



**ENMAX Power Corporation**

**Downtown Calgary Transmission Reinforcement Project**

**Costs Award**

**November 21, 2018**

**Alberta Utilities Commission**

Decision 23906-D01-2018

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**Calgary, Alberta**

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**1 Introduction**

1. In this decision the Alberta Utilities Commission considers applications by Jensen Shawa Solomon Duguid Hawkes LLP on behalf of Steinbock Development Corporation Ltd., and by Mr. John Retallack on behalf of the Calla Condo Owner's Group (the costs claim applications), for approval and payment of their costs of participation in Proceeding 23157<sup>1</sup> (the original proceeding). 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
Steinbock Development Corporation Ltd.								
Jensen Shawa Solomon Duguid Hawkes LLP	\$22,689.00	\$180.50	\$1,143.48	\$24,012.98	\$22,689.00	\$130.50	\$1,140.98	\$23,960.48
Marshall Tittermore Architects	\$810.00	\$0.00	\$40.50	\$850.50	\$810.00	\$0.00	\$40.50	\$850.50
Honorarium.	\$50.00	\$0.00	\$0.00	\$50.00	\$50.00	\$0.00	\$0.00	\$50.00
<b>Total</b>	<b>\$23,549.00</b>	<b>\$180.50</b>	<b>\$1,183.98</b>	<b>\$24,913.48</b>	<b>\$23,549.00</b>	<b>\$130.50</b>	<b>\$1,181.48</b>	<b>\$24,860.98</b>
Calla Condo Owner's Group.								
Brownlee LLP	\$4,599.00	\$7.80	\$230.34	\$4,837.14	\$4,599.00	\$7.80	\$230.34	\$4,837.14
Mr. John Retallack	\$2,412.50	\$0.00	\$0.00	\$2,412.50	0.00	0.00	0.00	0.00
Ms. Elizabeth Budny	\$1,456.25	\$0.00	\$0.00	\$1,456.25	0.00	0.00	0.00	0.00
Ms. Michelle Beaujot	\$650.00	\$0.00	\$0.00	\$650.00	0.00	0.00	0.00	0.00
Honorarium	\$5,450.00	\$37.10	\$0.00	\$5,487.10	\$5,450.00	\$37.10	\$0.00	\$5,487.10
<b>Total</b>	<b>\$14,567.75</b>	<b>\$44.90</b>	<b>\$230.34</b>	<b>\$14,842.99</b>	<b>\$10,049.00</b>	<b>\$44.90</b>	<b>\$230.34</b>	<b>\$10,324.24</b>
<b>Total of all amounts claimed and awarded</b>				<b>\$39,756.47</b>				<b>\$35,185.22</b>

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

3. The original proceeding was convened by the Commission to consider applications filed by ENMAX Power Corporation (ENMAX) for the construction and operation of a transmission development project in the downtown Calgary area. It involved written submissions, information requests (IRs) and responses to IRs, written evidence and an oral hearing held on August 15 and

<sup>1</sup> Proceeding 23157: ENMAX Power Corporation, Downtown Calgary Transmission Reinforcement Project.

August 16, 2018. The close of record for the original proceeding was August 16, 2018, and the Commission issued Decision 23157-D01-2018<sup>2</sup> on November 9, 2018.

4. Steinbock Development Corporation Ltd.'s (Steinbock) costs claim application was submitted on September 14, 2018, within the 30 day time limit under Rule 009: *Rules on Local Intervener Costs* (Rule 009). The Calla Condo Owner's Group's costs claim application was submitted on September 20, 2018, after the time limit expired. The Commission assigned Proceeding 23906 and applications 23906-A001 and 23906-A002 to the respective costs claim applications.

5. No comments were filed with respect to the costs claim applications and the Commission considers the close of record for this proceeding to be September 24, 2018.

