

Costs Order 2024-01

**Concourse Petroleum Inc.
Applications 31534137, 31534392,
and 31800011**

Costs Awards

Alberta Energy Regulator

Costs Order 2024-01 : Concourse Petroleum Inc., Applications 31534137, 31534392, and
31800011 for Three Sour Oil Well Licences

Grande Prairie

May 30, 2024

Published by

Alberta Energy Regulator

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Contents

Contents	i
Introduction.....	1
Background.....	1
Costs Claim	2
The AER's Authority to Award Costs	2
Mr. Wright's Costs Claim.....	3
Panel's Analysis and Decision	4
Order	5
Appendix 1 Summary of Costs Claimed and Awarded	7

**Concourse Petroleum Inc.
Applications for Three Sour Oil Wells
Grande Prairie Field**

**Costs Order 2024-01
Applications 31534137, 31534392,
and 31800011**

Introduction

[1] On January 13, 2022, Concourse Petroleum Inc. (Concourse) submitted applications 31534137 and 31534392 for re-entry of an existing sour oil well. On June 16, 2022, Concourse submitted application 31800011 for a new directional sour oil well. Concourse submitted the applications under section 2.020 of *the Oil and Gas Conservation Rules* in accordance with *Directive 056: Energy Development Applications and Schedules*.

[2] The licences applications were for three sour oil wells at surface location Legal Subdivision 01, Section 21, Township 77, Range 26, West of the 5th Meridian.

Background

[3] Kelvin and Christina Wright (the Wrights) own the land on which Concourses's sour oil wells will be located. Mr. Wright submitted statements of concern regarding the three applications. The AER determined the Wrights may be directly and adversely affected by the applications and referred them for a hearing. The notice of hearing for proceeding 420 was issued on December 6, 2022, initiating the hearing process.

[4] During the notice period, on December 21, 2022, Kelvin Wright requested abeyance of the hearing process. On January 5, 2023, Concourse advised that it supported Mr. Wright's abeyance request. The panel granted the request for the hearing abeyance while the parties participated in alternative dispute resolution (ADR).

[5] After being notified that ADR was unsuccessful, the panel resumed the hearing process on October 18, 2023, and issued a schedule for hearing submissions and a hearing date. The AER planned to hold a public hearing of the applications in or near Grande Prairie, Alberta, beginning on July 16, 2024, before panel members Parand Meysami (presiding) and Elizabeth McNaughtan and Tracey Stock.

[6] On March 20, 2024, its hearing submission deadline, Concourse notified the AER that it was withdrawing applications 31534137, 31534392, and 31800011. On March 22, 2024, the AER issued a notice of the cancelled hearing and subsequently a cancelled decision report (2024 ABAER 002).

Costs Claim

[7] On April 1, 2024, Mr. Wright filed a costs claim on his and Christina Wright's behalf in the amount of two thousand nine hundred and twenty-five dollars (\$2925.00). The costs claim was for time spent during the five months since the ADR ended preparing for the hearing on Concourse's applications. On April 15, 2024, Concourse submitted comments on Mr. Wright's costs claim. On April 16, 2024, Mr. Wright replied to Concourse's comments regarding the costs claim.

[8] The panel has decided to exercise its discretion and award the Wrights costs of \$2000.00 plus GST of \$100.00 for the reasons set out in this decision.

[9] The AER considers the cost process to have closed on April 16, 2024.

The AER's Authority to Award Costs

[10] Section 61(r) of the *Responsible Energy Development Act* gives the AER the authority to make rules governing the awarding of costs. The key sections of the *Alberta Energy Regulator Rules of Practice (Rules of Practice)* governing the award of costs in this matter are 58.1, 62, and 64.

[11] Section 62 of the *Rules of Practice* states a participant may apply for an award of costs incurred in a proceeding by filing a costs claim in accordance with *Directive 031*.

[12] *Directive 031* sets out what information must be included in the costs claim. Section 6.1.2 of *Directive 031* is relevant to Mr. Wright's costs claim. It states that a participant who personally prepares a submission without expert help may receive an honorarium in the range of \$300 to \$2500. A separate schedule of cost is provided for attendance at the hearing.

[13] The AER has broad discretion in deciding whether to award costs. Section 64 of the *Rules of Practice* states, "The Regulator may award costs to a participant if it finds it appropriate to do so in the circumstances of the case, taking into account the factors listed in section 58.1." The relevant factors for this decision are:

- (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;
- (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;
- (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.

[14] The AER considers the date of notice of hearing as the date the hearing process starts.

Mr. Wright's Costs Claim

[15] Concourse believed that a costs claim should not be awarded because it had cancelled its applications before the hearing began. Concourse said that previous AER costs orders were for costs incurred for the time after a hearing starts.

[16] Concourse also said that per section 58.1 of the *Rules of Practice*, there are no compelling reasons for the Wrights not to bear their costs and that all Albertans share the responsibility for ensuring the protection, enhancement, and wise use of the environment through their actions.

