

**Teck Resources Limited
Frontier Oil Sands Mine Project**

Costs Awards

October 23, 2019

Alberta Energy Regulator

Costs Order 2019-02: Teck Resources Limited, Frontier Oil Sands Mine Project

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Teck Resources Limited

Frontier Oil Sands Mine Project

**Applications OSCA 1709793, EPEA 001-00247548, Costs Order 2019-02
WA 001-00303079 and WA 001-00303091 Costs Application 1918076**

Introduction

[1] In November 2011, Teck Resources Limited submitted applications under the *Oil Sands Conservation Act* (1709793), the *Environmental Protection and Enhancement Act* (001-00247548), and *Water Act* (001-00303079 and 001-00303091) for the proposed Frontier Oil Sands Mine Project (Frontier project). The federal environmental assessment commenced in January 2012.

[2] The Frontier project would be a new 260 000 barrel per day oil sands mining operation approximately 110 kilometres (km) north of Fort McMurray, Alberta. The Frontier project is a truck and shovel mine. It would include two open mine pits, an ore preparation plant, a bitumen processing plant, tailings preparation and management facilities, cogeneration facilities, support utilities, disposal and storage areas, a river water intake, a fish habitat compensation lake, a bridge over the Athabasca River, administration and maintenance facilities, roads, an aerodrome, and a camp.

[3] On May 24, 2016, the federal Minister of Environment and Climate Change and the chief executive officer of the Alberta Energy Regulator (AER) announced the *Agreement to Establish a Joint Review Panel for the Frontier Oil Sands Mine Project*, which established a joint review panel to review the Frontier project on behalf of the AER and the Canadian Environmental Assessment Agency (CEAA). Under this panel agreement, Mr. A. Bolton was appointed as panel chair, and Mr. R. McManus and Mr. W. Klassen were appointed as panel members.

[4] On June 6, 2018, a notice of hearing was issued.

[5] The panel conducted a public hearing that started on September 25, 2018, in Fort McMurray, Alberta, and continued until October 4. It adjourned and resumed in Fort Chipewyan, Alberta, from October 15 to October 18. On October 20, the hearing resumed in Fort McMurray and was adjourned on October 24. The Aboriginal Consultation Office provided its hearing reports on November 26, and final argument was held in Calgary, Alberta, on December 11 and 12, 2018, at which time the hearing record was closed.

[6] On February 5, 2019, the panel requested an extension to July 25, 2019, to produce its decision report. The panel cited several reasons for the request including the length of the hearing, the size of the hearing record, and concurrent reviews. On March 28, 2019, the panel was notified by the minister that the deadline had been extended as requested.

[7] On July 25, 2019, the panel issued its decision report: *Decision 2019 ABAER 008: Teck Resources Limited, Frontier Oil Sands Mine Project, Fort McMurray Area*. The report includes the panel's findings and recommendations to the minister on the significance of environmental effects of the Frontier project as required by the *Canadian Environmental Assessment Act, 2012*. The report also includes the panel's decisions in its capacity as the AER for provincial applications under the *Oil Sands Conservation Act, Environmental Protection and Enhancement Act, and Water Act*.

Canadian Environmental Assessment Agency (CEAA) Participant Funding

[8] CEAA provided financial support to participants in the hearing through its Participant Funding Program. CEAA allocated a total of \$1 191 279.35 to assist 21 recipients in their participation in the environmental assessment for the Frontier project, including the public hearing.

[9] Below are the five CEAA Participant Funding Program recipients that also submitted costs claims to the AER:

- | | |
|---|----------|
| • The Pembina Institute (Pembina) (member of the Oil Sands Environmental Coalition) | \$29 980 |
| • Keepers of the Athabasca Watershed Society | \$19 760 |
| • John Malcolm on behalf of the Clearwater River Band No. 175 | \$27 097 |
| • John Malcolm on behalf of Original Fort McMurray First Nation | \$27 097 |
| • Smith's Landing First Nation | \$33 394 |

AER Costs Claims

[10] The AER received costs claims from the following:

- Oil Sands Environmental Coalition (OSEC)
- Keepers of the Athabasca
- Peter Hoffmann, Darrel Shevolup, and Chuck Shevolup (collectively, the trappers)
- Clearwater River Band #175
- Darlene Gladieu-Quinn of Triune Law

[11] Teck reached a settlement with Clearwater on its costs claim, and the AER closed Clearwater's costs application on May 24, 2019.

[12] On January 31, 2019, Smith's Landing First Nation (SLFN) made a request to submit a late costs claim, 50 days after the hearing record closed. It stated that the extraordinary circumstances that

prevented it from filing on time were limited staff capacity and numerous initiatives occurring simultaneously across a large traditional territory. The panel stated that these are not unusual circumstances for indigenous group and certainly not extraordinary. The panel did not accept SLFN's reasons for the delay and denied the request on April 29, 2019.

[13] On April 1, 2019, Mr. John Malcolm made a request to submit a late costs claim on behalf of the Original Fort McMurray First Nation (OFMFN), 110 days after the hearing record closed. He stated that the extraordinary circumstances that prevented OFMFN from filing on time included lack of funding and lack of knowledge of the AER costs claim process. The panel stated that these are not unusual circumstances for an indigenous group and certainly not extraordinary. The panel did not accept OFMFN's reasons for the delay and denied its request on May 9, 2019.

[14] In exercising its discretion to make this order, the panel considered all submissions made in this costs proceeding, including the costs submissions from OSEC, Keepers, the trappers, and Triune Law; Teck's responses to each submission; and the reply submissions of OSEC, Keeper, the trappers, and Triune Law.

[15] The panel awards OSEC \$169 898.89 for fees, expenses, and disbursements, and \$2898.59 for GST.

[16] The panel awards Keepers \$12 867.73 for fees, expenses, and disbursements, and \$128.97 for GST.

[17] The panel awards the trappers \$17 402.95 for fees, expenses, and disbursements, and \$566.19 for GST.

[18] The panel dismisses Triune Law's costs claim in its entirety.

[19] Appendix 1 sets out the amounts the AER awards to OSEC, Keepers, and the trappers for fees, expenses, and disbursements, and GST.

The AER's Authority to Award Costs

[20] The AER has broad discretion in deciding whether and how to award costs. Section 64 of the *Alberta Energy Regulator Rules of Practice* states:

The Regulator **may** award costs to a participant if it finds it appropriate to do so in the circumstances of the case, taking into account the factors listed in section 58.1.

[21] In determining who is eligible to submit a claim for costs, the AER is guided by the *Rules of Practice*, particularly sections 58(1)(c) and 62:

58(1)(c) “participant” means a person or a group or association of persons who have been permitted to participate in a hearing for which notice of hearing is issued or any other proceeding for which the Regulator has decided to conduct binding dispute resolution, but unless otherwise authorized by the Regulator, 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.

62(1) A participant may apply to the Regulator for an award of costs incurred in a proceeding by filing a costs claim in accordance with the Directive.

(2) A participant may claim costs only in accordance with the scale of costs.

(3) Unless otherwise directed by the Regulator, a participant shall (a) file a claim for costs within 30 days after the hearing record is complete or as otherwise directed by the Regulator, and (b) serve a copy of the claim on the other participants.

(4) After receipt of a claim for costs, the Regulator may direct a participant who filed the claim for costs to file additional information or documents with respect to the costs claimed.

(5) If a participant does not file the information or documents in the form and manner, and when directed to do so by the Regulator under subsection (4), the Regulator may dismiss the claim for costs.

[22] When assessing costs, the AER is guided by Division 2 of Part 5 of the *Rules of Practice*, *Directive 031: REDA Energy Cost Claims*, and *AER Bulletin 2014-07: Considerations for Awarding Energy Costs Claims and Changes to the AER’s Process for Reviewing Energy Costs Claims*. *Bulletin 2014-07* states that parties and applicants are expected to try to resolve costs claims. Where costs are not resolved, costs submissions should address the factors from the *Rules of Practice* that appear relevant to the particular costs claim. The bulletin also advises that the AER will only review the aspects of a costs claim that are identified as being specifically in dispute. Costs not disputed may be awarded by the AER without further consideration.

[23] The panel also had regard for the panel agreement, which directed the panel to conduct a public hearing in a manner that provided opportunities for meaningful participation by the public. Under the panel agreement, the panel was directed to take into account, to the extent practicable, the participant funding decisions made under the CEAA Participant Funding Program when making decisions under the AER’s costs regime.

Costs Claim of the Oil Sands Environmental Coalition

[24] On January 11, 2019, Kurt Stilwell and Barry Robinson of EcoJustice Canada filed a costs claim on behalf of OSEC. On January 28, 2019, Teck submitted comments on OSEC's costs claim. On February 7, 2019, OSEC submitted a reply to Teck's comments.

[25] OSEC's total costs claim was for \$301 140.94, broken down as follows:

- legal fees \$223 258.00
- expert and analyst fees \$60 401.25
- disbursements and expenses \$13 915.81
- GST \$3 565.88

Costs Factors and Principles

[26] OSEC indicated that it is a coalition of Pembina and the Fort McMurray Environmental Association, with a longstanding interest in the Athabasca Oil Sands Area.

[27] OSEC submitted it was accorded full participatory rights by the panel, filed written submissions in advance of the hearing, attended most of the hearing, adduced expert evidence, cross-examined Teck's witnesses, and made final argument. As a participant in the review process and hearing for the Frontier project, OSEC submitted that it is entitled to submit a claim for a final award of costs arising out of its participation.

[28] OSEC submitted that funding enables parties to efficiently and effectively advance their cases. The quality of environmental decision-making is improved when all relevant evidence is considered at a hearing. Useful interventions require significant expenditures to adequately test and challenge the evidence of the proponent.

[29] OSEC submitted that previous joint review panels and the AER have, for some time, recognized the importance of intervener funding for sound environmental and regulatory decision-making in the public interest. With respect to the need for adequate participant funding, OSEC referred the panel to statements made by the Alberta Court of Appeal in *Kelly v Alberta (ERCB)*, 2012 ABCA 19 (at paragraphs 33–34).

[30] OSEC submitted that it acted responsibly in the proceeding, contributed to a better understanding of the issues, and promoted an orderly and efficient hearing. The issues it focused on were narrowed to issues of paramount importance, which included a cost-benefit analysis, greenhouse gas emissions, biodiversity, the failure of the Government of Alberta to proceed with the Biodiversity Management Framework, and liability management and financial security options for reclamation.

[31] OSEC submitted that it helped eliminate duplication of information during the proceeding through its participation in numerous telephone conferences with other participants to discuss the issues that other groups intended to raise and the points their evidence would touch upon.

[32] OSEC submitted that the participation of counsel and expert witnesses for OSEC was professional, on point, efficient, of significance, and helpful for a better understanding of the issues. OSEC's participation did not unnecessarily lengthen the proceeding or create a step or stage in the proceedings that was improper, vexatious, or unnecessary or taken through negligence, mistake, or excessive caution.

