



ATCO Electric Ltd.

**McMillan – Heart Lake - Whitefish
240 kV Transmission Facilities Application**

Phase II – Part B Decision

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2004-05: ATCO Electric Ltd.

McMillan – Heart Lake – Whitefish

240 kV Transmission Facilities Application

Phase II, Part B Decision

Application No.: 1284230

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**ATCO Electric Ltd.
McMillan – Heart Lake - Whitefish
240 kV Transmission Facilities Application
Phase II – Part B Decision**

**Energy Cost Order 2004-05
Application No.: 1284230
File No. 8000-1284230-02**

1 INTRODUCTION

On November 27, 2002, ATCO Electric Ltd. (AE) applied to the Alberta Energy and Utilities Board (the Board) for approval to construct and operate a 240 kilovolt (kV) transmission line and three associated 240 kV substations designated as Dover, McMillan and Charron. The proposed transmission line would originate at the Dover substation, north of Fort McMurray in Section 31, Township 92, Range 12 west of the 4th Meridian, and would end at the existing Deerland substation northeast of Fort Saskatchewan in Section 22, Township 56, Range 20, west of the 4th Meridian, a distance of approximately 420 kilometers.

On January 24, 2003, the Board issued a Notice of Pre-Hearing Conference to be held on February 11, 2003. The Notice was published in Calgary and Edmonton major daily newspapers on January 29, 2003. The purpose of the Pre-Hearing Conference was to provide interested parties with an opportunity to discuss procedural matters and other issues relating to the Transmission Administrator's (TA) role at the hearing, the schedule for filing of evidence and filing of alternative transmission line routing information, the appropriateness of a two phase proceeding, and any other relevant issues.

The Board also requested interested parties wishing to participate in the pre-hearing conference to provide written notice and an initial position on the issues outlined in the Notice of Pre-Hearing Conference no later than February 4, 2003.

On February 11, 2003, the pre-hearing conference was held at the Board's Edmonton offices before A. J. Berg, P. Eng. (Presiding Member) and J.I. Douglas, FCA (Board Member). On February 19, 2003, Board Decision [2003-017](#) was issued which set out the Board's views respecting the issues outlined in the Notice of Pre-Hearing Conference, new issues raised by parties at the pre-hearing conference, and the schedule for the subsequent proceedings.

The Board decided to hold a two-phase hearing. Phase I would deal with the need for the transmission facilities and Phase II would address the detailed routing of the proposed line and its potential specific impacts on landowners. As well, the Phase II hearing would be separated into Part A and Part B.

On April 1, 2003, the Board held the Phase I hearing at Smoky Lake before A.J. Berg, P. Eng. (Presiding Member), N. W. MacDonald, P. Eng. (Acting Board Member) and J.R. Nichol, P. Eng. (Board Member).

On April 23, 2003, Board Decision [2003-027](#) was issued which approved the need for a third 240 kV transmission line south from Fort McMurray to the Fort Saskatchewan area.

Following the Board's Decision 2003-027, AE advised, on May 15, 2003, that it would be amending its Application to include a McMillan to Whitefish routing alternative.

The Board, in Decision 2003-027, also approved the Dover to McMillan end points of AE's Application No. 1284230. The Board stated that the detailed routing of the Dover to McMillan transmission facilities would be dealt with in a Phase II – Part A proceeding since it was common to both the Dover to Deerland route and the Dover to Whitefish route.

On April 24, 2003 the Board published a Notice of Re-scheduling of the Phase II – Part A proceeding to consider the specific routing of the Dover to McMillan portion of the transmission line. AE, in its Application No. 1284230, proposed two routes for the Dover to McMillan transmission line. These two routes were referred to as the West Route and the East Route. The Board originally set down the Phase II – Part A Hearing for May 27, 2003 in Fort McMurray. The Board noted that all interveners to this proceeding must be present at the commencement of the hearing to register their appearance.

The Phase II – Part A hearing was held at the Board's Edmonton offices on May 27, 2003 before A.J. Berg, P.Eng. (Presiding Member), J.R. Nichol, P.Eng. (Member), and N.W. MacDonald, P. Eng. (Acting Member). The Board heard oral argument and reply on May 27, 2003. On June 3, 2003 the Board issued Decision [2003-043](#).

On July 3, 2003 the Board issued a Notice advising interested parties that amended Applications had been filed and that any bona fide objections to the Applications were to be filed by July 25, 2003. The Board did not receive any objections.

By letter dated August 1, 2003 the Board advised interested parties that it had reviewed and approved the amended Applications and accordingly had cancelled the Phase II, Part B hearing proceedings.

The Board received one cost claim from Julian Bodnar on behalf of the Waskatenau Landowners Group (WLG) in the amount of \$42,766.04. The Board received and considered comments dated September 17, 2003 from Bennett Jones on behalf of AE regarding the cost claim. Further, the Board received and considered Mr. Bodnar's response dated October 6, 2003.

2 VIEWS OF THE BOARD – Authority to Award Costs

In determining local intervener costs, the Board is guided by its enabling legislation. In particular, by section 28 of the *Energy Resources Conservation Act* ([ERCA](#)) which reads as follows:

- 28(1) In this section, “local intervener” means a person or a group or association of persons who, in the opinion of the Board,
- (a) has an interest in, or
 - (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

It is the Board's position that a person claiming local intervener costs must establish the requisite interest in land and provide reasonable grounds for believing that such an interest may be directly and adversely affected by the Board's decision on the project in question.

