 009) and the scale of costs found in Appendix A of Rule 009.

7. Section 7 of Rule 009 provides that the Commission may award costs, in accordance with the scale of costs, to a local intervener if the Commission is of the opinion that:

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

7.1.2 the local intervener acted responsibly in the hearing or other proceeding and contributed to a better understanding of the issues before the Commission.

8. Section 22 of the *Alberta Utilities Commission Act* defines what a local intervener is and states:

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

(a) has an interest in, and

(b) is in actual occupation of or is entitled to occupy

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

9. In the Commission's ruling on standing in the original proceeding,⁴ 39 members of the Clearview Group were found to own or reside on land within two kilometres of the proposed project site and to have demonstrated that the Commission's decision on the applications in the original proceeding may directly and adversely affect their rights.

10. In that ruling, the Commission also found that 22 Clearview Group members had not demonstrated that they held rights which may be directly and adversely affected by the Commission's decision, and commented as follows:

In its January 10, 2018 update letter, the Clearview Group advised that while the majority of its members own land and/or reside within two kilometres of the project, the property interests of some members fall outside of the two-kilometre radius. The Clearview Group asserted however, that given the unprecedented height of the proposed turbines, its members outside of the two-kilometre radius will also be directly and adversely affected by the Commission's decision on the project. Those members that appear to fall outside of the two-kilometre radius are listed in Appendix B.

The Commission finds that there is insufficient information to determine the standing of those members of the Clearview Group that own and or reside on lands more than two kilometres from the project. However, consistent with the Commission's past practice, those members may participate in the proceeding as members of the Clearwater Group but may be ineligible to claim honoraria and the personal disbursements associated with their participation.⁵

11. The costs claim application submitted by McLennan Ross LLP on behalf of the Clearview Group included costs for 14⁶ of the members who were granted standing in the original proceeding, for five⁷ of the members who were denied standing, and for six⁸ additional members who did not file statements of intent to participate in the original proceeding and accordingly were not in the Commission's standing ruling. Of the latter two groups, four⁹ members appeared as witnesses at the oral hearing.

12. As noted in the Commission's initial ruling on standing, its general practice is to allow members of an intervener group to participate in a proceeding regardless of whether they have been granted standing (i.e., whether they fall within the definition of local intervener in Section 22 of the *Alberta Utilities Commission Act*). However, as the Commission noted in the ruling, those persons may be ineligible to claim honoraria and the personal disbursements associated with their participation.

13. In this proceeding, the Commission granted standing to persons who own or occupy lands within two kilometres of the project area. The Clearview Group had standing in the original proceeding by virtue of the fact that one or more members of the group had standing. The Commission considers that the Clearview Group falls within the definition of local intervener for

⁴ Exhibit 22665-X0108.

⁵ Exhibit 22665-X0108, paragraph 9.

⁶ Colleen Blair, Bruce Hayworth, Randy Hayworth, Nelson Hertz, Len Jorgenson, Chris Jorgenson, Sheldon Kroker, Kelly Kroker, Jim Ness, Hugh Ross, Kathy Simpson, Barry Wagstaff, Juanita Wagstaff and Lloyd Wagstaff.

⁷ Dawne Beaudoin, Larry Kaumeyer, Aaron Rude, Sandra Rude and Steven Rude.

⁸ Bryan Kroker, Lauren Kroker, Lori Kroker, Wyatt Simpson, Lloyd Hayworth and Kelsey Simpson.

⁹ Larry Kaumeyer, Bryan Kroker, Lauren Kroker and Wyatt Simpson.

the purposes of overall eligibility for costs; however, members of the group who would not qualify for standing in their individual capacity do not qualify for honoraria or intervener funding of personal expenses. The Commission notes that no statement of justification was filed with the costs claim, as required by Appendix C of Rule 009, and that six of the cost claimants were not identified in the Commission's standing ruling in the initial proceeding as they did not file statements of intent to participate in the original proceeding. However, to the extent that it is clear on the record of the original proceeding that those additional six claimants¹⁰ who were not in the original standing ruling qualify for standing in their individual capacity, the Commission finds that those persons qualify for funding of personal expenses.

14. Accordingly, the Commission finds that Lori Kroker,¹¹ Wyatt Simpson¹² and Lloyd Hayworth¹³ qualify for recovery of personal expenses, as the record of the original proceeding indicates that they own or occupy land within two kilometres of the project area. The Commission finds that Bryan Kroker, Lauren Kroker, and Kelsey Simpson do not qualify for recovery of personal expenses, as no information has been provided on the record of Proceeding 22665 or this proceeding which indicates that they fall within the definition of local intervener in the *Alberta Utilities Commission Act*.

15. With respect to the five cost claimants who were denied standing in the original proceeding, the Commission does not consider that they meet the definition of local intervener for the purposes of determining eligibility for claiming the costs of their participation. Accordingly, the Commission finds that Dawne Beaudoin, Sandra Rude, Steven Rude, Aaron Rude and Larry Kaumeyer are not eligible to claim funding for honoraria or personal expenses.

