LAND AND PROPERTY RIGHTS TRIBUNAL

Citation: ATCO Electric Ltd v Woronuk, 2023 ABLPRT 609

Date: 2023-11-27
File No.: RE2021.0024
Order No.: LPRT2023/SR0609
Municipality: Municipal District of Spirit River No. 133

In the matter of a proceeding commenced under section 23 of the *Surface Rights Act*, RSA 2000, c S-24 (the "*Act*")

And in the matter of land in the Province of Alberta within the:

NE ¼ 9-78-5-W6M as described in Certificate of Title No. 772 073 291 A (the "Land") particularly the area granted for Alberta Utilities Commission License No. 25181-D02-2020 (the "Site").

Between:

ATCO ELECTRIC LTD.,

Applicant/Operator,

- and -

DENNIS WORONUK (owner),
BRYAN WORONUK (occupant),
KELLY WORONUK (occupant),
CANADIAN UTILITIES LIMITED,
ALBERTA GOVERNMENT TELEPHONES,
ATCO GAS AND PIPELINES LTD.,
and
ALBERTA POWER LIMITED,

Respondents.

Before: Ike Zacharopoulos, Chair
Barbara McNeil
Glenn Selland
(the "Panel")

APPEARANCES

For the Applicant: Tim Myers, Bennett Jones LLP
Robert Telford, Telford Land & Valuation Inc.

For the Owner: Paul Barrette, Prowse Chowne LLP
Dennis Woronuk, landowner
Pat Woodlock, HarrisonBowker Valuation Group

No other Respondents were represented although duly notified of the Hearing.

COMPENSATION ORDER

IT IS ORDERED that the compensation payable by the Operator for the rights granted by Order No. LPRT1162/2021 dated August 20, 2021 is:

(a) The sum of FOURTEEN THOUSAND NINE HUNDRED TWENTY FOUR and 00/100 DOLLARS ($14,924.00), less any payment made, payable to Dennis Woronuk;

(b) The sum of EIGHT HUNDRED and 00/100 DOLLARS ($800.00), less any payment made, payable to Dennis Woronuk;

(c) For the period August 20, 2021 to August 19, 2022, the sum of FOUR THOUSAND FIVE HUNDRED NINETY SIX and 41/100 DOLLARS ($4,596.41), less any payment made, payable to Dennis Woronuk;

(d) For the period August 20, 2022 to August 19, 2023, the sum of FOUR THOUSAND FIVE HUNDRED NINETY SIX and 41/100 DOLLARS ($4,596.41), less any payment made, payable to Dennis Woronuk;

(e) For the period August 20, 2023 to August 19, 2024, the sum of FOUR THOUSAND FIVE HUNDRED NINETY SIX and 41/100 DOLLARS ($4,596.41), less any payment made, payable to Dennis Woronuk;

(f) After August 19, 2024, and so long as Order No. LPRT1162/2021 is in effect, for each year or portion of a year, the sum of FOUR THOUSAND FIVE HUNDRED NINETY SIX and 41/100 DOLLARS ($4,596.41), to be paid on or before August 20, 2024 and on or before August 20 in each year afterward, to Dennis Woronuk;

(g) Interest is payable on any unpaid balance owing at the Bank of Canada rate in effect as of the effective date of Order No. LPRT1162/2021; and

(h) Costs in the amount of FIFTY THREE THOUSAND TWENTY ONE and 05/100 DOLLARS ($53,021.05) are payable by the Operator to Dennis Woronuk.

DECISION AND REASONS

BACKGROUND/OVERVIEW:

[1] This Panel is tasked with determining compensation for Right of Entry Order No. LPRT 1162/2021 pursuant to section 23 of the *Act*. The Order was issued to ATCO Electric Ltd. ("ATCO") on August 20th, 2021 for the alteration and operation of ATCO's existing Rycroft 730S Substation which was approved under Alberta Utilities Commission Transmission Line Permit and License No. 25181-D02-2020. The right of entry order was granted in respect of a 4.55-acre expansion to the existing Rycroft substation. The existing station consists of a 1.4-acre grant of land under Right of Entry Order No. E296/85 issued February 13th, 1985 and a 0.23 acre land parcel in the northeast corner of the Land owned in fee simple by ATCO.

[2] At the time the Panel tasked with rendering a decision on ATCO's application for a right of entry order first reviewed materials provided in support of the application, no objections or submissions were included in the electronic file. Order No. LPRT1162/2021 was issued based on the materials before that Panel. On or around August 27th, 2021, Tim Myers ("Myers") on behalf of ATCO advised Tribunal administration that an objection to the right of entry application had been submitted by landowner Dennis Woronuk ("Woronuk") and occupant Bryan Woronuk. On or around August 30th, 2021, Woronuk submitted an application under section 29 of the *Act* requesting that Order No. LPRT1162/2021 be rescinded citing concerns with topsoil removal and characterization of the substation as a transmission line.

[3] The Tribunal conducted a written hearing into the section 29 matter and issued a Decision on September 2nd, 2021. Amending Order No. LPRT1551/2021 was issued on September 17th, 2021 addressing technical issues with Order No. LPRT1162/2021. On December 7th, 2021, the Tribunal issued amending Order No. LPRT2442/2021 addressing use of the term *right of way* in Appendix A which forms part of the Order No. LPRT1162/2021, by substituting the term *right of way* with the term *area granted*.

[4] Woronuk applied under section 27 of the *Act* for a review of the annual rate of compensation established under Order No. E296/85 (Tribunal File No. RR2021.0016). Correspondence dated September 22nd, 2022 from Woronuk's legal counsel Paul Barrette ("Barrette") indicated Woronuk's desire to discontinue the rate review application and only proceed on the matter of compensation in respect to the 4.55-acres granted under Order No. LPRT 1162/2021. This Panel only addresses the matter of compensation associated with Order No. LPRT1162/2021.

[5] Dispute Resolution Conferences were held between September 15th, 2021 and September 13th, 2022 resulting in the Hearing being rescheduled from June 2nd and 3rd to October 18th and 19th, 2022. A virtual Hearing was held on October 18th and 19th, 2022 with all parties located within the Province of Alberta.

RELEVANT LEGISLATION:

Surface Rights Act, RSA 2000, c S-24, ss. 23, 25
Surface Rights Rules, rule 31

EXHIBITS FILED:

The Exhibits are listed in Appendix A.

ISSUES:

[6] The issues before the Panel are:

1. What amount of compensation, if any, is payable under section 25(1)(a) or (b) of the *Act*?
   a. Has an applicable pattern of dealings been established?
   b. If so, is there a cogent reason to depart from the pattern of dealings?

2. a. What amount of compensation, if any, is payable under section 25(1)(c) of the *Act* for loss of use of the area granted?

   b. What amount of compensation is payable, if any, under section 25(1)(d) of the *Act* for the adverse effect of the area granted on the remaining land of the owner?

   c. What amount of compensation, if any, is payable under section 25(1)(e) of the *Act* for damage to the land in the area granted that might be caused by the operator?

   d. What amount of compensation, if any, is payable under section 25(1)(f) of the *Act* for any other factors the Panel considers proper under the circumstances?