[33] OSEC submitted that it should not bear its own costs as Pembina staff functioned as experts on behalf of OSEC. Pembina provides services on a fee-for-service basis and does not receive core funding from other sources. Furthermore, OSEC qualified for costs in other oil sands mining hearings in the vicinity of the Frontier project.

[34] OSEC submitted that its costs claim is reasonable, appropriate, and consists of money reasonably spent to assist the panel in having a full and better understanding of the issues to reach its decision on whether or not the Frontier project is in the public interest.

[35] Teck submitted that costs should only be awarded when they (1) were directly necessary and reasonable for the applicant to participate in the hearing and (2) contributed to a better understanding of the issues before the AER. The costs must be proportionate to the nature of the application. The AER must also consider whether a participant unnecessarily lengthened the proceeding and attempted to coordinate participation in the hearing with other participants. The onus is on the costs applicant to demonstrate that its costs are reasonable and appropriate and to include information addressing the applicable factors in section 58.1 of the *Rules of Practice*. The AER must follow guidance in *Directive 031* to ensure that the costs claimed are eligible for reimbursement.

Legal Fees and Disbursements

[36] Kurt Stilwell, a 30-year member with the Law Society of Alberta, claimed just over 397 hours of work (including travel time). Barry Robinson, a member of the Law Society of Alberta for approximately 11 years, claimed just over 419 hours of work (including travel time). Their total claim is \$232 232.86, broken down as follows:

	Fees	Disbursements	GST	Total
Kurt Stilwell	\$108 290.00	\$5 367.12	\$217.73	\$113 874.85
Barry Robinson	\$114 968.00	\$3 271.99	\$118.02	\$118 358.01
Total	\$223 258.00	\$8 639.11	\$335.75	\$232 232.86

[37] OSEC submitted that the hearing was long and the evidence voluminous and complex. There was a division of duties between Mr. Stilwell and Mr. Robinson. Mr. Stilwell focused on the cost-benefit

analysis and economic evidence. Mr. Robinson dealt with greenhouse gas emissions, climate targets, financial reclamation liabilities, and biodiversity. Both counsel conducted examination in chief and cross-examination and delivered final argument.

[38] Teck submitted that the AER has previously only awarded costs for more than one lawyer to attend a hearing in exceptional circumstances. This hearing was not an exceptional case, nor had OSEC put forward an argument suggesting otherwise. Teck was of the view that appropriate legal staffing for a file like this would involve a junior lawyer spending time on certain tasks (e.g., research and drafting submissions) and a senior lawyer reviewing the work produced by the junior lawyer before finalizing it, as well as conducting other tasks that require more expertise. Instead, OSEC had senior counsel performing tasks that are more appropriately conducted by junior lawyers.

[39] OSEC submitted that it cannot, at the outset, seek to tailor its expenditure of time and resultant legal fees to that which a panel or project proponent might consider reasonable. It is the duty of counsel to expend the time necessary to adequately represent and protect the interests of the client.

[40] Teck submitted that while OSEC's rationale for staffing two senior lawyers was for the division of topics, the submitted invoices showed that two very senior lawyers frequently attended the same meetings, conducted the same tasks, and thereby duplicated efforts.

[41] OSEC submitted the Athabasca Chipewyan First Nation (ACFN), Mikisew Cree First Nation, the Government of Canada, Teck, and Canadian Parks and Wilderness Society all used two or more counsel at the hearing. This demonstrates that it was reasonable to retain and use more than one lawyer given the volume of material, the nature of the subject matter, the number of witnesses, the significant use of expert testimony, and the complexity of important issues.

[42] OSEC submitted that unlike larger law firms, OSEC's counsel does not have the luxury of articling students and junior associates in its Alberta office. Ecojustice's most junior lawyer in Alberta has been practicing for 6 years. OSEC adjusted for this fact by claiming at a rate of \$280/hour for a lawyer with 5–7 years' experience for Mr. Robinson and Mr. Stilwell rather than the \$320/hour allowable rate for Mr. Robinson and the \$350/hour allowable rate for Mr. Stilwell. Thus, the amounts claimed reflect a 12.5% discount for the legal fees of Mr. Robinson and a 20% discount for the legal fees of Mr. Stilwell.

[43] Teck submitted that the amount of time spent by Mr. Robinson and Mr. Stilwell was grossly inflated and unnecessary for effective participation in the hearing. Between Mr. Robinson and Mr. Stilwell, they claimed a total of 816.95 hours at senior billing rate which is equivalent to 102 eight-hour work days. Teck submits that this is an exorbitantly high and unnecessary number of hours for OSEC's half-day direct examination, half-day cross-examination, and hour-long final argument participation.

[44] OSEC submitted that its claim for legal fees is neither exorbitant nor unreasonable. Mr. Robinson limited his attendance, as second counsel, at the hearing only as required for cross-examination of Teck

witnesses, the direct examination and cross-examination of the Pembina witnesses, and final oral argument. Mr. Robinson did not attend for the direct examination or cross-examination of Dr. Joseph. Mr. Stilwell, for his part, also acted judiciously in attending at the hearing or monitoring the video feed only as needed to properly represent the interests of OSEC. OSEC submitted that on the basis of 2–3 days of preparation for each day of hearing (based on *Costs Order 2007-001*), OSEC’s claim for legal fees is neither exorbitant nor unreasonable.

[45] Teck submitted that that OSEC’s legal fees should be significantly reduced. Following the AER’s past practice of recognizing roughly 170 hours of preparation to be adequate for participation, the maximum amount of legal costs that should be awarded to OSEC in this proceeding is \$50 000.

[46] OSEC submitted that Teck’s contention that an award of \$50 000 for legal fees for all services, which is only slightly higher than the allowance for a single lawyer attending the hearing without preparation, is neither reasonable nor appropriate. It would have been reasonable and acceptable for at least one counsel to attend or monitor all full 17 days of hearing and for a second counsel to attend as needed. A total of 19 days were spent in the evidentiary portion of the proceedings and final argument. With the break in the proceedings in Fort McMurray and travel days at either end of the hearing, four days would have been used for travel. At the rate of \$280 per hour for seven-hour days and one-half the hourly rate for travel, this time by itself would have accounted for roughly \$41 000 in legal fees for one counsel, ignoring any preparation time.

[47] Teck indicated the relevant disbursements may be awarded as claimed in the amount of \$5584.85 for Mr. Stilwell and \$3390.01 for Mr. Robinson.

[48] OSEC submitted that in this proceeding, use of a second counsel was warranted, the hours claimed for OSEC counsel were reasonable and in line with a hearing of this length and complexity, and the rate claimed for legal counsel was significantly reduced from the allowable rate. On that basis, OSEC submitted that its costs claim for legal counsel is fair and reasonable.

Views of the Panel

[49] The panel awards OSEC costs for EcoJustice’s legal fees in the amount of \$109 776.34.

[50] The panel considered factors as set out in *Directive 031* and specifically the reasonableness of the costs claimed. The guiding principle in exercising discretion is that costs be reasonable, in the sense that they were directly and necessarily required for the costs claimant to appropriately participate in the proceeding. This often means that the costs applicant will not be fully indemnified by a costs order. It also means that the costs award must be proportionate to the matter the costs relate to and a participant’s participation in a proceeding.

[51] Experienced, capable practitioners such as those retained by OSEC are expected to demonstrate a high level of expertise and efficiency. The panel recognizes that while the AER grants costs for more than

one counsel only in exceptional circumstances (e.g., *Costs Orders 2017-002, 2016-003, and 2008-011*), second counsel may be warranted where the principal counsel requires support in fulfilling their functions in a proceeding of this type.

[52] Given the nature and length of this proceeding, the volume of filed materials, and the complexity of issues, the panel considers it appropriate for EcoJustice to use second counsel. However, the panel finds that second counsel should be a junior lawyer who would be responsible for tasks like research, file and transcript review, monitoring the video webcast, and drafting of submissions. The use of a billing rate for a lawyer with 5–7 years' experience (\$280/hour) for both Mr. Robinson and Mr. Stillwell, instead of the 8–12 and 12+ year billing rates that may have otherwise been claimed, mitigates to some degree the use of two senior counsel on this file. The panel notes that an hourly rate of \$280 is approximately the average hourly rate of a senior lawyer and junior lawyer combined.

[53] In this case, costs claimed for Mr. Stillwell and Mr. Robinson indicate that 816.95 hours including travel time (777.75 hours excluding travel time) was required for preparation, attendance, and argument. This equates to just over 102 eight-hour workdays by counsel (including travel time), or 97 eight-hour workdays (excluding travel time). Notwithstanding the length of this proceeding, the voluminous filed materials and complexity of issues, the panel finds this amount to be excessive given the nature of OSEC's participation. In this case, OSEC examined Teck over the course of approximately one day, provided direct evidence over the course of approximately half a day, and presented closing argument for approximately 1.5 hours.

[54] While the panel does not agree that a reduction in legal fees at the scale submitted by Teck is appropriate under the circumstances, it does find that a reduction is warranted in relation to amounts claimed for preparation (502 hours) and final argument preparation and attendance (149.50 hours). The amount claimed for hearing attendance was found to be reasonable under the circumstances. However, the panel will reduce the travel time claimed by Mr. Robinson by 8 hours to account for the fact that only one round-trip between Calgary and Fort McMurray was required.

[55] The panel finds the amount claimed for preparation and final argument to be excessive given the nature of OSEC's participation. In considering the reasonableness of these costs, the panel also considered duplication of efforts and whether OSEC's participation contributed to a better understanding of the issues before the panel.

[56] The panel recognizes that Mr. Robinson and Mr. Stillwell divided the topics raised by OSEC between them. However, many of the time entries noted in EcoJustice's statement of account demonstrate to the panel that there was some duplication of efforts (e.g., overlap in meetings attended and work on topics notwithstanding the division of efforts). This duplication was considered by the panel when determining the reasonableness of the costs under the circumstances.

[57] The panel notes that a portion of OSEC’s closing argument was not particularly helpful to the panel and did not contribute to a better understanding of the issues before it (e.g., discussion of legal principles such as the requirement to provide reasons). This was also taken into account in determining the reasonableness of the costs claimed in relation to final argument.

[58] The panel also notes that several EcoJustice time entries relate to the preparation of OSEC’s costs claim and are not recoverable through the AER’s costs regime. Additional entries relate to correspondence and discussions with the Regional Municipality of Wood Buffalo. The panel notes that costs must be justified, and the panel is not satisfied under the circumstances that these costs are directly and necessarily related to this proceeding. As such, these costs will not be awarded.

[59] The panel views an award of \$109 776.34 for legal fees as reasonable and fair for this proceeding. This amount covers prehearing and preparation matters (201.08 hours or 25 eight-hour work days), attendance at and travel to the hearing (156.75 hours or 19.5 eight-hour work days) and preparation for and attendance at final argument (49.83 hours or 6 eight-hour work days).

