



**RES Forty Mile Wind GP Corp.  
Forty Mile Wind Power Project Amendments**

**Costs Award**

**June 14, 2023**

**Alberta Utilities Commission**

Decision 28107-D01-2023

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The Commission may, no later than 60 days from the date of this decision and without notice, correct typographical, spelling and calculation errors and other similar types of errors and post the corrected decision on its website.

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## **1 Introduction**

1. In this decision, the Alberta Utilities Commission (AUC) considers an application by Anita Jenkins for an award of costs for participation in Proceeding 27561<sup>1</sup> (the original proceeding). For the reasons set out below, the Commission approves \$92,594.03 in costs for Anita Jenkins.

2. The original proceeding was convened by the Commission to consider an application from RES Forty Mile Wind GP Corp. (RES) for approval of amendments to the Forty Mile Wind Power Project, approved originally in Decision 22966-D01-2018.<sup>2</sup> A. Jenkins participated in the original proceeding and submitted her costs claim application within the 30-day timeline permitted by Rule 009: *Rules on Local Intervener Costs*. It was assigned Application 28107-A002 in the AUC's eFiling System.<sup>3</sup> The record for this costs proceeding closed on April 13, 2023, the date it was determined that no information requests were required.

## **2 Anita Jenkins's claim**

3. A. Jenkins is an individual that owns and occupies lands in the project area. A. Jenkins submitted evidence and argument on topics including noise impacts, infrasound, health effects, environmental impacts, cumulative effects of surrounding wind projects in the area, shadow flicker, adequacy of consultation, negative impacts to her farming business practices and aerial spraying.

4. A. Jenkins was granted standing<sup>4</sup> in Proceeding 27561 and is eligible to claim costs in accordance with sections 21 and 22 of the *Alberta Utilities Commission Act* and Rule 009.

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<sup>1</sup> Proceeding 27561, RES Forty Mile Wind GP Corp. Forty Mile Wind Power Project Amendments.

<sup>2</sup> Decision 22966-D01-2018: BHEC-RES Alberta GP Inc. – Forty Mile Wind Power Project, Proceeding 22966, Application 22966-A001, August 30, 2018.

<sup>3</sup> There is no Application 28107-A001 in this proceeding, due to the way the eFiling System operates.

<sup>4</sup> Exhibit 27561-X0054, AUC ruling on standing and process schedule.

5. The following is a breakdown of the costs claimed by A. Jenkins:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
<b>Anita Jenkins</b>							
Ackroyd LLP	149.10	51.30	0.00	\$59,373.00	\$3,746.27	\$3,154.96	\$66,274.23
Cottonwood Consultants Ltd.	44.00	12.00	0.50	\$15,255.00	\$49.50	\$765.23	\$16,069.73
FDI Acoustics Inc.	23.00	0.00	0.00	\$5,520.00	\$0.00	\$276.00	\$5,796.00
Mariana Alves-Pereira, PhD	10.50	29.50	0.00	\$10,800.00	\$0.00	\$0.00	\$10,800.00
Intervener honoraria and disbursements	0.00	0.00	0.00	\$300.00	\$769.02	\$38.46	\$1,107.48
<b>Total</b>	<b>226.60</b>	<b>92.80</b>	<b>0.50</b>	<b>\$91,248.00</b>	<b>\$4,564.79</b>	<b>\$4,234.65</b>	<b>\$100,047.44</b>