3. Is interest payable, and if so, at what rate and to whom?

4. Are costs payable, and if so, what amount is payable and to whom?

POSITIONS OF THE PARTIES:

ATCO/Applicant

[7] ATCO prepared its offer of compensation consistent with the provisions of section 25(1) of the *Act* and relied on a *Market Value and Appraisal and Compensation Report* and *Annual Compensation Report*, both dated September 19th, 2022, prepared by Robert Telford ("Telford"). ATCO submitted that while a pattern of dealings approach was the preferred methodology of the Tribunal and Alberta Courts in establishing the per acre value of land granted to an operator under a right of entry order, Telford determined there was insufficient data available on land granted for sub-stations to facilitate a pattern of dealings analysis.

[8] ATCO determined that for purposes of establishing a per acre value for the initial taking of the Land the highest and best use was agricultural with long-term potential for urban growth of the Village of Rycroft. ATCO relied on Telford's reports in establishing compensation for first year general disturbance and annual compensation for loss of use and adverse effect.

[9] ATCO's offer of compensation was as follows.

Section 25(1)(b) – land value $14,924.00 one-time payment (4.55 acres @ $3,280.00 per acre)
Section 25(1)(c) – loss of use $1,739.00 annual payment (4.55 acres @ $383.00 per acre)
Section 25(1)(d) – adverse effect $657.00 annual payment
Section 25(1)(f) – other factors (general disturbance) $800.00 one-time payment

[10] ATCO proposed that a determination of one-time compensation for construction damages not occur at this point as construction was not complete as of the effective date of Order No. LPRT1162/2021 nor as of the date of the Hearing. ATCO submitted that the landowner failed to provide evidence that an actual loss was incurred relative to claims for topsoil removal ($9,500.00) and trespass ($3,000.00) and that these claims should be denied.

Landowner/Woronuk

[11] Woronuk relied primarily on a *Real Estate Appraisal and Compensation Analysis* dated September 9th, 2022, prepared by Pat Woodlock ("Woodlock") and testified on his own behalf regarding the matters of soil removal and trespass. Woodlock concurred that a pattern of dealings analysis could not be completed due to a lack of data on land taken for purposes of a substation.

[12] Woodlock submitted that the Land was traditionally used for agricultural purposes but had municipal zoning supporting residential or country residential use. Woodlock further submitted that the highest and best use of the property is long-term holding for future, phased development. In recognition of the long-term potential for development, Woodlock identified several comparable properties in the vicinity of Rycroft and based on available sale data established a value range of $4,000.00 to $7,000.00 per acre for speculative land and argued a value of $6,600.00 per acre was well supported.

[13] Woodlock submitted that compensation for loss of use was appropriately founded on the agricultural interim use of the Land and should be based on a gross per acre loss of revenue of the area granted under Order No. LPRT1162/2021. Further, adverse effect should be based on the highest and best use of the Land as a holding parcel for future development. Damages were related to the interim use of the property for agricultural purposes and were limited to unfunded fixed costs as well as land sterilized due to the expanded sub-station. Woronuk did not challenge ATCO's proposal to defer the determination of one-time compensation for construction damages until construction was complete.

[14] Woronuk sought compensation as follows.

Section 25(1)(b) – land value $30,030.00 one-time payment (4.55 acres @ $6,600.00 per acre)

Section 25(1)(c) – loss of use $2,821.00 annual payment (4.55 acres @ $620.00 per acre)
Section 25(1)(d) – adverse effect $2,500.00 annual payment
Section 25(1)(f) – other factors
(general disturbance) $4,340.00 one-time payment
(trespass) $3,000.00 one-time payment
(topsoil removal) $9,500.00 one-time payment

DECISION:

[15] 1. Compensation in the amount of a one-time payment of $14,924.00 is payable to Dennis Woronuk under section 25(1)(b) of the *Act*.
   a. Based on the evidence, the Panel does not need to decide on whether a pattern of dealings has been established.
   b. The Panel does not need to address this question.

2. Compensation payable to Dennis Woronuk under section 25(1)(c), (d), and (f) of the *Act* is as follows:

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Section 25(1)(c) Loss of use	$2,096.41 **annual payment**	($460.75 x 4.55 acres)
Section 25(1)(d) Adverse effect	$2,500.00 **annual payment**	
Total Annual Payment	$4,596.41	
Section 25(1)(f) Other factors	$800.00 **one-time payment**	

3. Interest is payable on any unpaid balance owing at the Bank of Canada rate in effect as of the effective date of Order No. LPRT1162/2021.

4. Costs in the amount of $53,021.05 are payable by ATCO to Dennis Woronuk.

REASONS FOR DECISION:

[16] Under section 23 of the *Act*, "*On making a right of entry order, the Tribunal shall, in accordance with the rules, hold proceedings to determine the amount of compensation payable and the persons to whom it is payable*". Under section 25(1), in determining the amount of compensation payable the Tribunal may consider the following heads of compensation.

…

> *(a) the amount the land granted to the operator might be expected to realize if sold in the open market by a willing seller to a willing buyer on the date the right of entry order was made,*
>
> *(b) the per acre value, on the date the right of entry order was made, of the titled unit in which the land granted to the operator is located, based on the highest approved use of the land,*
>
> *(c) the loss of use by the owner or occupant of the area granted to the operator,*
>
> *(d) the adverse effect of the area granted to the operator on the remaining land of the owner or occupant and the nuisance, inconvenience and noise that might be caused by or arise from or in connection with the operations of the operator,*
>
> *(e) the damage to the land in the area granted to the operator that might be caused by the operations of the operator, and*
>
> *(f) any other factors that the Board considers proper under the circumstances.*

…

[17] It is the practice of the Tribunal to base compensation on a pattern of dealings when one is established based on the evidence unless there are cogent reasons for doing otherwise. This approach is (a) based on the underlying premise that the marketplace is usually the best determinant of fair and reasonable rates of compensation, (b) consistent with that used by the Court in *Livingston v Siebens Oil & Gas Ltd*, 1978 ALTASCAD 83 (CanLII, 8 A.R. 439 (C.A.), and (c) now routinely used by the Court and the Tribunal.

1. What amount of compensation, if any, is payable under section 25(1)(a) or (b) of the Act?
   a. Has an applicable pattern of dealings been established?
   b. If so, is there a cogent reason to depart from the pattern of dealings?

[18] In this matter, the Operator through its witness Telford and the landowner through its witness Woodlock submitted that the data required to complete a pattern of dealings analysis that was applicable to a substation in the Rycroft area was not available. As such, neither witness conducted a pattern of dealings analysis nor posited that an applicable pattern of dealings was present. The Panel accepts the position of the parties that it is not possible to conduct a pattern of dealings analysis and finds it does not need to render a decision on whether a pattern of dealings has been established.

[19] As the Panel accepts the party's position that it is not possible to conduct a pattern of dealing analysis in this matter it is now tasked with deciding on an amount of compensation consistent with the provisions of section 25(1) of the *Act* based on the evidence. With respect to compensation for the 4.55-acres granted under Order No. LPRT1162/2021, both parties sought to establish a per acre value as of the date the Order No. LPRT1162/2021 was issued based on the highest and best use of the Land consistent with section 25(1)(b) of the *Act*.

[20] ATCO relied primarily on Telford's *Market Value Appraisal and Compensation Report* in determining a per acre value. Telford submitted that under the Municipal District of Spirit River

Land Use Bylaw No. 11-2019, the Land was designated as Agriculture Restricted District to accommodate rural development near urban centres and airports. Telford further submitted that the Land was identified in the Intermunicipal Development Plan ("IDP") of the Village of Rycroft and Municipal District of Spirit River for potential future urban growth of the village. Telford concluded that based on estimated growth of the village, an additional 8.15 acres to 126 acres of land outside of the village boundaries is required over the next 50 years, but there are currently no plans in place for the village to annex land within the IDP.

