

# **Canadian Natural Resources Limited**

## **Applications for Three Pipelines and a Free-Standing Liner Dunvegan Field**

### **Costs Awards**

October 10, 2019

**Alberta Energy Regulator**

Costs Order 2019-01: Canadian Natural Resources Limited, Applications for Three Pipelines and a Free-Standing Liner, Dunvegan Field

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Suite 1000, 250 – 5 Street SW

Calgary, Alberta

T2P 0R4

Telephone: 403-297-8311

Toll free: 1-855-297-8311

Email: [inquiries@aer.ca](mailto:inquiries@aer.ca)

Website: [www.aer.ca](http://www.aer.ca)

## Contents

Introduction.....	1
The AER's Authority to Award Costs .....	2
Costs Claim of the Wiebens.....	4
Canadian Natural's Submissions .....	5
The Wiebens' Reply.....	6
AER Decision .....	6
Order .....	10
Appendix 1 Summary of Costs Claimed and Awarded .....	12



## Costs Order 2019-01

### Canadian Natural Resources Limited Applications for Three Pipelines and a Free-Standing Liner Dunvegan Field

### Applications 158722 and 158850

## Introduction

### Background

[1] Canadian Natural Resources Limited (Canadian Natural) filed applications 158722 and 158850 on a nonroutine basis under part 4 of the [Pipeline Act](#) to repair and replace existing pipeline infrastructure about 11 to 14 kilometres (km) south of the town of Fairview, Alberta.

[2] On February 11, 2019, a notice of hearing was issued for applications 158722 and 158850, providing an opportunity for submitting requests to participate in the hearing. D. and M. Wieben, G. and B. Wieben, submitted requests to participate and were granted full participation rights on March 8, 2019. J. Heffren, as the daughter of one of the landowners, also participated in the Weibens group as a witness, but was not formally a party to the hearing. D. and M. Wieben, G. and B. Wieben, and J. Heffren are collectively referred to in this order as the Wiebens.

[3] The AER held a public oral hearing (proceeding 375) in Fairview, Alberta, which commenced on May 29, 2019, and concluded on May 30, 2019, before a panel of hearing commissioners composed of D. O’Gorman (presiding), J. Daniels, and B. Zaitlin (the panel).

[4] On July 22, 2019, the AER issued [Decision 2019 ABAER 007: Canadian Natural Resources Limited, Applications for Three Pipelines and a Free-Standing Liner, Dunvegan Field](#) approving the applications as amended.

### Costs Claim

[5] On June 27, 2019, the Wiebens filed a costs claim in the amount of \$98 693.96. On July 3, 2019, the AER issued a procedural letter setting out the deadlines for the parties’ reply. On July 18, 2019, Canadian Natural submitted a reply to the costs claim and on August 2, 2019, the Wiebens submitted a final reply.

[6] On August 2, 2019, and after the deadline for the Wiebens’ final reply, the AER received an unsolicited submission from Dr. B. Bietz who, although he was the Wiebens’ agent in proceeding 375,

was not acting as their agent for this costs claim. CNRL filed a response to Dr. Bietz's submission on August 6, 2019, and Dr. Bietz replied on August 7, 2019.

[7] The AER decided to disregard these late submissions as contrary to its July 3, 2019, procedural letter. The AER considers the costs process to have closed on August 2, 2019.

[8] In exercising its discretion to make this order, the panel has read and thoroughly considered all of the submissions made during this costs process. The absence in this decision of a reference to a particular submission or aspect of a submission in no way indicates that the panel failed to consider the entire submission. All material filed with the AER has been carefully considered by the panel in coming to its decision.

[9] The AER awards the Wiebens the amount of \$52 110.65 for fees, honoraria, and disbursements and GST in the amount of \$1910.93 (see appendix 1).

### **The AER's Authority to Award Costs**

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

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.

[11] In determining who is eligible to submit a claim for costs, the AER is guided by the *Rules of Practice*, particularly section 58(1)(c) in which it states that

“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.