6. RES raised the following issues with A. Jenkins's cost claim in its submission:

- i. Ackroyd LLP transitioned counsel working on the file, from Ifeoma Okoye to Heather Beyko. RES submitted that I. Okoye's hours after the case was taken over by H. Beyko, should be denied on the grounds that it was not reasonable or necessary for I. Okoye to review eFiling notifications and client communications when H. Beyko was primarily responsible for the file and for handling communication with the clients after December 9, 2022.
- ii. James Farquharson of FDI Acoustics Inc. was retained to assist with noise issues, but did not submit an expert report. RES submitted J. Farquharson's fees for participating as an intervener expert in the proceeding should be reduced, because his involvement in the file was unclear and his statement of account does not comply with Rule 009 requirements.
- iii. Dr. Mariana Alves-Pereira was retained to assist with infrasound issues as an intervener expert in the proceeding. RES submitted that Dr. Alves-Pereira's fees should be globally reduced because her evidence did not contribute to a better understanding of the issues in this proceeding, was largely duplicative of her participation in the previous proceeding, and her statement of account does not comply with Rule 009 requirements and does not provide sufficient detail for the Commission to understand the nature of the activities.

7. A. Jenkins responded to RES's comments in a costs submission filed on April 4, 2023.<sup>5</sup> The submission stated that A. Jenkins' costs were reasonable in view of the scope and nature of the issues she raised and that no evidence was presented that was not relevant to the issues and concerns A. Jenkins identified. A. Jenkins submitted that:

- i. Given I. Okoye's and Richard Secord's significant experience before the Commission, they maintained an advisory role following H. Beyko assuming conduct of the file, and that this was reasonable.

<sup>5</sup> Exhibit 28107-X0009, Anita Jenkins Reply submission.

- ii. J. Farquharson's costs should not be globally reduced and his statement of account was submitted with sufficient details. An additional task time history was provided as part of the reply. J. Farquharson's curriculum vitae was also submitted as part of the reply submission.
- iii. Dr. Alves-Pereira's costs should not be globally reduced since she provided evidence that contributed to a better understanding of the issues before the Commission, and her invoice included sufficient information. An updated and amended timesheet of Dr. Alves-Pereira's work on the proceeding was submitted as part of the reply submission.
- iv. Expert witness costs should not be reduced and each expert substantially complied with Rule 009.

8. The Commission finds that A. Jenkins generally acted responsibly in the original proceeding and contributed to the Commission's understanding of the relevant issues. The Commission is also satisfied that the costs claimed are consistent with the Scale of costs in Appendix A of Rule 009.

9. The Commission finds that the costs claimed for Cottonwood Consultants Ltd. and FDI Acoustics Inc. are reasonable and approves those costs in full. Accordingly, the Commission approves the claim for consulting fees for Cottonwood Consultants in the amount of \$15,255.00, a disbursement of \$49.50 for aerial photographs and GST of \$765.23 for a total of \$16,069.73; and approves consulting fees for FDI Acoustics in the amount of \$5,520.00 and GST of \$276.00 for a total of \$5,796.00.

10. However, the Commission is unable to approve the full amount of the costs claimed in respect of the services performed by Ackroyd LLP and Dr. Alves-Pereira and for the disbursements claimed by A. Jenkins for the reasons set out below.

11. A. Jenkins claimed a total of \$59,373.00 in legal fees for Ackroyd LLP. As noted above, RES submitted that the costs claimed for I. Okoye beginning on December 9, 2022, and through to the end of the original proceeding be denied due to duplication with similar activities performed by H. Beyko.<sup>6</sup> RES estimated those costs to be approximately \$2,400.00, including GST.<sup>7</sup> The Commission agrees that there was likely some unreasonable duplication, and finds that a reduction to the fees claimed for I. Okoye for that period is warranted in the circumstances. However, the costs of \$2,400.00 identified by RES during the relevant period appear to be in error. The Commission calculates the total fees for that period to be \$1,376.00<sup>8</sup> and applies a reduction of 50 per cent, being \$688.00, to those fees.

12. The Commission finds the disbursements claimed for Ackroyd for transcripts (\$3,636.30), postage (\$33.57) and photocopying (\$76.40) are reasonable and are approved.

<sup>6</sup> Exhibit 28107-X0007.01, RES Comments on Anita Jenkins costs claim, PDF page 3.

<sup>7</sup> Exhibit 28107-X0007.01, PDF page 3.