[21] Telford submitted that in terms of the economic aspects of future development, there was little demand for vacant residential development land. However, there was a steady demand for productive agricultural parcels in the area. Telford concluded that the current use of the Land for agricultural purposes conformed to existing land use designations and the highest and best use of the subject property was continued agricultural pursuits with long-term residential potential. Telford conducted a valuation exercise using a direct comparison approach that considered, in part, the site location, physical features, legal factors, and economic factors.

[22] Using a direct comparison approach, Telford identified five land holdings that recently sold or were offered for sale. In consideration of the physical similarities, land use designation, development horizons and location, Telford submitted sales 1, 4 and 5 were the best indicators of value. Telford further submitted that sales 2 and 3 having rail frontage were superior to the subject property and not appropriate comparables.

[23] With sales 1, 4 and 5 having a range in value from $2,329.00 per acre to $3,280.00 per acre and a mean of $2,903.00 and median of $2,903.00 per acre, Telford concluded that the estimated value of the subject property was $3,280.00 per acre as of the effective date of Order No. LPRT1162/2021 with sale 1 being provided more weight due to its location.

[24] The landowner relied primarily on Woodlock's *Real Estate Appraisal and Compensation Analysis* in establishing a per acre value of the Land consistent with section 25(1)(b) of the *Act*. Woodlock described the Land as a holding property currently used for agricultural purposes and submitted the Land had development potential given it was zoned as Agriculture Restricted District with future use defined as a Future Urban Growth Area and Urban Residential District as per the Municipal Development Plan ("MDP") and IDP.

[25] Woodlock submitted the Land was cropped. There are two grain terminals located a few kilometres to the south. Lands to the north are comprised of the Village of Rycroft being a mix of residential, commercial, and institutional (school) uses. Development potential of the Land was supported by good topography, access, potential annexation by the Rycroft and ability of the landowner to create less intensive sub-divisions. Woodlock remarked that constraints to development included extreme low demand, stagnant population in Rycroft and a lack of site-specific planning. According to Woodlock, good cropland in the subject area sells in the $2,500.00 to $3,500.00 per acre range or higher.

[26] As part of his analysis, Woodlock concluded that based on available information the highest and best use of the subject property, as is, would be achieved through continued agricultural use. The Land could also be used as a new farmstead, and/or sub-divided up to four times to create country residential lots. In employing a direct comparison approach, Woodlock

completed a qualitative analysis wherein he compared each comparable sale with the subject property on an overall basis in terms of being superior, inferior or similar. Woodlock also completed a quantitative analysis wherein adjustments to the selling price of the value indicators were applied to quantitatively reflect differences between the subject property and comparable sales.

[27] Based on the premise that it was in the best interest of the landowner to maximize per acre value by employing the Land to its highest and best use, Woodlock concluded the Land was developable and had longer term planning in place to allow more development for more intensive uses in anticipation of future urban development. Woodlock identified eight comparable parcels (value indicators) with varying municipal zoning including agricultural, agricultural with future residential or industrial use, and rural industrial.

[28] Woodlock placed weight on comparable sale number seven which consisted of eight individual linear parcels with a mixture of municipal zoning in estimating a per acre land value. Based on a qualitative analysis, Woodlock estimated a per acre land value of $4,000.00 to $6,600.00 per acre. Based on a quantitative analysis, Woodlock estimated a per acre land value of $4,000.00 to $7,000.00 noting that the two approaches were mutually supportive. Woodlock concluded that the quantitative analysis provided primary support in establishing a land value and further concluded that a unit range and value analysis resulted in a final land value of $6,600.00 per acre.

29] In support of his per acre valuation, Woodlock referenced a surface lease Woronuk held with Bell West Inc. for an equipment shelter. The lease area was approximately 0.4 acres with an annual rental of $2,895.00. Woodlock submitted this lease demonstrated the value of land used for commercial purposes but did not detail how the heads of compensation set out in section 25(1) of the *Act* were applicable to this lease.

Panel Analysis and Decision – Per Acre Land Value

[30] In surface rights matters before the Tribunal, reference is commonly made to the principle that landowners should be *made whole* with respect to compensation (see *Cabre Exploration Ltd. v Arndt*, 1988 ABCA 212 (CanLII), *ATCO Electric Ltd. v Williams*, 2015 ABSRB 944 (CanLII)).

[31] Within the context of a grant of land pursuant to a right of entry order, section 25(1) of the *Act* states that *"The Tribunal, in determining compensation payable, may consider … (b) the per acre value, on the date the right of entry order was made, of the titles unit in which the land granted to the operator is located, based on the highest approved use of the land …"*. Telford and Woodlock employed a direct comparison approach to estimate a per acre value and consistent with their understanding of real estate appraisal and relied on highest and best use as the basis for property valuation. Telford and Woodlock presented a degree of commonality as to the criteria that should be applied in valuing a property based on highest and best use. Specifically, the use must be legal, within the realm of probability, financially feasible, and provide the best return for the land. Certain factors are also to be considered including the site location, physical features, legal factors pertaining to the site, and economic factors such as marketability.

[32] The Panel considered the criteria typically associated with highest and best use in evaluating each party's evidence and decides that comparables found in Telford's *Market Value*

Appraisal and Compensation Report are the most like the subject Land and provide the best indicator of per acre value. The basis for the Panel's decision follows.

[33] The Panel concurs with Telford's conclusion that while the IDP identifies the Land has potential for future urban growth of Rycroft, the stagnant population growth and lack of demonstrated demand for new residential parcels indicates that market conditions will see the subject property remaining in agricultural production for the foreseeable future. Consistent with his conclusion, Telford placed weight on three of five comparable sales he identifies in the IDP as having potential for future residential development or future urban growth, which, in his opinion, was consistent with the subject Land being zoned Agriculture Reserve District in the IDP with potential for future residential development of Rycroft 30 to 50 years in the future. The Panel finds that Telford's selected comparables are consistent with the current and foreseeable use of the subject Land and Telford's valuations are reflective of land currently being used for agricultural production with long-term potential for residential development.

[34] Woodlock acknowledged that the current highest and best use of the Land was agricultural production but concluded the Land should be valued as a holding property with potential for development including small-scale country residential.

[35] Based on his conclusion, Woodlock relied on comparable number 7 consisting of eight individual parcels that had municipal land use zoning supporting mixed agricultural, future industrial and future residential use with portions of each parcel being used for widening of Range Road 54 by the MD of Spirit River The Panel finds that Woodcroft is speculating on future development of the subject Land with limited consideration of Woronuk's position that he does not intend to pursue development and that market conditions do not support residential development in the foreseeable future. The Panel decides Woodlock's comparable number 7, which he places weight on, is not like the subject Land given this comparable has already been zoned for industrial/commercial development and rural residential development which does not match the subject Land's zoning as agricultural with long-term potential for residential development.

[36] As an alternative approach to establish a per acre land value, Woodlock referenced a surface lease Woronuk held with Bell West Inc. as an example of land values that are higher than what is being offered by ATCO. However, Woodlock did not provide evidence indicating that this lease was negotiated with consideration to the heads of compensation under section 25 of the *Act* or with consideration to the principle that the purpose of compensation is to make the landowner whole. The Panel finds that this surface lease does not assist in determining a market based per acre land value as its presentation is not supported with evidence attesting to the lease's comparability to the subject Land and relevance in establishing compensation pursuant to the *Act*.

