



Utility company withstands regulatory scrutiny of capital project costs with expert help from Protiviti

Keys to Success

Change Requested

Regulatory support to formally defend billions of dollars in capital project expenditures

Change Envisioned

Provide detailed analysis of project documentation, respond to intervenor Information Requests and prepare rebuttal arguments for the regulatory hearing

Change Achieved

A favorable regulatory ruling limiting disallowed costs to a fraction of what was initially anticipated

Few regulatory proceedings are as thorough or risk-laden as Canada's Provincial Public Utility Commissions' reviews of major capital utility projects. Companies performing the construction can be on the hook for hundreds of millions of dollars if a commission deems their project expenditures imprudent.

Interveners, on behalf of utilities commissions and the ratepayers, aggressively analyze every aspect of project execution and costs. To address this risk, one electricity transmission company sought expert help from Protiviti to prepare for a looming regulatory proceeding in which it needed to defend billions of dollars of capital project expenditures. The ensuing collaboration with Protiviti ultimately helped the company limit "disallowed" costs to a fraction of the more than C\$50 million in possible disallowances.

Based on this favorable outcome, the transmission company subsequently enlisted Protiviti to help it prepare for the next regulatory proceeding, to defend expenditures on more than double the amount of capital projects (by dollar value) defended in the previous hearing. Protiviti's assistance included the development of procurement and change order analysis documents and thorough review of key project documents.

A Rigorous Discovery Process for Capital Projects

The approval, execution and oversight of major capital projects related to gas and electric generation and transmission in Canada are heavily regulated activities that involve more than one government entity. The provincial

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independent system operator (ISO) is the body responsible for system planning and identifying the need for additional electrical capacity in a province. A second body, the public utilities commission, is responsible for reviewing the project-planning process, monitoring each project’s progress, typically through monthly progress and budget reports, and ultimately determining whether project costs are prudent. This determination of allowable costs takes place after the project is complete, during a formal hearing conducted inside a courtroom. Since the outcome of this review determines the extent to which the company can recover project costs through rate increases, the stakes are potentially high for the company and, to a lesser extent, ratepayers. In advance of the hearing, project documentation is submitted, and interveners can send Information Requests to the companies “on trial.”

The utilities commission enlists interveners — professionals with legal, accounting and utility expertise — to pick apart every dollar the transmission company has spent on the project. Those unfamiliar with such proceedings are often startled by the interveners’ meticulous scrutiny of project costs as well as the frequently antagonistic tone of the questions they put to company leaders and capital project teams. For example, interveners may ask not only for comparisons of individual room rates for hotels used by construction teams but also may challenge the company’s internal procedures for comparing lodging options.

Preparing a Strategic Defense

Naturally, the interveners zero in on the change orders that pinpoint where actual project costs differed most dramatically from the original budget. The transmission company and Protiviti also focused significant attention on these change orders while preparing for the hearing. The work included identifying which change orders would likely attract the greatest scrutiny and criticism from the interveners and then justifying those changes with rationale and arguments that would make them withstand a challenge in court and be consistent with other testimony.

Protiviti’s assistance included the following:

- Extensive change order analysis and associated defense strategies
- Project manager and project team interviews
- Responses to interveners’ Information Requests
- Contract analysis and cross-referencing of change orders and scope documents

- Strategizing with the client's leadership and legal team to develop rebuttal arguments for use during the regulatory hearing
- Preparing witnesses for the regulatory hearing
- Gathering and consolidating information from thousands of documents to create small reference binders for witnesses to utilize during the proceedings
- Real-time analysis and client requests during the hearing to provide accurate information for the legal team

A Favorable Ruling and More Collaboration

Protiviti's strategy resulted in a highly favorable ruling, and the company decided to extend the engagement to more capital projects. Protiviti investigated project documentation to pinpoint and summarize major project challenges, identified major project trends, and categorized the costs associated with both. Our team also provided a detailed analysis of change orders and procurement costs to provide visibility into decisions made. Following that work, the transmission company engaged Protiviti again to respond to intervenor Information Requests and help prepare for an upcoming hearing.

"It was great to work with such a knowledgeable and dedicated client," said Anna Furby, a manager on the Protiviti engagement team. "They were truly collaborative, providing us with everything we needed to perform our work, and made us feel like part of their team."

When it comes to planning and executing capital projects in intensely regulated environments, transparency and defensibility of project costs are crucial to the regulatory process. Capital projects do not always go as planned and cannot account for weather, environmental factors and other discovered conditions. Failing to adequately document or clearly justify the prudence of the costs can create serious reputational risks, cut into profits and impact future opportunities. For that reason, successful collaborations that bring more clarity and control to capital project management activities can be extremely valuable.

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