



Intrepid Energy Corporation

S.40 Review Request by Intrepid Energy Corporation on Decision 2007-080

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2008-007: (Intrepid Energy Corporation)

(S.40 Review Request by Intrepid Energy Corporation on Decision 2007-080)

Application No. 1547927

Cost Application No. 1556478

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**INTREPID ENERGY CORPORATION
S.40 REVIEW REQUEST BY INTREPID ENERGY
CORPORATION ON DECISION 2007-080**

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Application No. 1547927
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1 INTRODUCTION

Intrepid Energy Corporation (Intrepid) applied to the Alberta Energy and Utilities Board (EUB or Board) pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations* for licences to drill three natural gas wells. The purpose of the wells was to obtain natural gas production from the Horseshoe Canyon Formation of the Edmonton Group.

Intrepid applied in accordance with Section 7.001 of the *Oil and Gas Conservation Regulations* for approval to construct and operate three single-well gas batteries with compression at each of the proposed well sites. In addition, Intrepid applied in accordance with Part 4 of the *Pipeline Act* for approval to construct and operate four pipelines for the purpose of transporting natural gas from each of the wells to tie-in points on existing pipelines.

The Board held a public hearing in Red Deer, Alberta, from June 27 to June 29, 2007, before Board Member J. D. Dilay, P.Eng. (Presiding Member) and Acting Board Members D. K. Boyler, P.Eng., and W. G. Remmer, P.Eng. On October 30, 2007 the Board issued Decision [2007-080](#).

On November 15, 2007, Intrepid applied for a review and variance (R&V) of Decision 2007-080.

By way of letter dated November 29, 2007, the EUB requested that any comments with respect to the R&V application be submitted by December 17, 2007. The Board received submissions from the following parties.

- Pat and Gerry Hanson, December 11, 2007;
- Ackroyd LLP on behalf of the Christian Family, December 12, 2007; and
- Davis LLP on behalf of the Telford Family, December 14, 2007.

By way of letter dated December 17, 2007, Intrepid submitted comments regarding the above submissions and ultimately requested that their R&V application be withdrawn. On December 20, 2007, the Board notified Intrepid that it was proceeding to close the R&V application.

Subsequent to the Board's letter of December 20, 2007, the Board received the following cost claims.

- Ackroyd LLP on behalf of the Christian Family, \$2,598.88.
- Davis LLP on behalf of the Telford Family, \$2,082.36.

On January 22, 2008, the Board requested Intrepid to file comments regarding the cost claims by February 5, 2008 and any responses to be filed by February 19, 2008. The Board received comments from Intrepid and responses from the Christian Family and Telford Family.

The Board considers the cost process to have closed on February 19, 2008.

2 VIEWS OF THE BOARD – Authority to Award Costs

In determining local intervenor costs, the Board is guided by its enabling legislation. In particular, by section 28 of the *Energy Resources Conservation Act* (ERCA) which reads as follows:

28(1) In this section, “local intervenor” means a person or a group or association of persons who, in the opinion of the Board,

- (a) has an interest in, or
- (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, 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.

It is the Board’s position that a person claiming local intervenor costs must establish the requisite interest in land and provide reasonable grounds for believing that such an interest may be directly and adversely affected by the Board’s decision on the project in question.

When assessing costs, the Board will have reference to Part 5 of the *Rules of Practice* and to its *Scale of Costs*.

Section 55(1) of the *Rules of Practice* reads as follows:

Section 55(1) The Board may award costs in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:

- (a) the costs are reasonable and directly and necessarily related to the proceeding and;
- (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

3 VIEWS OF THE PARTIES

3.1 Intrepid

On January 24, 2008, Intrepid submitted comments with respect to the two cost claims. Intrepid is of the view that it should not be responsible for any of the costs submitted by the Christian Family and the Telford Family.

Intrepid submits that it was not making a formal R&V application and quoted the following from its letter of November 15, 2007.

Intrepid does not believe that there is any need to re-open the hearing as we are not suggesting any new evidence other than what the panel may require to help with their decision. Any additional legal costs placed on Intrepid would be unreasonably punitive based on the astronomical costs submitted by the interveners to date. Any further submissions/information requested/required by the Board should be written and without legal counsel's involvement.

In addition, Intrepid notes that on or about December 4, 2007, it advised the Board that "*Intrepid would have no choice but to withdraw as uncertainty with respect to future costs will likely outweigh the value of potential reserves*". On December 17, 2007, Intrepid again advised the Board "*...Intrepid has no alternative at this time but to respectfully withdraw from any formal review and variance process that could result in additional costs to Intrepid*".