[37] The Tribunal typically awards compensation where the loss is actual or reasonably probable. In this matter, the potential loss is associated with agricultural land that, based on current municipal zoning and bylaws, has long-term potential for residential development. The Panel finds that the Operator's evidence is superior in terms of establishing the per acre value of the Land as the three comparables Telford places weight on are, like the subject Land, agricultural land with

long-term potential for residential development. The Operator proposed an award of per acre compensation that was based on the actual loss of agricultural land with consideration to the fact that current municipal zoning permits residential development.

[38] In providing an award of compensation that will make the landowner whole, the Panel decides that the best evidence of fair and reasonable per acre compensation for land granted under Order No. LPRT1162/2021 is Telford's *Market Value Appraisal and Compensation Report* as it provides an amount of compensation for land that is agricultural with potential long-term residential development, matching the type of land granted under Order No. LPRT1162/2021. The Panel awards compensation under section 25(1)(b) of the *Act* in the amount of a one-time payment of $14,924.00 ($3,280.00 per acre x 4.55 acres).

2. a. What amount of compensation, if any, is payable under section 25(1)(c) of the Act for loss of use of the area granted?

[39] ATCO relied primarily on Telford's *Market Value Appraisal and Compensation Report* in determining compensation for loss of use of the land granted under Order No. LPRT1162/2021. Telford's analysis was based on the landowner's reported crop rotations for the years 2017 to 2021 and crop yield data obtained from Agricultural Services Corporation ("AFSC") for the subject area. Telford submitted that AFSC data represented the best information available as to farm specific crop loss associated with Order No. LPRT1162/2021. Telford assessed Woronuk's loss of use for the 2017 to 2021 period by crop type and calculated a low, average, and high per acre value for each crop type. Based on Telford's evidence and testimony, ATCO asserted that an average of $381.60 per acre was fair and reasonable compensation for the 2021 to 2026 compensation period.

[40] ATCO was critical of Woodlock's loss of use assessment in that Alberta-wide data was used as opposed to the actual losses experienced by the landowner. Further, ATCO argued that Woronuk did not personally farm the land and has a land rental arrangement with family members who carry out agricultural production activities. Under this arrangement, Woronuk receives approximately $35.00 per acre and ATCO submitted there was no evidence indicating Woronuk's revenue from this arrangement would be reduced due to Order No. LPRT1162/2021. ATCO further submitted it would be open to the Panel awarding loss of use compensation to Woronuk at the rate of $35.00 per acre.

[41] The landowner relied primarily on Woodlock's *Real Estate Appraisal and Compensation Analysis* to determine a fair and reasonable rate of loss of use compensation. Woodlock submitted gross revenue should be used in estimating loss of use and cites *Alberta Agriculture Cost and Return Benchmarks for Crops and Forages* and *2022 Estimated Production Costs and Returns ($/acre) Grey Wooded (Peace Region)* in concluding that per acre loss of use compensation should be $620.00 per acre for the 2021 to 2026 period. In calculating per acre compensation for loss of use, Woodlock did not provide evidence reflecting historic or forecasted crop rotations nor per bushel sale values as may have been available from the landowner.

Panel Analysis and Decision

[42] The Panel finds that the appropriate rate of compensation for loss of use is $460.75 per acre and awards annual loss of use compensation in the amount of $2,096.41 ($460.75 X 4.55 acres). This amount is based on Telford's empirical evidence which the Panel decides is reliable for the purpose of determining compensation whereas the Panel has concerns with the empirical evidence provided by Woodlock.

[43] The Panel provides weight on Telford's empirical data as he identified crop rotation for the subject Land using site-specific satellite imagery for the 2017 to 2021 period and crop yield and pricing on independent, third party AFSC reports for Risk Area 19, a subset of the Peace Region, which included lands in the immediate vicinity of Spirit River and Rycroft.

[44] The Panel is persuaded that Telford's empirical date is reliable as it is based on a crop rotation of peas, wheat, and canola for the years 2017 to 2021 which is reflective of crop rotations on the subject Land and Telford relies on AFSC data in calculating an across crop average of $381.60 per acre from a per acre range of $241.44 (low), $381.60 (average), and $460.75 (high) as the estimated compensation for loss of use per acre.

[45] The Panel is not persuaded by Woodlock's opinion that loss of use compensation should be $620.00 per acre based on his empirical analysis. Unlike Telford, Woodlock does not provide site specific crop rotation for the subject Land to support his opinion and uses province wide *Alberta Agriculture and Forestry* costs and return benchmarks which are designed to assist grain, oilseed and pulse crop producers make better crop planning decisions.

[46] Further, Woodlock's evidence consists of averaged provincial level cost and return benchmarks calculated by Alberta Agriculture and Forestry and estimated production costs and returns for the Peace Region. Also, Woodlock's evidence includes crops that are not cultivated on Woronuk's Land. The Panel decides Woodlock selected an amount of $620.00 per acre without detailing how this amount is reflective of actual crop rotation, production, and pricing on Woronuk's Land.

[47] In determining a rate of annual compensation for loss of use, the Panel seeks to keep the landowner whole but not to enrich. Evidence provided by the operator and landowner witnesses does not include farm specific data and Telford and Woodlock rely, in part, on aggregated data developed by AFSC and Alberta Agriculture and Forestry. The Panel received evidence that the use of the Land as of the effective date of Order No. LPRT1162/2021 is for agricultural purposes, specifically the production of cereal, pulse or oilseed crops. However, the parties do not agree on the per acre value of these crops.

[48] On the balance of probabilities, the Panel decides the AFSC averages are indicative of gross revenue that reasonably could be achieved on Woronuk's Land in the 2021 to 2025 period. The Panel further decides that given the AFSC calculations are statistical averages, and that crop production and pricing will likely vary over the 2021 to 2025 period, it is fair and reasonable to award loss of use compensation at the high average of $460.75 per acre. The Panel awards annual loss of use compensation in the amount of $2,096.41 ($460.75 x 4.55 acres).

2. *b. What amount of compensation is payable, if any, under section 25(1)(d) of the Act for the adverse effect of the area granted on the remaining land of the owner?*

[49] ATCO focused compensation for adverse effect on potential impacts to typical farming patterns on the subject Land assuming farm operations involve six to eight equipment passes each season and the landowner would alternate the direction of operations every second year. Farming operations consist of spraying, fertilizing, swathing, combining, and harrowing. Telford made certain assumptions as to the type of equipment used on the Woronuk Land as he did not have specific information from the landowner.

[50] Telford submitted that he reviewed a significant body of research and based on this information concluded it is impossible to quantify specific impacts on crop reduction in field without site specific test results. However, Telford stated that a 15% reduction in crop reduction was reasonable for purposes of quantifying compensation for tangible adverse effect based on the data he reviewed. Using a machine costs calculator program, Telford determined tangible adverse effect associated with impacts to the farming pattern due to Order No. LPRT1162/2021 was $257.00 per year.

[51] Telford calculated compensation for intangible adverse effects associated with items such as noise, traffic, visual concerns, loss of quiet enjoyment and landowner time spent dealing with the operator. Telford submitted that compensation for intangible adverse effect was best compensated based on landowner time which he estimated at eight hours per year at a rate of $50.00 per hour for a total of $400.00.

[52] ATCO submitted that based on Telford's evidence annual compensation for adverse effect should be $657.00.