[60] Teck does not dispute disbursements claimed for Mr. Stillwell and Mr. Robinson, and indicates that relevant disbursements for Mr. Stillwell (\$5584.85) and Mr. Robinson (\$3390.01) be awarded. As such, the panel will award these amounts as claimed for a total of \$8974.86 in relation to EcoJustice’s disbursements and GST.

Experts’ Fees and Disbursements

The Pembina Institute

[61] OSEC submitted that its expert witnesses from Pembina qualify as experts because of their relevant experience and academic training and the relevance of their evidence. OSEC referred the panel to the curricula vitae filed on the hearing record for these professionals.

	Fees	Disbursements	GST	Total
Simon Dyer	\$13 095.00	\$838.99	\$688.76	\$14 622.75
Nina Lothian	\$4 715.00	\$821.69	\$276.73	\$5 813.42
Jodi McNeill	\$10 680.00	\$964.61	\$582.16	\$12 226.77
Jan Gorski	\$15 880.00	\$932.47	\$840.46	\$17 652.93
Nikki Way	\$2 081.25	\$800.26	\$144.52	\$3 026.03
Total	\$46 451.25	\$4 358.02	\$2 532.63	\$53 341.90

[62] OSEC submitted that Simon Dyer’s relevant professional experience spans in excess of 18 years. He claimed 50.50 hours of work (including travel time). His total claim is \$14 622.75.

[63] OSEC submitted that Nina Lothian’s engineering experience is in excess of 10 years and that she assisted Jodi McNeill, prepared an expert report, and attended the hearing to testify. She claimed 22.50 hours of work (including travel time). Her total claim is \$5813.42.

[64] OSEC submitted that Jodi McNeill has approximately 6 years of experience as a researcher, environmental scientist, and technical and policy analyst. She provided an expert report and testimony at the hearing. She claimed 91 hours of work (including travel time). Her total claim is \$12 226.77.

[65] OSEC submitted that Jan Gorski has 6 years of engineering experience and participated in the hearing through an expert report and testimony. He claimed just over 101 hours of work (including travel time). His total claim is \$17 652.93.

[66] OSEC submitted that Nikki Way, an analyst with Pembina, did not participate as an expert. Her fees are for her significant contribution as support staff that included being the main point of contact with EcoJustice counsel, marshalling the resources of Pembina staff, handling all communication with Dr. Joseph in conjunction with counsel, attending numerous teleconferences among hearing participants, reviewing all submissions prepared by counsel, and handling the scheduling of deadlines and attendance at a four-hour session at the hearing during the testimony of the Pembina experts to assist counsel and the witnesses. She claimed just over 46 hours of work. Her total claim is \$3026.03.

[67] Teck submitted that the above experts and Ms. Way are employed by Pembina, which is an advocacy organization that charges fees for speakers and research and analysis. It is also the main member of OSEC. These individuals' participation in the hearing was done as part of the advocacy that they are employed to carry out. Therefore, no fees for these individuals should be awarded.

[68] OSEC rejected Teck's assertion that because these expert witnesses were employed by Pembina, they were only delivering their advocacy work on behalf of Pembina. OSEC submitted that this is inconsistent with previous joint review panels and the AER's treatment of similar facts involving in-house witnesses' participation in oil sands mine hearings. The Pembina witnesses' evidence is relevant, informative, and balanced and not advocacy. OSEC also submitted that costs claim for experts would have been magnified had it retained the services of independent third-party expert witnesses as opposed to the in-house expertise of Pembina.

[69] Teck also submitted that OSEC's claims for expert fees did not comply with *Directive 031* as the claim failed to provide sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding. No detailed invoices were provided, making it impossible to assess what work was done by each individual, what amount of time was spent for each task, whether the work was relevant to the hearing, or whether the amount of time spent was actually accrued.

[70] OSEC responded that it is unreasonable to expect Pembina to render detailed invoices to itself for the work of its in-house experts. Pembina personnel do not record detailed time entries describing the work done. Rather, hours are coded by project and phase. OSEC submitted that it is easy to observe from the Pembina expert reports and testimony that the work was necessary, relevant, and that reasonably competent and significant time was incurred in preparing the reports. These experts attended the hearing, provided direct testimony, and were cross-examined.

[71] OSEC referred to *Costs Order 2014-002* wherein the panel awarded OSEC the full amount claimed for Pembina expert witnesses in the absence of invoices with detailed time entries. The costs submission included only the number of hours spent by, the years of experience of, and the hourly rate of the Pembina experts as is the case in the current matter.

[72] OSEC submitted that it has qualified for at least six previous AER costs awards. Teck has not shown that considerations in this costs matter are so different that OSEC should not receive intervenor costs.

[73] With respect to disbursements, Teck submitted that OSEC's Form E4 did not accord with the scale of costs in *Directive 031*. In particular, Ms. McNeill's, Ms. Lothian, Mr. Gorski, and Mr. Dyer's accommodation should be limited to \$140.00 each, and meals for Ms. Way and Ms. Gorski should be limited to \$40.00 each.

[74] In response to Teck's contention that accommodation costs of Ms. McNeill, Ms. Lothian, Mr. Gorski, and Mr. Dyer should be limited to \$140 each, OSEC pointed to *Costs Order 2014-002* wherein the panel stated at paragraph 267, "Although the rates claimed are above the limits provided in the scale of costs, the panel finds them to be within the range for nightly accommodation in Fort McMurray and further notes that room sharing by the witnesses help to minimize accommodation costs."

Swift Creek Consulting

[75] In its initial costs claim, OSEC indicated that ACFN retained Dr. Chris Joseph of Swift Creek Consulting in January 2018 to conduct a cost-benefit analysis of the Frontier project. At the same time, OSEC also intended to advance a case on the economic benefit to be derived from the Frontier project. OSEC assumed the retainer of Dr. Joseph in August 2018 given the significant hearing-related demands upon counsel for ACFN and with a view to avoiding duplication in expert testimony. OSEC and ACFN shared the costs of retaining Dr. Joseph. This initial claim included ACFN's share. The total claim is broken down as follows:

	Fees	Disbursements	GST	Total
Chris Joseph	\$31 300.00	\$803.18	\$1 565.00	\$33 668.18
Tom Gunton	\$14 850.00	\$0.00	\$742.50	\$15 592.50
James Hoffele	\$5 100.00	\$0.00	\$255.00	\$5 355.00
Total	\$51 250.00	\$803.18	\$2 562.50	\$54 615.68

[76] In its later reply submission, OSEC removed ACFN's share from the claim. As a result, OSEC's claim for reimbursement for costs related to Dr. Joseph was reduced significantly to \$15 556.18 for

payment of invoices dated August 23 and October 22, 2018. These invoices include fees for Dr. Joseph and Dr. Gunton's time and Dr. Joseph's disbursements. The revised claim is broken down as follows:

	Fees	Disbursements	GST	Total
Chris Joseph	\$10 800.00	\$918.68	\$540.00	\$12 258.68
Tom Gunton	\$3 150.00	\$0.00	\$157.50	\$3 307.50
Total	\$13 950.00	\$918.68	\$697.50	\$15 566.18

Dr. Chris Joseph

[77] Dr. Joseph has over 10 years of relevant resource management and cost-benefit analysis experience. He has professional experience as a research associate, independent consultant, sessional instructor and teaching assistant, socioeconomic specialist, and principal of Swift Creek consulting. Dr. Joseph charged ACFN and OSEC an hourly rate of \$200 per hour, which is between the hourly rates for 5 to 7 years' experience and 8 to 12 years' experience for experts. He initially claimed 164 hours of work (including travel time). His total claim was \$33 668.18, broken down as follows:

	Fees	Disbursements	GST	Total
Chris Joseph	\$31 300.00	\$803.18	\$1565.00	\$33 668.18

[78] However, as noted above, the fees claimed in relation to Dr. Joseph were reduced to \$10 800.00, for 54 hours of work (including travel time). Dr. Joseph's disbursements remain unchanged.

[79] Teck submitted that it is unable to ascertain the validity of costs associated with Dr. Joseph's work due to the lack of detail in his invoices. The invoices include no details regarding the dates the work was performed on or the period of time over which the invoices cover and contain only a high-level description of the work conducted. Accordingly, his fees should be dismissed.

[80] With respect to the inadequate detail in the invoices, OSEC submitted that Dr. Joseph adequately documented, with sufficient detail, the date upon which he performed his work and the date range within which that work was performed. The invoices show that the time was spent during the period from retention in January 2018 through to the conclusion of Dr. Joseph's testimony on October 22, 2018.

[81] Teck submitted that as Dr. Joseph was present at the hearing for only one day, his disbursements for hotel and meals should be reduced in accordance with the scale of costs in *Directive 031*:

- for accommodation, from \$167.54 to \$140.00, and
- for meals, from \$80.00 to \$40.00.

As such, Dr. Joseph's disbursements should be reduced from \$803.18 to \$735.64, without GST.

Dr. Thomas Gunton

[82] Dr. Gunton assisted in the preparation of Dr. Joseph's expert report on a cost-benefit analysis of the Frontier project. Dr. Gunton has more than 30 years of relevant experience providing advice to private and public sector clients on the evaluation of resource development projects and is a professor of resource and environmental client planning at Simon Fraser University. He claimed 66 hours of work (no travel time) for a total claim of \$15 592.50, including GST. However, as noted above, the fees claimed in relation to Dr. Gunton were reduced in OSEC's reply submission.

James Hoffele

[83] Mr. James Hoffele provided research support to Dr. Joseph. Mr. Hoffele has a master's degree in resource management from Simon Fraser University and between 5 and 10 years of relevant experience. He claimed 68 hours of work (no travel time) for a total claim of \$5355.00, including GST. However, as noted above, the revised fees claimed by OSEC in relation to Dr. Joseph included only the August 23, 2018, and October 22, 2018, invoices, which did not include fees for work conducted by Mr. Hoffele.

[84] Teck submitted that costs associated with Dr. Gunton and Mr. Hoffele should be dismissed in their entirety as neither expert appeared on behalf of OSEC and their curriculum vitae were not provided to Teck. Furthermore, their identity, credentials, and contribution remain unclear and unproven, which is exacerbated by the lack of detailed invoices.

[85] OSEC responded that sufficient details regarding the qualifications of Dr. Gunton and Mr. Hoffele were set out in its costs submission. Furthermore, Dr. Joseph was in the best position to decide whether these individuals were sufficiently qualified for him to rely upon, and he chose to do so. OSEC submits that it and ACFN accepted the invoices as rendered without question or objection, demonstrating the measure of importance, quality, and relevance of the work of and qualifications of Dr. Gunton, Mr. Hoffele, and Dr. Joseph.