6. Costs claim applications not received within the specified timeframe may be rejected without further process. The Calla Condo Owner's Group costs claim application was filed three days after the deadline under Rule 009 expired. The delay in filing was due, at least in part, to medical reasons. In the circumstances, the Commission has decided to accept the late filing of the Calla Condo Owner's Group's costs claim application.

## 2 The Commission's authority to award costs and intervener eligibility

7. The Commission's authority to award costs for a participant in a hearing or other proceeding 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*, is found in sections 21 and 22 of the *Alberta Utilities Commission Act*. Only "local interveners" as defined in Section 22 are eligible to claim costs in facility applications. 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 and the Scale of Costs found in Appendix A of Rule 009.

8. Section 7 of Rule 009 provides that the Commission may award costs to a local intervener, in accordance with the Scale of Costs, 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.

9. Section 22 of the *Alberta Utilities Commission Act* defines "local intervener:"

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

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<sup>2</sup> Decision 23157-D01-2018: ENMAX Power Corporation, Downtown Calgary Transmission Reinforcement Project, Proceeding 23157, November 9, 2018.

(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.

### 3 Commission findings

10. In the original proceeding,<sup>3</sup> the Commission granted standing to Steinbock, Mr. John Retallack (who later formed Calla Condo Owner’s Group), Ms. Elizabeth Budny (Calla Condo Owner’s Group member), Ms. Michelle Beaujot (Calla Condo Owner’s Group member) and Mr. Hafiz Karmali,<sup>4</sup> because they each own land, reside on, or otherwise occupy lands adjacent or close to the proposed route for the transmission reinforcement project. For the same reason, the Commission is satisfied that those granted standing are local interveners within the meaning of Section 22 of the *Alberta Utilities Commission Act* and are eligible for cost recovery.

#### 3.1 Steinbock Development Corporation Ltd.

11. The following table summarizes Steinbock’s costs claim in this proceeding:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Steinbock Development Corporation Ltd.							
Jensen Shawa Solomon Duguid Hawkes LLP	57.00	7.30	3.80	\$22,689.00	\$180.50	\$1,143.48	\$24,012.98
Marshall Titemore Architects	3.00	0.00	0.00	\$810.00	\$0.00	\$40.50	\$850.50
Honorarium.	0.00	0.00	0.00	\$50.00	\$0.00	\$0.00	\$50.00
<b>Total</b>	60.00	7.30	3.80	\$23,549.00	\$180.50	\$1,183.98	\$24,913.48

12. The Commission has approved reduced costs for Jensen Shawa Solomon Duguid Hawkes LLP for the reasons set out below.

#### Jensen Shawa Solomon Duguid Hawkes LLP

13. Steinbock was represented in the original proceeding by Mr. Sabri Shawa and Mr. Raymond Bastedo of Jensen Shawa Solomon Duguid Hawkes LLP (JSS Barristers). The fees claimed by Steinbock for legal services relate to counsel reviewing the application, drafting IRs, corresponding with experts, reviewing responses to IRs, reviewing evidence, preparing for and attending the hearing, and drafting argument.

<sup>3</sup> Exhibit 23157-X0040, Ruling on standing.

<sup>4</sup> Of those granted standing, only Mr. Karmali did not actively participate in the original proceeding.

14. The Commission finds that Steinbock acted responsibly in the proceeding and contributed to a better understanding of the issues before the Commission. Further, the services performed by JSS Barristers were directly and necessarily related to Steinbock's participation in the original proceeding, and the fees claimed for those services are in accordance with the Scale of Costs and are reasonable.

15. Not all of the disbursements claimed for JSS Barristers are permitted under the Scale of Costs. A charge of \$50.00 was claimed as a "File administration fee." The Scale of Costs states that legal fees are deemed to include all overhead charges that are implicit in the operation of a law firm. The Commission finds that the file administration fee claimed is not permitted under the Scale of Costs and it has disallowed this fee. The remaining disbursements for internal printing and search fees in the total amount of \$130.50 and GST of \$6.53 are approved.

