



# Glacier Power Ltd.

## Dunvegan Hydroelectric Facility

### Cost Awards



**ALBERTA UTILITIES COMMISSION**

Utility Cost Order 2009-008: Glacier Power Ltd.

Dunvegan Hydroelectric Facility

AUC Application No. 1485454

NRCB Application No. 0602

Cost Application No. 1604827

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**ALBERTA UTILITIES COMMISSION & NATURAL RESOURCES CONSERVATION BOARD**

Calgary, Alberta

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## **1 INTRODUCTION**

The Alberta Utilities Commission (the Commission) and the Natural Resources Conservation Board (the Board) received a cost claim from the Concerned Residents for Ongoing Service at Shaftesbury Ferry on 11 December 2008. The claim seeks an award of costs in the amount of \$109,648.68, consisting of \$92,830.28 for legal services performed by McLennan Ross, \$5,058.03 for ice modeling expertise performed by KGS Group, \$1,653.75 for Applications Management Consulting Ltd. for assistance in assessing compensation plans for CROSS members, and \$10,106.62 for honoraria. The Commission and the Board (collectively referred to as the Panel) conducted a joint review with the Canadian Environmental Assessment Agency of the application by Glacier Power Ltd. (Glacier) for the Dunvegan Hydroelectric Facility. The joint review included a five day (22-26 September 2008) public hearing in Fairview, Alberta. Following the close of the hearing CROSS and Glacier provided written supplemental final argument with the final submission tendered 12 November 2008. The Panel members for the review included Vern Hartwell (Chair), Doug Larder and George Kupfer. The joint review Panel issued its decision on 22 December 2008 as Commission Decision [No. 2008-138](#), Board Decision No. [NR 2008-03](#).

Glacier provided detailed comments on the CROSS cost claim on 17 December 2008 which was followed on 24 December 2008 by a reply from CROSS. Accordingly, the Panel considers, for the purposes of this Cost Order, the cost process to have closed on 24 December 2008.

## **2 VIEWS OF THE PANEL – AUTHORITY TO AWARD COSTS**

Both the Commission and the Board have the authority to award costs to eligible interveners. As this was a joint review, after providing an opportunity for participant comment, the Panel determined it appropriate to adopt the Commission's process, including the rules related to local intervener costs. When assessing a cost claim pursuant to section 22 of the AUC Act, the Commission applies Rule 009, *Rules on Local Intervener Costs* ([Rule 009](#)). The Panel has assessed the costs claimed in respect of the Application in accordance with the current Rule 009 with the scale of costs that was in effect prior to the 30 September 2008 amendments.

Before exercising its discretion to award costs under Rule 009, the Panel must consider whether the participant acted responsibly and contributed to a better understanding of the issues before the Commission, and whether the costs claimed are reasonable and directly and necessarily related to the proceeding. The Panel considers these factors in light of the scope and nature of the issues in question.

In the Panel's view, the responsibility to contribute positively to the process is inherent in the choice to intervene in a proceeding. The Panel expects that those who choose to participate will prepare and present a position that is reasonable in light of the issues arising in the proceeding and necessary for the determination of those issues. To the extent reasonably possible, the Panel will be mindful of participants' willingness to co-operate with the Panel and other participants to promote an efficient and cost-effective proceeding. The Panel only approves those costs that are reasonable and directly and necessarily related to the party's participation in the proceeding.

### **3 VIEWS OF THE PANEL – ASSESSMENT**

The Panel finds that CROSS does have members that satisfy the eligibility requirements for local intervener funding as many members of this group reside close to Shaftesbury Crossing and utilize both the ferry and ice bridge on a frequent basis. The Panel accepts that these individuals may be directly affected by the construction of the Dunvegan hydroelectric facility and the potential for delays in the construction of the ice bridge. The Panel finds that the participation of the applicant and interveners was, for the most part, effective and of assistance in reviewing the Application. Specifically, the Panel also finds that CROSS generally contributed to a better understanding of issues that were relevant and important to the assessment of the Glacier application.