Views of the Panel

The Pembina Institute

[86] The panel recognizes that a number of OSEC's expert witnesses are employed by Pembina, which is a member of OSEC. The AER does not typically award costs for services provided by a participant's internal personnel in the normal course of their duties (*Costs Order 2017-02*). However, in this case, the panel is prepared to consider a costs award for professional fees and will not refuse this costs award on the basis that the witnesses are employed by or otherwise internal staff of Pembina. The panel believes that meaningful public interest participation in hearings is important and that some cost recovery is appropriate under the circumstances to allow for and encourage participation. The panel is satisfied that the Pembina witnesses were qualified to give evidence within their respective areas.

Furthermore, the analysis and evidence provided by the Pembina witnesses assisted the panel and, except as noted below, was objective. Use of external experts would have also magnified the costs.

[87] The AER expects that applications containing claims for professional fees include a statement of account with sufficient detail to demonstrate that all items billed were necessary and related to the applications or proceeding at issue. However, under the circumstances, the panel is prepared to accept that all amounts claimed were incurred in relation to OSEC's participation. This is due to the observed participation of the Pembina witnesses in the proceeding (expert reports and oral testimony) and the affidavit of fees sworn by counsel for OSEC.

[88] The panel awards fees as claimed by OSEC for Ms. McNeill, Ms. Lothian, and Mr. Gorski. The panel found that the evidence provided by these experts assisted the panel and that the amount of the claim was reasonable given the level of participation. In relation to Mr. Dyer, the panel notes that no expert report was filed and that his contribution was limited to oral testimony and several pages in OSEC's written submission. The panel also found Mr. Dyer's evidence to be less objective and somewhat advocacy oriented. As a result, the panel finds it reasonable under the circumstances to reduce the fees claimed by Mr. Dyer by 50 per cent.

[89] Accordingly, the panel awards \$39 713.63 in professional fees including GST to Ms. McNeill, Ms. Lothian, Mr. Gorski, and Mr. Dyer.

[90] The panel does not award costs claimed by OSEC for Ms. Way. In dismissing this claim, the panel had regard for the funding received by Pembina under the CEAA Participant Funding Program, which was not accounted for in OSEC's costs claim, and the nature of Ms. Way's role in the proceeding. The panel notes that Pembina is a member of OSEC and the entity to which OSEC has requested payment of its costs claim be directed.

[91] The panel agreement directs the panel to take into account, to the extent practicable, the participant funding decisions made under the CEAA Participant Funding Program when making decisions under the AER's costs regime. The funding provided in relation to the CEAA Participant Funding Program is intended to assist in various steps of the environmental assessment, including participation in the public hearing. Consequentially, there may be some overlap with AER costs, which are also provided to assist parties with participation in the public hearing.

[92] OSEC's costs claim does not account for the \$29 980 in CEAA participant funding granted to Pembina. This leaves the panel in a difficult position of not being able to assess whether previously awarded amounts should cover a portion of OSEC's AER costs claim, including the fees incurred by Ms. Way.

[93] The panel also notes that the nature of much of Ms. Way's participation as described by OSEC appears to be related to supporting legal counsel (e.g., reviewing all submissions prepared by counsel and

attendance at the hearing during the testimony of the Pembina experts to assist counsel and the witnesses). Under *Directive 031*, a lawyer's hourly rate is to include all overhead expenses such as support/secretarial work. Given the circumstances, the panel does not award Ms. Way's costs.

[94] In relation to the Pembina experts' disbursements, the panel will award costs as claimed by OSEC with the exception of Ms. Way's disbursements. As the claim for Ms. Way's fees was dismissed, the panel will not award her claimed disbursements.

[95] In relation to Teck's contention that accommodation costs claimed by Ms. McNeill, Ms. Lothian, Mr. Gorski, and Mr. Dyer should be limited to \$140 each, the panel finds that the costs claimed comply with *Directive 031* given the maximum amount set out therein of \$140 per day plus provincial hotel tax. Furthermore, the panel notes that *Directive 031* may not adequately reflect the range of nightly accommodation in Fort McMurray and would have been prepared to award a reasonable higher amount in any event. Teck also disputes the meals claimed by Mr. Gorski. The panel is prepared to award Mr. Gorski's meals as claimed (\$44.66), recognizing that this amount is only marginally above the \$40 per diem set out in *Directive 031*, and two days of per diem would have been reasonable here in light of the overnight stay in Fort McMurray and travel involved to give testimony.

Swift Creek Consulting

[96] In its reply submission, OSEC advised that the costs claimed in relation to Dr. Joseph were limited to the invoices issued August 23, 2018, and October 22, 2018 (\$15 556.18), which represent OSEC's out of pocket expenditures related to Dr. Joseph. In relation to professional fees, the panel notes that the above-noted invoices include fees incurred by Dr. Joseph and Dr. Gunton. While Teck disputed the fees claimed by Mr. Hoffele, his fees were not included in the adjusted costs claim. Accordingly, there is no need for the panel to consider Mr. Hoffele's fees in making its award.

[97] Dr. Joseph prepared an expert report, presented direct evidence, and was cross-examined over the course of approximately two hours at the hearing and responded to two undertakings. It is expected that an expert's account contains sufficient detail to demonstrate that all items billed are necessary and relate to the proceeding. In reviewing Dr. Joseph's account, the panel notes that the date on which various services were undertaken (e.g., report finalization, "hearing," and project management) was not provided. While the panel would have preferred to see dates on which work was performed, it is satisfied that the accounts provide enough detail to understand the date range in which work was performed. Furthermore, given the actual participation of Dr. Joseph in the proceeding and the date range set out in the invoices, the panel is prepared to accept that Dr. Joseph's time in these invoices was necessary, reasonable, and related to his participation in the hearing notwithstanding the general description of the work provided. The panel awards \$9765.00 for Dr. Joseph's professional fees including GST. In doing so, the panel notes that the 15 hours claimed for Dr. Joseph's travel time was calculated at half his hourly rate.

[98] In relation to Dr. Joseph's disbursements, the panel notes that Teck specifically disputed only the accommodation and meal costs. In relation to accommodation costs, the panel will award \$167.54, as claimed by Dr. Joseph, on the basis that it is within the range for nightly accommodation in Fort McMurray. In relation to the meal costs, the panel is prepared to award \$80 as claimed (\$40 per diem for two days). While Dr. Joseph's participation in the hearing occurred during one half-day of hearing time, the panel views two days of meal costs to be reasonable and directly and necessarily incurred to give testimony particularly in light of the distance travelled to attend. The panel awards \$840.28 in disbursements including GST for Dr. Joseph, as claimed by OSEC.

[99] The panel also notes that Dr. Joseph's fees were shared by OSEC and ACFN and appreciates the parties' efforts to avoid duplication in expert testimony and reduce overall participation costs.

[100] In relation to Dr. Gunton's professional fees, the panel notes that the August 23, 2018, invoice includes 2 hours for "report finalization," and the October 22, 2018, invoice includes 12 hours for "hearing." Costs awards are discretionary and must be justified. In this case, the panel finds that despite the role of Dr. Gunton as described by OSEC, it is not apparent that Dr. Gunton made a substantial contribution to the hearing. Dr. Gunton made no formal appearance at the hearing and Dr. Joseph's statement of account contains insufficient detail to demonstrate that work performed by Dr. Gunton was necessary and related to the proceeding. The report prepared by Dr. Joseph provides no direct acknowledgement of Dr. Gunton's contribution, and while one of Dr. Gunton's publications is referenced in the report, this in and of itself does not demonstrate to the panel how Dr. Gunton contributed to the report and hearing. Furthermore, while some information was provided by OSEC in relation to Dr. Gunton's qualifications, no curriculum vitae was provided. The panel agrees with Teck that OSEC has failed to justify Dr. Gunton's costs in this matter. Accordingly, the portion of the costs claim with respect to Dr. Gunton is denied.

[101] The panel awards a total award to OSEC of \$172 797.48.

Costs Claim of Keepers of the Athabasca

[102] On January 11, 2019, Keepers advised the AER that it had not received all the invoices from its experts to include in its costs claim and requested an extension, which was granted. A review of Keepers' costs claim filed on January 16, 2019, indicated that it did not meet the requirements of *Directive 031*. On January 25, 2019, Keepers submitted a revised costs claim. Additional information was requested by the AER, and on February 1, 2019, Keepers submitted another revised costs claim. On February 13, 2019, Teck submitted comments on Keepers costs claim. On February 28, 2019, Keepers submitted a reply to Teck's comments.

[103] Keepers filed a costs claim for a total of \$13 356.67, broken down as follows:

- experts' fees and honoraria \$7 306.28
- disbursements and expenses \$5 921.45
- GST \$128.97

[104] Keepers submitted that its costs claim covers the period from September 1, 2018, to December 12, 2018, and that previous funding from the CEAA Participant Funding Program was used up to the end of August 2018. Keepers considered the funds from CEAA to be for "preparation" and the AER funding to be for the hearing process itself. Keepers indicated that no preparation expenses were included in its costs claim, and that the CEAA funding did not cover costs for attendance at the hearing, preparation of cross-examination questions and motions, or development of final submissions between September and December of 2018.

[105] Teck submitted that Keepers failed to take into account the funds it was awarded under the CEAA Participant Funding Program (\$19 760), which were intended to assist participation in upcoming steps of the environmental assessment, specifically for participation in the public hearing. Teck also notes that the CEAA Participation Funding exceeds the amount of Keepers costs claim by \$6403.33.

[106] Teck submitted that Keepers costs claim ought to be denied in its entirety as all costs claimed by Keepers should have been covered by amounts awarded under the CEAA Participant Funding Program. In the alternative, and only if the panel is of the view that Keepers' reasons are compelling and justified, Teck submits that Keepers is only reasonably entitled to \$8458.17.

Costs Factors and Principles

[107] Keepers submitted that it is a not-for-profit Alberta society that operates with project funding for several unrelated projects, without core funding. Although its funding does not include participation in the Teck hearing, it was compelled to participate to bring attention to the cumulative local environment and health issues.

[108] Keepers indicated that it spent substantial resources to participate in the hearing, including travel and time of its expert and non-expert witnesses, and that it is the role of intervenors like Keepers to present concerns and observations in order to round out the picture for the panel. Keepers hoped that its submissions, cross-examination, and presentations were useful in bringing forward additional information for consideration.

[109] Keepers submitted that its costs claim is reasonable and appropriate and consists of expenses incurred to assist the panel in developing a better understanding of the risks involved in potential approval of the Frontier project and whether it is in the public interest. Furthermore, Keepers indicated that it

worked with other intervenors to prevent duplication and provided information in a manner that did not lengthen the proceeding or result in inefficiencies.

Experts' Fees, Honoraria, and Expenses

Dr. Gerda Kits

[110] Dr. Kits total claim is \$1044.20, broken down as follows:

	Fees/Honoraria	Disbursements	GST	Total
Dr. Gerda Kits	\$300.00	\$715.02	\$29.18	\$1044.20

[111] Teck submitted that notwithstanding the absence of an invoice, it is amenable to the \$300 attendance professional fees claimed.