[12] Section 58.1 of the *Rules of Practice* sets out the following considerations for awarding costs:

The Regulator shall consider one or more of the following factors when making a decision in respect of an application by a participant for an advance of funds request, an interim award of costs or a final award of costs:

- (a) whether there is a compelling reason why the participant should not bear its own costs;
- (b) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;

- (c) in the case of an advance of funds, whether the submission of the participant will contribute to the binding dispute resolution meeting or hearing;
- (d) in the case of interim costs, whether the participant,
  - (i) has a clear proposal for the interim costs, and
  - (ii) has demonstrated a need for the interim costs;
- (e) whether the participant has made an adequate attempt to use other funding sources;
- (f) whether the participant has attempted to consolidate common issues or resources with other parties;
- (g) in the case of final costs, whether an advance of funds or interim costs were awarded;
- (h) whether the application for an advance of funds or for interim or final costs was filed with the appropriate information;
- (i) whether the participant required financial resources to make an adequate submission;
- (j) whether the submission of the participant made a substantial contribution to the binding resolution meeting, hearing or regulatory appeal;
- (k) whether the costs were reasonable and directly and necessarily related to matters contained in the notice of hearing on an application or regulatory appeal and the preparation and presentation of the participant's submission;
- (l) whether the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Regulator;
- (m) the conduct of any participant that tended to shorten or to unnecessarily lengthen the proceeding;
- (n) a participant's denial of or refusal to admit anything that should have been admitted;
- (o) whether any step or stage in the proceedings was
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution;
- (p) whether the participant refused to attend a dispute resolution meeting when required by the Regulator to do so;
- (q) the participant's efforts, if any, to resolve issues associated with the proceeding directly with the applicant through a dispute resolution meeting or otherwise;
- (r) any other factor that the Regulator considers appropriate.

[13] When assessing costs, the AER is also guided by [Directive 031: REDA Energy Cost Claims](#) and by AER [Bulletin 2014-07: Considerations for Awarding Energy Costs Claims and Changes to the AER's Process for Reviewing Energy Costs Claims](#). The bulletin states that costs submissions are to address the factors in 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 specifically in dispute and may grant the rest of the claim without further review.

[14] As stated in *Bulletin 2014-07*, participants and applicants are expected to make an effort to come to an agreement on costs claims. If they are unable to do so, *Bulletin 2014-07* makes it clear that the party opposing the costs claim is expected to specifically identify and provide submissions for each of the disputed costs.

### Costs Claim of the Wiebens

[15] The total costs claim of the Wiebens is \$98 693.96, broken down as follows:

Professional fees	\$83 961.00
Honoraria	\$5 200.00
Disbursements and expenses	\$5 277.22
GST	\$4 255.74

[16] The professional fees are broken down as follows:

D. Wieben (185.5 hours x \$120/hour)	\$22 260.00
B. Wieben (168 hours x \$45/hour)	\$7 560.00
Dr. Bietz (185 hours x \$270/hour)	\$49 950.00
T. Pesta (5 hours x \$270/hour)	\$1 350.00
J. Reid (5 hours x \$270/hour)	\$1 350.00

[17] The Wiebens submit that consideration for their costs should be treated fairly, and that the panel should take into account that this is their first experience with the AER hearing process and that they put significant efforts into managing this matter, which were time consuming and stressful, and consolidated common issues between the Wieben family members. Their participation included gathering of material, reading and printing of all the relevant legislations, reviewing the proposal of work on pipelines in the applications, attending meetings in person and by teleconference, consulting with Dr. Bietz, managing the large amount of emails and communication, as well as travel time and mileage incurred.

[18] In their effort for a resolution, the Wiebens submit that they worked tirelessly and participated in numerous negotiations with Canadian Natural as well as attending alternative dispute resolution (ADR) meetings.