<sup>8</sup> As per Exhibit 28107-X0004, PDF pages 21-28, there are a total of 4.3 hours claimed for I. Okoye during the period (0.4 Dec 14, 0.2 Dec 16, 0.6 Dec 19, 0.1 Dec 20, 0.4 Dec 22, 0.5 Jan 3, 0.1 Jan 15, 1.0 Jan 24, 0.4 Feb 6, 0.4 Feb 9 and 0.2 Feb 13), claimed at the hourly rate of \$320.00 results in total fees claimed of \$1,376.00.

Accordingly, the Commission approves the claim for legal fees in the amount of \$58,685.00,<sup>9</sup> disbursements of \$3,746.27 and GST of \$3,121.56 for a total of \$65,552.83.

13. A. Jenkins claimed \$10,800.00 in consulting fees for Dr. Alves-Pereira. As noted in a previous costs decision regarding the evidence of Dr. Alves-Pereira, even if evidence pertains to an issue of concern for an intervener, such as infrasound, Rule 009 requires that the services provided by the expert should also contribute to a better understanding of the issues before the Commission. That is generally not the case if evidence is primarily anecdotal in nature,<sup>10</sup> as the Commission found the studies referred to by Dr. Alves-Pereira were in this case. Further, much of this evidence was not specifically tailored to the facts in this proceeding, as demonstrated by Dr. Alves-Pereira's lack of familiarity with the noise impact assessment filed by RES and her lack of analysis on project specific details. For these reasons, the Commission applies a 60 per cent reduction to the claimed consulting fees. Accordingly, the Commission approves the claim for consulting fees for Dr. Alves-Pereira in the amount of \$4,320.00.<sup>11</sup>

14. A. Jenkins claimed attendance honoraria of \$300.00. This was claimed in accordance with the Scale of costs and is approved. A. Jenkins also claimed disbursements in the total amount of \$769.02. This included \$169.95 for printing cartridges and a total of \$599.07 for Telus internet. The claim for printing cartridges is reasonable and is approved. The Telus invoices<sup>12</sup> show \$480.00 for "Telus Smart Hub 5G Indoor Unit" and it is assumed the remainder of the fees were for internet usage for January and February 2023. As the Commission expects that the smart hub unit would continue to be useful to A. Jenkins following the conclusion of the virtual hearing in mid-February, the Commission approves half of the charge for this unit.<sup>13</sup> The Commission finds the remainder of the internet fees are reasonable and are approved. As a result, honoraria of \$300.00, disbursements of \$529.02 and GST of \$26.45 are approved for A. Jenkins.

15. For the reasons provided above, the Commission approves Anita Jenkins's claim for recovery of costs in the total amount of \$92,594.03, consisting of legal fees of \$58,685.00, consulting fees of \$25,095.00, disbursements of \$4,324.79, honoraria of \$300.00 and GST of \$4,189.24.

### 3 Order

16. The Commission approves Application 28107-A002 pursuant to sections 21 and 22 of the *Alberta Utilities Commission Act* and Rule 009, and orders as follows:

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<sup>9</sup> \$59,373.00 - \$688.00 = \$58,685.00.

<sup>10</sup> Decision 23787-D01-2018: BHEC-RES Alberta G.P. Inc. Forty Mile Wind Power Project Costs Award, Proceeding 23787, October 26, 2018, paragraphs 37-41.

<sup>11</sup> \$10,800.00 \* 0.40 = \$4,320.00.

<sup>12</sup> Exhibit 28107-X0004, Anita Jenkins Costs claim application, PDF pages 41 and 42.

<sup>13</sup> \$480.00 \* 0.50 = \$240.00.

- (1) RES Forty Mile Wind GP Corp. shall pay intervener costs to Anita Jenkins in the total amount of \$92,594.03 within 30 days of this Order. Payment shall be made to Ackroyd LLP on behalf of Anita Jenkins.

Dated on June 14, 2023.

**Alberta Utilities Commission**

*(original signed by)*

Douglas A. Larder, KC  
Vice-Chair