[53] The landowner focused compensation for adverse effect on impacts to the potential future use of the remaining Land. Woodlock submitted the Land was intended for future residential or country use residential use and that future development may be affected by the substation due to its larger scale. Further, any future country residential of residential use would need to be sited away from the substation due to negative impacts associated with light and noise originating from the sub-station. Woodlock also cited studies associated with High Voltage Transmission Lines that suggested a potential reduction in land values.

[54] Woodlock opined that the impact of the substation on development would diminish with distance from the substation. Woodlock calculated a low ($1,010.00), medium ($1,683.00), and high ($3,366.00) value for adverse effect reflecting a $6,600.00 per acre land value and a 10% annualized return on the land. However, Woodlock asserted that during the course of negotiations with Woronuk regarding compensation associated with Order No. LPRT1162/2021 that occurred prior to the Hearing, ATCO offered annual adverse effect compensation of $2,500.00 which is an amount that Woodlock submitted was in-line with his analysis and he adopted this amount as part of his compensation analysis.

Panel Analysis and Decision

[55] Compensation under section 25(1)(d) of the *Act* is for the adverse effect the area granted has on the remaining land of the landowner consisting of 150.28 acres. ATCO based its offer of compensation on the land being used for agricultural production for the 2021 to 2025 period. The landowner based his request for compensation on the highest and best use of the land being future residential or country residential use.

[56] Evidence before the Panel indicates the land has municipal zoning as Agriculture Restricted which is permissive of future residential development. However, Woronuk testified that he intended to retain the land in agricultural production for the foreseeable future. The Panel reasonably concludes based on the evidence that it is probable the land will remain in agricultural production for the 2021 to 2025 period. As such, the Panel decides any award of compensation for adverse effect should reflect impacts to agricultural operations.

[57] The substation is in the north-west corner of Woronuk's land and Telford provided evidence that the pre-existing substation footprint along with a dugout immediately south of the substation had impacts on agricultural operations. The Panel accepts that the substation expansion will influence the operation of farm machinery but given the configuration of the substation, presence of an existing dugout and the farming pattern associated with the adjacent field the Panel decides these effects will be of a lower magnitude. Given there are no existing residences or other structures on the remaining land of the landowner, the Panel also considers the magnitude of potential noise and light impacts on the remaining agricultural land to be of a low level of magnitude.

[58] The Panel decides Telford's evidence is of limited assistance in determining an award of compensation for adverse effect because Telford acknowledges that his review of literature regarding quantification of adverse effect on an agricultural property is inconclusive, though he advances a 15% crop reduction and assumes intangible effect is limited to eight hours of landowner time.

[59] ATCO's Right of Entry Application included a copy of ATCO's final offer of compensation. This offer indicated $2,500.00 per year was presented to Woronuk. The Panel understands that Woronuk declined ATCO's offer of compensation and this offer is not binding on the parties or the Panel. However, the offer of compensation for adverse effect is the best evidence before the Panel as to an amount of compensation for adverse effect that ATCO appears to have deemed to be fair and reasonable. Further, Woodlock concludes that an offer of $2,500.00 per year is consistent with his analysis of adverse effect compensation. The Panel decides that compensation for adverse effect will be awarded at the rate of $2,500.00 per year.

2. c. What amount of compensation, if any, is payable under section 25(1)(e) of the Act for damage to the land in the area granted that might be caused by the operator?

[60] ATCO submitted that section 25(1)(e) was not applicable to Order No. LPRT1162/2021 and that any damages that may occur in the area granted should be considered temporary in nature and addressed by Woronuk in a damage claim.

[61] The landowner submitted that damages in the form of lump sum payments arose from an increase of unfunded costs to the remaining farm and sterilized land due to altered farming patterns. Woodlock argues that agricultural production of every acre contributes to paying fixed costs of a farming operation and without compensation or replacement of the 4.55 acres granted under the Right of Entry the landowner will suffer an economic loss. Woodlock further argued that the 4.55 acres granted was sterilized from agricultural production and compensation should be provided on potential lost income per acre. Woodlock opined that damages should be awarded in the amounts of $0.00 for unfunded costs and $3,760.00 for sterilized land.

Panel Analysis and Decision

[62] The Panel does not accept the landowner's argument that compensation should be awarded for damage to the area granted over and above compensation that is being provided under section 25(1)(b) for the per acre value of the Land and 25(1)(c) for loss of use of the 4.55 acres. The scheme of the *Act* is such that the landowner is compensated for the initial taking of land under a Right of Entry and the landowner receives annual compensation for crop loss on the 4.55 acres. In the Panel's view, the landowner is being compensated for the grant of 4.55 acres to ATCO and for crop loss on those 4.55 acres.

[63] Further, in support of an argument for compensation, Woodlock cited two Court decisions dating from 1979 and 1980 and the *Cost and Return Benchmarks for Crops and Forages* prepared by Alberta Agriculture and Forestry. However, Woodlock does not explain how this material or evidence supports an argument for an award of damages nor does Woodlock assert that the taking of land under Order No. LPRT1162/2021 resulted in severance of a portion of the remaining land which merits compensation as an adverse effect. Woodlock's submission does not persuade the Panel that compensation being awarded under section 25(1)(b) and 25(1)(c) fails to address the financial loss he submitted Woronuk was incurring as a damage. The Panel dismisses the landowner's claim of $3,760.00.

2. d. What amount of compensation, if any, is payable under section 25(1)(f) of the Act for any other factors the Panel considers proper under the circumstances?

[64] ATCO offered a one-time payment of $800.00 under the heading of general disturbance as compensation for time the landowner is likely to have spent dealing with ATCO during construction of the sub-station. This amount was based on an estimate by Telford that landowner time equates to 16 hours at an hourly compensation rate of $50.00 per hour.

[65] Compensation was sought by the landowner for alleged trespass by ATCO ($3,000.00) and for costs Woronuk incurred in removing topsoil from the area granted ($9,500.00). The Panel considered these requests for compensation under section 25(1)(f).

Topsoil Removal

[66] ATCO acknowledged that Woronuk undertook work to remove topsoil from the 4.55-acre area granted but asserted there was no agreement between ATCO and Woronuk for this work to be completed. ATCO further asserted removal of the topsoil by Woronuk was of no benefit to

ATCO, that the landowner was not qualified to undertake this work in the context of the construction of the sub-station, and ATCO was still required to strip topsoil prior to commencing construction of the sub-station. ATCO argued the claim for $9,500.00 in compensation should be denied.

[67] The landowner concurred that he did not have an agreement with ATCO to remove topsoil from the area granted. Woronuk submitted that being aware that ATCO was required to strip and stockpile topsoil he elected to conduct this work on his own volition and the work was of benefit to ATCO. Woronuk moved the topsoil to other areas of his farm and seeks recovery of out-of-pocket expenses he incurred in stripping the topsoil.

Panel Analysis and Decision – Topsoil Removal

[68] Order No. LPRT1162/2021 grants ATCO the right to enter the 4.55-acre area granted for purposes incidental to the construction, operation, or removal of a power transmission line. Section 1(k)(i)(ii) of the *Act* provides a definition of a power transmission line. Tribunal Decision in *ATCO Electric Ltd v Woronuk*, 2021 ABLPRT 826 confirms that by virtue of the Right of Entry ATCO holds the right to enter, to use and to take the surface of the whole of the land required for the stated purpose of the Right of Entry. The Right of Entry confirms that the landowner is allowed to use the area granted for farming if this does not interfere with ATCO's activities.