## Canadian Natural's Submissions

[19] Canadian Natural disputes portions of the Wiebens' costs claim because in its view they do not comply with section 58.1 of the *Rules of Practice* and *Directive 031* and the costs claimed are excessive and unreasonable in the circumstances.

[20] Canadian Natural submits the following:

- The Wiebens are not entitled to professional fees.
- Bietz Resources Ltd.'s fees for Dr. Bietz, Mr. Pesta, and Mr. Reid should be reduced.
- It is not clear when or why the expenses relating to transcripts and printing were incurred, which means that they may relate to the preparation of this cost claim, which is not recoverable under *Directive 031*.

### Professional Fees for D. and B. Wieben

[21] With regards to D. Wieben's and B. Wieben's professional fees claim, Canadian Natural stated that they do not qualify for professional fees because they are not lawyers, consultants, or experts, as required by section 6.2 of *Directive 031*. In addition, Canadian Natural submitted that the D. and B. Wieben failed to provide a professional account with a detailed list of services performed, the hourly rate, and the amount of time spent on each work component, as required by *Directive 031*. According to Canadian Natural, D. and B. Wieben should be compensated for their participation and contribution in the hearing through participant honoraria and not through professional fees.

### Professional Fees for Bietz Resources Ltd.

[22] Canadian Natural acknowledged that all three experts retained by Bietz Resources Ltd. have over 12 years of experience and did not dispute their hourly rate of \$270.00. However, Canadian Natural disputes the total number of hours incurred by Bietz Resources Ltd.

### Dr. Bietz

[23] Canadian Natural disputes two aspects of Dr. Bietz's costs claim. The first is the time he spent working on the file before the notice of hearing was issued for the proceeding, which is contrary to *Directive 031*. The second aspect is his conduct during the hearing after the notice of hearing was issued, which unnecessarily lengthened the hearing process. As a result, Canadian Natural proposes a reduction of 35.5 hours for work performed before the notice of hearing was issued and a further reduction of 20 per cent to account for the unnecessary delay he caused.

### Professional Fees for Mr. Pesta and Mr. Reid

[24] Canadian Natural disputes the costs for Mr. Pesta and Mr. Reid in their entirety because no detailed breakdown of their services was provided and because they failed to fulfil their role as experts or consultants in the hearing.

[25] In summary, Canadian Natural is prepared to pay the amount of \$36 771.92 in total for the professional fees out of the amount of \$49 950.00 claimed by Bietz Resources Ltd.

### Disbursements

[26] Canadian Natural disputes the following disbursements: the mileage expenses in the amount of \$363.00 and \$366.63 for B. Wieben and D. Wieben, respectively; transcript expenses in the amount of \$963.90; and external printing expenses in the amount of \$1328.25. The grounds for disputing the mileage expenses are that most of them were incurred outside of the hearing phase of the proceeding. Canadian Natural is disputing the transcript expenses because the transcripts were ordered on June 19, 2019, which is well after the completion of the hearing. Canadian Natural is disputing the external printing expenses because the evidence provided in support of them is unclear on whether those expenses were incurred for the preparation of this cost claim and not for the hearing.

### Participant Honoraria

[27] In its submission, Canadian Natural stated that it is prepared to provide the Wiebens with participant honoraria. D. and B. Wieben should receive \$2500.00 each, G. and M. Wieben should receive \$2000.00 each, and J. Heffren should receive \$500.00 for their preparation to participate in the hearing. In addition, Canadian Natural is also prepared to provide \$300.00 each to D. Wieben, M. Wieben, G. Wieben, B. Wieben, and J. Heffren for attendance at the hearing and \$300.00 each to D. Wieben and B. Wieben for forming a group.

## **The Wiebens' Reply**

[28] In their reply, the Wiebens declined the offer made by Canadian Natural and reiterated that they stand behind their costs claim as filed. The Wiebens also provided a clarification from Katalac Professional Services in support of their claim for external printing services in the amount of \$1328.25 and explained that the AER had to give permission to release the transcripts, which were not available until June 2019.

