



**Eastervale Solar Inc.
Eastervale Solar + Energy Storage Project**

Costs Award

February 20, 2025

Alberta Utilities Commission

Decision 29665-D01-2025

Eastervale Solar Inc.

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Proceeding 29665

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Published by the:

Alberta Utilities Commission

Eau Claire Tower

1400, 600 Third Avenue S.W.

Calgary, Alberta T2P 0G5

Telephone: 310-4AUC (310-4282 in Alberta)

1-833-511-4AUC (1-833-511-4282 outside Alberta)

Email: info@auc.ab.ca

Website: www.auc.ab.ca

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1 Introduction

1. In this decision, the Alberta Utilities Commission considers applications by the Eastervale Preservation Authority group (EPA) and the Municipal District of Provost No. 52 (MD) for an award of costs for their participation in Proceeding 28847¹ (the original proceeding). For the reasons below, the Commission approves \$230,409.68 in costs for the EPA and \$84,531.66 in costs for the MD.

2. The original proceeding was convened by the Commission to consider an application from Eastervale Solar Inc. (ESI) for approval to construct and operate the Eastervale Solar + Energy Storage Project (the project), which consists of a 300-megawatt (MW) solar power plant; the Eastervale 1090S Substation; and a 200-MW, 400-megawatt-hour (MWh) battery energy storage system (BESS). The EPA and the MD participated in the proceeding and submitted their costs claims within the 30-day timeline permitted by Rule 009: *Rules on Local Intervener Costs*. The record for this costs proceeding closed on December 23, 2024, the date it was determined that no information requests were required.

2 Eastervale Preservation Authority's claim

3. The EPA consisted of seven individuals all of whom own or occupy lands in the project area. The group submitted evidence and argument on topics including agricultural impacts, residential and social impacts, noise impacts, environmental impacts, glare impacts, property value impacts, project construction, operation and reclamation impacts, road access, emergency response plan and BESS fire risks.

4. Members of the EPA were granted standing in the original proceeding² and the group is eligible to recover costs in accordance with sections 21 and 22 of the *Alberta Utilities Commission Act* and Section 5 of Rule 009.

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

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
EPA group							
Ackroyd LLP	264.60	42.60	10.70	\$108,016.00	\$9,824.62	\$5,877.03	\$123,717.65
Agri-Environmental Consultant	49.25	0.00	6.00	\$11,050.00	\$30.00	\$552.50	\$11,632.50
Cottonwood Consultants Ltd.	66.50	11.50	0.00	\$21,060.00	\$577.68	\$1,081.88	\$22,719.56

¹ Proceeding 28847, Eastervale Solar Inc., application for the Eastervale Solar + Energy Storage Project.

² Exhibit 28847-X0061, AUC letter – Ruling on standing.

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Gettel Appraisals Ltd.	6.50	0.00	1.50	\$2,160.00	\$0.00	\$108.00	\$2,268.00
Green Agronomy	111.25	3.00	0.00	\$22,850.00	\$0.00	\$1,142.50	\$23,992.50
Integrated Modelling Inc.	133.50	17.85	4.00	\$41,944.50	\$0.00	\$2,097.23	\$44,041.73
FDI Acoustics Inc.	18.00	10.00	0.00	\$7,280.00	\$0.00	\$364.00	\$7,644.00
Intervener honoraria and disbursements	0.00	0.00	0.00	\$1,000.00	\$299.99 ³	\$15.00	\$1,314.99
Total	649.60	84.95	22.20	\$215,360.50	\$10,732.29	\$11,238.14	\$237,330.93

6. ESI argued that Ackroyd’s time should be reduced globally by 60 per cent, as more use could have been made of junior counsel and co-counsel with lower billable rates. ESI found it excessive and unreasonable for the most senior lawyer on the file, Richard Secord, with the highest billable rate to spend nearly all (92 per cent) of the time on the file, compared to more junior counsel. Additionally, ESI submitted that Ackroyd allowed or contributed to significant duplication of intervener activities, including an overlap and duplication of evidence between EPA and the MD and pursuing immaterial or out-of-scope issues, which led to inefficiency in the hearing process.

