



# Grizzly Resources Ltd. and Sinopec Daylight Energy Ltd.

Applications for Well, Pipeline, and Facility Licences  
and a Regulatory Appeal of a Pipeline Licence  
Pembina Field

Costs Awards

**ALBERTA ENERGY REGULATOR**

Costs Order 2014-001: Grizzly Resources Ltd. and Sinopec Daylight Energy Ltd., Applications for Well, Pipeline, and Facility Licences and a Regulatory Appeal of a Pipeline Licence, Pembina Field

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# ALBERTA ENERGY REGULATOR

Calgary, Alberta

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**GRIZZLY RESOURCES LTD. AND  
SINOPEC DAYLIGHT ENERGY LTD.  
APPLICATIONS FOR WELL, PIPELINE, AND  
FACILITY LICENCES AND A REGULATORY  
APPEAL OF A PIPELINE LICENCE  
PEMBINA FIELD**

**COSTS ORDER 2014-001  
APPLICATIONS NO. 1707770, 1723456,  
1723458, 1723460, 1723486,  
1723491, 1759037, 1759038,  
1759044, 1759045, and 1728964  
COST APPLICATION NO. 1769724**

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## 1 Introduction

[1] On June 17, 2013, the *Responsible Energy Development Act (REDA)* came into force in Alberta. The *Energy Resources Conservation Act (ERCA)*, which established the Energy Resources Conservation Board (ERCB/Board), was repealed and the Alberta Energy Regulator (AER) was created. In accordance with the terms of *REDA*, the AER assumed all of the ERCB's powers, duties, and functions under Alberta's energy resource enactments, which includes the *Oil and Gas Conservation Act* and the *Pipeline Act*. Throughout this transition from the ERCB to the AER, the authority of the AER continued without interruption in accordance with the *REDA Transition Regulation*. As a result, the ERCB/Board will be referred to in this costs order as the AER regardless of whether the organization was known at the time as the ERCB or the AER.

### 1.1 Background

*Application No. 1707770*

[2] Grizzly Resources Ltd. (Grizzly) applied to the AER, pursuant to section 2.020 of the *Oil and Gas Conservation Rules*, for a licence to drill a directional well from a surface location in Legal Subdivision (LSD) 7, Section 5, Township 50, Range 6, West of the 5th Meridian (7-5 well site), to a projected bottomhole location in LSD 1-8-50-6W5M.

*Application No. 1723456*

[3] Sinopec Daylight Energy Ltd. (SDEL) applied, pursuant to part 4 of the *Pipeline Act*, for a licence to construct and operate a pipeline to transport salt water from an existing well site at LSD 6-3-50-6W5M to the 7-5 well site.

*Application No. 1723458*

[4] SDEL applied, pursuant to part 4 of the *Pipeline Act*, for an amendment to an existing pipeline to increase the hydrogen sulphide (H<sub>2</sub>S) concentration from 100.00 mol/kmol (10.00 per cent) to 220.00 mol/kmol (22.00 per cent). The pipeline transports oil effluent from an existing well site at LSD 6-3-50-6W5M to an existing multiwell battery at LSD 13-2-50-6W5M (13-2 battery).

*Application No. 1723460*

[5] SDEL applied, pursuant to part 4 of the *Pipeline Act*, for approval to construct and operate a pipeline to transport fuel gas from an existing well site at LSD 6-3-50-6W5M to the 7-5 well site.

*Application No. 1723486*

[6] SDEL applied, pursuant to part 4 of the *Pipeline Act*, for approval to construct and operate pipelines to transport oil effluent from an existing multiwell pad site at the 7-5 well site to the 13-2 battery and an existing well site at LSD 6-3-50-6W5M.

*Application No. 1723491*

[7] SDEL applied, pursuant to section 7.001 of the *Oil and Gas Conservation Rules*, for an amendment to the 13-2 battery. The proposed amendment would increase the H<sub>2</sub>S concentration from 100.00 mol/kmol (10.00 per cent) to 250.00 mol/kmol (25.00 per cent), change the maximum licensed inlet rate of water from 2000 cubic metres per day (m<sup>3</sup>/d) to 2500 m<sup>3</sup>/d, increase compression from 149 kilowatts (kW) to 1193 kW, and include construction of a larger group separator.

*Application No. 1759037*

[8] SDEL applied, pursuant to part 4 of the *Pipeline Act*, for an amendment to an existing pipeline licence for a line split. The line split would divide a discontinued pipeline into two pipelines: the first extending from an existing pipeline tie-in at LSD 4-2-50-6W5M to an existing pipeline tie-in at LSD 4-2-50-6W5M and the second extending from an existing pipeline tie-in at LSD 4-2-50-6W5M to an existing pipeline tie-in at LSD 13-35-49-6W5M.

*Application No. 1759038*

[9] SDEL applied, pursuant to part 4 of the *Pipeline Act*, for approval to construct and operate a pipeline to transport natural gas from an existing pipeline tie-in at LSD 3-2-50-6W5M to an existing pipeline tie-in at LSD 4-2-50-6W5M.

*Application No. 1759044*

[10] SDEL applied, pursuant to part 4 of the *Pipeline Act*, for an amendment to a licence for two existing pipelines to resume operation of the lines and reverse the flow of production. The pipelines would transport crude oil from an existing pipeline tie-in at LSD 4-2-50-6W5M to an existing pipeline tie-in at LSD 4-2-50-6W5M and from an existing pipeline tie-in at LSD 4-2-50-6W5M to the 13-2 battery.

*Application No. 1759045*

[11] SDEL applied, pursuant to part 4 of the *Pipeline Act*, for a substance change from crude oil to natural gas and to move the two existing pipelines from Pipeline Licence No. P49489 to a new licence number. The pipelines would transport natural gas from an existing pipeline tie-in at LSD 4-2-50-6W5M to an existing pipeline tie-in at LSD 4-2-50-6W5M and from an existing pipeline tie-in at LSD 4-2-50-6W5M to the 13-2 battery.

*Application No. 1728964 (Regulatory Appeal)*

[12] On October 20, 2011, the AER approved SDEL's Application No. 1696239 to add Line No. 5 to Pipeline Licence No. P52607. Line No. 5 was then constructed and has been operating since December 19, 2011. Line No. 5 is licensed to transport oil effluent with a maximum H<sub>2</sub>S content of 90.00 mol/kmol (9.00 per cent) from a well at LSD 4-27-50-6W5M to a pipeline tie-in at LSD 16-14-50-6W5M. On October 21, 2011, the AER received a request from T. Losey and C. Kerpan to review its decision to approve Line No. 5, pursuant to sections 39 and 40 of the

*ERCA*. On May 25, 2012, the AER granted the review hearing, pursuant to section 40 of the *ERCA*, and registered it as Proceeding No. 1728964.

[13] A notice of hearing on Grizzly's Application No. 1707770 was originally issued on March 13, 2012. The AER received and granted an intervener's request to reschedule the hearing and issued a notice of postponement of hearing on May 2, 2012. A notice of rescheduling of hearing was issued on July 6, 2012. The AER received another request from participants to postpone the public hearing and to add SDEL's applications to the hearing. On September 14, 2012, the AER granted the postponement request and issued a notice of postponement of hearing to fully consider the request to add additional applications.

[14] On February 8, 2013, the AER sent correspondence to all the parties advising that the Grizzly and SDEL applications and review hearing would be heard in a single omnibus oral hearing.

[15] On February 15, 2013, the AER issued a notice of prehearing meeting. On May 6, 2013, a notice of rescheduling of hearing was issued announcing that the applications from Grizzly and SDEL would be combined into one oral hearing commencing on July 2, 2013.

[16] The AER received objections to Grizzly's and SDEL's applications from S. Kelly, L. McGinn, L. Duperron, R. Domke (assisted by C. Ehbrecht), A. Warnock and D. Warnock, Dr. Losey, and Ms. Kerpan (collectively known as the participants).

[17] The AER held a prehearing meeting concerning the applications on March 6, 2013. The AER determined that an advance of funds was appropriate, and on April 25, 2013, the AER issued its decision on the advanced costs claims of the participants as presented in the table below.

<b>Requested for</b>	<b>Amount Requested</b>	<b>Amount Awarded</b>
Klimek Buss Bishop Law Group	\$131 600.00	\$65 800.00
C. Duncan	\$37 800.00	\$18 900.00
D. McCutcheon	\$21 152.25	\$10 576.13
A. Bessel	\$1 984.50	\$992.25
G. Phillips	\$90 000.00	\$45 000.00
B. Zelt	\$68 400.00	\$34 200.00
<b>Total</b>	<b>\$350 936.75</b>	<b>\$175 468.38</b>

[18] In the April 25, 2013, decision on advance funds, the AER cautioned that any duplication of work by the experts may result in a reduction in the final costs awarded to the participants.

[19] The public hearing of these applications was held in Drayton Valley, Alberta, beginning on July 2, 2013, and ending on July 5, 2013, before panel members R. C. McManus, M.E.Des. (presiding), A. H. Bolton, P.Geo., and G. Eynon, P.Geo., FGC.

[20] The AER issued its decision approving the applications on October 31, 2013, in *Decision 2013 ABAER 019*.

## 1.2 Costs Claims

[21] On July 31, 2013, the participants filed a costs claim in the amount of \$337 135.46. On August 26, 2013, Grizzly and Sinopec submitted comments on the costs claim of the participants. On September 6, 2013, the participants submitted a response to the comments of Grizzly and Sinopec. The AER considers the cost process to have closed on September 6, 2013.

## 2 The AER's Authority to Award Costs

[22] In determining who is eligible to submit a claim for costs, the AER is guided by the *Alberta Energy Regulator Rules of Practice (Rules of Practice)*, in particular sections 58(1)(c):

58(1)(c) "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.

[23] When assessing costs, the AER is also guided by part 5 of the *Rules of Practice*, as well as appendix D, "Scale of Costs," in AER *Directive 031: REDA Energy Cost Claims*. Section 64 of the *Rules of Practice* states that

64 The Regulator may award costs to a participant if it finds it appropriate to do so in the circumstances of a case, taking into account the factors listed in section 58.1.

[24] The panel notes that the *Rules of Practice* was amended on November 30, 2013. This amendment added section 58.1 and removed the considerations for cost awards previously provided in section 64 (see appendix A). The panel observes that most of the factors listed in section 58.1 are considerations previously provided in section 64. It is these considerations that were previously listed in section 64 that the cost applicants have relied upon and referred to in their submissions in this cost proceeding.

[25] Given that the key events relating to an award of costs in this matter (award of advance funds, hearing, cost application, and submissions) all occurred prior to the November 30, 2013, amendment to the *Rules of Practice*, the panel, in making this cost decision, has had regard to those considerations existing prior to that date.

[26] References to section 64 of the *Rules of Practice* by Grizzly and SDEL in this costs order are to the section that was in force prior to the November 30, 2013, amendment.

[27] The panel has read and thoroughly considered all of the submissions made in this cost 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 this decision.



### 3 Costs Claim of the Hearing Participants

[28] Klimek Buss Bishop Law Group (Klimek Buss Bishop) filed a costs claim on behalf of the hearing participants on July 31, 2013. The participants claimed legal fees in the amount of \$129 721.00, disbursements in the amount of \$11 640.54, expert fees in the amount of \$164 260.00, honoraria in the amount of \$16 400.00, and GST in the amount of \$15 113.92, for a total claim of \$337 135.46.

#### 3.1 Views of the Participants

[29] The participants submitted that for the number of hearing days, the number of applications, and the complexity of the matter, the costs incurred are reasonable and less than those initially budgeted.

[30] The participants noted that in correspondence prior to the prehearing and again in the prehearing decision, the AER determined that they were local “interveners” under section 28 of the *ERCA*, and therefore eligible for costs. After proclamation of *REDA*, the participants requested confirmation that they were “participants” in accordance with the new wording of *Directive 031*. The panel confirmed that the ruling of the AER on this point would stand.

[31] The participants argued that *Directive 031* and the *Rules of Practice* provide that participants will be reimbursed for costs provided that they acted responsibly in the proceeding and contributed to a better understanding of the issues and that the costs are reasonable and directly related to the proceedings.

[32] The participants submitted that they had met this test and that the reasonableness of the costs was tied to the nature of the applications and proceedings. They submitted that this hearing was complex. It included 11 applications and two applicants and involved many things that were new to the participants, such as the ERCBH2S model version 1.20, the AER regulatory regime under *REDA*, and multiple proponents.

[33] The participants noted that in addition to the applications for the Grizzly well and the SDEL pipelines and facilities, the hearing also considered Dr. Losey and Ms. Kerpan’s regulatory appeal application.

[34] The participants argued that three or more separate hearings might have been required but for their resourcefulness in requesting that the applications be combined into a single hearing and in working together with common experts and legal counsel. The participants suggested that because the costs of the hearing would presumably be shared between the two proponents, the costs to each proponent are significantly lower than past cost awards for less complex hearings.

[35] The participants also noted that Grizzly and SDEL retained a total of five lawyers (two for Grizzly and three for SDEL) and multiple experts. The applicants presented two panels of witnesses with some overlap between the panels. The participants had one lawyer at the hearing that had to deal with all of the applications, the evidence, and the extended hours. The participants argued that it resulted in a heavy workload that was not easily managed.