[69] ATCO submitted that it was required to strip and conserve topsoil under approvals it held from Alberta Environment and Parks and conducted soil stripping work after the work conducted by the landowner. Woronuk testified that he sought agreement from ATCO for topsoil removal but was not successful. Notwithstanding a lack of agreement, Woronuk arranged for equipment and undertook soil stripping with the material being placed on other areas of his farmland.

[70] The Panel is not persuaded by Woronuk's argument that the soil stripping work he undertook is of benefit to ATCO and that he should be reimbursed for the associated cost. Woronuk undertook work on Land that was granted to ATCO under Order No. LPRT1162/2021 and he completed this work without an agreement with ATCO. The Panel decides that in acting without an agreement with ATCO and knowing the Land was granted to ATCO under Order No. LPRT1162/2021, Woronuk should bear the costs that arose from his actions. The Panel denies Woronuk's claim of $9,500.00 for topsoil removal.

Trespass

[71] ATCO submitted that under the *Act* the Right of Entry provides an operator the ability to enter land for purposes of making surveys or ascertaining those portions of the surface of the land incidental or necessary to any of the operations mentioned in the *Act*. ATCO cited section 14(1)(a) and (b) of the *Act* which state:

…

> 14(1) Notwithstanding section 12(1) and (2) but subject to subsection (2) of this section, an operator proposing to undertake any of the operations mentioned in this Act, or any person employed or engaged by the operator, may enter on any Crown or other land for the purpose of

> (a) making surveys or examinations on the surface of the land for fixing the site of the operation, and
> (b) setting out and ascertaining those portions of the surface of the land that are incidental to or necessary for the operation.
>
> …

ATCO also cites section 16 of the *Surveys Act* which provides:

…

> **Right to enter private property**
>
> 16 A surveyor and the surveyor's authorized assistants may, using reasonable care, pass over, measure along and ascertain the bearings of any line or boundary, and for those purposes may pass over or through the land of any person, but the surveyor is liable for any damage the surveyor or the surveyor's assistants cause.
>
> …

[72] ATCO argued that the statutory provisions allowed entry onto Woronuk's land and in any event absent evidence of damage caused by an alleged trespass Woronuk's claim should be dismissed in its entirety.

[73] Woronuk testified that during the summer of 2021, ATCO requested urgent permission to enter the site and he believed that compensation should be paid by ATCO for accessing the lands as ATCO was doing soil testing. Woronuk further testified that in 2013 when ATCO required access for soil testing, they paid $1500.00 for access. Woronuk claimed $1,500.00 for two instances of trespass, a total of $3,000.00, where ATCO entered his land in the summer of 2021 for purposes that allegedly include soil testing.

Panel Analysis and Decision

[74] Provisions of the *Act* allow an operator, or any person engaged or employed by the operator to enter land. The *Surveys Act* allows a surveyor or their assistant to pass over or through land of any person. The Panel understands that if ATCO entered Woronuk's land for purposes provided for in the *Act* or the *Surveys Act*, then ATCO may not be in trespass. Section 14(2) of the *Act* provides that the operator is liable to the landowner or occupant of the land for any damage caused by the operator or person engaged or employed by the operator. Section 16 of the *Surveys Act* provides that the surveyor or their assistant is liable for any damage they cause.

[75] The testimony of Woronuk was that ATCO conducted soil testing and did not pay for entry for this purpose. Woronuk did not provide persuasive evidence that the two instances of entry onto his land in 2021 were for purposes other than that contemplated in the *Act* and the *Surveys Act* or that entry resulted in a compensable damage. Rather, Woronuk provided photographic evidence of the alleged trespass as collected by a family member and he admitted that the photos may not depict the site of the sub-station. The Panel decides Woronuk is seeking compensation for entry versus compensation for a damage.

[76] The Panel finds that ATCO entered the land for purposes contemplated under section 14 of the *Act* and section 16 of the *Surveys Act* and that no compensable damage arose from ATCO's entry onto the Land. The Panel decides that Woronuk's claim of trespass is not supported by the facts. The Panel dismisses Woronuk's claim of $3,000.00 consisting of two claims of $1,500.00.

General Disturbance

[77] ATCO submitted that typical negotiation and construction scenarios require between 8 and 24 hours of landowner time and in this matter selected the mid-point of this range and applying the Tribunal's typical rate of $50.00 per hour for landowner time offers compensation for general disturbance in the amount of $800.00. The landowner did not address this offer by presenting evidence. The Panel awards compensation for general disturbance in the amount of a one-time payment of $800.00.

Summary of Compensation Award

[78] The Panel awards compensation as follow:

LPRT File No. RE2021.0024

Section 25(1)(b) per acre value	$14,924.00 **one-time payment**	($3,280 x 4.55 acres)
Section 25(1)(c) Loss of use	$2,096.41 **annual payment**	($460.75 x 4.55 acres)
Section 25(1)(d) Adverse effect	$2,500.00 **annual payment**	
Total Annual Payment	$4,596.41	
Section 25(1)(f) Other factors	$800.00 **one-time payment**	

3. Is interest payable, and if so, at what rate and to whom?

[79] Interest is payable on the unpaid balance owing at the Bank of Canada rate in effect as of the effective date of Order No. LPRT1162/2021.

4. Are costs payable, and if so, what amount is payable and to whom?

[80] Woronuk seeks costs in respect of personal time, mileage and accommodation, legal costs of Prowse Chowne LLP, and appraisal costs as follows:

- personal costs	$45,017.17
- legal costs	$44,913.20
- appraisal costs	$26,130.37
Total	$116,060.74

[81] ATCO notes that it previously agreed to pay the costs associated with an appraisal prepared by Plant & Associates Appraisal Services Inc. in the amount of $3,906.00. This amount is included in the above summary and Woronuk provides a copy of a receipt dated May 6th, 2020 supporting this cost.

[82] ATCO submits that Woronuk's costs are grossly excessive and ought to be significantly reduced to the following amounts.

- personal costs	$2,000.00
Plant Report	$3,906.00
Woodlock Report	$7,000.00
- legal costs	$20,000.00
Total	$32,906.00

[83] An award of costs is within the discretion of the Tribunal (Section 39 of the *Surface Rights Act*) and the Tribunal is empowered to make its own rules governing practices and procedures. *Surface Rights Rule* 31 subsection 1 deals with the prerequisites for an award of costs and subsection 2 outlines the factors the Tribunal may consider. The prerequisites for an award of costs are as follows:

- That the costs are directly and necessarily related to the proceeding.
- That there are reasons to support the request.
- That there is a detailed description of the costs sought.
- That there are copies of any invoices or receipts for disbursements or expenses.

It is important to note that these are mandatory requirements.

[84] The Panels in *Firenze Energy Ltd. v Balderston Energy Corp.*, 2018 ABSRB 165 and *Canadian Natural Resources Limited v Balderston Capital Corp.*, 2018 ABSRB 315 note that there must be sufficient detail as to what was done and whether it related to and was necessary to the proceedings.

[85] Rule 31(2) lists factors that the Tribunal may consider in determining costs.

> …
>
> (2) In making an order for the payment of a party's costs, the Board [Tribunal] may consider:
>
> (a) the reasons for incurring the costs;
> (b) the complexity of the proceeding;

(c) the contribution of the representatives and experts retained;
(d) the conduct of a party in the proceeding;
(e) whether a party has unreasonably delayed or lengthened a proceeding;
(f) the degree of success in the outcome of a proceeding;
(g) the reasonableness of any costs incurred; and
(h) any other factor the Board [Tribunal] considers relevant.