7. In response, the EPA referenced the Commission’s cost Decision 28858-D01-2024,⁴ arguing that Rule 009 does not mandate the use of senior and junior counsel; instead, the focus should be on reasonableness of the legal activities and the costs incurred. Ackroyd also stated that no junior lawyers were available to work on this proceeding from March 8 to June 30, 2024, and Celeste Kwok, an articling student, assisted on the file upon joining the firm in July 2024. Additionally, Ackroyd asserted that there was no duplication of evidence between the EPA and the MD, including between the interveners.

8. The Commission finds that the EPA generally acted responsibly in the original proceeding and contributed to the Commission’s understanding of the relevant issues. The Commission is also satisfied that, with the exception of the claim for an intervener disbursement, the costs claimed are consistent with the scale of costs in Appendix A of Rule 009.

9. The EPA claimed a \$500.00 preparation honorarium for Mark Wight and a \$100.00 attendance honorarium for each of M. Wight, Kjirsten Hoveland-Wight, Lee Hayes, Brandon Penman and Kelli Penman. The Commission finds the claims for honoraria were made in accordance with the Scale of costs and approves a total of \$1,000.00 in intervener honoraria.

10. The EPA also claimed a disbursement of \$299.99 for M. Wight for the purchase of a drone that was equipped with a 4K camera. The drone was used to take five aerial photographs which were filed in the original proceeding as part of Exhibit 28847-X0106.⁵ While Section 2 b) of the scale of costs states that “Reasonable expenses incurred by a local intervener and related to the preparation of a submission may be claimed in accordance with the disbursements set out in Section [3],” Section 3 provides for disbursements for office expenses and personal, travel-

³ In Exhibit 29665-X0009, the Commission allowed the EPA to include a disbursement invoice in its costs claim application.

⁴ Decision 28858-D01-2024: WR2 Wind GP Corp. Wild Rose 2 Wind Power Plant Amendment Costs Award, Proceeding 28858, July 16, 2024.

⁵ Exhibit 28847-X0106, EPA, Appendix A Mark Wight Submissions.

related expenses that may be incurred throughout an eligible participant's involvement in the hearing or proceeding. The Commission finds that purchase of equipment is not in the nature of office expenses or personal, travel-related expenses contemplated in the scale of costs. Further, the Commission finds the aerial photographs were not necessary and did not contribute to a better understanding of the issues in the original proceeding. For these reasons, the Commission denies the claim for the drone equipment.

11. The Commission acknowledges that intervenor evidence may sometimes overlap in a proceeding. In this case, the Commission observed some overlap between the EPA and the MD's concerns regarding ESI's agrivoltaics plan. However, the Commission finds such overlap unavoidable, given that this issue was a concern for both parties as relates to agricultural land use. Also, the Commission finds Ackroyd's explanation for R. Secord's extensive time on the matter acceptable and deems the legal activities conducted by counsel on the file in this case reasonable.

12. The Commission finds that the costs claimed for legal fees performed by Ackroyd LLP are reasonable and approves those costs in full. The EPA also claimed disbursements for Ackroyd for transcripts (\$9,384.00), postage (\$2.09), land titles searches (\$80.00), a copy of a study (\$58.53) and water testing and analysis services (\$300.00). The Commission finds the disbursements are reasonable and approves them. Accordingly, the Commission approves the EPA's claim for legal fees in the amount of \$108,016.00, disbursements of \$9,824.62 and GST of \$5,877.03 for a total of \$123,717.65.

13. The Commission finds that the costs claimed for Agri-Environmental Consultant, Cottonwood Consultants Ltd., Gettel Appraisals Ltd., Green Agronomy and FDI Acoustics Inc. are reasonable and approves those costs in full. Accordingly, the Commission approves the EPA's claim for consulting fees for Agri-Environmental Consultant in the amount of \$11,050.00, a disbursement of \$30.00 for a Commissioner of Oaths fee and GST of \$552.50 for a total of \$11,632.50; the claim for consulting fees for Cottonwood Consultants in the amount of \$21,060.00, a disbursement of \$577.68 for aerial photographs and GST of \$1,081.88 for a total of \$22,719.56; the claim for consulting fees for Gettel Appraisals in the amount of \$2,160.00 and GST of \$108.00 for a total of \$2,268.00; the claim for consulting fees for Green Agronomy of \$22,850.00 and GST of \$1,142.50 for a total of \$23,992.50; and the claim for consulting fees for FDI Acoustics in the amount of \$7,280.00 and GST of \$364.00 for a total of \$7,644.00.