[36] The participants noted that the hearing panel made it clear that the hearing was to be completed in the time allocated. The participants submitted that they worked very hard to ensure that the hearing was completed within the time frame allocated and pointed out that they had three major roles at the hearing: cross-examination, presentation of evidence, and argument.

[37] In order to prepare for the hearing, the participants' counsel stated that they

- reviewed several applications; a process that they argued was difficult as SDEL had very repetitive applications and kept adding additional applications during the process;
- retained experts and worked with them to prepare information requests and the submission;
- attended a prehearing meeting;
- reviewed expert reports;
- reviewed the responses to the information requests;
- compiled their evidence; and
- prepared for cross-examination and argument.

[38] The participants stated that their evidence was submitted in two forms: in writing in the submission and orally at the hearing. The participants asserted that they were very involved with instructing legal counsel and compiling the written evidence. In light of the limited time allocated to the hearing, they spent a great deal of time preparing their oral evidence and attempted not to repeat what was in their submission. They attempted to highlight their concerns and evidence. The participants indicated that they willingly sat late to give their evidence, and when it became apparent that the panel did not want to hear all of their evidence and only the highlights, they severely abbreviated their participation and evidence.

[39] The participants acknowledged issues with their oral evidence as the AER found that the evidence included new information that had to be excluded. The participants contended that the applicants submitted materials on the record after the participants' written submissions were filed. They maintained that it was therefore impossible to have addressed all the proponents' materials in the written submissions that were filed in May. The participants also noted that the information was provided in the same manner as evidence given in previous hearings for which there was no complaint and that the participants willingly revised their evidence and, in fact, took out some of the proper evidence to accommodate for this error.

[40] The participants stated that they tried their best to comply with all timelines set by the AER and did not intentionally run afoul of the rules with respect to their evidence.

[41] The participants contended that meeting the timelines set out for the risk assessment report requested by the AER was extremely difficult. The participants highlighted that they had much less time than the proponents to complete the same work. Furthermore, they did not have access to all of the information that the proponents had, making the task more onerous and difficult.

[42] The participants commented that it was important that the panel understand the relationship the participants had with counsel. The participants noted that at the outset of these applications, they did not have counsel as J. Klimek, their usual counsel, was unavailable due to personal circumstances.

[43] The participants further contended that the costs claim for their time began when they received information from Grizzly about its plans to drill another well and produce the existing wells, as they could not retain counsel until their standing and local intervener status had been determined. The participants stated that prior to the determination of their status as participants in early 2013, they had some contact with Klimek Buss Bishop (formerly Klimek Law) for general advice and information on the applications that had been submitted by Grizzly and SDEL. Klimek Buss Bishop also assisted with the submission on standing and eligibility for costs. The participants argued that the initial contact with Ms. Klimek, K. Buss, D. Bishop, T. Razagghi, and their assistant concerned the provision of information on previous hearings the participants had been involved in and the general approach to the current applications. The participants highlighted that the lawyers did very little substantive work on the standing applications and only reviewed the work done by the participants.

[44] The participants submitted that agents for Klimek Buss Bishop assisted with setting up the meeting with Grizzly for which they issued a bill, dated June 7, 2012. Grizzly agreed to pay for these costs but has not done so. The participants indicated that they also incurred a bill from Spectrum Enterprises for taking written notes for the participants and that the costs related to that meeting are part of the costs claim.

[45] The participants noted that a hearing for the Grizzly well was originally set for May 15, 2012. The participants did not have counsel for that hearing and had to deal with the application on their own. The participants asked the AER to make a determination on their standing and filed a submission on the date the AER set for submissions. After their submission was filed, the AER advised them that the submission deadlines were suspended and that this suspension did not adjourn the hearing dates set out in the notice of hearing.

[46] The participants submitted that the hearing was subsequently rescheduled for September 18, 2012, and on September 14, 2012, it was again postponed. They noted that following this postponement, counsel for the participants submitted letters asking the AER to clarify the participants' standing and which applications would be included in the hearing. The participants stated that since their status was questioned and a joint hearing was opposed, they had to submit argument and evidence on those issues. The participants argued that while the letters addressing those issues were submitted by Klimek Buss Bishop, the participants did a great deal of the work to reduce the costs until a determination as to their status had been made. The participants asserted that as a result the submissions on standing are only a modest amount in the costs claim.

[47] The participants noted that in addition to the applications that involved the Grizzly wells and their production, the participants were also involved early on in relation to the AER regulatory appeal. They submitted that Dr. Losey and Ms. Kerpan worked with Ms. Kelly in preparing their submissions and letters to the AER.

[48] The participants further submitted that once the AER made a determination on standing and eligibility for costs that was favourable to the participants, they retained counsel. However, they argued that they did a great deal of work because their new counsel was not familiar with their history and concerns and had limited time due to prior commitments. Additionally, the participants wanted to reduce costs.

### 3.1.1 Legal Fees and Disbursements

[49] Ms. Bishop submitted 271.65 hours for preparation, 45.6 hours for attendance, and 6.4 hours for argument and reply, for a total legal time of 323.65 hours at \$280.00 per hour. Ms. Bishop claimed \$90 622.00 for legal fees and \$2630.68 for disbursements, plus GST of \$4662.63, for a total of \$97 915.31.

[50] Ms. Razzaghi submitted 158.1 hours of preparation time at \$240.00 per hour for a total of \$37 944.00 for legal fees, plus \$1587.17 for disbursements and GST of \$1976.56, for an overall total of \$41 507.73.

[51] Ms. Buss submitted 3.3 hours of preparation time at \$350.00 per hour for a total of \$1155.00, plus GST of \$57.75, for an overall total of \$1212.75. Ms. Buss did not claim any disbursements.

[52] Ms. Bishop argued that participants do much better with legal assistance in a hearing as complicated as this one. She also noted that although counsel provided some advice prior to the AER's determination on standing and the participants' eligibility for costs and the AER's scheduling of the hearing, such work was limited to avoid the participants incurring expenses that would not be reimbursed if they were found not to be eligible for costs.

[53] The participants argued that through extreme efforts of frugality, the legal costs claimed are very close to the amount budgeted, despite the additional work that was required as a result of motions, new material from the proponents during the prehearing process, and additional work required with the risk assessment.

[54] The participants noted that two lawyers were involved in most of the prehearing work on this file, Ms. Bishop and Ms. Razzaghi. They submitted that the services of Ms. Bishop and Ms. Razzaghi were required to meet the condensed timelines, advocated by the proponents and directed by the AER.

[55] The participants highlighted that Ms. Bishop's current hourly rate is below that allowed by *Directive 031* (\$280.00 per hour claimed vs. \$320.00 per hour allowed). Ms. Bishop is a professional engineer (nonpractising) with eight years of direct experience at the bar and five years of engineering experience related to corrosion monitoring. She stated that she has practised almost exclusively before tribunals, such as the AER, and for landowners and aboriginal clients on matters of surface rights impacts from oil and gas and power developments. The participants asserted that Ms. Bishop's hourly rate is more than reasonable.

[56] The participants stressed that Ms. Bishop worked very hard and spent many hours

- reviewing the multiple applications,
- drafting information requests,
- meeting with the participants,
- working with expert witnesses,
- preparing a detailed written submission,

- reviewing the large volume of reply evidence and risk assessment reports that came in less than a week before the hearing began,
- responding to correspondence and motions on short deadlines, which required many weekend hours, and
- appearing at a hearing where long hours were expected and to which the proponents sent five lawyers.

Ms. Bishop also used the assistance of Ms. Razzaghi where necessary at a reduced rate to decrease costs and assist in meeting short deadlines.

[57] The participants stated that a meal claim for \$96.34 on July 5, 2013, was included in the costs claim in error. Ms. Bishop indicated that she will bear her own cost for this meal.

### 3.1.2 Experts' Fees and Expenses

[58] The participants maintained that all the experts had relevant expertise and provided valuable information. Furthermore, they argued that the experts contributed to the proceeding in a very efficient, effective manner and represented all of the participants jointly.

#### *A. Bessel*

[59] The participants noted that Mr. Bessel was awarded some advanced funding and that an agreement was made with the proponents for payment of his fees. The participants requested confirmation from the proponents that funds were advanced to Mr. Bessel as per this agreement, which satisfies Mr. Bessel's claim in its entirety.

#### *S. Du*

[60] In order to compile their submissions on standing, the participants asked Dr. Du, an air dispersion modeller, to complete some modelling on the well and pipelines using the ERCBH2S models. After standing was granted, the information was also included in the hearing submission. Dr. Du claimed three hours of preparation time at \$270.00 per hour, for a total costs claim of \$810.00.

#### *C. Duncan*

[61] The participants argued in their request for advanced funding that the purpose of Mr. Duncan's evidence would be to assist the AER in determining whether the well, pipeline, and battery amendment applications meet industry standards that are necessary to protect against corrosion and failures. They also argued that Mr. Duncan would participate by reviewing the well, pipeline and battery amendment applications, visiting the proposed sites and participants' lands, meeting with the participants, submitting information requests to the proponents if necessary, preparing an expert report, preparing a rebuttal report if necessary, assisting legal counsel in preparing for and conducting cross-examination of the proponents' experts, and providing expert oral evidence at the hearing.

[62] In the final costs submissions, Mr. Duncan claimed 202 hours for preparation and 19 hours for attendance at the hearing, all at the rate of \$270.00 per hour, for a total professional fees

claim of \$59 670.00, plus \$2069.56 in expenses and GST of \$3086.97, for an overall total of \$64 826.53.

[63] The participants submitted that they were initially unable to assess the integrity of the pipeline system based on the information provided in the applications. As the safety of the projects was of prime importance to them, they retained Mr. Duncan to review the integrity of the projects.

[64] They stated that Mr. Duncan was critical of the paucity of information in the original applications. As a result, Mr. Duncan spent many hours drafting information requests and reviewing the responses, which caused him to exceed the time budgeted.

[65] The participants argued that through Mr. Duncan's information requests he was able to obtain considerable information that assisted him in assessing the applications. The participants stated that it appeared that SDEL changed some of its monitoring programs as a result of the intervention. For example, it hired different consultants and presented a more detailed corrosion monitoring plan in its responses to the participants' information requests. The participants argued that this approach satisfied many of Mr. Duncan's concerns and resulted in SDEL having a much better project.

[66] The participants also submitted that without Mr. Duncan's involvement SDEL would not have provided additional information to the participants and a thorough assessment could not have been completed.

*Groupe Oxand Canada Inc. (Oxand)*

[67] The participants highlighted that the issue of risk assessment was raised by the panel and that the participants retained experts on risk assessment at the request of the AER. A risk assessment expert was not in the participants' original proposal, as outlined at the prehearing. To comply with the AER's request, the participants and counsel contended that they spent a great deal of time and effort trying to find an expert who would do it on a rush basis and for participant funding.

[68] The participants noted that the AER refused to approve advance funding for their initial chosen expert, so the participants had to scramble to find a replacement in order to meet the short timelines. During this time, the participants requested a proposal from Oxand. While the participants made no commitment to Oxand to pay for this proposal, Oxand submitted an invoice for completing the proposal and requested payment by the participants. Oxand claimed 24 hours for preparation at \$226.66 per hour, for a total claim of \$5440.00, plus GST of \$272.00. The participants submitted that if this cost is owed, then it is a reasonable cost incurred by the participants and properly forms part of this costs claim.

*B. Zelt*

[69] The participants claimed for Dr. Zelt 223 hours for preparation and 21 hours for hearing attendance at a rate of \$195.00 per hour, for a total of \$47 580.00 plus GST. In addition, the participants claimed total expenses for Dr. Zelt in the amount of \$1141.42 plus GST.

[70] The participants submitted that Dr. Zelt and G. Phillips had very limited time to do the risk assessment work; however, it was all completed below budget.

[71] The participants noted in their advance funding request that Dr. Zelt outlined his work scope and budget estimates. In his work-scope letter, Dr. Zelt indicated that he would provide dispersion modelling and risk modelling, as well as emergency planning zone (EPZ) technical support to the source modelling and frequency assessment by Mr. Phillips. Dr. Zelt stated that the exact scope of the assessment could not be determined at that time; however, his estimated cost for this project was \$68 400 excluding GST and travel expenses.

#### *G. Phillips*

[72] The participants claimed for Mr. Phillips 108 hours for preparation and 12 hours for attendance at a rate of \$270.00 per hour, for a total of \$32 400.00 plus GST. Total expenses in the amount of \$425.62 plus GST were also claimed for Mr. Phillips.

[73] The participants' counsel advised the AER in their advance funding request that the participants had retained two individuals, one of which was Mr. Phillips, to do the dispersion modelling and prepare a risk assessment report. They also advised that they had retained Dr. Zelt to do the detailed dispersion modelling and to work with Mr. Phillips.

#### *D. McCutcheon*

[74] The participants claimed for Mr. McCutcheon 60 hours for preparation and 8 hours for attendance at a rate of \$270.00 per hour, for a total of \$18 360.00 plus GST. Total expenses in the amount of \$878.70 were also claimed for Mr. McCutcheon.