4 The Clearview Group's costs claim

16. The following table summarizes the Clearview Group's cost claim for the original proceeding:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Clearview Group							
McLennan Ross LLP	400.20	84.00	7.10	\$143,262.50	\$9,711.24	\$7,656.51	\$160,630.25
Cottonwood Consultants Ltd.	81.00	11.75	2.25	\$24,637.50	\$919.04	\$1,277.83	\$26,834.37
dBA Noise Consultants Ltd.	218.25	5.00	0.00	\$50,088.38	\$2,979.86	\$2,626.80	\$55,695.04
Delta Waterfowl Foundation	110.00	0.00	4.00	\$14,512.50	\$779.00	\$0.00	\$15,291.50
RDI Resources Design Inc.	205.25	5.00	0.00	\$30,317.88	\$2,802.80	\$1,645.56	\$34,766.24
Mr. Conrad Hatcher	26.50	0.00	0.00	\$4,995.00	\$1,493.62	\$780.10	\$7,268.72
Honorarium	12.00	4.50	0.00	\$3,250.00	\$6,949.55	\$119.10	\$10,318.65
Total	1,053.20	110.25	13.35	\$271,063.76	\$25,635.11	\$14,105.90	\$310,804.77

¹⁰ Bryan Kroker, Lauren Kroker, Lori Kroker, Wyatt Simpson, Lloyd Hayworth and Kelsey Simpson.

¹¹ Transcript, Volume 3, pages 741-743, lines 20-6.

¹² Transcript, Volume 3, page 679, lines 2-4.

¹³ Exhibit 22665-X0158, Submissions of the Clearview Group, page 3.

17. The Commission finds that the Clearview Group 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. The Commission's findings in relation to each of the costs claimed are detailed in the sections that follow.

4.1 McLennan Ross LLP

18. McLennan Ross LLP represented the Clearview Group in the original proceeding. The fees claimed by the Clearview Group for the legal services provided by Mr. Gavin Fitch, Mr. Marco Baldasaro, Mr. Michael Barbero, Ms. Navreet Bal, and Ms. Andrea MacLean relate to reviewing the application, drafting IRs, corresponding with experts and interveners, reviewing IR responses, reviewing evidence of other parties and preparing reply evidence, preparing cross-examination, preparing for and attending the hearing, and drafting argument.

4.1.1 Comments from EDP

19. EDP noted the Clearview Group's cost claim application did not include a "submission of justification," resulting in insufficient information for EDP to assess whether some of the costs claimed were reasonable.

20. EDP submitted the total costs claimed were disproportionately high given the length of the proceeding and scope of the issues.

21. EDP noted a number of hours were claimed for preparation of letters to the Special Areas Board and Alberta Environment and Parks, and submitted the hours should be disallowed as, although they may be related to the project, they are outside the scope of this proceeding.

22. EDP asserted the Clearview Group's counsel unnecessarily lengthened the proceeding without contributing to a better understanding of the issues, did not ensure expert evidence was relevant and helpful, and inefficiently used senior and junior counsel.

23. EDP also noted that costs were claimed for pre-hearing travel and costs for printing and colour reprographic services were excessive.

4.1.2 Reply from the Clearview Group

24. The Clearview Group submitted the total costs claimed were not disproportionate given it was the only intervener opposing the applications, that McLennan Ross LLP used an associate to minimize legal fees where feasible, and it represented 66 clients and presented 17 lay witnesses and five expert witnesses at the hearing.

25. The Clearview Group responded that its counsel did not unnecessarily lengthen the hearing, noting the hearing concluded on the date it was originally scheduled to conclude.

26. The Clearview Group denies the assertion that its expert witnesses' evidence was general in nature and did not contribute to a better understanding of the issues.

4.1.3 Commission findings

27. Under Appendix C of Rule 009, cost claimants are required to provide justification of the interests they represent, the tasks undertaken, why they appeared before the Commission, the efforts expended to avoid duplication between counsel, experts and consultants, and why the

costs submitted are reasonable. The Commission notes that there was no detailed cover letter providing this information with the Clearview Group's costs claim application, but notes that sufficient information was provided in reply submissions to shed light on some of the costs claimed. To the extent that the lack of justification resulted in insufficient information for the Commission to properly assess the costs claimed, those costs will be disallowed, as set out in detail below.

28. The Commission finds that the services performed by McLennan Ross LLP were directly and necessarily related to the Clearview Group's participation in the original proceeding. The Commission is not convinced that counsel for the Clearview Group engaged in conduct which unnecessarily lengthened the original proceeding or made submissions on irrelevant issues or motions, including its costs for correspondence to the Special Areas Board or Alberta Environment and Parks, as argued by EDP. Given the size of the Clearview Group, the number of experts, and the issues discussed in the proceeding, as well as the length of the proceeding, the Commission considers that the majority of the fees claimed by McLennan Ross LLP are reasonable.

29. However, the Commission finds that not all fees were claimed in accordance with the scale of costs. The Commission observes that under the scale of costs, travel time may only be claimed in connection with attendance at a hearing. Therefore, the Commission disallows 14 hours on August 17, 2017, and 16 hours on November 9, 2017, for travel time unconnected with attendance at the hearing. The adjustment decreases the original amount claimed by \$4,565.00. The Commission finds the remainder of fees for legal services reasonable.