16. Accordingly, the Commission approves Steinbock's claim for legal fees for JSS Barristers in the amount of \$22,689.00, disbursements of \$130.50 and GST of \$1,140.98 for a total of \$23,960.48.

### **Marshall Tittlemore Architects**

17. Marshall Tittlemore Architects (Marshall) was retained by Steinbock to perform consulting services in the original proceeding. The fees claimed for the consulting services provided by Mr. Bill Marshall relate to reviewing the application, preparing an expert report and attending the oral hearing.

18. The Commission finds that the services performed by Marshall were directly and necessarily related to Steinbock's participation in the original proceeding, and that the fees and disbursements claimed are in accordance with the Scale of Costs and are reasonable. Accordingly, the Commission approves Steinbock's claim for consulting fees in the amount of \$810.00 and GST of \$40.50 for a total of \$850.50.

### **Honorarium**

19. Mr. Naim Ali, the director and president of Steinbock, was a witness in the hearing. The claim by Steinbock for a \$50.00 attendance honorarium for his participation is in accordance with the Scale of Costs and is approved.

### **Total amount awarded**

20. The Commission approves Steinbock's claim for recovery of costs in the total amount of \$24,860.98. This amount is composed of legal fees of \$22,689.00, consulting fees of \$810.00, honorarium of \$50.00, disbursements of \$130.50 and GST of \$1,181.48.

### 3.2 Calla Condo Owner’s Group

21. The following table summarizes the costs claim of Calla Condo Owner’s Group in this proceeding:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Calla Condo Owner’s Group.							
<b>Brownlee LLP</b>	15.44 <sup>5</sup>	0.00	0.00	\$4,599.00	\$7.80	\$230.34	\$4,837.14
<b>Mr. John Retallack</b>	82.50	8.25	5.75	\$2,412.50	\$0.00	\$0.00	\$2,412.50
<b>Ms. Elizabeth Budny</b>	47.25	8.00	3.00	\$1,456.25	\$0.00	\$0.00	\$1,456.25
<b>Ms. Michelle Beaujot</b>	26.00	0.00	0.00	\$650.00	\$0.00	\$0.00	\$650.00
<b>Honorarium</b>	0.00	0.00	0.00	\$5,450.00	\$37.10	\$0.00	\$5,487.10
<b>Total</b>	171.19	16.25	8.75	\$14,567.75	\$44.90	\$230.34	\$14,842.99

22. The Commission has approved reduced intervener costs for Calla Condo Owner’s Group for the reasons set out below.

#### **Brownlee LLP**

23. Calla Condo Owner’s Group was represented by Brownlee LLP (Brownlee) in the original proceeding. In its costs claim application, Calla Condo Owner’s Group stated it was self-represented at the oral hearing and engaged legal counsel shortly before the hearing for the purpose of advising on issues such as logistics and strategy. The fees claimed by Calla Condo Owner’s Group for the legal services provided by Mr. Derek King in the total amount of \$4,837.14, relate to reviewing the application, advising on AUC hearing processes and procedures, drafting cross-examination questions, reviewing and revising an opening statement and closing argument, and advising on the costs application.

24. Mr. King’s statement of account indicates that he provided services to Calla Condo Owner’s Group between August 7 and August 17, 2018. The statement of account also indicates that Mr. King did not charge Calla Condo Owner’s Group for the services rendered on August 17, 2018, which is the day after the hearing ended. The Commission finds that the services performed by Brownlee LLP for which costs are claimed were directly and necessarily related to the Calla Condo Owner’s Group’s participation in the original proceeding, and that the fees and disbursements claimed are in accordance with the Scale of Costs and are reasonable. Further the Calla Condo Owner’s Group acted responsibly in the proceeding and contributed to a better understanding of the issues before the Commission.

25. Accordingly, the Commission approves the Calla Condo Owner’s Group claim for legal fees in the amount of \$4,599.00, disbursements of \$7.80 and GST of \$230.34 for a total of \$4,837.14.