[112] Teck noted that Dr. Kits only attended the hearing for one half-day to give direct evidence. Dr. Kits's expenses included only one day of meal and two nights of accommodation. Teck submitted that only one night of accommodation is warranted under the circumstances and that this disbursement should be reduced to \$126.37.

[113] Keepers submitted that Dr. Kits booked a hotel in Fort McMurray the night prior to her attendance at the hearing in order to attend a prehearing meeting. To safely travel home after the hearing, she stayed an additional night as the hearing ended in darkness after 5:00 p.m. Keepers paid Dr. Kits's invoice, which included two nights' accommodation. Keepers submitted that this is reasonable and rejects any reduction in the expenses claimed for Dr. Kits.

Dr. John O'Connor

[114] Keepers submitted that Dr. O'Connor attended the hearing in Fort McMurray on October 3, 2018, presented expert evidence, and was cross-examined. Dr. O'Connor's total claim is \$1446.28, broken down as follows:

	Fees/Honoraria	Disbursements	GST	Total
Dr. John O'Connor	\$1406.28	\$40.00	\$0	\$1446.28

[115] Teck noted that Keepers initially submitted an hourly rate of \$1300.00 for Dr. O'Connor in their January 25, 2019, costs claim, which was based on a job advertisement for doctors in the Fort McMurray area. Teck submitted that this was not in compliance with the scale of costs in *Directive 031*. On February 1, 2019, Keepers' revised its costs claim, changing Dr. O'Connor's hourly rate to \$234.38. Teck submits it is amenable to this hourly rate.

[116] Teck, however, noted that Keepers has also claimed six hours of attendance for Dr. O'Connor despite the fact that Dr. O'Connor was required to leave the hearing to attend work and that his absence actually delayed the hearing for approximately 45 minutes. As such, Dr. O'Connor was not actually at the

hearing for the full six hours and his absence resulted in material delays to the hearing. Teck submitted that this conduct unnecessarily lengthened the hearing and that Dr. O'Connor's hours ought to be reduced by half.

[117] As such, Teck submitted that the costs claimed for Dr. O'Connor ought to be reduced from \$1406.28 to \$703.14.

[118] Keepers submitted that Dr. O'Connor was out of the country and was not able to provide an invoice until January 31, 2019. This resulted in a regrettable but unavoidable (and mistaken) calculation due to the timeline of its invoice.

[119] Keepers submitted that Dr. O'Connor's absence was due to a matter of life and death of a patient. Keepers also submits that, because the panel had called a regular break at the time preceding Dr. O'Connor's presentation, the maximum delay was 30 minutes or less. Dr. O'Connor was at the hearing for at least six hours, which included time before and after the hearing presentation. Keepers objected to any reduction in the amounts claimed for Dr. O'Connor.

Regan Boychuk

[120] Mr. Boychuk's total claim is \$1096.56, broken down as follows:

	Fees/Honoraria	Disbursements	GST	Total
Regan Boychuk	\$400.00	\$650.61	\$45.95	\$1096.56

[121] Teck noted that Keepers claimed a daily rate \$200.00 for Mr. Boychuk in the Form E1 *Summary of Total Costs Claim* but not in the Form E2 *Summary of Professional Fees Claimed*. Therefore, Teck assumed that the fees claimed for Mr. Boychuk are for honoraria and not professional fees.

[122] Teck submitted that the AER has previously acknowledged that honoraria are not paid for other times during the hearing unless the witness is helping counsel or a similar representative or is presenting argument. Mr. Boychuk participated in the hearing for one half-day only, providing direct evidence that amounted to Mr. Boychuk reading his report that had already been filed. As such, Teck submitted that an appropriate honorarium for Mr. Boychuk is \$100.00 for the one half-day.

[123] Keepers submitted that the designation of the \$100 per half-day honoraria is the same as the \$200 per day fee as charged by Mr. Boychuk. Keepers submitted that Mr. Boychuk was one of only two Keepers witnesses that was cross-examined. His work to expose financial liability in relation to the Frontier project is important and a recognized challenge to the project. Mr. Boychuk went above and beyond to assist Keepers' participation in the hearing, providing guidance to Keepers, preparing a motion, presenting argument, and presenting important information for the panel's consideration and being cross-examined. Mr. Boychuk provided more than four full days' work in his participation as a witness for

Keepers and assisted with presenting argument. Keepers noted that it was unable to claim for all of Mr. Boychuk’s extra work given Keepers lack of knowledge regarding the AER costs process.

[124] With respect to expenses, Teck noted that Keepers claimed \$535.76 for Mr. Boychuk’s airfare but have not provided a receipt, contrary to *Directive 031*. Accordingly, Teck submitted that the airfare disbursement for Mr. Boychuk should be denied.

[125] Teck submitted that the costs claimed for Mr. Boychuk ought to be reduced from \$1096.56 to \$260.80.

[126] Keepers’ objected to any reduction in the amount claimed for Mr. Boychuk.

Paul Belanger

[127] Mr. Belanger is a co-chair for Keepers. His total claim is \$1006.00, broken down as follows:

	Fees/Honoraria	Disbursements	GST	Total
Paul Belanger	\$400.00	\$606.00	\$0	\$1006.00

[128] Teck assumed that the fees claimed for Mr. Belanger are for honoraria and not professional fees, as Keepers claimed a daily rate of \$200.00 for Mr. Belanger’s in the Form E1 *Summary of Total Costs Claim* but not in the Form E2 *Summary of Professional Fees Claimed*. Teck submitted that the AER has previously acknowledged that honoraria are not paid for other times during the hearing unless the witness is helping counsel or a similar representative or is presenting argument. Teck submitted that Mr. Belanger participated in the hearing for one half-day providing direct evidence only and that his costs claimed ought to be reduced from \$1006.00 to \$706.00.

[129] Keepers submitted that the \$100 per half-day is the same as the \$200 per day, similar to the claim for Mr. Boychuk. Keepers submitted that Mr. Belanger helped in providing guidance on the day of the hearing, in strategy calls with other witnesses leading up to the hearing, during Keepers’ monthly board calls, and in the development of Keepers’ final submission. These tasks are in addition to the half-day he presented at the hearing. Keepers objects to any reduction in the fees claimed for Mr. Belanger.

Jean L’Hommecourt

[130] Ms. L’Hommecourt is a co-chair for Keepers. Her total claim is \$3405.68, broken down as follows:

	Fees/Honoraria	Disbursements	GST	Total
Jean L’Hommecourt	\$1800.00	\$1574.57	\$31.11	\$3405.68

[131] Keepers submitted that Ms. L’Hommecourt not only attended and presented at the hearing in Fort McMurray and Calgary but attended part of the hearing in Fort Chipewyan in order to help prepare Keepers final submission.

[132] Teck estimated that the costs claim includes a daily rate of \$200 for nine days of Ms. L’Hommecourt’s attendance at the hearing. Similar to the Mr. Boychuk and Mr. Belanger’s claims, Teck notes Ms. L’Hommecourt’s fees were included in Keepers’ Form E1 *Summary of Total Costs Claim* but not in the Form E2 *Summary of Professional Fees Claimed*. As such, Teck assumed that the fees claimed for Ms. L’Hommecourt are for honoraria and not professional fees.

[133] Teck submitted that the AER has previously acknowledged that honoraria are not paid for other times during the hearing unless the witness is helping counsel or a similar representative or is presenting argument. However, given that Keepers did not have legal counsel and that Ms. L’Hommecourt was serving as co-chair for Keepers, Teck is willing to support the granting of honoraria for all days of attendance claimed. Teck acknowledges that Ms. L’Hommecourt attended the hearing for many days and that this included travel to Fort Chipewyan.

[134] With respect to travel, Keepers claimed \$991.16 for Ms. L’Hommecourt’s airfare. Teck noted that the receipt originally provided was entirely illegible such that Teck was unable to confirm the dates of travel. The updated receipt provided indicated that a total of \$691.16 was paid for Ms. L’Hommecourt’s airfare to Calgary to participate in final argument. Therefore, Teck submitted that the airfare for Ms. L’Hommecourt ought to be corrected from \$991.16 to \$691.16.

[135] Teck submitted that the costs claimed for Ms. L’Hommecourt ought to be corrected from \$3405.68 to \$3105.68. Keepers acknowledged the discrepancy in the airfare invoice as they did not provide an invoice for Ms. L’Hommecourt’s airfare to Fort Chipewyan.

[136] Keepers submitted that air travel to Fort Chipewyan has a stable cost at \$300 per return trip, and there is no other way at that time of year to get to Fort Chipewyan. Although there is no receipt, Keepers received a daily breakdown verbally from Ms. L’Hommecourt and submits that this was good enough for Keepers’ board to pay her invoice.

Jule Asterisk

[137] Ms. Asterisk’s total claim is \$5357.98, broken down as follows:

	Fees/Honoraria	Disbursements	GST	Total
Jules Asterisk	\$3000.00	\$2335.25	\$22.73	\$5357.98

[138] Ms. Asterisk claimed honoraria fees of \$200 per day for time spent between September and December 2018, which included time for attendance at hearings in Fort McMurray and Calgary (cross-examination, presentation of evidence and argument, taking notes on proceedings), coordination of Keepers’ strategy, and responses and submissions and liaising with other environmental nongovernmental organizations to ensure that submissions are not duplicative.

[139] Teck noted that Ms. Asterisk's honoraria fees are for 15 days' attendance, at eight hours per day. Teck acknowledges that Keepers is claiming for hours that are not only for attendance at the actual hearing but are for activities such as coordinating strategy, liaising with other environmental nongovernmental organizations to avoid repetition, as well as attending and taking notes at the hearing. Teck submitted that time spent on these tasks is contrary to *Directive 031* as they are not attending at the hearing, giving evidence, being cross-examined, assisting counsel and consultants, and presenting closing arguments. However, given that Keepers did not have legal counsel and that Ms. Asterisk was serving as co-chair for Keepers, Teck was willing to support the granting of some of the honoraria claimed for Ms. Asterisk. Teck was of the view that as Ms. L'Hommecourt's participation at the hearing was similar to that of Ms. Asterisk, and given that both co-chaired on behalf of Keepers, it was fair and reasonable for Ms. Asterisk to be awarded the same amount as Ms. L'Hommecourt (\$1800.00)

[140] Teck acknowledged that a preparation honorarium may be provided for participants who personally prepare a submission without expert help. Teck submitted that Keepers' Form E3 *Summary of Participant Honoraria Claimed* clearly shows that all honoraria requests are for attendance; no preparation honoraria have been requested. In addition, Teck submitted that Ms. Asterisk's cross-examination was ill-prepared and attempted to introduce argument. This resulted in repeated reminders by the panel that she was not to introduce evidence and to keep her questions relevant to the matters before the panel. Teck acknowledged that Ms. Asterisk had a prepared submission for final argument. However, Teck submitted that this was not a personally prepared submission without expert assistance. Therefore, Teck submitted that Ms. Asterisk is not eligible for a preparation honorarium pursuant to *Directive 031* and that Ms. Asterisk materially increased the duration of the hearing.