30. The disbursements claimed for McLennan Ross LLP were not all claimed in accordance with the scale of costs. The Commission disallows the disbursement claim for meals and gas on November 9, 2017, and associated GST, as this date does not fall within the dates of the hearing.

31. The claims made for accommodation to attend the hearing for Mr. Fitch and Mr. Baldasaro are not in accordance with the rates permitted by the scale of costs. The Commission has, therefore, determined that a reduction in the daily rate for accommodation from the claimed rate of \$154.00 to \$140.00 for a total of eight days is required.

32. McLennan Ross LLP's internal disbursements for photocopying and laser printing services were listed as \$662.50 and \$1,160.75, respectively, and total \$1,823.25. The scale of costs allows for photocopying at the rate of 10 cents per page. At this rate, the amounts claimed for photocopying and laser printing would amount to over 18,000 pages for the proceeding. The Commission considers this disproportionate to the total size of the record in the original proceeding and accordingly reduces the disbursement by 40 per cent, for a total allowed disbursement of \$1,093.95.

33. McLennan Ross LLP's internal disbursement for colour reprographic services was listed as \$2,735.20. The Scale of Costs states the Commission will consider other office disbursements when a short explanation of the expense claimed is provided in the costs claim application. The Clearview Group did not provide an explanation in either its costs claim application or in its reply comments as to why this disbursement is reasonable. As a result, the claim for \$2,735.20 is also reduced by 40 per cent.

34. The Commission approves the remaining disbursements for meals, transcripts and courier fees in the amount of \$5,768.49. Consequently, the Commission approves total disbursements for McLennan Ross LLP in the amount of \$9,711.24 inclusive of the accommodation costs approved.

35. Accordingly, the Commission approves the Clearview Group's claim for legal fees for McLennan Ross LLP in the amount of \$143,262.50, disbursements of \$9,711.24 and GST of \$7,656.51 for a total of \$160,630.25.

4.2 Cottonwood Consultants Ltd.

36. Cottonwood Consultants Ltd. was retained by the Clearview Group to perform consulting services in the original proceeding. The fees claimed by the Clearview Group for the consulting services provided by Mr. Cliff Wallis relate to reviewing the application, drafting an expert report, assisting with responses to IRs, drafting cross-examination and preparing for and attending the oral hearing.

4.2.1 Comments from EDP

37. EDP submitted Mr. Wallis inappropriately presented new evidence during the hearing and that his evidence was general in nature and did not contribute to an understanding of the issues.

4.2.2 Reply from the Clearview Group

38. The Clearview Group noted Mr. Wallis responded to the testimony of EDP's experts, that his testimony was very similar to that given in previous wind energy proceedings and that the Commission has always found it to be helpful and of assistance.

4.2.3 Commission findings

39. The Commission finds that the services performed by Cottonwood Consultants Ltd. were directly and necessarily related to the Clearview Group's participation in the original proceeding, and that the fees and disbursements claimed in accordance with the scale of costs for those services were reasonable. The Commission is not convinced that there is any indication on the record of the original proceeding that Mr. Wallis did not prepare evidence specific to the project proposed by Capital Power in the proceeding or otherwise provided irrelevant information. Accordingly, the Commission approves the claim for consulting fees for Cottonwood Consultants Ltd. in the amount of \$24,637.50, disbursements for accommodation, meals and mileage of \$919.04 and GST of \$1,277.83 for a total of \$26,834.37.

4.3 dBA Noise Consultants Ltd.

40. dBA Noise Consultants Ltd. was retained by the Clearview Group to perform consulting services in the original proceeding. The fees claimed by the Clearview Group for the consulting services provided by Mr. Henk de Haan relate to reviewing the application; modelling, measuring and recording data; drafting an expert report; assisting with responses to IRs, drafting cross-examination and preparing for and attending the oral hearing.

4.3.1 Comments from EDP

41. EDP noted the costs claim for dBA Noise Consultants Ltd. was disproportionately high compared to costs claimed by the Clearview Group for their other experts, and that travel costs were included for dates outside of the oral hearing. EDP submitted that there were a number of hours in Mr. de Haan's statement of account which appeared to be included for activities not related to the original proceeding. Specifically, Mr. de Haan's statement of account included entries in early April 2018 relating to "SIR round 1" and the preparation of "SIR reply," which EDP understood to refer to "supplemental information requests" which was not a part of the process schedule in the original proceeding in early April 2018.

4.3.2 Reply from the Clearview Group

42. The Clearview Group submitted that Mr. de Haan's expert report and evidence were thorough and that the pre-hearing site visits were necessary to comprehensively reply to EDP's application.

4.3.3 Commission findings

43. While the Commission finds that the services performed by dBA Noise Consultants Ltd. were directly and necessarily related to the Clearview Group's participation in the original proceeding, the Commission finds that the fees claimed for those services are excessive. The Commission considers that the costs claimed were significant in light of the scope of the noise issues, the work performed, the utility of the evidence presented and the length of the hearing in the original proceeding.

44. The Commission notes that there were activities conducted by Mr. de Haan that did not help the Commission to better understand the issues in the proceeding. For example, with respect to the CONCAWE models created by Mr. de Haan, the Commission commented in the Decision as follows:

364. The Commission notes that Mr. de Haan's case study was conducted to compare sound levels as predicted using ISO 9613-2 and the CONCAWE method. However, the Commission finds that the case study was constructed specifically for comparison purposes and the results may not be universally applicable.