## **AER Decision**

[29] In accordance with *Bulletin 2014-07*, the AER reviews only those aspects of a costs claim that the claimant or the responder identify as being in dispute. As noted in Canadian Natural's submissions, the following costs are in dispute:

- professional fees for both D. and B. Wieben;
- Bietz Resources Ltd. professional fees for Dr. Bietz, Mr. Pesta, and Mr. Reid; and
- disbursements for mileage, transcripts, and printing.

#### Professional Fees for D. and B. Wieben

[30] The Wiebens' claim for professional fees are as follows: a total of \$7938.00 to B. Wieben as secretarial and support staff (\$45 per hour x 168 hours of preparation work plus GST in the amount of \$378) and a total of \$23 373.00 to D. Wieben on the basis of his negotiation experience (\$120 per hour x [185 hours of preparation work and 0.5 hours in argument and reply] plus GST in the amount of \$1113.00). In their submissions, B. and D. Wieben provide further details of their respective administration and negotiation experience. B. Wieben has extensive experience as a veterinary technologist and over 6 years' experience in municipal governance. D. Wieben has over 45 years' experience in negotiating oil and gas operations on his land and has also been a leader in the Fairview Surface Rights Group.

[31] Canadian Natural disputes each of D. Wieben's and B. Wieben's professional fees claim because they are not lawyers, consultants, or experts and failed to provide a professional account that included a detailed list of the services performed, the hourly rate, and amount of time spent on each work component, as required by *Directive 031*. As a result, D. and B. Wieben should be compensated for their participation and contribution in the hearing through participant honoraria and not through professional fees.

#### Views of the Panel

[32] The AER is of the view that the characterization of the participation of D. and B. Wieben in the hearing was as directly and adversely affected landowners who filed a statement of concern with regard to the proposed project and not as experts or consultants. Therefore, in accordance with *Directive 031*, the AER finds that their participation falls squarely within the criteria for attendance honoraria and that it does not qualify for expert or consultant fees. The AER denies the costs claim for professional fees for D. and B. Wieben in their entirety.

#### Professional Fees for Bietz Resources Ltd.

##### Dr. Bietz

[33] As noted above, Canadian Natural disputes Dr. Bietz's 35.5 hours spent on the file prior to the issuance of the notice of hearing for the proceeding and seeks a further 20 per cent reduction for the hours after the notice of hearing was issued because it claims that Mr. Bietz caused an unnecessary lengthening and protracting of the hearing process.

#### Views of the Panel

[34] When making decisions to award costs, one of the factors that the AER must consider, as stated in section 58.1(k) of the *Rules of Practice*, is

whether the costs were reasonable and directly and necessarily related to matters contained in the notice of hearing on an application or regulatory appeal and the preparation and presentation of the participant's submission

[35] In accordance with the *Rules of Practice*, the AER generally does not award costs for work done before it is clear that a matter is to go to hearing and a notice of hearing issued. To be eligible for an award, costs must be necessarily and reasonably incurred for the direct purposes of a hearing, and if there is no certainty of a hearing (i.e., no notice of hearing), that test cannot be met. As the AER noted in [AER \*Costs Order 2016-001\*](#) (at paragraph 16), any party claiming costs incurred before a notice of hearing is issued would have to provide compelling evidence as to why the AER should depart from this general rule and award costs. Similarly, in the current costs proceeding, there was no compelling reason given as to why the panel should award costs for the 35.5 hours Dr. Bietz spent on the file prior to the issuance of the formal notice of hearing. Therefore, the AER denies the costs claimed for the 35.5 hours Dr. Bietz worked before the notice of hearing was issued.