[141] In Keepers' reply, it submitted that Ms. Asterisk helped develop Keepers' position on this file, prepared submissions, strategized for efficiencies, cross-examined Teck, and presented argument. Ms. Asterisk's daily log of activities in relation to the proceeding was provided. Keepers considered the honoraria fees of \$3000 for Ms. Asterisk to be fair. It indicated that all items in the daily log are crucial to the appropriate representation of Keepers.

[142] Keepers submitted that it is not appropriate to arbitrarily assign the same cost to both Ms. Asterisk and Ms. L'Hommecourt given the disparate time spent on this file by each. Keepers also noted that it was Ms. Asterisk's first cross-examination and that she responded to any panel direction provided.

[143] Teck submitted that Ms. Asterisk's claim for approximately 3550 kilometres of mileage, without any explanation, is excessive and unjustified. Teck submitted it would be amenable to mileage costs in the amount of \$400.00, as it is in the range of the other Keepers' participants.

[144] Keepers submitted that the actual total for Ms. Asterisk's travel to participate in this hearing was 3551 km for travel between Slave Lake, Fort McMurray, and Calgary, during the period of September

and December 2018. Keepers submitted that it finds Teck's arbitrary request to reduce the travel to approximately 792 km is insulting.

[145] Teck submitted that the costs claimed by Ms. Asterisk ought to be reduced from \$5357.42 to \$2764.72.

[146] Keepers submits that it objects to any reduction in the fees and expenses claimed by Ms. Asterisk.

Views of the Panel

[147] At the outset, the panel notes that Keepers' costs claim covers a period from September 1, 2018, to December 12, 2018. No costs were claimed in relation to Keepers' preparation for the hearing prior to this date as Keepers indicates that the \$19 760 awarded to it through the CEAA Participant Funding Program was used up to the end of August of 2018. Keepers submit that the funds from CEAA were used for preparation and that AER funding is for the hearing process itself (September to December of 2018).

[148] AER costs are provided to assist parties with its participation in a proceeding, and include costs related to preparation for a hearing. When advance or interim costs are awarded, the participant is required to provide a costs claim that accounts for expenses incurred using the advance or interim funds. These costs are reviewed at the end of the proceeding to ensure that the costs related to the amounts advanced were actually and necessarily incurred for purposes directly related to the hearing. If it is determined that the award was not appropriate, the advance funds must be refunded in whole or in part to the project proponent.

[149] The funding provided in relation to the CEAA Participant Funding Program is intended to assist in various steps of the environmental assessment, including the public hearing. Consequentially, there may be some overlap with AER costs. Furthermore, the panel agreement directed the panel to take into account, to the extent practicable, the participant funding decisions made under the CEAA Participant Funding Program when making decisions under the AER's costs regime.

[150] In the absence of a costs claim for the entirety of Keepers' preparation for and participation in the hearing process, it is difficult to assess whether Keepers needed financial resources to make an adequate submission in the proceeding and whether previously awarded amounts covered all or some of Keepers' AER costs claim. However, the panel does not view this as grounds to deny the claim in its entirety, as submitted by Teck. The panel is prepared to accept Keepers' submission that the CEAA funding covered costs incurred up until August 31, 2018, and that the AER costs claim is for expenses related to hearing attendance, cross-examination, and final argument. This finding is based upon the observed participation of Keepers in the environmental assessment process, including the public hearing, and the nature of the costs claimed by Keepers in its AER costs claim. The panel notes that Keepers participated in the environmental assessment process before September 2018, as evidenced by the comments provided on the Frontier project between 2015 and 2018 and Keepers' hearing submission, which included reports and

submissions prepared by Dr. Kits, Mr. Boychuk, Dr. O'Connor, and Mr. Belanger. It is apparent that Keepers' costs claim does not include expenses incurred for this participation, which occurred before September 2018. However, this participation was observed and added value. In these specific circumstances, the panel is prepared to award Keepers the costs set out below.

[151] In relation to Dr. Kits, the panel notes that Teck specifically disputes only the accommodation disbursements claimed. In particular, Teck submits that only one night's accommodation is warranted given that Dr. Kits attended the hearing for one half-day to give direct evidence. The panel finds that the two nights' accommodation claimed by Dr. Kits is reasonable under the circumstances, particularly in light of the travel involved and unpredictability of the hearing schedule. Furthermore, the amount claimed per night is below maximum allowed in *Directive 031*. Accordingly, the panel awards \$300 in relation to Dr. Kits professional fees and \$744.20 in disbursements and GST, as claimed.

[152] In relation to Dr. O'Connor, Teck specifically disputes the amount of hours in professional fees claimed. Teck asserts that the six hours claimed for attendance at the hearing should be limited to three hours as Dr. O'Connor was absent during part of Keepers' testimony and actually delayed the hearing for approximately 45 minutes. The panel accepts that Dr. O'Connor has obligations to his patients and that Keepers made efforts to minimize the delay. As such, the panel is prepared to award fees for six hours of Dr. O'Connor's time as claimed. The panel awards \$1406.28 in relation to professional fees and \$40 in disbursements.

[153] In relation to Mr. Boychuk, Teck specifically disputes the amount claimed for Mr. Boychuk's time and airfare. The panel notes that it appears from Keepers' costs claim that an honorarium, rather than professional fees, was claimed for Mr. Boychuk's participation in the hearing. The panel notes that Keepers' hearing presentation commenced at approximately 11:00 a.m. on October 4th and ended shortly after 5:00 p.m. on the same date. As a result, the panel finds it reasonable under the circumstances to award an attendance honorarium in the amount of \$200 for Mr. Boychuk's time giving evidence and being cross-examined. This amount is in accordance with *Directive 031* and represents \$100 for each half-day of hearing time. In relation to Mr. Boychuk's airfare, the panel notes that no supporting receipt was provided, as required by *Directive 031*. However, under the circumstances the panel is prepared to award the amount for airfare in any event as Mr. Boychuk attended the hearing and claimed an amount consistent with other witnesses travelling by air between Calgary and Fort McMurray. Accordingly, Mr. Boychuk is awarded \$696.56 in disbursements and GST.

[154] In relation to Mr. Belanger, Teck specifically disputes the amount claimed for Mr. Belanger's time. The panel notes that it appears from Keepers' costs claim that an honorarium, rather than professional fees, was claimed for Mr. Belanger's participation in the hearing. The panel is prepared to award an attendance honorarium in the amount of \$200 for Mr. Belanger's time giving evidence. The panel will also award Mr. Belanger's disbursements as claimed in the amount of \$646.00 given that Teck did not dispute these amounts.

[155] In relation to Ms. L'Hommecourt, Teck indicates it is amendable to the honoraria claimed. Teck specifically disputes only the airfare claimed for Ms. L'Hommecourt's travel to Fort Chipewyan as no receipt supported the claim, as required by *Directive 031*. Keepers indicates that Ms. L'Hommecourt did not receive a receipt for her travel to Fort Chipewyan, and that air travel was the only way to access this community in October. Keepers also notes that such airfare is provided at a stable cost of \$300 per return trip. Under the circumstances, the panel is prepared to award the amount claimed for Ms. L'Hommecourt's airfare to Fort Chipewyan. The panel observed that Ms. L'Hommecourt was present during the proceeding in Fort Chipewyan and acknowledges that air travel was the only means to attend this portion of the hearing. Accordingly, the panel awards honoraria, disbursements and GST as claimed for Ms. L'Hommecourt in the amount of \$3405.68.

[156] In relation to Ms. Asterisk, Teck specifically disputes the honoraria claimed. The panel notes that in Keepers' reply submission, Ms. Asterisk indicates that she attended the hearing for approximately 6.5 days. In light of this, and in recognition of Ms. Asterisk's role as executive director of Keepers and the fact that no legal counsel was retained, the panel is prepared to award \$1300 in attendance honoraria. Furthermore, having regard for the steps taken by Ms. Asterisk in preparation for Keepers' testimony, questioning of Teck, and presentation of closing argument, the panel is prepared to award Ms. Asterisk a preparation honorarium in the amount of \$1700. This amount recognizes Ms. Asterisk's role as executive director of Keepers and that no legal counsel was retained to support Keepers participation. Furthermore, while Keepers lacked familiarity with the process, the panel is of the view that efforts were made to comply with direction provided by the panel. Accordingly, the panel will award Ms. Asterisk honoraria in the amount of \$3000.

[157] In relation to Ms. Asterisk's disbursements, Teck specifically disputes Ms. Asterisk's mileage. Upon review of Keepers' reply submission where Ms. Asterisk's mileage was explained, the panel is satisfied that the mileage claimed has been justified and is reasonable and directly and necessarily related to the proceeding. Accordingly, the panel will award \$2357.98 for Ms. Asterisk's disbursements as claimed.

[158] The panel awards a total of \$12 996.70 to Keepers.

Costs Claim of the Trappers

[159] On November 19, 2018, Peter Hoffmann filed a costs claim on behalf of himself, Darrel Shevolup, and Chuck Shevolup (collectively, the trappers); consultant Donald McCarger; and Darlene Gladieu-Quinn of Triune Law. On January 28, 2019, Teck submitted comments on the trapper's costs claim. The trappers replied to Teck's comments on January 31, 2019, with a letter from the trappers and a letter from Don McCargar on behalf of the trappers, and February 1, 2019, with a letter from Darlene Gladieu-Quinn of Triune Law on behalf of the trappers.

[160] The trappers filed a costs claim for a total of \$47 038.05, broken down as follows:

• Trappers' fees	\$4 329.30
• Consultant fees	\$30 618.00
• Legal fees	\$2 905.00
• Disbursements and expenses	\$7 152.00
• GST	\$2 033.75

Trappers' Fees

[161] The total claim for the trappers' lost wages and disbursements is \$8665.22, broken down as follows:

	Fees	Disbursements	GST	Total
Peter Hoffmann	\$1 445.50	\$1 519.48	\$75.97	\$3 040.95
Darrel Shevolup	\$1 585.30	\$1 189.59	\$59.48	\$2 834.37
Chuck Shevolup	\$1 298.50	\$1 420.38	\$71.02	\$2 789.90
Total	\$4 329.30	\$4 129.45	\$206.47	\$8 665.22

[162] Teck submitted that it is amenable to paying the amounts claimed by the trappers for lost wages and disbursements relevant to their participation in the hearing.

[163] The trappers agreed with Teck's offer but wished to wait for an AER decision on consulting and legal fees rather than receive the costs claimed for lost wages and disbursements immediately.