...

367. ...The Commission finds that use of the CONCAWE meteorological correction is not necessary unless there is compelling evidence that propagation conditions more conservative than those considered in ISO 9613-2 are representative of conditions in the project area.¹⁴

45. The Commission is accordingly not convinced that the extent and volume of the work performed by Mr. de Haan on the various models for the purposes of the original proceeding contributed to a better understanding of all the noise related issues in such a manner that the contribution is commensurate to the significant amount claimed.

¹⁴ Decision 22665-D01-2018, paragraphs 364 and 367.

46. With respect to the entries in the statement of account provided by dBA Noise Consultants Ltd. which refer to work related to “SIRs,” the Commission is not convinced based on the evidence before it that those fees do not relate to the proceeding as alleged by EDP, based on the process schedule in the original proceeding and the statements of account submitted by Mr. de Haan and McLennan Ross LLP. While the Commission notes that further clarification on those entries was not provided by the Clearview Group in its reply submissions, the Commission is nonetheless satisfied that the timing of those entries is consistent with the process schedule in the original proceeding, and information on the record of this proceeding indicates that those entries relate to work with respect to Proceeding 22665. Mr. de Haan’s statement of account¹⁵ includes the following entries relating to “SIRs”:

February 13, 2018 – prepare SIRs for publication
March 29, 2018 – discuss several supplied answers to SIR round 1
March 30, 2018 – SIRs round 1
April 3, 2018 – SIRs round 1
April 9, 2018 – work on SIRs reply
April 12, 2018 – work on SIR reply

47. In the original proceeding, the Clearview Group issued IRs to EDP on March 12, 2018.¹⁶ EDP responded to those IRs on March 26, 2018.¹⁷ The dates on the above entries, and the lack of any other entries on Mr. de Haan’s statement of account relating to review of EDP’s IR responses during the timeframe, indicates to the Commission that, although not explicitly and clearly set out in the Clearview Group’s cost claim, the work performed on those dates related to the review of EDP’s IR responses. This is further consistent with the statement of account provided by McLennan Ross LLP, which contains an entry for April 12, 2018, which includes that activity “Review comments from H. de Haan on EDP’s responses to noise IRs.”¹⁸

48. For the reasons set out above, the Commission finds that the costs claimed by dBA Noise Consultants Ltd. for Mr. de Haan’s activities related to the CONCAWE models created were of little value to the Commission and the Commission accordingly reduces the fees claimed by the Clearview Group for Mr. de Haan by 15 per cent.

49. The Commission finds that the disbursements claimed by dBA Noise Consultants Ltd. for software, sound level meter usage and GIS services were reasonable and approves them in full.

50. The Commission notes that the hotel, meal and mileage expenses claimed for two pre-hearing trips to the site are not explicitly allowed within the scale of costs but were claimed in accordance with the rates allowed by the scale of costs. However, the Commission finds that it is reasonable that a consultant preparing a noise assessment could more effectively prepare their evidence with a trip to the project area. As a result, the Commission will exercise its discretion to allow dBA Noise Consultants Ltd. to recover the costs of its pre-hearing travel as claimed in the application, with the exception of the GST on mileage, which is not allowed in the scale of costs.

51. Appendix A of Rule 022 states that the Commission’s mileage rate for automobile travel is 46 cents per km including GST. For the reasons stated above, the GST of \$26.61 claimed for

¹⁵ Exhibit 23761-X0002, Local Intervener Cost Claim of the Clearview Group (Part 1 of 2), PDF page 4.

¹⁶ Exhibit 22665-X0114, Clearview Group Information Requests to EDP (1 through 49).

¹⁷ Exhibits 22665-X0118 through X0129.

¹⁸ Exhibit 23761, X0002, Local Intervener Cost Claim of the Clearview Group (Part 1 of 2), PDF page 6.

mileage (which includes the two pre-hearing trips and travel to attend the hearing) has been disallowed.

52. Accordingly, the Commission approves the claim for consulting fees for dBA Noise Consultants Ltd. in the amount of \$50,088.38, disbursements in the amount of \$2,979.86 and GST of \$2,626.80 for a total of \$55,695.04.

4.4 Delta Waterfowl Foundation

53. Delta Waterfowl Foundation (Delta Waterfowl) was retained by the Clearview Group to perform consulting services in the original proceeding. The fees claimed for the consulting services provided by Dr. Scott Petrie relate to drafting an expert report, assisting with evidence preparation and preparing for and attending the oral hearing.

4.4.1 Comments from EDP

54. EDP noted the costs claim for Delta Waterfowl did not include a detailed statement of account as required by the scale of costs and that a reduced rate for travel time was not applied to the 38 hours for “travel, document review and testimony” for the June 6 to 9, 2018, time entry¹⁹ included on Delta Waterfowl’s invoice. EDP noted that there was no breakdown of the hours between travel and consulting work, and further stated that as a result of this lack of clarity, it is not possible for the Commission to ascertain how many hours were spent on travel. Therefore, EDP suggested that the rate that can be applied for all Dr. Petrie’s hours must be reduced to a rate commensurate with the allowed hourly rate for travel time, which is one half of the consultant fee and results in a rate of \$135.00 per hour.