When assessing costs, the Board will have reference to Part 5 of the *Rules of Practice* and to its *Scale of Costs*.

Section 55(1) of the *Rules of Practice* reads as follows:

- Section 55(1) The Board may award costs in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:
- (a) the costs are reasonable and directly and necessarily related to the proceeding and;
 - (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

3 VIEWS OF THE BOARD – Assessment

3.1 Waskatenau Landowners' Group (WLG)

The Board has reviewed the cost claim submitted by Mr. Julian Bodnar on behalf of WLG that consists of legal fees in the amount of \$25,575.00, disbursements of \$1,820.08, and GST of \$1,917.66. Landcore International Corporation's portion of the claim consists of fees in the amount of \$9,476.00, expenses of \$578.70, and GST of \$703.83. Alberta Research Council's portion of the claim consists of fees in the amount of \$2,425.00 and GST of \$169.76. Lastly, the cost claim includes an honoraria claim for Deb Kurylo in the amount of \$100.00. The total amount being claimed by WLG is \$42,766.04.

The Board notes that the Applications were approved without a hearing as a result of not receiving a bona fide objection from any of the interested parties, including WLG. As a result of the approval the Board advised parties on August 1, 2003 that the hearing was cancelled.

The Board recognizes that some legitimate preparation and expenses may have been incurred before the TA officially filed the amended application for the McMillan to Whitefish line. However, once the amended application was filed, WLG was no longer a party with an interest in land that may be directly and adversely affected by the decision.

In addition, the Board has reviewed the statements of account for Mr. Bodnar and Landcore and finds that a number of entries relate to Phase I and Phase II - Part A matters, including attending the hearing.

Julian Bodnar, P.Ag. LL.B. and Landcore International Corporation (Landcore)

Upon review of the statements of account provided by Mr. Bodnar and Landcore, the Board notes that 91.3 hours and 89.7 hours were incurred for preparation, respectively.

The Board will allow a portion of these claims only, based on the fact that before the application for a new line was filed Mr. Bodnar and Landcore spent some time preparing for a potential hearing of the Phase II - Part B hearing on the McMillan to Deerland line.

Some entries relate to the Phase I hearing and the Phase II - Part A hearing in which the WGL did not participate. Upon review of Mr. Bodnar's and Landcore's statements of account, the Board has determined that approximately 20 hours (\$5,000.00) and 11 hours (\$1,045.00), respectively were incurred with respect to the previous phases and as such disallows this portion of each claim.

In addition, the Board finds that the remaining number of hours claimed to prepare for the Phase II part B hearing is excessive. Taking the foregoing into account, the Board has reviewed both claims and finds it appropriate to reduce the fees by 25 %.

The Board has reviewed Mr. Bodnar's disbursements incurred that include, but are not limited to, accommodation, meals, and mileage totaling \$1,253.20. While the Board appreciates that a certain amount of preparation was necessary by counsel, the Board finds these expenses would be more appropriately incurred where they are a result of traveling to and attending a Board hearing. In this particular instance these expenses have not been incurred during the hearing phase and are therefore not being claimed in accordance with Guide 31A, as such the Board disallows this portion of the disbursements. The Board finds the remaining disbursements for postage, courier, long distance telephone, fax charges, and photocopying to be reasonable and are approved in the amount of \$566.88.

The Board has reviewed Landcore's expenses that include \$344.50 for meals and mileage. As noted earlier in this order these types of expenses are not in accordance with Guide 31A such that they have not been incurred during the hearing phase, as such the Board disallows this portion of Landcore's expenses. The Board finds the remaining expense of \$144.00 for long distance telephone to be reasonable and therefore approves the expense in full.

Taking all of the foregoing into account, the Board approves the following costs:

Julian Bodnar: legal fees in the amount of \$14,181.25, disbursements in the amount of \$566.88, and applicable GST in the amount of \$1,032.37 for a total award of \$15,780.50.

Landcore: professional fees in the amount of \$6,072.00, expenses in the amount of \$144.00, and applicable GST in the amount of \$435.12 for a total award of \$6,651.12.

Alberta Research Council (ARC)

The Board has reviewed ARC's portion of the claim and notes that 17 hours were incurred with respect to preparation. From reviewing the statements of account of Mr. Bodnar and Landcore, it appears to the Board that ARC was being retained for the purposes of being an expert witness at the anticipated hearing. The Board finds that 17 hours of preparation for the anticipated hearing is a reasonable amount of time to be incurred by an expert witness.

Based on the foregoing the Board approves ARC's professional fees of \$2,425.00 and GST of \$169.76 for a total award of \$2,594.76.

Deb Kurylo

The Board has considered Ms. Kurylo's preparation honoraria of \$100.00 and finds that the amount is reasonable given the initial assistance with preparation towards the anticipated hearing. Accordingly, the Board approves Ms. Kurylo's claim of \$100.00.

4 ORDER

IT IS HEREBY ORDERED THAT:

1. ATCO Electric Ltd. shall pay intervener costs to the Waskatenau Landowners Group in the amount of \$25,126.38 as shown in Appendix “A” attached.
2. Payment under this Order shall be made to Mr. Julian Bodnar, 607 Lenore Drive, Saskatoon SK, S7K 5G7.

Dated in Calgary, Alberta on this 1st day of April , 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



"ECO 2004-05
Appendix A (AE Tran:

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