[75] The participants mentioned that emergency planning is of prime importance to them. They stated that Mr. McCutcheon is an expert in emergency planning and is familiar with the application of Major Industrial Accident Council of Canada (MIACC) planning guidelines and he reviewed the applications and provided information on risk assessment and emergency planning. They noted that Mr. McCutcheon was able to provide his services within budget.

[76] In the advanced funding request, the participants noted that Mr. McCutcheon's work proposal included reviewing the well, pipeline, and battery amendment applications, particularly the emergency response plans, meeting with the interveners, submitting information requests to the proponents, preparing an expert report, preparing a rebuttal report if necessary, assisting legal counsel, and providing oral evidence at the hearing.

#### 3.1.3 Participants' Honoraria and Expenses

[77] In form E3, "Summary of Participant Honoraria Claimed," the participants, with the exception of Ms. Ehbrecht and Ms. Kelly, each claimed a preparation honorarium of \$200.00 for attendance at meetings with legal counsel and hearing preparation.

[78] Preparation honorarium for Ms. Kelly was claimed in form E3 in the amount of \$10 000.00.

[79] Additionally, the participants claimed the following attendance honoraria in accordance with their attendance at the hearing and *Directive 031*:

- Ms. Kelly \$800.00
- Ms. Duperron \$800.00
- Ms. McGinn \$400.00
- Mr. Domke \$800.00
- Ms. Ehbrecht \$800.00
- Dr. Losey \$700.00
- Ms. Kerpan \$700.00

[80] Ms. McGinn was only able to attend the hearing for one-and-a-half days due to work commitments. Included in her claim is her loss of wages for the time she was able to attend.

[81] The participants argued that Ms. Kelly spent countless hours gathering information, researching, preparing and typing letters to the AER on behalf of the participants (along with and prior to having legal counsel), submitting the participants' submission by the April 17, 2012, deadline without counsel, reviewing applications, discussing applications and issues with legal counsel, and drafting information requests. They also noted that she acted as a liaison with counsel and the experts on behalf of the participants, arranged and hosted meetings, and educated counsel and the experts on the changes to the applications over time and the history of sour gas operations by both Grizzly and SDEL (as well as predecessors) in the area.

[82] The participants submitted that the claim for legal time for the preparation of information requests was considerably less than if it had been handled completely by counsel and experts.

[83] The participants argued that the circumstances of Ms. Kelly's presentation at the hearing, late at night after some intense objections to the participants' evidence by counsel for SDEL and Grizzly, were not ideal. However, they stated that it must have been clear to the AER upon reading her prepared statement and history document, filed as exhibits 28.02 and 28.03, respectively, that she had spent many hours compiling her statement and phrased it to be useful to the commissioners.

[84] The participants argued that the countless hours they spent bringing their concerns to the AER should not be overlooked. As outlined in final argument, they submitted that their activities have resulted directly and indirectly in improvements to sour gas policy and regulation.

[85] The participants argued that as a result they should be awarded a group honorarium to partially reimburse them for their extensive work, in particular Ms. Kelly whose work reduced both legal and expert costs.

[86] The participants submitted that such an approach was recently taken by the Alberta Utilities Commission (AUC) in *AUC Decision 2011-489: AltaLink Management Ltd. and EPCOR Distribution & Transmission Inc., Heartland Transmission Project Local Intervener Costs Claim*. In the decision, the AUC awarded each of the three intervening landowner groups an honorarium of \$10 000.00 in recognition of the efforts of the landowner group representatives to organize the groups and work with legal counsel and the experts.



[87] The participants pointed out that they formed a group and presented their evidence and argument as a group. They submitted that this process increased the efficiency of the hearing. The participants stated that without the assistance of Ms. Kelly in organizing the participants' attendance at the hearing, given so many applications within a large and diverse geographical area involving two proponents, their participation in the hearing would not have been possible.

### 3.2 Views of Grizzly

[88] Grizzly asserted that the costs sought by the participants are not in accordance with the *Rules of Practice, Directive 031*, and previous cost awards by the AER in similar proceedings and are generally excessive.

#### 3.2.1 Legal Fees and Disbursements

[89] Grizzly submitted that the amounts claimed by the participants' legal counsel, Klimek Buss Bishop, are excessive.

[90] Grizzly stated that the notice of hearing was issued on May 6, 2013, and that Klimek Buss Bishop included legal costs of Ms. Buss, Ms. Bishop, and Ms. Razzaghi that were dated prior to May 6, 2013. Grizzly argued that, as per section 6.3 of *Directive 031*, costs incurred prior to the issuance of a notice of hearing are generally not awarded. However, Grizzly acknowledged that the AER has previously ruled that it may award costs incurred prior to the notice of hearing in the event that parties are required to begin preparation for a hearing prior to the notice of hearing being issued.

[91] Given the procedural novelty of this omnibus proceeding, Grizzly did not dispute the reasonable costs incurred prior to the notice of hearing. Grizzly noted that it was on December 21, 2012, that the AER granted the participants standing with respect to SDEL's applications. Prior to this determination, it was not clear as to whether the participants would have standing, and if they did not, no hearing would have been held. Accordingly, Grizzly submitted that all costs prior to December 21, 2012, which includes \$1155.00 for Ms. Buss, \$2496.00 for Ms. Razzaghi, and \$1064.00 for Ms. Bishop, should be disallowed.

[92] Grizzly argued that although having at least two lawyers acting for the participants could have reduced costs, the numerous meetings between participants' counsel and meetings and conference calls with more than one lawyer for the participants caused needless inefficiencies and duplication. The AER has previously reduced the legal costs claimed by participants in such circumstances, which Grizzly contended should occur here.

[93] Grizzly noted that there are numerous time entries for Ms. Razzaghi's travel time to Drayton Valley. According to the Scale of Costs, professionals are allowed only half of their hourly rate for travel time. Grizzly submitted that there should therefore be a reduction of \$2700.00 for Ms. Razzaghi's travel time since it does not appear that her travel time was billed at half her hourly rate.

[94] Grizzly also noted that Ms. Bishop included time interacting with Dr. Batterman but that on March 28, 2013, the AER advised that Dr. Batterman was not a suitable expert. Grizzly submitted that Ms. Bishop's claim should therefore be reduced by \$1400.00.

[95] Grizzly further argued that this proceeding was not overly complex and certainly not for the “new counsel” as Ms. Bishop described herself. Grizzly noted that Ms. Bishop was counsel for the participants in a sour gas hearing where version 1.19 of the ERCBH2S model was used to determine EPZs and that there is no fundamental difference between version 1.19 and 1.20. Grizzly also stated that this proceeding involved an application for one Grizzly well, not an overall project as claimed by Ms. Bishop. Grizzly maintained that there are no significant differences between the ERCB and the AER. Grizzly also noted that in this proceeding, all of the participants reside outside of the EPZ and, as was clearly demonstrated by the participants’ own experts, risk outside the EPZ is minimal.

[96] Grizzly noted that even if this proceeding were complex, Ms. Bishop has extensive tribunal experience, specifically in the Drayton Valley/Tomahawk area. Ms. Bishop has been counsel in six other AER proceedings respecting sour gas issues. Furthermore, as Ms. Bishop explained during the hearing on July 4, 2013, she has participated in numerous hearings with the ERCB, AUC, and AER.

[97] Grizzly argued that the fact that some of the costs may be shared between proponents should not be a relevant factor in determining a cost award. Grizzly also argued that the number of lawyers retained by it and SDEL was irrelevant and should be ignored as a consideration for awarding costs.

[98] Grizzly submitted that the participants’ meeting with Grizzly representatives on May 30, 2012, was held outside of the AER’s process; therefore, the associated costs should not be considered.

[99] Grizzly indicated that it has significant concerns over the remaining Klimek Buss Bishop legal costs and submitted that a reduction of the fees claimed is warranted using the criteria set out in *Directive 031* and the *Rules of Practice*, in particular section 64.

[100] Grizzly indicated that Ms. Bishop repeatedly asked Grizzly witnesses questions relating to a report from a previous ERCB hearing despite the panel’s ruling that no questions were to be asked that had been dealt with at past hearings. Ms. Bishop also attempted to enter into evidence opening statements of participants containing new evidence that was not on the record. The panel ruled the materials inadmissible as they constituted new evidence. Grizzly noted that Ms. Bishop failed to comply with the panel’s ruling and unnecessarily delayed the hearing by attempting to reintroduce the same materials as evidence. Ms. Bishop also unnecessarily lengthened the duration of the proceeding by asking irrelevant questions of Grizzly’s witnesses.

[101] Grizzly submitted that Ms. Bishop did not provide sufficient assistance to the panel, AER staff, and the parties in the proceeding to justify an award for the amount sought. As a result, Grizzly submitted that the claimed amount should be reduced by 50 per cent.

[102] Grizzly noted that teleconference fees are not listed in *Directive 031* as an allowable disbursement. Grizzly stated that it understood the need to hold teleconferences on occasion. However, it noted that the participants had not provided either the number of teleconferences or the costs of each teleconference in their submission. Grizzly submitted that the disbursement of \$502.53 should be reduced to \$250.00.

[103] Grizzly contended that a receipt submitted by the participants for a meal on July 5, 2013, in the amount of \$96.34 should be excluded as the cost was incurred after the close of the hearing.

[104] Grizzly submitted that Klimek Buss Bishop should be given an award totalling \$65 735.96 for fees and disbursements (less the advance award of \$65 800.00)

### 3.2.2 Experts' Fees and Expenses

#### *Oxand*

[105] Grizzly submitted that an award for Oxand was not justifiable in any respect since Oxand was not retained, did not file any materials, and did not give any evidence at the hearing. Grizzly contended that the participants did not present any evidence that the work done by Oxand was reasonable or necessary for their intervention.

#### *Dr. Du*

[106] Grizzly noted that the costs claimed for Dr. Du were for time prior to the participants receiving standing. Dr. Du did not file any materials in the proceeding nor did he appear at the hearing. Grizzly had not been aware that Dr. Du was involved with this proceeding before receiving the application for costs. Grizzly asserted that this is inconsistent with previous decisions and Dr. Du's claim should be disallowed.

#### *Mr. Duncan*

[107] Grizzly noted that while Mr. Duncan's contribution to the proceeding provided value and assistance, his claim is excessive and includes unnecessary efforts. Mr. Duncan's time sheet includes time reviewing issues outside his expertise and excessive time spent preparing information requests that were of little assistance to the proceeding. Grizzly felt that 35 hours of Mr. Duncan's time was unnecessary. Accordingly, his claim should be reduced by \$9450.00.

[108] Grizzly further submitted that Mr. Duncan's claim of \$400.00 for miscellaneous office supplies is excessive and should be disallowed. Grizzly submitted that *Directive 031* sets out that for an expense claimed under the miscellaneous category, an explanation is to be provided. No explanation was provided for Mr. Duncan's claim.

[109] Grizzly submitted that an appropriate award for Mr. Duncan is \$54 976.53 for fees and disbursements (less the advance award of \$18 900.00).

#### *Mr. Phillips*

[110] Grizzly stated that Mr. Phillips's claim is unacceptable and must be disallowed in its entirety. Mr. Phillips ignored the parameters set out in the AER's letter dated March 3, 2013, and he did not provide a meaningful response to the questions asked in the letter. Furthermore, his findings were suspect and likely based on incorrect assumptions and data. Grizzly submitted that it is not clear why Mr. Phillips was retained or what the terms of his retainer were. Grizzly also noted that Mr. Phillips did not appear to have performed the tasks set out in his advance cost claim.

*Dr. Zelt*

[111] Grizzly for the most part took no issue with Dr. Zelt's contribution because his report reached conclusions that are similar in many respects to those reached by Mr. Dowsett and Mr. Springer. Grizzly submitted, however, that Dr. Zelt's participation should have been curtailed when it became clear in producing his report that his conclusions were more or less consistent with the proponents' experts. He should not have prepared his addendum report, filed June 23, 2013, and there was no need for him to appear at the hearing. Grizzly suggested that his claim should be reduced by the 21 hours billed for his preparation and appearance at the hearing and the 26 hours billed following submission of his primary report. Accordingly, Dr. Zelt's claim should be reduced by \$9165.00.

[112] Grizzly contended that an appropriate award for Dr. Zelt is \$41 950.42 for fees and disbursements (minus the awarded advance of \$34 200.00).

*Mr. McCutcheon*

[113] Grizzly submitted that Mr. McCutcheon's claim should be disallowed in its entirety as he provided virtually no value to the proceeding. He acknowledged during his cross-examination that he does not have experience in the oil and gas industry and does not have any experience with respect to sour gas or with preparing emergency response plans for sour facilities. Grizzly submitted that his report and evidence consisted primarily of qualitative information that was theoretical in nature. Furthermore, Mr. McCutcheon's report did not reflect any consideration of the AER's regulatory requirements, including *Directive 071*.

### 3.2.3 Participants' Honoraria and Expenses

[114] Grizzly contended that the group of six participants was formed long before the present applications were filed. Therefore, the group honorarium is not warranted.

[115] Grizzly submitted that unlike the situation in *AUC Decision 2011-489*, the participants in this hearing were experienced and small in number. Grizzly believed that very little effort or time was required to form the group. Grizzly suggested as an alternative to awarding no group honorarium awarding a more typical honorarium of \$500.00 would be sufficient in this case.