55. EDP also argued that Dr. Petrie’s evidence relied entirely on studies of wind power projects located outside of Alberta, and reached conclusions on the basis of highly equivocal conclusions from those studies.

4.4.2 Reply from the Clearview Group

56. The Clearview Group submitted it was obvious the majority of Dr. Petrie’s time during the week of the hearing was spent preparing for and attending the hearing.

4.4.3 Commission findings

57. The Commission finds, in general, the services performed by Delta Waterfowl were directly and necessarily related to the Clearview Group’s participation in the original proceeding. However, the Commission finds that the fees claimed are excessive because they are not commensurate with the work performed and the value of the evidence provided to the Commission. Given the absence of a detailed statement of account, the Commission is unable to conclude that all of the hours recorded were reasonable and contributed to the Commission’s understanding of the issues in the proceeding. In addition, the evidence provided by Delta Waterfowl did not contribute significantly to a better understanding of the issues in the proceeding. The Commission considers that much of the evidence provided by Delta Waterfowl consisted of general commentary based on the expansive Prairie Pothole Region in which the project is located and broad concerns with the potential for avoidance and barrier effects as a result of the project, without supplying specific evidence on waterfowl in the project area. In

¹⁹ Exhibit 23761-X0007, EDPR Response to CG Costs Claim, PDF page 11.

addition, portions of the evidence provided by Delta Waterfowl were based on studies conducted in Europe.

58. Further, where specific information was provided, the Commission was unable to assign substantial weight to that evidence. For instance, the Commission provided the following comments in the decision related to the evidence provided by Dr. Petrie:

242. Delta Waterfowl submitted that breeding waterfowl densities in the project area are up to 25 pairs per square kilometre. However, when Dr. Petrie was questioned about this assessment during testimony, it appeared that the waterfowl breeding pairs data cited by Dr. Petrie was not generated for the specific boundaries of the project area, but rather by flying a plane over “transect” flight corridor areas. Therefore, it is unclear to the Commission how closely the transect being relied on by Delta Waterfowl corresponds with the boundaries of the project area. As a result, the Commission cannot assign much weight to the evidence provided by Delta Waterfowl regarding the breeding waterfowl density in the project area.²⁰ [citations omitted]

59. With respect to the lack of delineation of hours claimed for travel time within the overall fees claimed for Delta Waterfowl, a review of Dr. Petrie’s itinerary included in the costs claim application²¹ shows an approximate total flying time for the return trip to be 13 hours.²² The Commission has accordingly reduced the claimed rate for those 13 hours spent by Dr. Petrie on travel to one half of his hourly rate, or \$135.00, in keeping with the scale of costs. This results in an adjusted total amount for consulting fees of \$29,025.00.

60. For the reasons stated above, the Commission reduces the adjusted total amount for consulting fees of \$29,025.00 for Delta Waterfowl by 50 per cent.

61. Accordingly, the Commission approves the claim for consulting fees for Delta Waterfowl Foundation in the reduced amount of \$14,512.50 and disbursements for flights of \$779.00 for a total of \$15,291.50.

4.5 RDI Resources Design Inc.

62. RDI Resources Design Inc. (RDI) was retained by the Clearview Group to perform consulting services in the original proceeding. The fees claimed for the consulting services provided by Dr. Ken Fairhurst relate to preparing a visual effects assessment, drafting an expert report, assisting with responses to IRs and preparing for and attending the oral hearing. The fees claimed for the technical support services provided by Mr. Brydon Coby include field work and photography.

²⁰ Decision 22665-D01-2018, EDP Renewables SH Project GP Ltd. Sharp Hills Wind Project, Proceeding 22665, September 21, 2018, paragraph 242.

²¹ Exhibit 23761-X0002, pages 60 – 61.

4.5.1 Comments from EDP

63. EDP noted the costs claim for RDI included travel time and expenses for a trip to the project area outside of the oral hearing dates and argued that claiming for those costs is inappropriate. EDP argued that the evidence presented by Dr. Fairhurst contained a number of inaccuracies, was often irrelevant to the specific context of the proceeding, and generally did not contribute to the Commission's understanding of the issues.

4.5.2 Reply from the Clearview Group

64. The Clearview Group submitted that Dr. Fairhurst's and Mr. Coby's pre-hearing visit to the project area was necessary for the preparation of a visual impact assessment report and to comprehensively reply to EDP's application. The Clearview Group strongly denied the assertion that the evidence provided by Dr. Fairhurst was of limited assistance and did not contribute to the Commission's understanding of the visual impact of the project, which is significant.