Donald McCargar's Consulting Fees and Disbursements

[164] Mr. McCargar's total claim is \$35 264.57, broken down as follows:

	Fees	Disbursements	GST	Total
Donald McCargar	\$30 618.00	\$2967.30	\$1679.27	\$35 264.57

[165] Teck submitted that Mr. McCargar's claims for expert/consultant fees were unwarranted as his expertise was not directly necessary and reasonable for the trappers' participation in the hearing, nor did it contribute to the panel's understanding of the issues before it. Accordingly, Teck submitted that that these expenses should be dismissed in their entirety. The trappers strongly disagreed with Teck's submission that Mr. McCargar's expenses be dismissed in their entirety.

[166] Teck stated that it is unclear how Mr. McCargar's expertise in land development is related to the services performed for the trappers. As an expert's assistance must be related to the person's expertise, it is unreasonable for Mr. McCargar to claim his 44 years of land experience was related to the representation of the trappers.

[167] The trappers strongly disagreed that Mr. McCargar's expertise was not directly necessary and reasonable for the trapper's participation. Mr. McCargar submitted that he meets the definition of expert and consultant under section 6.2.2 of *Directive 031*. His 44 years of experience in construction and land development included consulting as an expert witness in various building and administrative hearings, as well as extensive dealings with procedural applications with municipal, provincial and federal governments which involved public hearings. Mr. McCargar also submitted that the Frontier project falls into the realm of land and project development which he has been involved in for the past 44 years

[168] Mr. McCargar submitted that he has been an indigenous leader for the past 12 years and an indigenous harvester for 48 years. As Métis, he identified with the trappers as belonging to an indigenous community. Using his indigenous experience and knowledge, he assisted the trappers with the presentation of their evidence regarding their indigenous rights.

[169] Teck submitted that Mr. McCargar's participation had minimal contribution to the trapper's participation. He did not file any written evidence or written argument, nor did he deliver final argument. The trappers were granted participant status on the first day of the hearing without Mr. McCargar's intervention. Mr. McCargar's participation during the trapper's direct evidence involved inappropriate and irrelevant delivery of evidence, and his minimal knowledge of the Frontier project and lack of preparation, which he admitted to on several occasions, was apparent during the trappers' cross-examination.

[170] The trapper's indicated that Mr. McCargar's assistance was critical to the accuracy, efficiency and validity of their presentation. Mr. McCargar submitted that because the panel would not allow any written submissions to be made, he needed to work extensively with the trappers on coordinating and organizing their thoughts and evidence for their oral presentation.

[171] Mr. McCargar submitted that with his help, the trappers' original allotted time for presentation was extended from 30 minutes to 2 hours. During their presentation, his line of questioning helped keep to the issues at hand and explained vital evidence which only the trappers, in their unique position, could provide to the panel. The presentation was followed with another hour of questioning by Teck and the panel, totalling approximately 16 questions. This shows the importance of the manner in which the trappers' evidence was delivered and assisted the panel in deliberating on the issues before it. The trappers also received 30 minutes to cross-examine Teck. These increases in time were the result of Mr. McCargar's efforts and advocacy on the trappers' behalf.

[172] Teck submitted that if the AER finds that Mr. McCargar is entitled to certain fees, the amounts claimed for both fees and disbursements are excessive and inconsistent with the AER's cost-awarding practice. Mr. McCargar's expertise was not relevant to or necessary for the trappers' participation. As such, he should not be entitled to claim the highest scale of cost associated with consultant/analyst/expert fees of \$270 per hour. At most, Mr. McCargar participated in the hearing as a lay person and should only

be permitted to claim honoraria for organizing a group in the amount of \$300–\$500, as stated in *Directive 031*.

[173] If the AER decides Mr. McCargar should be entitled to consultant fees, Teck submitted that Mr. McCargar should only be entitled to the \$120 hourly rate for 1–4 years’ experience and that a number of line items submitted by Mr. McCargar are not in accordance with the AER cost-award scheme. Mr. McCargar claimed the full hourly rate for his travel time. Teck submits that this is egregious and in contravention to the scale of costs, where only half of the hourly rate for travel time is allowed. Teck submitted that Mr. McCargar should only be entitled to the half-rate for travel time.

[174] Teck also submitted that the trappers’ claim on behalf of Mr. McCargar for a total of 113.4 hours of preparation and hearing attendance is unreasonable for the amount of participation by the trappers at the hearing. Several line items in Mr. McCargar’s invoice are inflated and unreasonable, including 26.5 total hours of preparation for direct examination when the trappers were allotted two hours for direct evidence and a 2 hour meeting with ACFN on October 11, 2018, with undefined relevance to the hearing.

[175] Mr. McCargar disputed Teck’s claim that his total number of hours for preparation and hearing attendance was 113.4 hours. Excluding travel time, Mr. McCargar submitted that he spent 79.8 hours for attendance at the hearing and preparation. The trappers submitted that the hours claimed by Mr. McCargar are more than reasonable.

[176] With respect to the meeting with ACFN, Mr. McCargar submitted that he had to communicate with ACFN to confirm that ACFN received funds from Teck to place monitoring stations under the supervision of ACFN on the trappers’ lands without the trappers’ approval.

[177] Mr. McCargar submitted that he has already reduced his consulting rate from \$300 per hour to fit into the AER’s scale of costs. He indicated that his assistance was helpful and essential to the trappers as evidenced by their letters of reference provided in the trappers’ January 31, 2019, reply submission, and that it was necessary to make adequate submissions, was not unreasonable and assisted the panel in understanding the issues before it.

Legal Fees and Expenses of Darlene Gladieu-Quinn of Triune Law

[178] Ms. Gladieu-Quinn’s total claim is \$3108.26 broken down as follows:

	Fees	Disbursements	GST	Total
Darlene Gladieu-Quinn	\$2905.00	\$55.25	\$148.01	\$3108.26

[179] Teck submitted that Ms. Gladieu-Quinn’s fees should be dismissed as her contribution was neither necessary for the trappers’ participation at the hearing nor did it assist the panel. Teck noted that she only appeared on behalf of the trappers to support Mr. McCargar’s submission for adjournment.

[180] The trappers indicated that Ms. Gladieu-Quinn's assistance was critical to the accuracy, efficiency and validity of their presentation. The trappers further submitted that Ms. Gladieu-Quinn's assistance was necessary and of extreme importance to the relevance of their presentations. Accordingly, the claim made in relation to Ms. Gladieu-Quinn is valid and reasonable.

[181] Ms. Gladieu-Quinn stated that her legal costs should not be dismissed as the legal services she provided were in the best interests of all involved. To deny the costs for legal assistance in these matters would essentially be a denial of procedural fairness. She further added that the time spent in assisting the trappers was reasonable under the circumstances and were directly and necessarily incurred for the purposes relating to the hearing.

[182] Mr. McCargar submitted that Ms. Gladieu-Quinn's assistance, combined with his consulting expertise, provided bare essential legal services that did not require the full cost of a lawyer.

Views of the Panel

[183] Given that Teck did not dispute and is amenable to paying the costs claimed by Peter Hoffmann, Darrel Shevolup, and Chuck Shevolup for lost wages and disbursements, the panel orders Teck to pay these costs, including GST, as claimed.

[184] In relation to fees claimed by the trappers for Mr. McCargar, the panel is prepared to award some of the costs claimed on the basis that Mr. McCargar is a consultant and provided some assistance to the trappers in preparing and presenting their evidence. The panel acknowledges Mr. McCargar's many years of experience as a consultant in construction and land management. However, he was not retained by the trappers as an expert in that regard in this proceeding. Under the circumstances, the services provided to the trappers by Mr. McCargar are akin to the services an agent would provide. For this reason, the panel finds that an hourly rate of \$100 is more reasonable than the \$270 per hour claimed. The rate selected represents a person with 1–4 years' experience. The panel notes that the maximum allowable hourly rate for consultants with this level of experience (\$120 per hour) is not awarded as a matter of course. The panel finds that under the circumstances, the rate selected is reasonable and appropriate for Mr. McCargar given his skills as an agent in proceedings of this nature, the limited nature of the trappers' participation, and recognizing that Mr. McCargar is not a lawyer.

[185] The panel finds that the claim of 113.4 hours for McCargar is excessive given the nature of the trappers' participation. In this case, the trappers examined Teck for approximately 30 minutes and presented direct evidence over the course of approximately one half-day. Furthermore, the participation of the trappers in this proceeding was limited to oral testimony; the presentation of evidence was not technically complex and legal counsel was also retained. However, the panel recognizes the value the trappers indicate Mr. McCargar brought to their participation. As such, the panel is prepared to allow a reasonable amount of Mr. McCargar's fees related to preparation, attendance, and travel time (the latter at half the hourly rate).

[186] In this case, the panel is prepared to award the trappers Mr. McCargar's consulting fees for two eight-hour days of hearing attendance and two eight-hour days of preparation. The fees awarded for hearing attendance are on account of Mr. McCargar's attendance on behalf of the trappers to cross-examine Teck, request an adjournment and expanded participation, and facilitate the trappers' direct evidence. The panel views these amounts to be reasonable and proportionate to the trappers' participation in this proceeding.

[187] In relation to the disbursements claimed for Mr. McCargar, the panel is prepared to award amounts that are reasonable and directly and necessarily related to the trappers' participation in the proceeding. In this case, the panel will award five nights' accommodation at the rate claimed (\$140 per day) and five days for meals at the per diem set out in *Directive 031*. The panel notes that the receipts provided to support the accommodation claim are in Ms. Gladieu-Quinn's name. Given Mr. Hoffmann's sworn statement in the trappers' Affidavit of Fees and Disbursements that accommodation costs were incurred by the trappers and Mr. McCargar's representation that he and Ms. Gladieu-Quinn shared a room, the panel is prepared to award accommodation costs as noted above. The panel will also award Mr. McCargar's mileage and photocopying, as claimed. The panel will not award fees or disbursements in relation to the meeting Mr. McCargar attended with ACFN in Edmonton. Notwithstanding the trappers' reply submission, the panel does not consider this meeting to be necessary or directly related to matters in the proceeding.

[188] In relation to Ms. Gladieu-Quinn, the panel accepts that some legal advice may have been necessary for the trappers' participation and that costs may have been minimized through use of legal counsel only as necessary. However, the panel notes that while Ms. Gladieu-Quinn appeared at the hearing to support the trappers' application for an adjournment and expanded participation, she did not otherwise appear to play a significant role in the trappers' participation in the hearing. Furthermore, the panel does not find that a lawyer billing at the highest scale for professional fees was required under the circumstances. Given the complexity of issues and the nature of support provided, the panel views a rate of \$240 (1–4 years' experience) to be more appropriate here. However, the panel also recognizes the value the trappers indicate Ms. Gladieu-Quinn brought to their participation. In light of the above, the panel is prepared to award the trappers \$2091.60 in legal fees and GST (8.3 hours claimed at a rate of \$240 per hour) and \$30.25 for Ms. Gladieu-Quinn's mileage.