[116] Grizzly did not take issue with the preparation honoraria claims for most of the participants, Ms. Kelly aside. Nevertheless, Grizzly argued that much of the evidence filed by the participants did not relate to the matters before the AER and most of the participants' evidence was copied or extracted from previous proceedings, in contravention of the AER's direction. Grizzly further argued that the evidence of the participants was replete with policy issues that were beyond the scope of the proceeding.

[117] Grizzly submitted that Ms. Kelly's contribution to the proceeding should be evaluated closely and any award should reflect her actual assistance to the proceeding.

[118] Grizzly noted that the AER does not normally provide a preparation honorarium to a local intervener if a lawyer is primarily responsible for preparing the intervention unless there are exceptional circumstances. Grizzly stated that Ms. Bishop has represented these participants in numerous hearings involving sour gas and has vast experience with sour issues in the Drayton

Valley/Tomahawk area. Grizzly questioned why Ms. Kelly was providing the degree of assistance claimed to participants' counsel and submitted that the claim for Ms. Kelly's preparation honorarium is excessive and unsupported and should be limited to the reasonable amount of \$500.00.

[119] Grizzly noted that Ms. Kelly claimed \$415.58 for five hours of typing or organizing notes as well as four-and-a-half hours of meeting time and mileage by "Spectrum Enterprises." Grizzly's review of corporate and trade name searches did not find an entity by that name registered in Alberta. Furthermore, Grizzly indicated that the address listed on the invoice from Spectrum Enterprises is the same address for Dr. Losey and Ms. Kerpan. Grizzly considered it inappropriate to claim costs for note-taking services in addition to preparation as participants.

[120] Grizzly did not take issue with the claims for attendance, however, it submitted that it was not appropriate for Ms. McGinn to be awarded for loss of wages for the one-and-a-half days she attended the hearing in addition to an attendance honorarium. Grizzly submitted that Ms. McGinn should be awarded an honorarium for attendance as this is the amount claimed.

[121] Grizzly expressed concern that Ms. Ehbrecht, who is not a registered participant, is claiming costs for four days of attendance and associated disbursements when she only spoke, on Mr. Domke's behalf, on one day.

[122] In summary, Grizzly argued that an appropriate award for the participants is \$9772.33, reflecting reductions to the amounts claimed by Ms. Kelly and Ms. Ehbrecht.

### 3.3 Views of Sinopec

[123] SDEL argued that the costs claim is excessive and should be significantly reduced.

#### 3.3.1 Legal Fees and Disbursements

##### *Ms. Buss*

[124] SDEL noted that 3.3 hours have been claimed for work by Ms. Buss prior to the start of the hearing. SDEL argued that *Directive 031* clearly states that the AER normally does not award costs incurred before notice is issued. A notice of hearing in relation to the SDEL applications was issued on December 21, 2012. SDEL submitted that the 3.3 hours should therefore not be considered. SDEL noted that as late as January 9, 2013, it was unclear to the parties, as well as the AER, whether Klimek Buss Bishop had been retained by the participants.

##### *Ms. Razzaghi*

[125] SDEL submitted that the costs claimed in relation to the 158.1 hours of work by Ms. Razzaghi are excessive and not reasonable in the circumstances and should be reduced.

[126] SDEL pointed out that Ms. Razzaghi's statement of account includes trips to Drayton Valley for meetings with the participants on October 2, 2012, and March 1, 2013. It also noted that *Directive 031* permits recovery of travel costs for the hearing phase of a proceeding only. SDEL submitted that these trips were unnecessary, as it is not clear that these activities could not have been conducted by telephone. SDEL contended that 6 hours, the approximate time required

to conduct two roundtrips to Drayton Valley from Edmonton, must be subtracted from Ms. Razzaghi's claimed time. Alternatively, that time spent travelling must be claimed at half of counsel's hourly rate in accordance with *Directive 031*.

[127]SDEL submitted that, assuming an eight-hour day, the remaining 152.1 hours work out to approximately 19 days of fully focused work in relation to the applications.

[128]SDEL argued that 7.4 of Ms. Razzaghi's hours are recorded for work done prior to the December 21, 2012, notice of hearing, and therefore are not compensable. SDEL further submitted that the remaining 144.7 hours attributed to Ms. Razzaghi is simply not reasonable for counsel acting in a supporting role and represents duplication of efforts with Ms. Bishop. *Directive 031* authorizes the AER to deny a claim for costs if the AER is not satisfied that the participation was conducted economically. SDEL submitted that, given the significant legal fees included in the costs claim, this is a circumstance in which questions necessarily arise as to whether the participation of multiple counsel was, in fact, conducted economically. In *ECO 2012-006: Glencoe Resources Ltd., Application for a Well Licence, Chigwell Field*, the AER acknowledged that junior lawyers may be used to reduce costs, but held that this would not be the case if it were to lead to "needless inefficiencies and duplications in the costs." SDEL argued that such inefficiencies resulted from the participation of Ms. Razzaghi in this matter, and her fees must be reduced accordingly.

[129]SDEL submitted that Ms. Razzaghi's claimed expenses include accommodation costs in the amount of \$644.47 for Mr. Duncan during the hearing. SDEL indicated that Mr. Duncan's attendance at the hearing was unreasonable, and therefore these hotel expenses must be deducted from the costs claim. Alternatively, SDEL submitted that the hotel costs exceed the maximum of \$140.00 per night allowed under the Scale of Costs and must be reduced accordingly.

#### *Ms. Bishop*

[130]SDEL submitted that the legal fees claimed by Ms. Bishop were unreasonable and should be reduced.

[131]SDEL noted that 3.4 of the claimed hours were for time spent prior to the notice of hearing being issued. SDEL submitted that throughout the preparation for and hearing of these applications, Ms. Bishop did not act responsibly or contribute to a better understanding of the issues before the AER. SDEL asserted that Ms. Bishop's unduly repetitive questioning, presentation of new evidence at the time of hearing, failure to comply with the directions of the AER, submission of evidence and argument on issues that were not relevant, and engagement in conduct that unnecessarily lengthened the duration of the proceeding must weigh against a full award of costs.

[132]SDEL noted that much of Ms. Bishop's cross-examination consisted of questions already posed in the information request process, which were addressed fully by SDEL.

[133]SDEL advised that section 64(2)(d) of the *Rules of Practice* indicates that the AER may have regard to whether a participant presented in oral evidence significant new evidence that was available to the participant at the time that they filed documentary evidence but was not filed at that time.

[134]SDEL submitted that the AER must weigh Ms. Bishop's conduct in attempting to enter significant new evidence onto the record (in the form of the participants' opening statements) in the course of the hearing against a full award of costs.

[135]SDEL further argued that the submission of new and potentially prejudicial information into evidence during the course of a hearing is, and has always been, procedurally unfair and is clearly a matter that weighs against a full costs award.

[136]SDEL stated that Ms. Bishop failed to comply with AER directions both leading up to and during the hearing.

[137]SDEL submitted that during the course of the hearing, the AER panel chair and hearing commissioners ruled on several motions, and Ms. Bishop flagrantly disregarded these rulings. In particular, the panel directed that Ms. Bishop restrict her questioning to corrections made to the risk assessment report by I. Dowsett and A. Springer. The panel was forced to repeat this instruction a total of five times. Each of these instances unnecessarily prolonged and burdened the hearing process.

[138]SDEL also stated that prior to the start of the hearing Ms. Bishop failed to adhere to deadlines set by the AER. SDEL pointed to the correspondence regarding the late filing of the participants' risk assessment reports, as well as Ms. Bishop's attempt to file past the deadline a revised version of Dr. Zelt's report as rebuttal evidence despite the fact that it did not represent reply or rebuttal evidence. SDEL highlighted that in *ECO 2011-008: Shell Canada Ltd., Applications for Well, Facility, and Pipeline Licences, Waterton Field*, the AER ordered a reduction to costs requested by Klimek Law and indicated that repeated failures to comply with the deadlines were a concern and should not be condoned. Similarly, SDEL argued that the AER should reduce the claimed costs in acknowledgement of Ms. Bishop's inability to satisfy deadlines set by the AER.

[139]SDEL noted that throughout the proceeding Ms. Bishop submitted evidence and argument on issues that were not relevant to the applications. SDEL submitted that Ms. Bishop improperly raised issues related to past incidents, the adequacy of AER directives and administrative process, the public interest writ large, and the operation of the SDEL sales pipeline, which was not part of the applications.

[140]SDEL argued that despite clear instructions from the AER, during direct and cross-examination and final argument at the hearing, Ms. Bishop repeatedly referred to past incidents and applications.

[141]SDEL submitted that throughout the hearing process, Ms. Bishop, her clients, and the experts took no exception with SDEL's compliance with AER requirements, but rather used the hearing as a forum to inappropriately attack the adequacy of those requirements. SDEL argued that submissions on the adequacy of *Directive 056: Energy Development Applications and Schedules* and *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry* were not relevant to the applications. *Directive 031*, page 7, expressly states that

[a] reasonable submission for costs purposes would not include arguments about things not being considered or not related to the application, arguments about matters already decided,

*or arguments about government policy or legislative changes, which should more properly be made to the government or a member of the Legislative Assembly of Alberta* [emphasis added].

[142]SDEL submitted that Ms. Bishop's experts took exception with the application requirements themselves, as mentioned above, and/or presented evidence relating to obsolete ERCBH2S models and evidence relating to facilities that were not the subject of the hearing.

[143]SDEL determined that Ms. Bishop had previously been cautioned on the very subject of her legal obligations and the cost consequences that may flow from the calling of irrelevant evidence. In *ECO 2011-008*, pages 54–55, the AER stated the following:

The Board notes that there were a number of witnesses presented at the hearing of these applications who gave evidence primarily or wholly related to government policy matters and legislative change. Section 4.1 of *Directive 031* is abundantly clear that costs related to such evidence are not considered reasonable submissions for cost purposes.

The Board expects counselor representatives to discharge their professional responsibilities to their clients, including accurately and realistically advising their clients about what issues in a given proceeding may require expert assistance or evidence, as well as the potential cost implications of accepting their advice and recommendations on retaining expert witnesses.

[144]SDEL argued that in this proceeding, like in others before it, Ms. Bishop has attempted through her experts to attack the adequacy of AER requirements, rather than to consider the substantive merits of the subject applications.

[145]SDEL contended that Ms. Bishop also spoke at length about her perceptions of the public interest, which is not relevant to the applications and beyond the scope of the hearing.

[146]SDEL further argued that despite the instructions of the panel, Ms. Bishop's cross-examination and argument repeatedly returned to the issue of the SDEL sales pipeline.

[147]SDEL noted that Dr. Zelt's report modelled the sales gas pipeline, which formed the basis of further irrelevant cross-examination by Ms. Bishop.

[148]SDEL submitted that Ms. Bishop has sufficient experience to appreciate that only the applications before the AER are the subject of the hearing process and available for discussion via cross-examination and argument.

[149]SDEL further noted that in final argument, Ms. Bishop suggested that the AER, presumably, may want to review the sales pipeline. SDEL submitted that the issue of whether the sales pipeline was part of the subject applications was canvassed thoroughly during cross-examination (and rejected) and should not have been revisited during final argument. SDEL argued that Ms. Bishop's cryptic suggestions to the panel on irrelevant matters served to prolong the hearing process and did not assist the panel in understanding the relevant issues.

[150]SDEL pointed out that throughout the hearing and in contravention of section 64(2)(h) of the *Rules of Practice*, Ms. Bishop engaged in conduct that unnecessarily lengthened the duration of the proceeding. For example, Ms. Bishop was unfamiliar with exhibit or page numbers for



documents that she sought to draw to the attention of the witnesses. Ms. Bishop's lack of familiarity with the application materials resulted in vague and unfocused cross-examination.

[151]SDEL advised that section 64(2)(1) of the *Rules of Practice* allows the AER to weigh any other matter considered to be appropriate in assessing a costs claim.

[152]SDEL submitted that Ms. Bishop was disrespectful of the hearing process. She was consistently unprepared and requested frequent breaks to allow her to prepare materials for questioning. She spoke frequently about the great volume of materials on the record, suggesting that the burden of preparation had simply been too great.

[153]SDEL argued that the volume of hearing materials was driven in part by the participants' information requests, which were voluminous and required a significant amount of material in response. Despite SDEL's efforts to prepare and present this material, it often appeared to SDEL that Ms. Bishop had not reviewed the material, and hence no efficiencies resulted.

[154]SDEL pointed out that it was Ms. Bishop and her clients' motion to consolidate the Grizzly and SDEL applications into a single omnibus proceeding. Their motion, which SDEL opposed, also contributed to the scope of the hearing and volume of material.

[155]SDEL noted that the participants' May 21, 2013, written submission, prepared by Ms. Bishop and her colleagues, included several allegations that were not supported by any evidence in the proceeding and/or were contradicted by SDEL.

[156]SDEL submitted that putting forward such allegations was inappropriate and unprofessional and caused SDEL to expend additional resources to address them. SDEL stated that this must weigh against a full award of costs.

[157]SDEL argued that regard should be given to prior energy costs orders in determining a reasonable costs award to Ms. Bishop.