4.5.3 Commission findings

65. While the Commission finds that the services performed by RDI were directly and necessarily related to the Clearview Group's participation in the original proceeding, it finds that the fees claimed for these services are excessive because the evidence provided by Dr. Fairhurst was of limited value in assessing the visual impacts of the project, as noted in the original proceeding. The Commission provided the following comments in the decision related to the evidence provided by Dr. Fairhurst:

109. Dr. Fairhurst proposed a set of objective criteria for assessing the visual impact of the project. While the Commission considers that the concept of using objective criteria may be helpful in attempting to determine and evaluate visual impact, Dr. Fairhurst acknowledged that his criteria was "borrowed from existing systems in BC, the US, Alberta, [a BC] guidebook, and the UK", and were "an assimilation of these approaches to make a workable assessment process [...]". Further, Dr. Fairhurst stated that "[t]he Visual Landscape System Rating Form [was] adapted by RDI for wind farm application [...]" and that "this is just the first go at using it for wind -- wind farms [...]". **The Commission considers that the objective criteria proposed by Dr. Fairhurst is not industry standard for wind projects and because it is untested, is of limited use in assessing the visual impacts of the project.**

110. Applying objective criteria to visual impact may be of some use, particularly when comparing alternatives. However, the Commission considers that the assessment of visual impact is ultimately subjective in nature, and agrees with Ms. Blair's statement that "[t]here is no study out there that can tell me what I should and shouldn't like when it comes to visual impact." The Commission understands that the criteria proposed by Dr. Fairhurst provides an objective framework for assessing the visual impact caused by the proposed project, but that Dr. Fairhurst's objective criteria may be different than the objective criteria of another party.

111. The Commission also finds that **the visual simulations completed by WSP were more helpful for visualizing the project than Dr. Fairhurst's Visual Nature Studio generated simulations. Dr. Fairhurst's Visual Nature Studio generated simulations did not provide photo realistic detail and were not convincing renderings of what the project may look like.** Dr. Fairhurst's Visual Nature Studio generated simulations also lacked accurate depictions of landscape features and were flawed because they did not include items like distribution poles, fences and grain bins. However, **Dr. Fairhurst's windPRO simulations, including the animations, were somewhat helpful in assessing**

the project’s visual impact because they provided photo-realistic detail.²³ [citations omitted, emphasis added]

66. While the Commission acknowledged that “the proposed project’s turbines would dramatically change the visual landscape of the project area,” with a view to the evidence of both Dr. Fairhurst and Mr. McDonnell, as noted above, the Commission found in the original decision that multiple aspects of Dr. Fairhurst’s evidence were of limited use. Accordingly, the Commission reduces the Clearview Group’s claim for consulting fees for RDI by 30 per cent, thereby approving fees in the amount of \$30,317.88.

67. The Commission finds that the disbursements claimed by RDI in the amount of \$2,802.80 are reasonable and approves them in full. The Commission finds that, while costs associated with a pre-hearing trip to the project area are not explicitly allowed within the scale of costs, it is reasonable that a consultant preparing a visual effects assessment could not effectively prepare this type of evidence absent such a trip to the project area. As a result, the Commission exercises its discretion to allow the travel time and disbursements which were claimed in accordance with the rates allowed by the scale of costs.

68. Accordingly, the Commission approves the claim for consulting fees for RDI in the amount of \$30,317.88, disbursements of \$2,802.80 and GST of \$1,645.56 for a total of \$34,766.24.

4.6 Mr. Conrad Hatcher

69. Mr. Conrad Hatcher was retained by the Clearview Group to perform consulting services in the original proceeding. The fees claimed for the consulting services provided by Mr. Hatcher relate to preparing a witness statement, consulting with stakeholders and counsel and appearing as an expert witness at the oral hearing.

4.6.1 Comments from EDP

70. EDP asserted that the evidence provided by Mr. Hatcher was limited to an explanation of how visual flight rules operate rather than the extent to which the project may adversely impact pilots in the project area, and did not contribute to a better understanding of the issues in the original proceeding.

4.6.2 Reply from the Clearview Group

71. The Clearview Group submitted that Mr. Hatcher’s evidence was critical to understanding the practical challenges pilots will face in the event the applications in the original proceeding were approved.

²³ Decision 22665-D01-2018, EDP Renewables SH Project GP Ltd. Sharp Hills Wind Project, Proceeding 22665, September 21, 2018, paragraphs 109-111.

4.6.3 Commission findings

72. The Commission finds that the services performed by Mr. Hatcher were directly and necessarily related to the Clearview Group's participation in the original proceeding. The Commission considers that the evidence provided by Mr. Hatcher was of use in understanding issues in the proceeding related to the potential impacts of the project on aerodromes in the area, and that the fees claimed in accordance with the Scale of Costs for those services were reasonable.

73. The Commission finds that the disbursements claimed by Mr. Hatcher in the amount of \$1,493.62 are reasonable and approves them in full.

74. Accordingly, the Commission approves the claim for consulting fees for Mr. Hatcher in the amount of \$4,995.00, disbursements of \$1,493.62 and GST of \$780.10 for a total of \$7,268.72.

4.7 Intervener costs

75. The Clearview Group's costs claim application included a claim for attendance for 24 members of the Clearview Group totalling \$3,800.00, an honorarium for Mr. Sheldon Kroker for forming a group in the amount of \$500.00, fees for Mr. Jim Ness for organizing the group, preparing evidence and attending the hearing in the amount of \$2,500.00, disbursements of \$7,913.03 and GST of \$266.87.

4.7.1 Comments from EDP

76. EDP asserted Mr. Hugh Ross's mileage charges for travel between Calgary and Oyen were unreasonable; that his costs claimed for graphic design, three dimensional illustrations and photo enlargements were unnecessary and not directly related to the original proceeding and should be denied; that costs were claimed for a "letter to farmers" which may not have formed part of the record of the proceeding; and that a group meal totalling \$478.17 was excessive.