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<sup>5</sup> Calla Condo Owner’s Group’s U2 form shows 13.14 hours and total fees of \$4,599.00 for Brownlee LLP, while Brownlee LLP’s Invoice No. 469320 shows 15.44 hours and the same total fees of \$4,599.00. The Commission notes, however, that the invoice also indicates that 2.30 hours’ of services were provided at no charge, so the form and the invoice are consistent.

## Honorarium

26. As indicated in the table above, the Calla Condo Owner's Group claim included claims for professional fees for each of Mr. John Retallack, Ms. Elizabeth Budny and Ms. Michelle Beaujot in the amounts of \$2,412.50, \$1,456.25 and \$650.00, respectively, as well as claims for honoraria and disbursements for these local interveners in the total amount of \$5,487.10.

27. The Scale of Costs allows honoraria and reasonable personal disbursements to be claimed by local interveners. It also sets out a scale for professional fees for legal counsel and other subject area professionals, where local interveners make a reasonable choice to engage these professionals for purposes related to the hearing. Members of Calla Condo Owner's Group participated in the original proceeding as owners of property near the proposed development. None of them provided written or oral evidence in the nature of an expert report or similar information that is typically provided by a professional when he or she is retained to give expert evidence. The Commission finds that Mr. Retallack, Ms. Budny and Ms. Beaujot did not participate in the original proceeding as subject area professionals and consequently denies their respective claims for professional fees.

28. The claim for honoraria includes \$500.00 for forming the Calla Condo Owner's Group, \$150.00 for each of three interveners for attendance honoraria, \$1,500.00 for each of three interveners for preparation honoraria and disbursements of \$37.10. The Commission finds the honorarium for forming the group, the honoraria for attendance and the disbursements to be reasonable and in accordance with the Scale of Costs, and grants these in the total amount of \$987.10.

29. With respect to the preparation honoraria, the Scale of Costs states in Section 2(b):

A local intervener who personally prepares a submission without expert help, may claim an honorarium in the range of \$300 to \$2500, depending upon the complexity of the submission. An honorarium may not be awarded for preparation honorarium if a lawyer is primarily responsible for the preparation of an intervention.

When a submission is prepared on behalf of a group of interveners without expert help, up to four people may be entitled to preparation honoraria at the same rates described above.

30. Calla Condo Owner's Group stated in its costs claim application<sup>6</sup> that it conducted the background work leading up to the hearing and prepared its own initial submission, and it engaged legal counsel shortly before the hearing to advise on logistics and strategy. It submitted that it was self-represented during the original proceeding and therefore its members are eligible to claim preparation honoraria. The Commission accepts that members of Calla Condo Owner's Group prepared the submissions made on its behalf in the original proceeding. Having regard for the written and oral submissions, the Commission finds that the preparation honoraria claimed are reasonable and the Commission grants the claim for three preparation honoraria in the total amount of \$4,500.00.

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<sup>6</sup> Exhibit 23906-X0004, at PDF page 1.

## **Total amount awarded**

31. The Commission approves recovery of costs for Calla Condo Owner's Group in the total amount of \$10,324.24. This amount is composed of legal fees of \$4,599.00, honorarium of \$5,450.00, disbursements of \$44.90 and GST of \$230.34.

## **4 Order**

32. It is hereby ordered that:

- 1) ENMAX Power Corporation shall pay intervener costs to Steinbock Development Corporation Ltd. in the amount of \$24,860.98. Payment shall be made to Jensen Shawa Solomon Duguid Hawkes LLP.
- 2) ENMAX Power Corporation shall pay intervener costs to Calla Condo Owner's Group in the amount of \$10,324.24. Payment shall be made to Mr. John Retallack for distribution to the Calla Condo Owner's Group in accordance with this decision.

Dated on November 21, 2018.

## **Alberta Utilities Commission**

*(original signed by)*

Carolyn Hutniak  
Panel Chair