[158]SDEL stated that *ECO 2009-003: Shell Canada Limited, Applications for Well, Pipeline, and Associated Facility Licences, Waterton Field*, and *Energy Cost Order 2009-004: Highpine Oil & Gas Limited, Applications for Three Well Licences, Pembina Field, Tomahawk Area*, are instructive for what constitutes reasonable costs. In *ECO 2009-003*, duplication of counsel work resulted in a reduction of fees. In *ECO 2009-004*, the AER found that counsel's preparation time was extreme and counsel fees were reduced by 50 per cent.

[159]SDEL further noted that in *ECO 2011-008*, Klimek Law sought \$120 638.92 in legal fees. The AER reduced this amount by nearly 30 per cent, for a total award of \$86 855.13. SDEL noted that that hearing was significantly lengthier (about 105 hours versus about 45 hours). Consequently, the legal fees set out in the costs claim for this proceeding should be reduced by more than one half.

[160]SDEL argued that reductions are also warranted for Ms. Bishop's expenses. SDEL indicated that the claim includes a Staples Canada receipt in the amount of \$923.46, which appears to include expenses for tabs, printing, hole punching, and scanning, and a \$41.90 Staples Canada receipt for CD burning. SDEL submitted that some of these activities could have been conducted in house at Klimek Buss Bishop Law. SDEL noted that Ms. Bishop has also included

a Tim Horton's receipt for \$16.86 on March 1, 2013. SDEL submitted that *Directive 031* is clear that only meals during the hearing phase of a proceeding are compensable. SDEL also argued that the \$150.00 claim for a June 17, 2013, meeting room rental was unnecessarily incurred. SDEL reasoned that Ms. Bishop's expenses should be reduced to approximately \$1500.00.

[161]SDEL noted that Ms. Bishop has included a July 5, 2013, meal receipt for \$96.34 for lunch at the 3 Knights Steakhouse & Pizza restaurant for seven people. However, the participants appear to have claimed a lunch allowance for that day, resulting in potential double claims. SDEL noted this as a concern if double claiming had indeed occurred.

[162]SDEL concluded that a total legal costs award of \$50 000.00, plus \$2800.00 in disbursements for all the work conducted by Ms. Buss, Ms. Razzaghi and Ms. Bishop, collectively, was reasonable.

### 3.3.2 Experts' Fees and Expenses

#### *Mr. Bessel*

[163]SDEL confirmed that the funds for Mr. Bessel have been paid to Ms. Bishop and that Mr. Bessel's costs claim was addressed.

#### *Dr. Du*

[164]SDEL stated that Dr. Du filed no evidence or report and did not appear as a witness. If the results of Dr. Du's modelling are part of the record in this proceeding, which SDEL does not know, they presumably relate to obsolete and irrelevant ERCBH2S models. SDEL therefore reasoned that Dr. Du should receive no cost award.

#### *Oxand*

[165]SDEL noted that Ms. Bishop had mentioned that the participants had made no commitment to pay Oxand for its proposal, suggesting that no monies may actually be owed to Oxand.

[166]SDEL submitted that Oxand filed no evidence or report in this proceeding and no Oxand representative appeared as a witness. Oxand's proposal was not provided to SDEL or the AER panel and did not form part of this proceeding. Hence, it was of no assistance in considering the applications. SDEL submitted that the amount claimed for Oxand should be rejected in full.

#### *Mr. McCutcheon*

[167]SDEL maintained that no costs should be awarded for Mr. McCutcheon's preparation for and participation in the hearing.

[168]SDEL argued that, as clearly stated in *ECO 2011-008*, counsel (Ms. Bishop) is expected to discharge their professional responsibilities, particularly in advising their clients as to which issues may require expert assistance or evidence. *Directive 031* states that the hearing is an inappropriate forum to raise concerns related to legislation or policy. SDEL argued that the assistance and evidence provided by Mr. McCutcheon was unnecessary with respect to the applications and served only to needlessly prolong the hearing.

[169]SDEL pointed out that in his evidence, Mr. McCutcheon raised no concerns about SDEL's compliance with the relevant AER requirements. SDEL argued that Mr. McCutcheon discussed the characteristics of effective emergency response plans in accordance with his views and experience and with little reference to AER requirements. His oral evidence focused on and critiqued the adequacy of *Directive 071*. SDEL commented that the adequacy of *Directive 071* is not relevant to these applications.

[170]SDEL noted that Mr. McCutcheon also referred to EPZ modelling work that he had completed using United States Environmental Protection Agency or American Industrial Hygiene Association models/criteria that are not endorsed by the AER, and therefore are irrelevant. SDEL argued that despite his reliance on inappropriate models/criteria, Mr. McCutcheon's EPZ modelling effectively endorsed SDEL's 0.24 km EPZ. SDEL submitted that this evidence was unnecessary and was of no assistance to the AER.

[171]SDEL maintained that it was unnecessary for Mr. McCutcheon to be present as a witness in the hearing; therefore, no costs should be awarded in relation to the report written by Mr. McCutcheon, his appearance at the hearing, or any associated expenses.

*Mr. Phillips*

[172]SDEL submitted that Mr. Phillips had access to the AER's March 3, 2013, letter, but did not follow the directions in the letter in preparing his risk assessment report. SDEL stated that Mr. Phillips's report was incomplete and lacked relevance and that he indicated repeatedly during cross-examination that his report was useful merely as a precursor to the more detailed report authored by Dr. Zelt. When asked whether Dr. Zelt's modelling methodology was more refined than the one he had used, Mr. Phillips responded in the affirmative. He also confirmed that Dr. Zelt's report was more representative of reality.

[173]SDEL noted that Mr. Phillips's statement that his report was a precursor to the more comprehensive report of Dr. Zelt is contrary to his intended role as set out in the AER letter of April 25, 2013:

Mr. Gerry Phillips is retained to prepare the risk assessment report and Mr. Brian Zelt is retained to do the dispersion modeling and work with Mr. Phillips.

[174]SDEL submitted that the work conducted by Mr. Phillips clearly duplicated Dr. Zelt's work and was superfluous to these proceedings. By Mr. Phillips own admission, his report was of limited value other than for demonstrating the use of a publicly accessible risk assessment model.

[175]SDEL argued that Mr. Phillips's report was unnecessary and no costs should be paid for his professional services or expenses.

*Dr. Zelt*

[176]SDEL submitted that it is prepared to pay reasonable costs up to the date Dr. Zelt's report was completed. Following that date, it should have been apparent that Dr. Zelt's evidence confirmed the results presented by SDEL's experts and, indeed, predicted lesser levels of risk. For this reason, Dr. Zelt's assistance and attendance at the hearing were no longer necessary.

[177]SDEL noted that Dr. Zelt's report was provided on June 19, 2013. Dr. Zelt recorded a total of 47 hours from June 20 to July 5, 2013. At a rate of \$195.00 per hour, this represents \$9165.00. SDEL submitted that the claim for Dr. Zelt's services should be reduced by \$9165.00, leaving a total cost of \$38 415.00 for his fees.

[178]SDEL objected to all expenses incurred by Dr. Zelt after June 19, 2013, particularly his recorded expenses for mileage and accommodations related to attendance at the hearing. SDEL suggested that Dr. Zelt should not be awarded the \$743.92 for mileage and accommodation.

[179]SDEL also objected to the mileage claimed for a meeting in Drayton Valley on June 17, 2013. *Directive 031* states that only travel costs that are incurred within the hearing phase of the proceeding are compensable. Therefore, Dr. Zelt's expenses must be further reduced by \$397.50. SDEL contended that as such, none of Dr. Zelt's stated expenses are compensable.

[180]SDEL noted that Dr. Zelt's report addressed modelling results related to ERCBH2S versions 1.19 and 1.20, which were irrelevant to the proceeding and were not requested in the AER's March 3, 2013 letter. SDEL submitted that the costs claimed for Dr. Zelt's work should therefore be reduced.

*Mr. Duncan*

[181]SDEL noted that the amount claimed in professional fees for Mr. Duncan's assistance is significantly greater than the \$37 800.00 (\$1800.00 per day over 21 days) estimated by the participants in their application for advanced funding. No justification was provided for the substantial increase in costs, and SDEL submitted that the hours spent by Mr. Duncan exceed what is reasonable under the circumstances.

[182]SDEL maintained that it is only appropriate to compensate Mr. Duncan's reasonable costs up until the time he received SDEL's reply submissions and information request responses to the March 3, 2013, letter. Following that date, it should have been apparent to the participants that Mr. Duncan's evidence confirmed the results presented by SDEL's experts on the same issues and was no longer necessary to support the participants' challenge of the applications.

[183]SDEL stated that if Mr. Duncan's concerns with regard to SDEL were resolved following receipt of the reply submissions and information request responses, he should have been withdrawn from participating in the hearing as an expert witness.

[184]As such, SDEL submitted that no costs should be paid to Mr. Duncan for any activities subsequent to his entries on June 19 and 21, which indicate that he reviewed and made notes on SDEL's submissions. This would result in a reduction of a total of 63 hours, or an amount of \$17 010.00 at a rate of \$270.00 per hour. SDEL expressed that an award of \$42 000.00 would be appropriate and reasonable.

[185]SDEL noted that Mr. Duncan has claimed \$150.00 for travel from Canmore to Calgary on April 10, 2013, for library reference materials. As this expense was not incurred during the hearing phase of the proceeding, it should be denied.

[186]SDEL also noted that Mr. Duncan has recorded a total of \$900.00 in mileage and meal expenses relating to the hearing. SDEL submitted that the costs claimed in relation to Mr. Duncan should therefore be further reduced by approximately \$900.00.

[187]SDEL submitted that Mr. Duncan has claimed certain expenses for office supplies in the amount of \$1228.07. Included in these expenses are charges for printer toner, pens, and similar office supplies. SDEL submitted that these types of expenses are not addressed in *Directive 031* and are assumed to be included within the professional fees. SDEL felt that a total award of \$300.00 for office supplies to Mr. Duncan is more reasonable in the circumstances and consistent with *Directive 031*.

### 3.3.3 Participants' Honoraria and Expenses

[188]SDEL submitted that *Directive 031* limits preparation honoraria awards when participants are represented by lawyers and experts and states that the AER generally will not provide an honorarium to an intervener for his or her preparation efforts.

[189]SDEL noted that past AER costs awards are also instructive in determining the appropriate preparation honoraria. In *ECO 2009-009: West Energy Ltd., Application for a Well Licence, Pembina Field*, the AER stated that

[h]onoraria are awards in recognition of personal time and efforts and typically range from \$300 to \$500. The Board is prepared to increase the honoraria awarded to participants in exceptional situations where there is a clear need for such a substantial intervention. In cases where the group is assisted by counsel and experts, the group may not qualify for an honorarium.

[190]In *ECO 2004-004: Polaris Resources Ltd., Applications for a Well Licence, Special Gas Well Spacing, Compulsory Pooling, and Flaring Permit, Livingstone Field*, the AER awarded a preparation honorarium of \$200.00 to an intervener as opposed to the \$500.00 being claimed. In rendering the decision, the AER noted that the intervener was represented by counsel at the hearing, who was primarily responsible for the hearing preparation.

[191] SDEL also refers to *ECO 2008-015: Highpine Oil and Gas Limited, Application for Well Licences, Pembina Field*, where interveners claimed a preparation honorarium of \$400.00 each. The AER acknowledged that significant time and effort went into the preparation of their submissions. However, the AER concluded that a \$400.00 honorarium is in recognition of "rather extraordinary preparation," and instead approved a \$300.00 preparation honorarium to most of the interveners and a \$400.00 honorarium to only two interveners.

[192]SDEL submitted that *AUC Decision 2011-489* cited in the participants' costs claim in support of \$10 000.00 for a group honorarium differs from the present case. *AUC Decision 2011-489* involved an intervener group of over 200 members, whereas less than ten participants were involved in this proceeding. As such, any group honorarium should be significantly less than \$10 000.00, reflecting the organizational activities required.

[193]SDEL submitted that as the participants were assisted by counsel and experts, their claim for preparation honoraria should be reduced.

*Ms. Kelly*

[194]SDEL noted that Ms. Bishop has claimed an honorarium of \$10 000.00 in relation to the participation of Ms. Kelly, as well as an \$800.00 honorarium for Ms. Kelly's attendance at the hearing.

[195]SDEL noted that it was unclear whether the \$10 000.00 claim for Ms. Kelly was for a group honorarium or a preparation honorarium.

[196]SDEL acknowledged Ms. Kelly's efforts in organizing the group of eight landowners participating in this proceeding, but submitted that the \$10 000.00 honorarium is excessive and unreasonable.

[197]SDEL noted that if the claimed \$10 000.00 is for preparation, the AER has previously considered a preparation honorarium of more than \$400.00 to be appropriate only in recognition of extraordinary efforts as established in *ECO 2004-004* and *ECO 2008-015*. SDEL asserted that an award of \$10 000.00 would be unprecedented and would not reflect the level of work or engagement that was required given that Ms. Kelly was assisted by several different counsel during the preparation for the hearing and had the further assistance of four expert witnesses.

[198]SDEL submitted that a preparation honorarium of \$400.00 is consistent with prior AER decisions and provides appropriate compensation for Ms. Kelly's efforts in relation to the applications.