…

[86] Not all factors apply in every case and some factors may be more important given the nature of the claim being made. Sufficiency of detail is also an important consideration in the Panel's assessment of the reasonableness of the costs being claimed. In this matter, the landowner seeks costs in three broad areas, landowner personal time and expenses, appraisal reports, and legal fees. For claims for landowner personal time and expenses the Panel will deal first with the hourly claim and then review the statement account based on a line-by-line review and then consider the overarching question of reasonableness.

Woronuk/Landowner Personal Time and Expenses
Claim - $35,517.17
Award - $4,666.21

Hourly Rate

[87] Woronuk appeared in his capacity as landowner and did not appear in the capacity of a professional board member or professional engineer. Further, he was not called as an expert witness, nor did he provide an expert report. Woronuk's justification for an hourly rate of $250.00 was that this amount is consistent with what he receives for his participation on several corporate boards as a board member and consulting engineer.

[88] In *Ember Resources Inc. v Sich*, 2017 ABSRB 942, the Tribunal rejected a claim for $200.00 per hour by a chiropractor who suggested he was losing income while attending the hearing. No such suggestion was made by Woronuk in this matter.

[89] The Tribunal consistently awards personal costs to landowners at the rate of $50.00 per hour (see *Canadian Natural Resources Limited v Bysterveld*, 2016 ABSRB 883, *Canadian Natural Resources Limited v Tonne*, 2016 ABSRB 1105, and *Direct Energy Marketing Ltd v F&M Farms*, 2018, ABSRB 36). No authorities or Tribunal decisions were provided in support of Woronuk's request for an hourly rate of $250.00. Accordingly, the Panel finds there is no basis to depart from a consistent practice of the Tribunal and this Panel will only consider costs associated with Woronuk's personal time at the rate of $50.00 an hour.

Line by Line Analysis

[90] Woronuk claimed 116.47 hours of personal time for the period of March 29th, 2019 to October 20th, 2022 as listed in numerous individual line entries contained in his cost submission. However, many of the line entries are described as call, or email, or prep, or review and do not provide sufficient detail to allow the Panel to determine whether the task is directly and necessarily related to this proceeding.

[91] Section 39(1) of the *Act* states that *costs of and incidental to proceedings under the Act are in the discretion of the Board* [Tribunal]. Section 39(4) states costs *may include all preliminary costs of the respondent necessarily incurred in reaching a decision whether to accept the compensation offered by the operator*. Panel review of Woronuk's cost submission indicates that there are entries related to an alleged trespass, review of the Tribunal's decision to issue the Order No. LPRT1162/2021, and meeting with the MD of Spirit River regarding re-zoning that may not be incidental to the proceedings.

Overarching Question of Reasonableness

[92] The Panel finds there is a lack of detail in the line items and the cost submission includes line items that do not appear to relate to proceedings on the matter of compensation. The Panel further finds that it is not reasonable to provide Woronuk the full amount he claimed as he did not demonstrate that all the costs directly and necessarily arise from negotiations associated with ATCO's offer of compensation. The Panel decides Woronuk will be compensated for 116.47 hours of personal time at the rate of $50.00 per hour but applies a 30% reduction to this amount reflecting the Panel's best estimate of entries that are not directly and necessarily related to the proceedings. The Panel awards the amount of $4,076.45 payable to Woronuk for personal time.

Woronuk Expenses (Mileage, Parking, Hotel Meals)

[93] Woronuk claimed personal expenses in the amounts of $1,482.00 for mileage (2,600 kilometres @ $0.57 per kilometre), $89.25 for parking, $120.00 for meals, and $803.25 for accommodation. These claims are not supported by receipts. The requirement to provide receipts is mandatory under *Surface Rights Rule* 31 subsection 1.

Line by Line Analysis

[94] Panel's review of Woronuk's claim indicates that mileage, parking, meals and accommodation costs appear to be associated with meetings with ATCO representatives, meetings with legal counsel Barrette and appraiser Woodlock, and attendance at the Hearing. The Panel finds these expenses are directly and necessarily related to the proceeding. The line entries indicate the date on which each expense was incurred but Woronuk did not provide receipts for any of these claims. Therefore, the Panel is unable to verify that the amounts claimed for parking, meals, and accommodation for Woronuk's actual out of pocket expenses.

[95] Woronuk's claim includes a 1084-kilometre claim for travel to meetings with Barrette and Woodlock on April 6th, 2022 and October 13th, 2022. The cost summary does not provide detail on the requirement for in-person meetings and Woronuk did not address the need to meet in-person when speaking to costs at the Hearing.

Overarching Question of Reasonableness

[96] The Panel is mindful of the principle that landowners should not be out of pocket (see *Husky Oil Operations Limited v Golden Yield Farm Ltd.*, 2016 ABSRB 822 (CanLII)). However, without receipts, this Panel finds it is reasonable to award costs for parking, meals, and

accommodation at Government of Alberta *Travel and Meal Allowance Rate*s for unreceipted expenses as set under the *Travel, Meal, and Hospitality Expenses Policy*.

[97] This Panel is also prepared to award mileage at the Government of Alberta rate of $0.505 per kilometre. Woronuk did not provide reasons as to why it was necessary for him to attend two meetings with Barrette and Woodlock on an in-person basis incurring a mileage claim of 1084 kilometres. The Hearing was conducted as a virtual Hearing and the Panel finds it reasonable that Woronuk may have attended meeting with Barrette and Woodlock on a virtual basis thereby minimizing personal time commitments and associated costs. The Panel will reduce the mileage claimed by 50% in its award of personal costs.

[98] The Panel awards expenses payable to Woronuk as follows:

- mileage $374.21
- parking $51.25
- meals $103.85
- accommodation $60.45

Total $589.76

Appraisal Reports
Claim - $30,036.37
Award - $16,971.19

[99] ATCO noted that it previously agreed to cover costs associated with an appraisal report prepared by Plant and Associates Appraisal Services Inc. in the amount of $3,906.00. Woronuk had this report prepared to provide an estimate of market value as of April 7th, 2020 when he was considering the purchase of the 4.55 acres by ATCO. ATCO submits that costs associated with Woodlock's appraisal report and participation in the proceeding ought to be reduced based on the report's limited value and Woodlock's testimony did not make a meaningful contribution to the assessment of relevant issues.

[100] The landowner submitted the HarrisonBowker invoices totalling $26,130.37 were reasonable and completely in line with or lower than expert costs for comparable hearings. Further, Woodlock's professional rates are reasonable, reasonable time was spent on tasks, there was no duplication of tasks, and the positions advanced were reasonable and efficiently dealt with.

Line by Line Analysis

[101] Woronuk submitted copy of an invoice from Plant & Associates Appraisal Services Inc. dated May 6th, 2020 listing charges for an appraisal and other related charges. A copy of the appraisal was submitted in evidence, but Woronuk did not rely on this report to establish compensation in this proceeding.

[102] The invoices of HarrisonBowker (Woodlock) provide limited detail as to the tasks performed with repeated descriptions of tasks as *report* and *report review*. *Surface Rights Rule* 31 subsection 2 outlines the factors the Tribunal may consider which include that there is a detailed

description of the costs sought. The Panel finds that the HarrisonBowker invoices lack the requisite detail that will allow the Panel to recognize the task being performed and assess the associated costs.