14. However, the Commission is unable to approve the full amount of the costs claimed in respect of the services performed by Integrated Modelling Inc. (IMI) for the reasons below.

15. The EPA claimed \$41,944.50 in consulting fees for IMI and the work included the preparation of two expert reports and responses to information request and participation at the hearing.⁶ ESI submitted that IMI's fees are excessive and unreasonable for various reasons and should be reduced by 70 per cent. The Commission notes that both Jason Binding and Marc Polivka, testified to having over 12 years of experience, which by implication forms the basis for their \$370.00 uniform hourly rate.⁷ Although IMI's report was helpful, the Commission finds that IMI's approach using scaled-up laboratory data did not enhance the Commission's understanding of the Battery Energy Storage System (BESS) and Hydrogen Fluoride (HF)

⁶ Exhibit 29665-X0001, EPA Costs claim application, paragraph 38.

⁷ Proceeding 28847, Transcript, Volume 3, page 429, lines 11 to 25; page 430, lines 1-5; page 431, lines 20-25; and page 432, lines 19-24.

emission issues, especially taking into account the specific battery system proposed (ELVO-FLEX) and its related testing protocol (UL 9540A). This is particularly true considering that, in the Dolcy proceeding,⁸ the Commission accepted an analysis that provided the most directly related evidence for the proposed Energy Storage technology.⁹

16. For these reasons, the Commission applies a 15 per cent reduction to the consulting fees claimed. Accordingly, the Commission approves the EPA's claim for consulting fees for Integrated Modelling in the amount of \$35,652.83 and GST of \$1,782.64 for a total of \$37,435.47.

17. For the reasons provided above, the Commission approves the EPA's claim for recovery of costs in the total amount of \$230,409.68, consisting of legal fees of \$108,016.00, consulting fees of \$100,052.83, honoraria of \$1,000.00, disbursements of \$10,432.30 and GST of \$10,908.55.

3 Municipal District of Provost No. 52's claim

18. The Municipal District of Provost No. 52 is located in east central Alberta, 300 kilometres (km) east of Red Deer and 300 km southeast of Edmonton. The MD registered to participate in the original proceeding as the project is located within the MD and will be subject to the MD's local development authority. In the original proceeding, the MD raised concerns regarding the incompatibility of the project with its municipal statutory planning laws and filed its Municipal Development Plan, Bylaw No. 2132 (MDP), and Land Use Bylaw, Bylaw No. 2157 (LUB). The MD presented one witness, Tyler Lawrason (Chief Administrative Officer), who addressed the MD's statutory planning and agricultural land use concerns.

19. The MD retained the services of Carscallen LLP as its legal representative in the original proceeding. In the MD's justification for costs, Carscallen stated that two lawyers primarily handled the case. Michael Niven, with over 40 years of experience, served as primary counsel, responsible for strategic planning and overall case management. Sarah Howard, with over two years of experience, acted as secondary counsel, supporting the file work, including research, communication, coordination with the MD, and necessary background preparation for the MD to properly intervene and participate in the proceeding.

20. The MD was granted full participation rights and costs eligibility in the original proceeding¹⁰ and is eligible to recover costs in accordance with sections 21 and 22 of the *Alberta Utilities Commission Act*.

⁸ Proceeding 28723, Dolcy Solar Inc. Power Plant Application for the Dolcy Solar + Energy Storage Project.

⁹ Decision 28723-D01-2024; Dolcy Solar Inc. Dolcy Solar + Energy Storage Project, Proceeding 28723, September 12, 2024, PDF page 26, paragraph 100.

¹⁰ Exhibit 28847-X0061, AUC letter – Ruling on standing.