[199]SDEL noted that Ms. Kelly also claimed expenses in the amount of \$1668.07. SDEL submitted that it should not have to provide compensation for expenses incurred prior to the December 21, 2012, notice of hearing. This includes expenses for faxes on December 8, 2011, and April 17, 2012; photocopying on May 8, 2012; and note-taking services on May 30, 2012. These expenses amount to approximately \$658.00.

[200]SDEL argued that Ms. Kelly appears to have claimed expenses related to the purchase of 27 Brazeau Country aerial maps for a total cost of \$360.00. SDEL submitted that this number of maps was clearly excessive and the claim should be reduced by approximately \$300.00.

[201]SDEL noted that Ms. Kelly included claims for mileage on March 6, 2013, and June 26, 2013, as well as for the duration of the hearing. *Directive 031* clearly indicates that compensation for travel mileage is restricted to travel distances of 50 km or more between cities. Ms. Kelly's round-trip travel was only 26 km; therefore, approximately \$68.00 in mileage is not eligible for compensation.

[202]Ms. Kelly claimed \$51.48 for lunch at a March 3, 2013, meeting. SDEL submitted that under *Directive 031* meal expenses are only compensable if incurred during the hearing phase of a proceeding. SDEL argued that this expense must be deducted from Ms. Kelly's claim.

[203]Overall, SDEL submitted that approximately \$600.00 of Ms. Kelly's claimed expenses are reasonable and compensable.

*Ms. Duperron, Ms. McGinn, Dr. Losey, Ms. Kerpan, Mr. Domke, Ms. Ehbrecht, Mr. Warnock, and Ms. Warnock*

[204]SDEL submitted that attendance by several of the participants at the multiple hearing days was excessive and unnecessary. SDEL suggested that it was only necessary for one member of each family to attend each day of the hearing. SDEL submitted that the attendance honoraria claimed for both Dr. Losey and Ms. Kerpan are duplicative and only one family member should be compensated. SDEL noted that *Directive 031* indicates that for large participant groups, the AER will generally award attendance honoraria to no more than six individuals.

[205]SDEL argued that Ms. Ehbrecht attended to assist her father, Mr. Domke, in reading his oral statement. SDEL submitted that only one half day of attendance honorarium in the amount of \$100.00 is necessary or reasonable in the circumstances. SDEL also argued that costs claimed in relation to all but mileage for one roundtrip and meals claimed by Ms. Ehbrecht (approximately \$260.00) should also be denied.

[206]SDEL stated that it did not contest an award of attendance honoraria to Ms. Duperron, Ms. McGinn, and Mr. Domke.

[207]SDEL also stated that it did not contest an award of \$200.00 of preparation honoraria to each participant (except for Ms. Ehbrecht), as set out in the costs claim.

[208]SDEL asserted that Ms. McGinn's claim for lost wages (referred to in the costs claim but not clearly set out in form E4) was not properly the subject of a costs award and that Ms. McGinn would be appropriately compensated for her time and participation via the attendance honorarium. SDEL argued that while *Directive 031* does contemplate a claim for lost wages, such a claim is intended as an alternative to an attendance honorarium.

[209]SDEL also submitted that since claims for mileage for travel distances less than 50 km are not eligible for compensation, the following should be denied:

- Ms. Duperron's mileage claim of approximately \$106.00 for six 35 km roundtrips,
- Ms. McGinn's mileage claim of approximately \$80.00 for four 39 km roundtrips,
- Mr. Domke's mileage claim of approximately \$22.00 for six 7.5 km roundtrips, and
- Mr. Wannock and Ms. Warnock's claim of approximately \$42.00 for two 42 km roundtrips.

[210]SDEL argued that Ms. Duperron's claim for \$74.99 for printer toner is not an expense contemplated under *Directive 031* and should not be compensated.

[211]SDEL noted the statements made by the participants that they, or at least some of them, view the hearing process as the primary avenue to express their concerns, engage project proponents, and learn about the applications before the AER in a particular proceeding. In addition, SDEL argued that the participants consistently communicated that there was nothing that the applicants could have done to address their concerns and to cause them to withdraw their objections despite the abundance of evidence from all parties that the proposed projects would result in very low risk to the participants.

[212]SDEL submitted that the participants' views and conduct in this regard are contrary to the spirit of the AER's public consultation processes and served to compel the parties to attend a wholly unnecessary hearing. SDEL further submitted that the participants should not be rewarded through the AER's costs process for deliberately sending the applications to a hearing so that they could participate in a learning experience or engage in dialogue with the applicants, as many other avenues and opportunities were available for them to do so.

[213]SDEL submitted that these are further grounds for a global reduction to the participants' claimed costs.

[214]SDEL argued that *Directive 031* indicates that it is the obligation of the party claiming costs to support its claim and to establish that the costs claimed are reasonable and directly and necessarily related to the issues in the proceeding. SDEL submitted that for the reasons provided, the costs claimed should be reduced to values more appropriate in the circumstances and commensurate with past cost awards.

### 3.4 Views of the AER

[215]The AER has carefully considered the substantial submissions filed by the participants, Grizzly, and SDEL. The AER acknowledges that this matter was unique and complex in that the proceeding involved two applicants with eleven related applications. The proceeding went forward as an omnibus hearing involving both applicants and all of the participants. The AER further notes that not all of the applications came in at the same time and one of the applications was a review and variance that had been set down for a hearing. In addition, there were numerous schedulings and reschedulings, a prehearing, and adjustments in timelines, as well as the need for certain types of expert assistance.

[216]The panel notes that the submissions of the applicants primarily addressed the reasonableness of the time and fees claimed by the participants' counsel and experts. The panel further notes that the hourly rates of the lawyers and their experts were not contested by the applicants. In respect of the participants' costs claim, the panel notes that they addressed the amount and difficulty of the work for counsel, the need for the experts, and the efforts of the participants individually and as a group. The main points of contention are

- efficiencies regarding preparation legal time and potential duplication of effort by counsel with respect to the professional fees and disbursements of Klimek Buss Bishop,
- the quality of hearing submissions and their value to the panel,
- duplication of the experts' work and the value of expert submissions, along with the associated costs, and
- participants' honoraria and costs.

[217]The panel's decisions on the various costs claimed are explained below. Appendix B provides a summary of the costs claimed and awarded.

#### 3.4.1 Legal Fees and Disbursements

[218]Klimek Buss Bishop claimed fees for legal work starting on May 2, 2012, by Ms. Buss. In regards to Grizzly's Application No. 1707770, the notice of hearing was issued on March 13,



2012, and for Proceeding No. 1728964, the AER granted the review hearing on May 25, 2012. With respect to the SDEL applications, the AER granted the participants standing on December 21, 2012. The panel accepts the submission of Grizzly that in unique circumstances, such as these, it is acceptable for the parties to begin preparation for a hearing prior to the notice of hearing being issued. Although the final notice of hearing, which brought all of these applications into one omnibus hearing, was not issued until May 6, 2013, the panel finds that it was reasonable to assume in May 2012 that Grizzly's and SDEL's applications were possibly going to a hearing. The panel therefore finds it appropriate to allow claims for legal work starting as of May 2012.

[219] The panel agrees with Grizzly's submission that the procedural novelty of this omnibus proceeding justifies a departure from the usual practice of not awarding costs incurred before a notice of hearing has been issued.

[220] The panel finds that separating out specific participant costs between Grizzly and SDEL is not practical or realistic given the integrated nature of the hearing process. Therefore, a global approach will be taken to all of the participants' costs, and those costs that are found to be acceptable will be apportioned equally between Grizzly and SDEL.

[221] The panel notes that in their submissions on costs, the participants and applicants sometimes appear to be rearguing the merits of the participants' intervention in the hearing instead of restricting their submissions narrowly to costs. The panel reminds both participants and applicants that the cost process is not the venue for rearguing such merits. Lengthy submissions in this regard are not helpful and slow down the cost decision process.

[222] In regards to the participants' counsel fees, the panel notes that on September 24, 2012, AER counsel requested confirmation from Klimek Buss Bishop that it was representing Dr. Losey and Ms. Kerpan in the review application and Ms. McGinn, Mr. Warnock, Ms. Warnock, Dr. Losey, Ms. Kerpan, Mr. Domke, Ms. Kelly, and Ms. Duperron in relation to the SDEL applications. On October 18, 2012, Ms. Bishop responded that her firm was retained by the participants provided that they receive standing and are eligible for intervener funds.

[223] On January 7, 2013, in an e-mail to Dr. Losey and Ms. Kerpan, AER counsel referred to correspondence dated January 3, 2013, received from Dr. Losey and Ms. Kerpan in which it was not apparent that their correspondence was also forwarded to Ms. Bishop. On January 9, 2013, the AER received correspondence from Ms. Kelly writing on behalf of Mr. Warnock, Ms. Warnock, Dr. Losey, and Ms. Kerpan wherein it appeared that they were of the view that Klimek Buss Bishop's retainer in this matter was not confirmed and that they were representing themselves at this stage of the process. Later that same day, Ms. Bishop was asked by AER counsel to respond as to whether she was representing the participants in the proceedings. On January 11, 2013, AER counsel sent a further e-mail requesting clarification on whether or not her office acted for the participants.

[224] Subsequent to this e-mail, Ms. Bishop requested a summary document from the AER that would clarify for each application which landowners had been deemed to have filed a substantive objection, had been determined to have standing, and/or would be eligible for costs. Ms. Bishop indicated that with this information she would be able to respond to AER counsel's letter on the matter of her firm's retainer for each landowner on file. She further indicated that she understood

AER counsel's concern and that she was seeking instructions and would get back to AER counsel.

[225] Later on January 11, 2013, AER counsel forwarded an e-mail with attached correspondence dated April 30, 2012, which confirmed standing with respect to Application No. 1707770 for Ms. Kelly, Mr. Domke, Ms. Duperron and Ms. McGinn. Furthermore, this correspondence confirmed that they qualified as local interveners and were eligible to apply for an award of costs. An attached letter dated December 21, 2012, also confirmed that there would be a public hearing of the SDEL pipeline and facility applications and that the interveners in Application No. 1707770 were entitled to participate as interveners in the hearing of the SDEL applications. The letter further noted that there was no request for a determination of local intervener status on behalf of Mr. Warnock, Ms. Warnock, Dr. Losey, or Ms. Kerpan. In the e-mail, AER counsel further indicated that other than the letters received by the AER that week, the AER had not received any other requests for decisions to be made under section 26 and section 28 of the *ERCA* with respect to these proceedings, and that for the review hearing initiated by Dr. Losey and Ms. Kerpan it was implied from the decision to proceed that they are entitled to participate in the review hearing as though section 26 was met.

[226] On February 8, 2013, AER counsel wrote to Klimek Buss Bishop noting that Ms. Kelly and, alternatively, counsel from Klimek Buss Bishop had made written submissions on behalf of most of the participants and that the AER would appreciate being advised at or before the prehearing meeting how the participants intended to participate in the hearing and how their interests would be represented. AER counsel confirmed that Ms. Kelly, Ms. Duperron, Ms. McGinn, Mr. Domke, Mr. Warnock, Ms. Warnock, Dr. Losey, and Ms. Kerpan all qualified as local interveners under section 28 of the *ERCA*.

[227] On March 1, 2013, Klimek Buss Bishop confirmed in the prehearing submissions that the interveners were all represented by legal counsel at Klimek Buss Bishop.

[228] While concerned about the extended uncertainty surrounding whether or not Klimek Buss Bishop was actually retained by the participants, the panel has decided not to make a deduction in legal time for the resulting delay and confusion. However, the panel would like to caution the participants and their counsel that this type of behaviour is not helpful to the AER or the regulatory process and could adversely affect future cost claims should it reoccur.

### *Ms. Bishop*

#### Fees

[229] The panel notes that Ms. Bishop has claimed a total of 323.65 hours at \$280.00 per hour. The claim includes 271.65 hours as preparation time, 45.6 hours as attendance time, and 6.4 hours for argument and reply.

[230] The panel notes the submissions of Grizzly and SDEL concerning what appears to be duplication of work between Ms. Bishop and Ms. Razzaghi and agrees that duplication should be minimized to the extent practical. Where Ms. Bishop and Ms. Razzaghi have claimed time for similar activities, the panel believes that a 50 per cent reduction in the fees claimed by both is appropriate.

[231] The panel finds what appears to be duplication of Ms. Bishop's and Ms. Razzaghi's time on March 1, 5, 19, 20, 21, April 2, and May 7, 14, 15, 17–21, and 31, representing approximately 58.4 hours for Ms. Bishop. The fees claimed by Ms. Bishop for these activities are therefore reduced by 50 per cent, resulting in a reduction of 29.2 hours, for a total remaining preparation time of 242.5 hours.

[232] The panel notes Ms. Bishop's submission in which she argues that the legal costs claimed are close to the amount budgeted despite the additional work that was required for the hearing.

[233] The panel also notes Ms. Bishop's submission that she worked very hard reviewing the applications, drafting information requests, meeting with the participants, working with the expert witnesses, preparing detailed written submissions, responding to motions and correspondence, and appearing at a hearing where long hours were expected and that she used the assistance of junior counsel to keep costs as low as possible.

[234] The panel acknowledges Grizzly and SDEL's concerns regarding the efficiency of preparation, presentation, and argument by Ms. Bishop at the hearing. Grizzly and SDEL argued that contrary to *Directive 031* and the *AER Rules of Practice*, Ms. Bishop did not act responsibly nor contribute to a better understanding of the issues before the AER.