[189] The panel notes that the trappers claimed \$25 for a "File opening admin. fee" charged by Ms. Gladieu-Quinn. This type of fee falls within the "overhead charges implicit in the normal operation of a law firm" that are deemed to be included in the legal fees awarded, and therefore the panel does not award this \$25 cost.

[190] The panel awards a total of \$17 969.14 to the trappers.

Costs Claim of Triune Law

[191] On December 12, 2018, Ms. Gladieu-Quinn of Triune Law submitted a costs claim for her representation as counsel for OFMFN and Clearwater. In the costs claim, Ms. Gladieu-Quinn indicated that there had been a breakdown of the solicitor-client relationship.

[192] Triune Law filed a costs claim for a total of \$49 649.86, broken down as follows:

- Legal fees \$44 205.00
- Disbursements and expenses \$3 080.58
- GST \$2 364.28

[193] On January 21, 2019, the AER provided Triune Law an opportunity to provide comments on the basis which the AER could consider its claim given that only participants, as defined in section 58 of the *Rules of Practice*, are eligible to recover costs and that the AER does not accept multiple claims submitted on behalf of one participant. In this letter, the AER noted that claims must be submitted with authorization of the participant.

[194] On January 25, 2019, Triune Law submitted its comments. Triune Law agreed that it was not a participant in the proceedings. However, it submitted that the liability of Mr. Malcolm to Ms. Gladieu-Quinn had been created and the account could be taxed and enforced under the provisions of the Rules of Court. The AER should be encouraged to avoid the promotion of litigation. Triune Law also requested that the costs claims submitted by Mr. Malcolm on behalf of OFMFN and Clearwater be combined with Triune Law's costs claim to form one costs submission given the unusual circumstances—the breakdown of the solicitor-client relationship. Triune Law submitted that Mr. Malcolm had refused to authorize its claim for legal fees, despite Mr. Malcolm's prior direction to Triune Law that its invoice be submitted to the AER if funds are no longer available through the CEAA Participant Funding Program and despite receiving capable legal assistance.

[195] On January 28, 2019, Teck provided a response to Triune Law's costs claim. Teck submitted that the costs claim was not in compliance with the *Rules of Practice* and should be dismissed. Ms. Gladieu-Quinn was not a party to the hearing and is therefore ineligible to claim costs. Any dispute between Ms. Gladieu-Quinn and Mr. Malcolm is not a matter that should involve the AER or Teck.

[196] On January 29, 2019, John Malcolm, on behalf of OFMFN and Clearwater, submitted a response. This response did not authorize Triune Law to submit a costs claim on behalf of OFMFN or Clearwater.

[197] On January 30, 2019, Triune Law submitted a reply to comments from Teck, OFMFN, and Clearwater.

Views of the Panel

[198] Only participants, as defined in section 58 of the *Rules of Practice*, are eligible to recover costs associated with participation in an AER hearing. The panel finds that OFMFN and Clearwater were participants in the subject proceeding, not Triune Law. In its submissions, Triune Law agrees that it is not a participant.

[199] The AER does not accept multiple claims submitted on behalf of one participant. While claims may be submitted by a representative of a participant (including a law firm), they must be made with the authorization of the participant. The AER will not accept costs claims made by law firms that are not authorized by a participant and that involve a law firm directly billing for the fees and disbursements the firm claims are owed to it by a hearing participant.

[200] It appears to the panel given the submissions filed in this costs proceeding that Triune Law's costs claim is not supported by or made with the authority of OFMFN or Clearwater. Furthermore, the panel received costs claims from John Malcolm filed on behalf of Clearwater and OFMFN. Even if the panel was prepared to combine the costs claims as proposed by Triune Law, the panel does not have before it a costs claim from OFMFN or Clearwater. Clearwater's costs claim was closed as Teck and Clearwater reached a settlement and OFMFN's request to submit a late costs claim was denied. In addition, Triune Law has requested that payment be sent directly to it. It appears to the panel that Triune Law is directly billing for the fees and disbursements it claims are owed to it by OFMFN and Clearwater.

[201] Given the above, the panel dismisses Triune Law's costs claim in its entirety.

[202] The panel notes that other issues were raised by Triune Law in its submissions. However, given that Triune Law's claim was dismissed as outlined above, the panel will not address these arguments. Furthermore, the panel notes that it is surprised to see the communications between a solicitor and client submitted by Triune Law as part of this costs proceeding.

[203] The panel also notes that the AER's costs claim process is not the forum in which to resolve disputes between a lawyer and client over legal fees, as set out in section 6.2.1 of *Directive 031*:

The AER cannot decide disputes between a lawyer and a client over legal fees. Such disputes may be resolved through the taxing officer at the Court of Queen's Bench.

Order

[204] The AER hereby orders that Teck pay costs for OSEC in the amount of \$169 898.89 and GST in the amount \$2898.59, for a total of \$172 797.48. This amount must be made payable to The Pembina

Institute and paid within 30 days from issuance of this order. It is to be sent to EcoJustice Canada Society as the submitter of the claim at

EcoJustice Canada Society
800, 744 – 4 Ave SW
Calgary AB T2P 3T4

[205] The AER hereby orders that Teck pay costs to Keepers in the amount of \$12 867.73 and GST in the amount \$128.97, for a total of \$12 996.70. This amount must be paid within 30 days from issuance of this order to Keepers as the submitter of the claim at

Keepers of the Athabasca
1008 – 14 Ave SE
Slave Lake AB T0G 2A3

[206] The AER hereby orders that Teck pay costs for the trappers in the amount of \$17 402.95 and GST in the amount \$566.19, for a total of \$17 969.14. This amount must be paid within 30 days from issuance of this order to Peter Hoffmann as submitter of the claim at

Peter Hoffmann
PO Box 101
Vilna AB T0A 3L0

Dated in Calgary, Alberta, on October 23, 2019.

Alberta Energy Regulator

Mr. A. Bolton
Presiding Hearing Commissioner

Mr. R.C. McManus
Hearing Commissioner

Mr. W. Klassen
Hearing Commissioner

Appendix 1 Summary of Costs Claimed and Awarded

	Total Fees/ Honoraria Claimed	Total Expenses/ Disbursements Claimed	Total GST Claimed	Total Amount Claimed	Total Fees/ Honoraria Awarded	Total Expenses/ Disbursements Awarded	Total GST Awarded	Total Amount Awarded	Reduction
Oil Sands Environmental Coalition									
EcoJustice Canada	\$223 258.00	\$8 639.11	\$335.75	\$232 232.86	\$109 776.34	\$8 639.11	\$335.75	\$118 751.20	\$113 481.66
Jodi McNeill	\$10 680.00	\$964.61	\$582.16	\$12 226.77	\$10 680.00	\$964.61	\$582.16	\$12 226.77	\$0.00
Nina Lothian	\$4 715.00	\$821.69	\$276.73	\$5 813.42	\$4 715.00	\$821.69	\$276.73	\$5 813.42	\$0.00
Jan Gorski	\$15 880.00	\$932.47	\$840.46	\$17 652.93	\$15 880.00	\$932.47	\$840.46	\$17 652.93	\$0.00
Simon Dyer	\$13 095.00	\$838.99	\$688.76	\$14 622.75	\$6 547.50	\$838.99	\$361.39	\$7 747.88	\$6 874.87
Nikki Way	\$2 081.25	\$800.26	\$144.52	\$3 026.03	\$0.00	\$0.00	\$0.00	\$0.00	\$3 026.03
Chris Joseph (Swift Creek Consulting)	\$10 800.00	\$918.68	\$540.00	\$12 258.68	\$9 300.00	\$803.18	\$502.10	\$10 605.28	\$1 653.40
Tom Gunton (Swift Creek Consulting)	\$3 150.00	\$0.00	\$157.50	\$3 307.50	\$0.00	\$0.00	\$0.00	\$0.00	\$3 307.50
Total	\$283 659.25	\$13 915.81	\$3 565.88	\$301 140.94	\$156 898.84	\$13 000.05	\$2 898.59	\$172 797.48	\$128 343.46
Keepers of the Athabasca									
Dr. Gerda Kits	\$300.00	\$715.02	\$29.18	\$1 044.20	\$300.00	\$715.02	\$29.18	\$1 044.20	\$0.00
Dr. John O'Connor	\$1 406.28	\$40.00	\$0.00	\$1 446.28	\$1 406.28	\$40.00	\$0.00	\$1 446.28	\$0.00
Regan Boychuk	\$400.00	\$650.61	\$45.95	\$1 096.56	\$200.00	\$650.61	\$45.95	\$896.56	\$200.00
Paul Belanger	\$400.00	\$606.00	\$0.00	\$1 006.00	\$200.00	\$646.00	\$0.00	\$846.00	\$160.00
Jean L'Hommecourt	\$1 800.00	\$1 574.57	\$31.11	\$3 405.68	\$1 800.00	\$1 574.57	\$31.11	\$3 405.68	\$0.00
Jule Asterisk	\$3 000.00	\$2 335.25	\$22.73	\$5 357.98	\$3 000.00	\$2 335.25	\$22.73	\$5 357.98	\$0.00
Total	\$7 306.28	\$5 921.45	\$128.97	\$13 356.70	\$6 906.28	\$5 961.45	\$128.97	\$12 996.70	\$360.00
Trappers									
Peter Hoffmann	\$1 445.50	\$1 519.48	\$75.97	\$3 040.95	\$1 445.50	\$1 519.48	\$75.97	\$3 040.95	\$0.00
Darrel Shevolup	\$1 585.30	\$1 189.59	\$59.48	\$2 834.37	\$1 585.30	\$1 189.59	\$59.48	\$2 834.37	\$0.00
Chuck Shevolup	\$1 298.50	\$1 420.38	\$71.02	\$2 789.90	\$1 298.50	\$1 420.38	\$71.02	\$2 789.90	\$0.00
Donald McCargar	\$30 618.00	\$2 967.30	\$1 679.27	\$35 264.57	\$4 820.00	\$2 101.95	\$260.12	\$7 182.07	\$28 082.50
Triune Law – Darlene Gladieu-Quinn	\$2 905.00	\$55.25	\$148.01	\$3 108.26	\$1 992.00	\$30.25	\$99.60	\$2 121.85	\$986.41
Total	\$37 852.30	\$7 152.00	\$2 033.75	\$47 038.05	\$11 141.30	\$6 261.65	\$566.19	\$17 969.14	\$29 068.91
Triune Law									
Darlene Gladieu-Quinn	\$44 205.00	\$3 080.58	\$2 364.28	\$49 649.86	\$0.00	\$0.00	\$0.00	\$0.00	\$49 649.86
Total	\$44 205.00	\$3 080.58	\$2 364.28	\$49 649.86	\$0.00	\$0.00	\$0.00	\$0.00	\$49 649.86