77. EDP submitted the professional fees claimed by Mr. Jim Ness were unfounded since he did not file evidence beyond a landowner statement and he was not in attendance during the period claimed on his statement of account.

78. EDP submitted the reimbursement of private air travel costs are not provided for in the scale of costs, and that Mr. Len Jorgenson's claim for costs to fly his private aircraft to the hearing should be denied.

79. EDP noted the Clearview Group did not justify why individuals not granted standing should be able to claim costs or why more than six members should be able to claim attendance honorarium, in accordance with the limit imposed in Section 2(a) of the scale of costs.

4.7.2 Reply from the Clearview Group

80. The Clearview Group submitted the entire community of Sedalia stands to be impacted if the applications in the original proceeding are approved and, as such, all of the costs claimants in the Clearview Group should be granted honoraria.

81. The Clearview Group asserted the costs claimed for Mr. Jorgenson to fly his personal aircraft to the hearing are not precluded by the Commission's rules, that the subject of his flight was relevant evidence during his testimony, and that the costs should be allowed.

82. The Clearview Group submitted the visual illustrations and photo enlargements obtained by Mr. Ross were relevant in the hearing and the costs should be allowed.

4.7.3 Commission findings

83. In the Commission's Ruling on Standing in the original proceeding,²⁴ 39 members of the Clearview Group were found to own or reside on land within two kilometres of the proposed project site and to have demonstrated that the Commission's decision on the applications in the original proceeding may directly and adversely affect their rights. The remaining 22 members of the Clearview Group were not granted standing. The costs claim application submitted by McLennan Ross LLP on behalf of the Clearview Group included costs for 14²⁵ of the members granted standing in the original proceeding, for five²⁶ of the members denied standing, and for six additional members who did not file statements of intent to participate in the original proceeding and accordingly were not considered in the Commission's standing ruling. Some of the members in the latter two groups were on the witness list provided to the Commission on June 1, 2018.²⁷

84. In the case of large local intervenor groups, the scale of costs allows up to six participants to claim attendance honoraria unless exceptional circumstances are found. Based on the nature of the Clearview Group's participation in the hearing and the value of the information provided by the group, the Commission is exercising its discretion to award honoraria to more than six members of the Clearview Group. In addition and as noted above, consistent with the Commission's past practice, members of an intervenor group who do not qualify for standing in their individual capacity do not qualify for intervenor funding of personal expenses. Therefore, the Commission awards the full amount of the attendance honoraria claimed by Colleen Blair, Bruce Hayworth, Randy Hayworth, Nelson Hertz, Len Jorgenson, Chris Jorgenson, Sheldon Kroker, Kelly Kroker, Hugh Ross, Kathy Simpson, Barry Wagstaff, Juanita Wagstaff, Lloyd Wagstaff, Lori Kroker, Wyatt Simpson, and Lloyd Hayworth.

85. In addition, Mr. Jim Ness claimed professional fees as a consultant in the proceeding in the total amount of \$2,625.00, broken down into participation in the organization of the Clearview Group (\$100.00 per hour for eight hours over four meetings), preparation of evidence for four hours (\$200.00 per hour) and attendance at the hearing from 10:00 a.m. to 2:35 p.m. (\$200.00 per hour). It is unclear to the Commission based on the record of the original proceeding what professional services Mr. Ness provided to the Clearview Group as a consultant, such as the preparation of an expert report; rather, it appears that Mr. Ness participated in his capacity as a landowner with standing in the original proceeding. The Commission does not consider that he is eligible to claim consulting hours instead of honoraria, and accordingly will treat the costs claimed by Mr. Ness in accordance with the provisions of Rule 009 related to landowner honoraria.

²⁴ Exhibit 22665-X0108.

²⁵ Colleen Blair, Bruce Hayworth, Randy Hayworth, Nelson Hertz, Len Jorgenson, Chris Jorgenson, Sheldon Kroker, Kelly Kroker, Jim Ness, Hugh Ross, Kathy Simpson, Barry Wagstaff, Juanita Wagstaff and Lloyd Wagstaff.

²⁶ Dawne Beaudoin, Larry Kaumeyer, Aaron Rude, Sandra Rude and Steven Rude.

²⁷ Exhibit 22665-X0231.

86. First, Mr. Ness claimed \$900.00 for 4.5 hours attendance at the hearing. As Mr. Ness is an intervener with standing, and given that the scale of costs allows a maximum claim of \$50 for each half day of attendance, the Commission awards a reduced amount of \$50.00 for attendance honorarium to Mr. Ness, based on his hours of attendance at the hearing. The costs claim application also included a claim for four hours at \$200.00 per hour for preparation of evidence by Mr. Ness. Appendix A of Rule 009 states that a preparation honorarium may not be awarded if a lawyer is primarily responsible for the preparation of an intervention. As Mr. Ness and the rest of the Clearview Group were represented by McLennan Ross LLP, the claim for preparation honorarium is denied.