[36] With regard to the 20 per cent reduction request, the panel notes that this hearing was not very complex and not very long in duration. The panel found that Dr. Bietz made a substantial contribution in the hearing and helped the panel gain a better understanding of the issues. Dr. Bietz was successful in achieving technical changes to the project, which in turn removed the need for a new right-of-way (ROW) on the Wiebens' lands. This addressed one of the main concerns of the Wiebens. However, the panel also finds that Dr. Bietz unnecessarily lengthened the proceeding to an extent by raising issues that were out of scope for the hearing and created, at times, through the numerous emails sent in correspondence, creating unnecessary work for AER staff assisting the panel in the hearing. As a result, the panel is reducing Dr. Bietz's cost claim by 10 per cent. The panel awards fees for Dr. Bietz's work in the amount of \$36 328.50 in total, calculated at 90 per cent of 149.5 hours (185 hours - 35.5 hours) at \$270.00 per hour plus GST in the amount of \$1816.43.00.

#### Professional Fees for Mr. Pesta and Mr. Reid

[37] Canadian Natural disputes the costs for Mr. Pesta and Mr. Reid in their entirety because no detailed breakdown of their services was provided and they did not fulfill their role as experts or consultants in the hearing.

#### Views of the Panel

[38] The AER disagrees with Canadian Natural on these costs. The panel finds that the evidence provided by Mr. Pesta and Mr. Reid contributed to a better understanding of the issues related to the

ROW required for the project. The panel also finds sufficient details recorded in Mr. Bietz's account on the services Mr. Pesta and Mr. Reid provided in the hearing.

[39] Therefore, the panel awards the costs related to both experts' participation in the hearing the amount of \$945.00 each, calculated at 100 per cent of 3.5 hours at \$270.00 per hour plus GST of \$47.25. The panel notes that the Wiebens claim 5 hours for these experts. However, the record provides sufficient details to support an award of 3.5 hours for each expert. To clarify, the total costs award for both Mr. Pesta and Mr. Reid is in the amount of \$1890.00 plus GST in the amount of \$94.50.

## Disbursements

### Views of the Panel

#### Mileage

[40] In accordance with *Directive 031*, the AER may consider claims for, among other things, the mileage for travel that has occurred during the hearing phase of the proceeding. According to Canadian Natural, most of the travel expenses were incurred outside of the hearing phase of the proceeding. The panel agrees that the evidence provided by the Wiebens shows that the travel in question occurred outside of the hearing phase of the proceeding, considering that the hearing was conducted in Fairview, Alberta, which is in a very close proximity to the Wiebens lands and residence. *Directive 031* allows claims for mileage for intercity travel distances of 50 km or more. Since the distance between Fairview and the Wiebens' residence is less than 50 km, the AER denies the mileage costs claim in its entirety.

#### Transcripts

[41] With regard to the transcript expenses, the panel agrees with the Wiebens that the transcripts form part of the evidence in the hearing. The panel is satisfied with the Wiebens' explanation that they obtained the transcripts as soon as they became available. The full amount of \$963.90 claimed for transcripts is awarded to the Wiebens.

#### Printing

[42] Finally, in relation to the disputed printing expenses in the amount of \$1328.25, the panel is satisfied with the explanation regarding these costs provided by Katalac Professional Services and filed by the Wiebens in their August 2, 2019, final reply. As stated in *Directive 031*, the AER does not require claimants to submit receipts for, among other things, photocopies and printing disbursements with their initial claim. Therefore, the panel awards the amount of \$1328.25 for printing services incurred by the Wiebens for the preparation in the hearing.

## Participant Honoraria

[43] The final item in this costs claim application is the participant honoraria. This item is not disputed by Canadian Natural. However, since both parties have a different understanding and have provided different amounts for these expenses, the panel will address them as well. The Wiebens, in their costs application, claimed the amount of \$5200.00 for honoraria.