Overarching Question of Reasonableness

[103] The Plant & Associates Appraisal Services Inc. appraisal report was prepared at Woronuk's request to provide an opinion of the current market value of the subject property for sale and/or lease negotiations purposes. This report appears to be directly and necessarily related to a determination of compensation in this matter. ATCO agrees to pay the invoiced amount of $3,906.00 which ensures Woronuk is not out of pocket for this cost. The Panel is not presented with evidence or argument from ATCO that the invoiced amount is unreasonable and as such the Panel decides to award Woronuk $3,906.00 for preparation of this appraisal report.

[104] The HarrisonBowker invoices concern the Panel as there is a lack of detail as how the work contributed to this file. The Panel recognizes that Woodlock prepared an expert report and appeared at the Hearing as an expert witness, but the type of work and hours associated in preparing the expert report lack a level of detail the Panel expects from a professional appraiser. Specifically, Woodlock's invoice includes line items under the heading of *preliminary report* and *report* totalling 40 hours out of a 41.50-hour claim at $270.00 per hour absent a description of the activities being conducted. Woodlock's invoice does not allow the Panel to determine whether all the hours claimed are directly and necessarily related to the proceedings. In considering the factors in *Surface Rights Rule* section 1 and section 2, the Panel reduces the HarrisonBowker invoices by 50% and awards costs payable to Woronuk in the amount of $13,065.19 for the HarrisonBowker appraisal report.

Legal Costs – Prowse Chowne LLP
Claim - $44,913.20
Award - $31,383.65

[105] The landowner submitted that the costs associated with work by Prowse Chowne LLP were reasonable and completely in line with legal costs for similar hearings. The professional rates were reasonable, reasonable time was spent on the tasks, there was no duplication of tasks, and the arguments advanced were reasonable.

[106] ATCO submitted that the legal costs sought by Woronuk were excessive and should be limited to $20,000.00. ATCO asserted that evidence put forward by Woronuk included considerable irrelevant material including documents from the Albert Utilities Commission proceedings, prior correspondence between Woronuk and ATCO and other evidence not germane to this proceeding. ATCO further submitted those legal costs associated with Woronuk's application under section 27 of the *Act* related to Tribunal File No. RR2021.0016, which was withdrawn, was a separate legal matter and should not be compensated under this section 23 proceeding.

Line by Line Analysis

[107] Prowse Chowne's costs submission includes several entries for disbursements totalling $79.42, but receipts are not provided. *Surface Rights Rule* subsection 2 specifies that copies of receipts are mandatory. The Panel will not award costs for disbursements without the receipts in support.

[108] The Prowse Chowne invoices include numerous references to *email correspondence*, *continue reviewing*, *further research*, and *phone message*. Detail on the nature of the task being performed is not provided and the Panel questions whether all the line entries are for tasks that require the expertise of legal counsel.

Overarching Question of Reasonableness

[109] The Panel finds there is not enough detail provided in Prowse Chowne's invoices to assess the contribution of counsel to this file. Further, the invoices include costs associated with Woronuk's application under section 27 of the *Act* (RR2021.0016) which was withdrawn and not before this Panel. Barrette also devoted significant time in questioning Woronuk on matters involving the Alberta Utilities Commission decision that is not a matter before this Panel. Barrette also sought evidence from Woodlock on studies associated with High Voltage Transmission Lines that is of limited assistance to the Panel in determining compensation.

[110] In consideration of all the factors, the Panel will reduce the claim for legal costs by 30%. The Panel awards legal costs in the amount of $31,383.65 payable to Woronuk.

ORDER:

[111] An Order will issue awarding compensation as set out in this decision.

Dated at the City of Edmonton in the Province of Alberta on November 27, 2023.

LAND AND PROPERTY RIGHTS TRIBUNAL

Glenn Selland

Glenn Selland, Member

Appendix A

Exhibit List

Exhibit No.	Description	Pages
Ex 01.00	LPRT Hearing Documents Package	300
	Operator's Initial Disclosure	
Ex 02.01	09_20_2022_RE2021.0024+1_Operators Initial Disclosure (Annual Compensation Report)	58
Ex 02.02	09_20_2022_RE2021.0024+1_Operators Initial Disclosure (Appraisal Report)	83
Ex 02.03	09_20_2022_RE2021.0024+1_Operators Initial Disclosure (Proof of Prepayment)	5
	Operator's Rebuttal Disclosure	
Ex 03.01	10_04_2022_RE2021.0024_Operators Rebuttal Disclosure (Negotiated Agreement Review)	6
Ex 03.02	10_04_2022_RE2021.0024_Operators Rebuttal Disclosure (Review of Landowners Evidence)	5
Ex 03.03	10_04_2022_RR2021.0016_Operators Costs re Withdrawn Application	7
	Landowner's Initial Disclosure	
Ex 04.01	2022-09-20_RE2021.0024(+1)_Landowner_(1983-01-04)Alberta Power Limited v Woronuk - Order Granting ROE	2
Ex 04.02	2022-09-20_RE2021.0024(+1)_Landowner_(2003-07-28)Equipment Shelter Lease Agreement	20
Ex 04.03	2022-09-20_RE2021.0024(+1)_Landowner_(2013-12-12)ATCO Electric Release of Damages	1
Ex 04.04	2022-09-20_RE2021.0024(+1)_Landowner_(2013-12-14) Board Compensation Agreement	1
Ex 04.05	2022-09-20_RE2021.0024(+1)_Landowner_(2014-03-18)ATCO Electric Ltd - Payment Components	1
Ex 04.06	2022-09-20_RE2021.0024(+1)_Landowner_(2014-03-18)Letter from ATCO Electric to Woronuk re proposed annual compensation review under Section 27 of the SRA	2
Ex 04.07	2022-09-20_RE2021.0024(+1)_Landowner_(2014-03-19)Surface Lease Agreement Areas	1
Ex 04.08	2022-09-20_RE2021.0024(+1)_Landowner_(2014-03-19)Surface Lease Agreement	7
Ex 04.09	2022-09-20_RE2021.0024(+1)_Landowner_(2014-04-15)Letter from ATCO Electric Ltd. to Woronuk re compensation	2
Ex 04.10	2022-09-20_RE2021.0024(+1)_Landowner_(2014-04-15)Letter from ATCO Electric to Woronuk re cheques payable as per Surface Lease Agreements	1
Ex 04.11	2022-09-20_RE2021.0024(+1)_Landowner_(2014-04-15)Settlement Notice from Surface Rights Board	1

Ex 04.12	2022-09-20_RE2021.0024(+1)_Landowner_(2015-01-28)Bridgeway Board Resolutions_Dennis Woronuk	1
Ex 04.13	2022-09-20_RE2021.0024(+1)_Landowner_(2017-03-23)Unsigned letter from ATCO Electric to Woronuk	1
Ex 04.14	2022-09-20_RE2021.0024(+1)_Landowner_(2019-09-01)ATCO Rycroft Substation Planned Site Layout	1
Ex 04.15	2022-09-20_RE2021.0024(+1)_Landowner_(2019-12-01)ATCO Rycroft Substation Proposed Site Plan (Mosaic)	1
Ex 04.16	2022-09-20_RE2021.0024(+1)_Landowner_(2019-12-01)ATCO Rycroft Substation Proposed Site Plan (Ownership)	1
Ex 04.17	2022-09-20_RE2021.0024(+1)_Landowner_(2019-12-01)Rycroft Substation Expansion Project - Application to the Alberta Utilities Commission	23
Ex 04.18	2022-09-20_RE2021.0024(+1)_Landowner_(2020-01-10)Letter from ATCO Electric Ltd. to Woronuk re request for consent to use 1.51-acre area	2
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