87. The scale of costs also provides that an honorarium for forming a group may be claimed by organizers in an amount of up to \$500.00, as Rule 009 recognizes that organizing a group of local interveners may require time, effort or expense. Mr. Sheldon Kroker claimed \$500.00 for forming an intervener group and Mr. Jim Ness claimed \$800.00 for forming an intervener group. With respect to the honorarium claimed by Mr. Sheldon Kroker, the Commission considers that it is clear from the record of the original proceeding²⁸ and this proceeding²⁹ that Mr. Kroker played a significant role in the organization of the Clearview Group and expended time, effort and expense as a result of his efforts. Accordingly, the claim by Mr. Sheldon Kroker for \$500.00 for forming an intervener group is within the scale of costs and is approved.

88. Mr. Jim Ness also claimed \$800.00 for organizing the group, which is above the maximum amount allowed under Rule 009. The Commission has reviewed the record of the original proceeding and the submissions in this proceeding and does not find that there is sufficient evidence to support Mr. Ness's claim for costs of organizing the group. As noted above, the purpose of an honorarium for forming a group under Rule 009 is to allow local interveners to recover the costs associated with the time, effort and expense of organizing a group. While it is clear that Mr. Ness expended time and effort in participating in the proceeding and appearing as a witness,³⁰ the Commission does not find that there is evidence indicating that Mr. Ness expended time, effort and expense specifically related to the organization of the Clearview Group such that an honorarium is justified in the circumstances. Accordingly, the Commission denies Mr. Ness's claim for an \$800.00 honorarium for organizing a group.

89. The costs claim application also includes a claim for Mr. Len Jorgenson in the amount of \$348.00 for private aircraft operating costs, for his travel to attend the hearing on June 8, 2018. The Commission notes that its scale of costs does not contemplate recovery of costs for private air travel and the costs are therefore not recoverable. However, the Commission uses its discretion to award a reduced amount to Mr. Jorgenson based on the estimated costs he otherwise would have been entitled to recover had he driven to the hearing, in the amount of \$296.24.

²⁸ e.g., Proceeding 22665, Transcript Volume 5, page 1062, lines 3-9, page 1099, lines 22-25, page 1226, lines 7-11.

²⁹ e.g., Exhibit 23761-X0002, Local Intervener Cost Claim of the Clearview Group (Part 1 of 2), PDF page 2, item 08-Aug-17, PDF page 3, items 10-Aug-17, 01-Sep-17, 05-Sep-17, 06-Sep-17, 11-Sep-17, 12-Sep-17.

³⁰ e.g., Exhibit 23761-X0002, Local Intervener Cost Claim of the Clearview Group (Part 1 of 2), PDF page 3, item 29-Sep-17, PDF page 6, items 22-Mar-18, 26-Mar-18, PDF page 7, item 7-May-18.

90. Mr. Hugh Ross claimed disbursements for photo enlargements (\$529.89), three dimensional wind turbine illustrations (\$250.00) and graphic design (\$2,000.00). The Commission understands all of those costs relate to the graphic submitted by the Clearview Group as Exhibit 22665-X0147, which contains two images of the proposed wind turbines next to a person and a barn, respectively, and the relative heights of the Calgary Tower, the proposed turbines, and an example of other turbine heights in Alberta and the United States.³¹ Given the concern with the project's visual impact raised by the Clearview Group and the use and relevance of that exhibit in the proceeding,³² the Commission considers that the costs of producing that graphic are reasonable.

91. Mr. Ross also claimed a disbursement for dinner for the Clearview Group in the total amount of \$478.17 including GST. The scale of costs sets a maximum \$15.00 claim for meals, although the claim indicates that it relates to a group dinner of the Clearview Group during the hearing. The cost claim did not include an itemized receipt for the meal,³³ and as a result the Commission is unable to assess how many meals were purchased or whether alcohol is included on the bill. The Commission accordingly denies the claim for \$478.17 for the group meal.

92. The remaining claims for disbursements for meals, mileage, parking, hall rentals, office supplies and postage are all within the scale of costs and are consequently approved.

93. Accordingly, the Commission approves the claim for intervener costs in the total amount of \$10,318.65. This amount is composed of honoraria of \$3,250.00, disbursements of \$6,949.55 and GST of \$119.10.

Total amount awarded

94. For the reasons provided above, the Commission approves the Clearview Group's claim for recovery of costs in the amount of \$310,804.77. This amount is composed of legal fees of \$143,262.50, consulting fees of \$124,551.26, honorarium of \$3,250.00, disbursements of \$25,635.11 and GST of \$14,105.90.

³¹ Exhibit 22665-X0147, Tab 11 - Turbine Simulations.

³² e.g., Decision 22665-D01-2018, paragraph 69, footnote 49, paragraphs 88-89; Proceeding 22665, Transcript Volume 5, page 1229, lines 1-11.

³³ Exhibit 23761-X0001, Local Intervener Cost Claim of the Clearview Group (Part 2 of 2), PDF page 7.

5 Order

95. It is hereby ordered that:

- 1) EDP Renewables SH Project GP Ltd. shall pay intervener costs to the Clearview Group in the amount of \$310,804.77. Payment shall be made to McLennan Ross LLP.

Dated on November 14, 2018.

Alberta Utilities Commission

(original signed by)

Mark Kolesar
Chair

(original signed by)

Joanne Phillips
Commission Member

(original signed by)

Tracee Collins
Commission Member