[44] Canadian Natural, is prepared to provide the Wiebens the following amounts. Canadian Natural is prepared to provide D. and B. Wieben a preparation honorarium of \$2500 each, given their larger role in preparing for the hearing. Canadian Natural is also prepared to provide G. and M. Wieben a preparation honorarium of \$2000.00 each and J. Heffren a preparation honorarium in the amount of \$500.00. In addition, Canadian Natural is prepared to provide D. Wieben, M. Wieben, G. Wieben, B. Wieben, and J. Heffren each an attendance honorarium of \$300.00 and D. and B. each an honorarium of \$300.00 for forming a group. The total amount Canadian Natural is prepared to provide for participant honoraria is \$11 600.00. Therefore, the panel agrees with Canadian Natural's submissions on this issue and awards the Wiebens the amount of \$11 600.00 in total for participant honoraria. The panel notes, in particular, that having the individual family members group together as "the Wiebens" around common issues resulted in a more efficient hearing.

[45] It is important to note a discrepancy in Canadian Natural's submissions on the participation honorarium it is prepared to provide for G. and M. Wieben. On page 9 of its reply, within the body of its submissions, Canadian Natural stated that it is prepared to provide both G. and M. Wieben a preparation honorarium of \$2000.00 each. However, in the table on page 10 of the same reply, the participation amount stated for G. and M. Wieben is \$1000.00, which makes the honoraria \$9600.00 in total. The panel decided to award the amount that was proposed by CNRL in the main body of Canadian Natural's submissions.

## Order

[46] The AER hereby orders that Canadian Natural pay costs in the amount of \$52 110.65 and GST in the amount of \$1910.93, for a total of \$54 021.58. Within 30 days of the date this order was issued, CNRL must pay this amount to the individuals listed in and in accordance with appendix 1.

Dated in Calgary, Alberta, on October 10, 2019.

## Alberta Energy Regulator

D. O'Gorman  
Presiding Hearing Commissioner

J. Daniels  
Hearing Commissioner

B. Zaitlin  
Hearing Commissioner

## Appendix 1 Summary of Costs Claimed and Awarded

	Total fees/ honoraria claimed	Total expenses claimed	Total GST claimed	Total amount claimed	Total fees/ honoraria awarded	Total expenses awarded	Total GST awarded	Total amount awarded	Reduction
<b>The Wiebens</b>									
D. Wieben	\$23 973.00	\$1 799.88	\$1 176.25	<b>\$26 949.13</b>	\$3 100.00	\$1 328.25		<b>\$4 428.25</b>	\$22 520.88
M. Wieben	\$600.00	\$0.00	\$0.00	<b>\$600.00</b>	\$2 300.00			<b>\$2 300.00</b>	-\$1 700.00
B. Wieben	\$8 538.00	\$1 979.80	\$446.89	<b>\$10 964.69</b>	\$3 100.00	\$963.90		<b>\$4 063.90</b>	\$6 900.79
G. Wieben	\$600.00	\$0.00	\$0.00	<b>\$600.00</b>	\$2 300.00			<b>\$2 300.00</b>	-\$1 700.00
J. Heffren	\$2 800.00	\$45.00	\$0.00	<b>\$2 845.00</b>	\$800.00			<b>\$800.00</b>	\$2 045.00
<b>Bietz Resources Ltd.</b>									
B. Bietz	\$49 950.00	\$1 452.54	\$2 497.60	<b>\$53 900.14</b>	\$36 328.50		\$1 816.43	<b>\$38 144.93</b>	\$15 755.21
T. Pesta	\$1 350.00	\$0.00	\$67.50	<b>\$1 417.50</b>	\$945.00		\$47.25	<b>\$992.25</b>	\$425.25
J. Ried	\$1 350.00	\$0.00	\$67.50	<b>\$1 417.50</b>	\$945.00		\$47.25	<b>\$992.25</b>	\$425.25
<b>Total</b>	<b>\$89 161.00</b>	<b>\$5 277.22</b>	<b>\$4 255.74</b>	<b>\$98 693.96</b>	<b>\$49 818.50</b>	<b>\$2 292.15</b>	<b>\$1 910.93</b>	<b>\$54 021.58</b>	<b>\$44 672.38</b>