3.2 Telford Family

On January 29, 2008, Ms. Steblyk, counsel for the Telford Family, submitted a response to Intrepid's comments. The Telford Family submits the following.

It is not their problem that Intrepid apparently did not understand the procedures in place governing review requests, and that Intrepid was not entitled to submit such a request without the involvement of the interveners and their legal counsel.

In addition, the Telford Family submits that the Board's procedures require the inclusion of interveners in review matters and as such the interveners are entitled to engage legal counsel to assist them.

The cost claim submitted by the Telford Family includes legal fees of \$1,958.00, expenses of \$6.49, and GST of \$117.87, for an overall claim of \$2,082.36.

3.3 Christian Family

On February 19, 2008, Mr. Secord, counsel for the Christian Family, submitted a response to Intrepid's comments. The Christian Family submits the following.

The Christian Family has had the opportunity to review Ms. Steblyk's letter to the Board dated January 29, 2008 and it adopts the comments that she made on behalf of the Telfords. The Christian Family has nothing further to add.

The cost claim submitted by the Christian Family includes legal fees of \$2,450.00, expenses of \$1.77, and GST of \$147.11, for an overall claim of \$2,598.88.

4 VIEWS OF THE BOARD

The Board has adopted a two-step process for addressing R&V requests. First, the Board determines the preliminary question as to whether the decision in question should be reviewed. Second, if the Board grants the review, a hearing on the merits is held. The Board affords an opportunity to interested parties to the proceeding to provide comments or submissions. The Board then provides an opportunity to the R&V Applicant to reply to any comments received by the Board.

The Board has reviewed the R&V file and notes the following:

- November 15, 2007 – EUB received correspondence from Intrepid requesting a review of Decision 2007-080;
- November 29, 2007 – EUB forwarded correspondence to all interested parties in relation to the R&V application requesting comments be provided on or before December 17, 2007 and Intrepid’s response to comments be provided on or before December 31, 2007;
- December 4, 2007 – EUB staff forwards a copy of EUB letter dated November 29, 2007 to Bernie Goruk of Intrepid via email;
- December 4, 2007 – Bernie Goruk of Intrepid responds to EUB staff via email stating the following:

“Intrepid is requesting the Board to make a decision on conditions for drilling through the aquifer and for a decision on the 8-18 well based on evidence given to date. In addition, Intrepid request the opportunity to respond to the new evidence presented at the hearing regarding a slant pad in 10-18; and to allow Intrepid to provide the information to assist the Board as referenced in Decision 2007-080.”

- December 5, 2007 – EUB staff sent an email to Intrepid advising that Intrepid has two recourses in responding to Decision 2007-080, either to request a review from the Board or to file an Appeal with the Court of Appeal;
- December 17, 2007 – EUB received correspondence from Intrepid advising that they are withdrawing from any formal R&V process;
- December 20, 2007 – EUB staff forwarded correspondence to Intrepid advising that the Board has closed its review file;

The Board is of the view that, given the fact that Intrepid has had prior participation in R&V matters it should be familiar with the process, including opportunities for interveners to provide comments, retain counsel, and claim costs. Further, Intrepid should recognize that there are only two avenues for varying or appealing a decision of the Board following a hearing, namely the R&V process or by seeking Leave to Appeal to the Court of Appeal. In both instances all interested parties would be informed and provided an opportunity to engage in the R&V or appeal process respectively.

Based on the above discussion the Board is of the view that it is appropriate for Intrepid to bear the costs associated with its R&V request. The Board has reviewed the cost claims submitted by the Telford Family and the Christian Family and found them to be directly and necessarily related to the proceeding. Accordingly, for the Telford Family, the Board approves legal fees of \$1,958.00, expenses of \$6.49, and GST of \$117.87, for a total award of \$2,082.36. For the Christian Family, the Board approves legal fees of \$2,450.00, expenses of \$1.77, and GST of \$147.11, for a total award of \$2,598.88.

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) The Board approves intervener costs for the Telford Family in the amount of \$2,082.36.

- (2) Payment shall be made to the offices of Davis LLP at 1000, 250 – 2nd Street SW, Calgary, AB T2P 0C1.
- (3) The Board approves intervener costs for the Christian Family in the amount of \$2,598.88.
- (4) Payment shall be made to the offices of Ackroyd LLP at 1500, 10665 Jasper Avenue, Edmonton, AB T5J 3S9.

Dated in Calgary, Alberta on this 21st day of May, 2008.

ALBERTA ENERGY AND UTILITIES BOARD

“Original Signed by Thomas McGee”

Thomas McGee
EUB Board Member