The retention of KGS and the contribution of this expert to the Panel's understanding of ice modeling related to Shaftesbury Crossing and the Peace River generally is reasonable and appropriate in the Panel's view. Subject to the disallowance of the meal gratuities claimed (\$8.69), the Panel awards the full costs claimed by this expert.

The Panel denies the component claimed for services provided by Applications Management Consulting Ltd. The Panel agrees with Glacier submissions on this portion of the claim. While compensation was discussed briefly at the hearing, CROSS did not put forward an expert to speak to the materials prepared by this expert. The Panel finds that this material did not contribute to a better understanding of issues related to the Glacier application.

Glacier stated that if the Panel found CROSS to be an eligible local intervener it did not object to the claimed honoraria other than a concern related to the claimed mileage rate. The Panel determined that, once the adjustment is made to the mileage rate, the claimed honoraria is reasonable and therefore includes \$9,966.72 as the honoraria component of the award.

The Panel does have some concerns related to the legal services component of this claim for costs. At the Pre-Hearing Meeting, the NRCB and EUB considered an advance funding request made by CROSS. At that time CROSS requested \$49,307.50 as the legal component for its intervention. Having regard for the complexity of the issues and the relative focus of this intervention the Panel is not satisfied that the level of involvement of two counsel to the degree claimed was justified. While not questioning the accounting provided by McLennan Ross, the detail provided is often of little assistance in assessing the contribution associated with the various entries. The Panel considers that an award of \$60,000.00, plus GST and expenses, is appropriate for legal services associated with the CROSS intervention.

Accordingly, the Panel considers the claims for fees, disbursements and applicable GST for CROSS to be reasonable in the total amount of \$84,523.41 less \$20,000.00 for advance funding previously awarded.

**4 ORDER**

IT IS HEREBY ORDERED that Glacier Power Ltd. shall pay intervener costs in the amount of \$64,523.41 as set out in column (h) of Appendix A.

Dated in Calgary, Alberta on this 24<sup>th</sup> day of February, 2009.

**ALBERTA UTILITIES COMMISSION  
NATURAL RESOURCES CONSERVATION BOARD**

*Original signed by:*

Vern Hartwell  
Panel Chair

*Original signed by:*

Douglas A. Larder, Q.C.  
Panel Member

*Original signed by:*

George Kupfer, Ph.D.  
Panel Member

**APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED**

[Glacier Final Cost Decision - Appendix A.xlsx](#)



Glacier Power Ltd.  
 (AUC 1485454)  
 (NRCB 0602)

Costs Claimed and Awarded

	Total Fees Claimed (a)	Total Expenses Claimed (b)	Total GST Claimed (c)	Total Amount Claimed (d)	Total Fees Awarded (e)	Total Expenses Awarded (f)	Total GST Awarded (g)	Total Amount Awarded (h)
<b>INTERVENER</b>								
<b>CROSS</b>								
McLennan Ross LLP	\$81,902.00	\$6,507.79	\$4,420.49	\$92,830.28	\$60,000.00	\$6,507.79	\$3,000.00	\$69,507.79
Kontzamanis Graumann Smith MacMillan Inc.	\$3,300.00	\$1,517.17	\$240.86	\$5,058.03	\$3,300.00	\$1,508.48	\$240.42	\$5,048.90
Applications Management Consulting Ltd.	\$1,575.00	\$0.00	\$78.75	\$1,653.75	\$0.00	\$0.00	\$0.00	\$0.00
Honoraria (Chenard, Heins, Lemay, Callioux and Ouellet)	\$5,900.00	\$4,206.62	\$0.00	\$10,106.62	\$5,900.00	\$4,066.72	\$0.00	\$9,966.72
<b>TOTAL INTERVENER AND APPLICANT COSTS</b>	<b>\$92,677.00</b>	<b>\$12,231.58</b>	<b>\$4,740.10</b>	<b>\$109,648.68</b>	<b>\$69,200.00</b>	<b>\$12,082.99</b>	<b>\$3,240.42</b>	<b>\$84,523.41</b>
<b>ADVANCE FUNDING AWARDED</b>								<b>-\$20,000.00</b>
<b>TOTAL INTERVENER AND APPLICANT COSTS PAYABLE</b>								<b>\$64,523.41</b>