[235] The panel finds that in some instances Ms. Bishop demonstrated a lack of understanding of or lack of willingness to abide by AER procedures and directions. For example, she

- engaged in unduly repetitive questioning when she posed questions during cross-examination that had already been fully addressed,
- attempted to enter significant new evidence onto the record in the form of the participants' opening statements during the course of the hearing,
- failed to comply when directed by the AER to restrict her questioning to corrections made to the risk assessment report by Mr. Dowsett and Mr. Springer, and
- submitted evidence and argument on issues that were not relevant such as the adequacy of the AER directives and administrative process.

[236] The panel also finds that counsel should have understood that time spent meeting with experts on issues that were not relevant would be counterproductive. In addition, the panel finds that this improper preparation did contribute to time being wasted at the hearing.

[237] In reviewing the submissions of the parties, the panel acknowledges that Ms. Bishop did create efficiencies by proposing to have all the applications consolidated into a single omnibus hearing. However, some of these efficiencies were lost by her presentation, which unnecessarily lengthened the duration of the proceeding.

[238] While Grizzly and SDEL both suggested that reductions in legal fees in the order of 50 per cent or greater were justified due to the above issues, the panel does not agree that such significant cuts are warranted. However, given the issues, the panel finds that a 20 per cent reduction of the 242.5 allowable hours remaining for preparation time for Ms. Bishop is warranted, for a new total of 194 hours.

[239] In regards to hearing time, the panel accepts the 52 hours claimed by Ms. Bishop.

[240] The panel notes Ms. Bishop's submission that her current hourly rate is below the *Directive 031* allowance for her year of call as a lawyer (\$280.00 per hour claimed versus \$320.00 per hour). The panel confirms that Ms. Bishop's billing rate of \$280.00 per hour is acceptable for all of her claimed time.

[241] Total legal fees for Ms. Bishop in the amount of \$68 880.00 are therefore allowed.

#### Disbursements

[242] Ms. Bishop has claimed \$728.21 in mileage. As pointed out by SDEL, the claim includes trips to Drayton Valley on March 1, 2013, June 17, 2013, and June 26, 2013. However, given that these trips are prior to the hearing, they are disallowed as per *Directive 031*. The mileage claimed during the hearing phase is, however, allowed in the amount of \$282.80.

[243] With respect to Ms. Bishop's claims for meals, the receipt for \$16.06 dated March 1, 2013, is not eligible for reimbursement as the expense was not incurred during the hearing phase. Ms. Bishop also claimed a meal expense for July 5, 2013, in the amount of \$96.34 for a meal with her clients. Since the participants also claimed meal expenses for that date, this amount is not allowed. With respect to meals during the hearing, the panel awards a total of \$160.00 for meal expenses for the four days of the hearing at a per diem rate of \$40.00.

[244] In regards to the claims for external printing, CD copies, and supplies of \$1381.46, no explanation was provided as to why they had to be obtained externally. The panel accepts that external sourcing of some services such as printing may be required for counsel and participants. However, in this instance the participants failed to provide a justification as to why some of these items could not have been provided in house. The panel therefore awards only 50 per cent of these costs, or \$690.73.

[245] With respect to the room rental of \$160.50 on June 26, 2013, the panel finds that in this unique matter, a face-to-face meeting with counsel and her clients was acceptable; therefore, this expense is allowed.

[246] Total disbursements in the amount of \$1386.73 are therefore allowed.

#### *Ms. Razzaghi*

#### Fees

[247] The panel notes that Ms. Razzaghi has claimed a total of 158.10 hours of preparation legal time at \$240.00 per hour. As discussed above, approximately 50.8 hours claimed by Ms. Razzaghi on March 1, 5, 19, 20, 21, April 2, and May 7, 14, 15, 17–21, and 31 appear to duplicate the legal work of Ms. Bishop. The panel therefore reduces these hours by 50 per cent, resulting in a reduction of 25.4 hours, for a total remaining preparation time of 132.7 hours.

[248] The panel notes from the Grizzly and SDEL submissions that Ms. Razzaghi had some trips to Drayton Valley to meet the participants before the hearing phase of the proceeding and that Grizzly and SDEL contended that this time should be deducted from her total fees claimed. However, given the complexity and unique nature of this omnibus hearing, the panel takes no issue with this time. The panel finds in this particular circumstance that face-to-face meetings between counsel and her clients is justified. There is therefore no deduction to the meeting time.

However, travel time will be only allowed in accordance with the Scale of Costs, which allows half of the hourly rate for travel time. As a result, there will be a further 4 hours deducted from Ms. Razzaghi's total hours claimed, leaving a total remaining of 128.7 hours.

[249] The panel also acknowledges the comments of Grizzly regarding Ms. Razzaghi's time spent interacting with Dr. Batterman and SDEL's submission that much of Ms. Razzaghi's time is unreasonable and excessive.

[250] With respect to preparing for the hearing, including time spent interacting with the experts, and the overall time claimed in preparing for these applications, the panel considers the total time claimed by Ms. Bishop and Ms. Razzaghi to be excessive. The panel therefore finds that a 20 per cent reduction of Ms. Razzaghi's time is also warranted. Of the 128.7 hours remaining after deductions for duplication and travel time, and a further reduction of 20 per cent of the remaining hours is applied, 103 hours remain and are allowed.

[251] The panel finds Ms. Razzaghi's rate of \$240.00 per hour to be reasonable. Total legal fees for Ms. Razzaghi are therefore allowed in the amount of \$24 720.40.

#### Disbursements

[252] The panel finds that most of the items claimed by Ms. Razzaghi for disbursements are acceptable and will be allowed. With respect to the claimed expense for Mr. Duncan's accommodation, the panel will allow it as the participants were entitled to have Mr. Duncan at the hearing. The panel notes that *Directive 031* permits a rate of \$140.00 per night, plus \$5.60 provincial room tax. The panel therefore only allows the *Directive 031* room rate for of \$145.60 per day, for a total of \$582.40.

[253] Total disbursements in the amount of \$1525.10 are therefore allowed.

#### *Ms. Buss*

##### Fees

[254] The panel notes that Ms. Buss billed for 3.3 hours of legal work after standing was granted in the Grizzly matter and claimed no disbursements. The panel considers Ms. Buss's rate of \$350.00 per hour to be acceptable and her overall claim to be appropriate. The panel therefore awards her claim of \$1155.00 in full.

### 3.4.2 Experts' Fees and Expenses

#### *Mr. Duncan*

##### Fees

[255] The panel finds that Mr. Duncan's expert opinion was of assistance, particularly with respect to corrosion control issues. However, the panel notes the submissions of Grizzly that Mr. Duncan assisted the participant's counsel with and provided opinions on areas outside of his expertise. The panel agrees with Grizzly and SDEL that not all Mr. Duncan's time was essential as he worked outside the scope of his qualifications.

[256] The panel also agrees that the number of hours seems excessive given his original scope of work on corrosion issues. No justification was provided for the increased hours claimed by Mr. Duncan relative to the hours originally budgeted. While his contribution assisted the participants and their counsel, not all of the information was useful to the panel. As a result, the panel finds that a 30 per cent reduction of the 202 hours claimed by Mr. Duncan for preparation is warranted.

[257] SDEL argued that Mr. Duncan should only be compensated for his assistance up until the time he received the SDEL information request responses and reply submissions. SDEL submitted that following this date it should have been apparent to the participants that Mr. Duncan's evidence confirmed the results of SDEL's experts and that he was no longer necessary for the participants' challenge of the applications.

[258] The panel finds it reasonable for an expert of Mr. Duncan's qualifications to assist the participants and their counsel through to the completion of the hearing phase of these complex and unique applications. The panel finds the 19 hours of attendance time claimed by Mr. Duncan appropriate and awards this claim in full.

[259] The panel finds the \$270.00 per hour rate submitted by Mr. Duncan to be acceptable.

[260] Given the above, the panel awards Mr. Duncan \$38 178.00 for preparation and \$5130.00 for hearing attendance, for a total costs award of \$43 308.00.

#### Expenses

[261] As pointed out by SDEL, Mr. Duncan has claimed \$150.00 for a trip from Canmore to Calgary on April 10, 2013. Since this timeframe is outside the hearing phase, the panel declines to award this travel expense. Mr. Duncan has also claimed \$550.00 for 1100 km at \$0.50 per kilometre for travel to the hearing. Google maps shows the distance from Canmore to Drayton Valley as 410 km one way. Allowing for a return trip of 900 km, the panel awards mileage in the amount of \$454.50.

[262] Grizzly and SDEL both pointed out that Mr. Duncan claimed an excessive amount for printer toner, pens and similar office supplies. In *Directive 031*, these incidental expenses are assumed to be included in Mr. Duncan's professional fees. These expenses are therefore not allowed.

[263] Mr. Duncan claimed \$200.00 for meals. *Directive 031* is quite clear that only meals during the hearing itself are eligible for recovery. The panel will therefore award a meal per diem of \$40.00 for each of the four days of the hearing, for a total of \$160.00.

[264] Total expenses in the amount of \$614.50 are therefore allowed.

#### *Dr. Zelt*

#### Fees

[265] The panel notes the submissions of Grizzly and SDEL that Dr. Zelt's contributions were meaningful, but that he should not have attended the hearing as his report confirmed their experts' results. In complex technical matters such as this particular hearing, the panel finds it

acceptable for counsel to have the assistance of experts to assist with the hearing phase. Furthermore, the panel found Dr. Zelt's participation at the hearing to be helpful, and therefore his claims for attendance at the hearing are reasonable. In addition, given unique circumstances, such as in this matter, an expert meeting face-to-face with participants prior to the hearing may be necessary. With respect to the face-to-face meeting with the participants in Drayton Valley on June 17, the panel believes that it was a helpful part of the preparation for the hearing.

[266] The panel notes that Dr. Zelt was not able to complete all the work outlined in the original scope of work described by the participants in their advance costs submissions. Although Dr. Zelt failed to provide the risk of the EPZ and evacuation endpoints, as set out in the panel's direction to the parties regarding risk assessments, he was able to provide a professional report addressing the lethality endpoint that responded to the panel's requirements.

[267] The panel also notes that Dr. Zelt's claimed fees of \$47 580.00 are less than the original budgeted estimate of \$68 400.00 as contained in the participants' advance fund request.

[268] The panel notes that Dr. Zelt provided a comparison of ERCBH2S version 1.19 and 1.20 predictions and that he also provided modelling results for sulphur dioxide emissions. While this work was beyond the panel's original request, the panel notes that it satisfied questions raised by the participants.

[269] The panel finds that Dr. Zelt's total hours claimed and his hourly rate of \$195.00 are acceptable. The panel therefore awards Dr. Zelt's claimed professional fees of \$47 580.00 in full.

#### Expenses

[270] Dr. Zelt claimed \$397.50 for mileage on June 17, 2013. He also claimed mileage for his travel at a rate of \$0.530 per kilometre. However, as per *Directive 031*, mileage can only be charged at \$0.505 per kilometre. Dr. Zelt's mileage claims are therefore reduced to this rate and the AER declines to award the cost for mileage on June 17, 2013, as it preceded the hearing. Mileage is therefore allowed in the amount of \$378.75 for 750 km of travel.

[271] Dr. Zelt claimed \$320.98 for two nights' accommodation. The panel notes that *Directive 031* permits a rate of \$140.00 per night, plus \$5.60 provincial room tax. The panel therefore only allows the *Directive 031* room rate for Dr. Zelt of \$145.60 per day, for a total of \$291.20.

[272] The panel awards Dr. Zelt a total of \$669.95 for expenses.

#### *Mr. Phillips*

#### Fees

[273] The panel notes from the participants' advanced cost submissions that Mr. Phillips was one of two individuals retained to do the dispersion modelling and risk assessment report. Additionally, the participants advised that they retained Dr. Zelt to do the detailed dispersion modelling and to work with Mr. Phillips. In its April 25, 2013, decision the panel cautioned the participants' counsel that any duplication of work by the experts may result in a reduction in the amount of the final costs awarded.

[274] The panel agrees with the submissions of Grizzly and SDEL and in particular the point that Mr. Phillips' contribution was a less precise or refined modelling exercise and somewhat duplicative of Dr. Zelt's work. The panel also notes that Mr. Phillips made a significant error in his modelling that reduced its usefulness in assessing risks associated with the applications.

[275] The panel notes the views of Grizzly and SDEL that Mr. Phillips should receive no costs. However, the panel did find that Mr. Phillips's assessment of the applications in the context of the MIACC risk-based setbacks and his determination that the general magnitude of the risks was consistent with Dr. Zelt's risk assessment was of some use to the panel and the participants.

[276] In light of the above, the panel finds that a 75 per cent reduction of Mr. Phillips's claimed preparation time of 108 hours is warranted.

[277] With respect to Mr. Phillips's 12 hours of time claimed for participation at the hearing, the panel finds that his attendance was warranted in order to be available for cross-examination and to provide support to the participants' counsel. The panel therefore awards the full amount claimed by Mr. Phillips for hearing attendance.

[278] The panel confirms that Mr. Phillips's hourly rate of \$270.00 per hour is acceptable. Mr. Phillips's is therefore awarded a total of \$10 530.00 for fees.