[17] Concourse said that if the AER decides to award costs, they should be limited to a \$325.00 honorarium, which would fall within the range of honorariums for participants in a hearing. Further, the \$325.00 corresponded to the hours for submission preparation itemized on Mr. Wright's costs claim.

[18] Concourse stated that the hearing issues raised by the Wrights dealt mainly with compensation or surface lease issues rather than matters the AER regulates, and as such, the hearing was not complex.

[19] Mr. Wright replied that the landowners were diligent and anxious about the hearing and wanted to be prepared. They believed the hearing would occur as there was no information stating otherwise.

[20] Mr. Wright said he filed the original statement of concern regarding Concourse's applications because he wanted to ensure the wise use of the environment.

[21] Mr. Wright characterized the hearing process as time consuming and lengthy. Mr. Wright sent itemized hours spent on preparing for the hearing throughout the hearing process between December 2022 and March 2024.

[22] Mr. Wright requested ADR and found it to be time consuming. He said they spent hours meeting with Concourse during the ADR. As the ADR with Concourse was unsuccessful, the Wrights expected the matter to go to hearing and started preparing their submission. Mr. Wright said that on a farm or a ranch, every single hour counts; they do not have the luxury of nights or weekends off. By the time Concourse withdrew its applications, they had committed their "precious" time to the ADR and hearing preparation, which they could have spent on their farm instead.

Panel's Analysis and Decision

[23] In coming to our decision, we read and considered the submissions made in this cost process and all other material filed with the AER.

[24] An AER hearing process has multiple procedural steps. Preparing for a hearing may mean a lot of reading, writing, evidence gathering, and preparing arguments. For an unrepresented person who is not legally trained or otherwise familiar with regulatory hearing processes, preparing to participate in a hearing process can be time consuming and difficult. Based on Mr. Wright's costs claim, they have been diligently preparing for the hearing. The itemized costs claim demonstrates that some of the hours they spent have been dedicated to conversations with AER hearing staff to better understand the process and prepare for the hearing. It appears to the panel that the Wright's itemized costs submission is reasonable and relates directly to matters of the hearing and preparation for the presentation of the participant's submission.

[25] The parties agreed to participate in ADR, which extended the hearing process by more than ten months. None of the hours the Wrights spent in ADR are part of the itemized costs submission and costs claim; their participation in the ADR process reflects a willingness to resolve the issues between the parties.

[26] We agree with Mr. Wright that a farmer's time is valuable. For farmers, it is unusual to spend time preparing for a hearing on oil and gas development and production. The hearing was to decide on applications for three sour oil wells. Knowledge of matters concerning sour oil well drilling and related safety or environmental matters may be readily available to professionals working in the field, but that knowledge is not as readily available for people in other professions, including farming. Therefore, it is reasonable to infer that preparing for a hearing concerning sour oil drilling is a time-consuming endeavour for the Wrights.

[27] Mr. Wright's costs claim identifies hours spent over the five months by Mr. and Mrs. Wright between the end of the ADR and Concourse's withdrawal of its applications. The applications were withdrawn on the day Concourse's submissions were due to the AER, and the panel agrees that the Wrights had no indication before the withdrawal of the applications that the hearing would not proceed. Therefore, the panel believes it was reasonable for the Wrights to continue to prepare for the hearing up until Concourse's withdrawal.

[28] The Wrights' preparation for the hearing began after the notice of hearing and continued after ADR failed because they had no indication that the hearing would be cancelled. Concourse took the five months between the end of ADR and their submission due date to determine that they would withdraw their applications. Therefore, we consider that the Wrights had invested time in the protracted hearing process that might have been avoidable.

[29] The detailed costs claim submitted by Mr. Wright exceeds the maximum honorarium the AER can award participants. With regards to section 58.1(a) of the *Rules of Practice*, which requires parties to bear responsibility for some of their costs, we have decided to award \$2100.00 to settle Mr. Wright's costs claim, including GST.

Order

[30] The AER orders that Concourse Petroleum Inc., pay costs in the amount of \$2000.00 plus GST in the amount of \$100.00, for a total of \$2100.00.

[31] This amount must be paid within 30 days from issuance of this order to

Kelvin Wright
Box 243
Eaglesham AB
T0H 1H0

Dated in Calgary, Alberta, on May 30, 2024.

Alberta Energy Regulator

Parand Meysami, P.Eng. LL.B., M.Sc.
Presiding Hearing Commissioner

Elizabeth McNaughtan, MBA, P.Ag.
Hearing Commissioner

Tracey Stock, KC, FEC, FGC (Hon), P.Eng., Ph.D.
Hearing Commissioner

Appendix 1 Summary of Costs Claimed and Awarded

	Total Fees / Honorary Claimed	Total Expenses Claimed	Total GST Claimed	Total Amount Claimed	Total Fees / Honorary Awarded	Total Expenses Awarded	Total GST Awarded	Total Amount Awarded	Reduction
K. Wright (participant)									
Total	\$2925.00	\$0.00	\$0.00	\$2925.00	\$2000.00	\$0.00	\$100.00	\$2100.00	\$825.00