21. The following is a breakdown of the costs claimed by the MD:

Claimant	Hours			Fees	Disbursements	GST	Total
	Preparation	Attendance	Argument				
Municipal District of Provost							
Carscallen LLP	267.10	46.10	6.10	\$84,046.00	\$94.50	\$4,207.03	\$88,347.53
Intervener honorarium and disbursements	0.00	0.00	0.00	\$100.00	\$589.91	\$6.64	\$696.55
Total	267.10	46.10	6.10	\$84,146.00	\$684.41	\$4,213.67	\$89,044.08

22. ESI argued for a 30 per cent reduction in the MD's fees, claiming the MD's participation was ineffective, anti-solar, inflexible, and uncooperative, leading to an inefficient hearing. ESI also cited duplication with the EPA's evidence and excessive legal fees by Carscallen. In response, the MD maintained that it is not “anti-solar”, and it has consistently advocated for commercial development on less agriculturally productive lands, aligning with its statutory planning objectives. Additionally, the MD stated that Carscallen’s fees were reasonable and, despite overlapping concerns with the EPA about ESI’s agrivoltaics plan, it avoided duplicating efforts by not revisiting areas extensively covered.

23. The Commission finds that the MD generally acted responsibly in the original proceeding, although it would have been more helpful if the MD's questioning and evidence had provided or elicited information on the balancing of factors the Commission must conduct to make a public interest determination. The Commission is satisfied that the costs claimed are consistent with the scale of costs in Appendix A of Rule 009. Despite this, the Commission is unable to approve the full amount of the costs claimed in respect of services performed by Carscallen for the reasons below.

24. The MD claimed a \$100.00 attendance honorarium and travel-related expenses for Tyler Lawrason. T. Lawrason travelled from Provost to Calgary to participate in the hearing with the MD’s legal counsel at the Carscallen offices. The disbursements included meal allowances (\$40.00), mileage (\$385.48) and accommodations (\$171.07). The accommodations amount includes the room charge of \$129.00, parking of \$25.00 and tourism levy, destination marketing fees and GST. The Commission finds that as a municipal employee, T. Lawrason is not able to claim honorarium and therefore the Commission denies this claim. The Commission does, however, approve the travel related costs including meal allowances (\$40.00), mileage (\$385.48), accommodations (\$164.43) and GST (\$6.64) for a total of \$596.55.

25. The MD claimed legal fees in the total amount of \$84,046.00, representing 67.40 hours of work by Michael Niven and 251.90 hours of work by Sarah Howard. The Commission notes the effective division of legal activities between both counsel, as shown in the time entries.

26. Additionally, the Commission finds that the MD’s cross-examination was repetitive¹¹ and did not significantly clarify the issues examined or assist the Commission in understanding the relevant matters, thus undermining the efficiency of the hearing process.

¹¹ Proceeding 28847, Transcript Volume 2, page 286, lines 8-16.

27. For these reasons, the Commission applies a five per cent reduction to the legal fees claimed for Carscallen.¹² The MD also claimed disbursement for photocopying (\$94.50) which the Commission finds is reasonable and is approved. Accordingly, the Commission approves the MD's claim for legal fees in the amount of \$79,843.70, a disbursement of \$94.50 and GST of \$3,996.91 for a total of \$83,935.11.

28. For the reasons provided above, the Commission approves the MD's claim for recovery of costs in the total amount of \$84,531.66, consisting of legal fees of \$79,843.70, disbursements of \$684.41 and GST of \$4,003.55.

4 Order

29. The Commission approves applications 29665-A001 and 29665-A002, under sections 21 and 22 of the *Alberta Utilities Commission Act* and Rule 009, and orders as follows:

- (1) Eastervale Solar Inc. shall pay intervener costs to the Eastervale Preservation Authority group in the total amount of \$230,409.68 within 30 days of this Order. Payment shall be made to Ackroyd LLP on behalf of the Eastervale Preservation Authority group.
- (2) Eastervale Solar Inc. shall pay intervener costs to the Municipal District of Provost in the total amount of \$84,531.66 within 30 days of this Order. Payment shall be made to Carscallen LLP on behalf of the Municipal District of Provost.

Dated on February 20, 2025.

Alberta Utilities Commission

(original signed by)

Renée Marx
Commission Member

¹² $\$84,046.00 * 0.95 = \$79,843.70.$