#### Expenses

[279] The panel notes that, as per *Directive 031*, mileage is permitted at \$0.505 per kilometre. Mr. Phillips's claim for \$21.62 for meals and most of his mileage claims are acceptable. However, the panel finds that the mileage claimed on June 17, 2013, cannot be accepted as this is outside of the hearing phase. The panel reduces Mr. Phillips's total expense claim by \$202.00, for a total award of \$223.62.

#### *Mr. McCutcheon*

#### Fees

[280] The panel agrees with the submissions of Grizzly and SDEL regarding Mr. McCutcheon's written and oral evidence and finds the arguments of SDEL compelling.

[281] *Directive 031* states that the hearing is an inappropriate forum in which to raise concerns related to legislation or policy. The panel notes that in his report Mr. McCutcheon referred to modelling he completed using criteria not endorsed by the AER. As such, this material was of no assistance to the panel. Mr. McCutcheon also commented on the adequacy of *Directive 071* when it was clear that this was not relevant in this proceeding. The panel also finds that Mr. McCutcheon's evidence did not address the particulars of the applications that were the subject of this proceeding.

[282] Mr. McCutcheon did not complete the work as outlined in the scope of work in the participants' request for advanced funding. Mr. McCutcheon's five-page written submission provided unsubstantiated opinion on topics such as the municipalities' ability to respond and the adequacy of the size of the EPZ, as well as a conclusion that early detection is crucial to an effective response. He attached media articles and other documents to his report that had little or no apparent relationship to the applications being considered.



[283] Mr. McCutcheon failed to address the specifics of the applications. While he asserted that the emergency response plans were too complex, he did not provide any analysis to support this conclusion, such as specific issues related to the plans. It was also not apparent to the panel how his participation assisted the participants or their counsel. Overall, the panel found no benefit from either Mr. McCutcheon's written report or oral testimony.

[284] The panel declines to award any professional fees related to Mr. McCutcheon's participation in the proceeding.

#### Expenses

[285] The panel notes that Mr. McCutcheon has claimed total expenses of \$878.70, all of which is for mileage. Given that Mr. McCutcheon's report and attendance did not assist the panel, the panel also declines to award Mr. McCutcheon any expenses.

#### *Dr. Du*

[286] The panel notes that Dr. Du filed no evidence or report in this proceeding and did not appear as a witness. The panel finds that none of the amount claimed for Dr. Du is compensable; therefore, this claim is denied.

#### *Oxand*

[287] The panel notes that Oxand filed no evidence or report in the proceeding and no representative from Oxand appeared as a witness. Additionally, it is not clear to the panel whether the participants agreed in advance to pay Oxand for preparation of the proposal and whether there is anything owing to Oxand. The panel is not prepared to award costs for preparing estimates or proposals for expert assistance when the normal practice is for these to be completed by experts at no cost in anticipation of getting the work. No amount is awarded to Oxand for preparing its proposal.

### 3.4.3 Participants' Honoraria and Expenses

#### Honorarium for Forming a Group

[288] The panel notes the submissions of Grizzly and SDEL that the group honorarium claimed by the participants is not warranted or should be minimal. The panel also acknowledges the submissions of the participants that the group honorarium should be awarded to partially reimburse them for their extensive work. As noted by the participants' counsel, the interveners formed a group and presented their evidence and argument as a group. They further argued that this process increased the efficiency of the hearing.

[289] The panel notes in *Directive 031* that the AER encourages participants with similar issues to consider participating as a group rather than as individuals. The formation of a group often results in more balanced and complete participation and reduces duplication of the information presented at the hearing.

[290] The AER recognizes that organizing a group of participants can require considerable time and effort. Depending on the size of the group and the efforts required to organize it, organizers may receive honoraria in recognition of their efforts. While such awards are generally \$300.00–

\$500.00, if the necessary preparation time is substantial, honoraria in excess of \$500.00 may be considered.

[291] In this unique matter, the panel notes that the group that was formed was not that large and the members were familiar with each other from prior proceedings. Nevertheless, the panel recognizes the effort of the participants in forming and participating in the hearing as a group and believes that this resulted in some efficiencies. As such the panel awards an honorarium to Ms. Kelly for forming a group in the amount of \$400.00.

#### Preparation Honorarium

[292] The panel notes the submissions of the participants that Ms. Kelly spent countless hours carrying out a variety of functions, including gathering information, preparing letters on behalf of the participants, providing submissions of the participants without counsel, reviewing applications, liaising with counsel and the experts on behalf of the group, and assisting in drafting written submissions.

[293] However, the panel finds Grizzly's argument that much of the participants' evidence was copied or extracted from previous proceedings and contained policy issues that went beyond the scope of the proceeding to have some merit. The panel also notes SDEL's submission that preparation honorarium of more than \$400.00 is exceptional and only appropriate in recognition of extraordinary efforts.

[294] The panel finds the magnitude of Ms. Kelly's request of \$10 000.00 for a preparation honorarium to be excessive. Nevertheless, the panel accepts that the efforts of Ms. Kelly in preparing materials and organizing the participants were significant. The panel further notes that a preparation honorarium at the high end of the range may be awarded depending on the complexity of the submission and whether or not the participant had the assistance of counsel. In this matter, Ms. Kelly had the assistance of counsel. However, given her significant efforts as described in the costs claim, the panel is prepared to award a preparation honorarium at the higher end of the range in the amount of \$500.00.

[295] With respect to the remaining participants, the panel notes the request of a \$200.00 preparation honorarium for each participant except for Ms. Ehbrecht. The panel also notes Grizzly's submission that the AER does not normally provide preparation honoraria to participants if a lawyer is primarily responsible for the preparation unless there are exceptional circumstances. In this matter, the panel finds that the remaining participants did contribute to the hearing preparation despite the fact that they had counsel to assist them. The panel therefore awards a preparation honorarium of \$200.00 to each remaining participant other than Ms. Ehbrecht.

#### Attendance Honorarium

[296] The panel confirms that all of the participants other than Ms. Ehbrecht had standing in this proceeding. The panel affirms that it will award an attendance honorarium, as per *Directive 031*, of \$100.00 for each half day of attendance to each participant that attended the hearing. Attendance honoraria is therefore awarded to Ms. Kelly (\$800.00), Ms. Dupperon (\$800.00), Ms. McGinn (\$300.00), Mr. Domke (\$800.00), Dr. Losey (\$700.00), and Ms. Kerpan (\$700.00). As

Ms. Ehbrecht only assisted her father in reading his oral statement, she is awarded a half-day attendance honorarium of \$100.00.

[297] The panel confirms that when an award is given for attendance honorarium, it is not appropriate for loss of wages to also be awarded to a participant for attending the hearing. The panel therefore denies Ms. McGinn's claim for loss of wages.

#### Expenses

[298] With regard to the participants' claims for meal expenses, the AER awards the amounts claimed, with the exception of the claim for Ms. Ehbrecht.

[299] As pointed out by Grizzly and SDEL, Ms. Ehbrecht was only required to appear at the hearing for a half day to assist her father, Mr. Domke, in reading his oral statement. As such, the panel awards Ms. Ehbrecht the \$30.00 for meal expenses she claimed for July 4, 2013. Furthermore, *Directive 031* directs that mileage can be claimed only for intercity travel of 50 km or more. Given this, all claims for mileage for Ms. Ehbrecht with the exception of one roundtrip in the amount of \$58.08 are denied. Total expenses for Ms. Ehbrecht in the amount of \$88.08 and Mr. Domke in the amount of \$93.00 are allowed.

[300] In regards to Dr. Losey's mileage claims, he has claimed mileage for the prehearing and three days of hearing in the amount of \$149.48, and this amount is allowed. However, the \$37.37 that has been claimed for the June 26, 2013, meeting is disallowed. Total expenses for Dr. Losey of \$224.48 and Ms. Kerpan of \$75.00 are allowed.

[301] Mileage claimed by all the other participants is disallowed as none of the claims are for more than 50 km roundtrip.

[302] Claims have been made for faxes prior to the March 3, 2012, notice of hearing on the Grizzly application. These claims are disallowed and will result in a reduction of the following amounts: \$25.50 for Ms. Kelly, \$17.90 for Ms. Duperron, \$9.00 for Ms. McGinn, and \$6.00 for Mr. Domke.

[303] Ms. Kelly and Ms. Duperron have claimed costs for laser printer toner cartridges of \$160.92 and \$74.99, respectively. These costs are not eligible for recovery under the category of office disbursements in the Scale of Costs, and as such are disallowed.

[304] Ms. Kelly has claimed \$815.58 under the miscellaneous category. It appears that this claim relates to \$400.00 for aerial maps and \$415.58 for note-taking at a meeting on March 30, 2012.

[305] The participants did not provide any submissions on the necessity of the maps. The panel therefore finds that an award of \$100 is appropriate for the maps.

[306] With respect to the March 30, 2012, meeting, Grizzly indicated that it was held outside of the AER's process. As such, the panel declines to award the amount of \$415.58 for note-taking.

[307] Given the above findings, total expenses of \$700.42 for Ms. Kelly, \$95.00 for Ms. Duperron, and \$34.40 for Ms. McGinn are allowed.

#### **4 Order**

[308]The AER hereby orders that Grizzly Resources Ltd. and Sinopec Daylight Energy Ltd. pay costs in the amount of \$208 403.68 and GST in the amount \$10 095.18, for a total of \$218 498.86. The participants received an award of advance funding on April 25, 2013, in the amount of \$174 476.13. This payment is hereby subtracted from the awarded amount of \$218 498.86, for a final total amount awarded of **\$44 022.73**. This amount must be paid within 30 days from issuance of this order to

Klimek Buss Bishop Law Group  
1450 Standard Life Centre  
10405 Jasper Avenue  
Edmonton, Alberta T5J 3N4

Dated in Calgary, Alberta, on January 15, 2014.

#### **ALBERTA ENERGY REGULATOR**

*<original signed by>*

R. C. McManus, M.E.Des.  
Presiding Hearing Commissioner

*<original signed by>*

A. H. Bolton, P.Geo.  
Hearing Commissioner

## **Appendix A Section 64 of the *AER Rules of Practice* prior to November 30, 2013, Amendment**

The *AER Rules of Practice* was amended on November 30, 2013, in accordance with the *Alberta Energy Regulator Rules of Practice Amendment Regulation* (AR 203/2013). The excerpt below is from the *Rules of Practice* prior to that amendment.

### **Costs awarded**

**64(1)** The Regulator may award costs to a participant if the Regulator 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 Regulator.

**(2)** In determining the amount of costs to be awarded to a participant, the Regulator may consider whether the participant did one or more of the following:

- (a) asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by that participant's witness;
- (b) made reasonable efforts to ensure that the participant's evidence was not unduly repetitive of evidence presented by another participant;
- (c) made reasonable efforts to co-operate with other participants to reduce the duplication of evidence and questions or to combine the participant's statement of concern with that of similarly interested participants;
- (d) presented in oral evidence significant new evidence that was available to the participant at the time the participant filed documentary evidence but was not filed at that time;
- (e) failed to comply with a direction of the Regulator, including a direction on the filing of evidence;
- (f) submitted evidence and argument on issues that were not relevant to the proceeding;
- (g) needed legal or technical assistance to take part in the proceeding;
- (h) engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs;
- (i) denied or refused to admit anything that should have been admitted;
- (j) took any step or stage in the proceeding that was
  - (i) improper, vexatious or unnecessary, or
  - (ii) taken through negligence, mistake or excessive caution;
- (k) failed to comply with this Part;
- (l) any other matter the Regulator considers appropriate.

Grizzly Resources Ltd. and Sinopec Daylight Energy Ltd.  
Applications for Well, Pipeline, and Facility Licences and a Regulatory Appeal of a Pipeline Licence  
Cost Application No. 1769724

	Advance Funds Requested	Advance Amount 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	Remaining Amount to be Paid	
LAWYERS	Karin Buss		\$1,155.00	\$0.00	\$57.75	\$1,212.75	\$1,155.00	\$0.00	\$57.75	\$1,212.75	-	
	Tarlan Razzaghi		\$37,944.00	\$1,587.17	\$1,976.56	\$41,507.73	\$24,720.40	\$1,525.10	\$1,312.28	\$27,557.78	-	
	Debbie Bishop		\$90,622.00	\$2,630.68	\$4,662.63	\$97,915.31	\$68,880.00	\$1,386.73	\$3,513.34	\$73,780.07	-	
	<i>Klimek Buss Bishop*</i>	<i>\$131,600.00</i>	<i>\$65,800.00</i>							<i>\$102,550.59</i>	<i>\$36,750.59</i>	
EXPERTS	Shuming Du		\$810.00	\$0.00	\$0.00	\$810.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	
	Colin Duncan	\$37,800.00	\$18,900.00	\$59,670.00	\$2,069.56	\$3,086.97	\$64,826.53	\$43,308.00	\$614.50	\$2,196.13	\$46,118.63	\$27,218.63
	Doug McCutcheon	\$21,152.25	\$10,576.13	\$18,360.00	\$878.70	\$918.00	\$20,156.70	\$0.00	\$0.00	\$0.00	\$0.00	(\$10,576.13)
	Groupe Oxand Canada Inc.			\$5,440.00	\$0.00	\$272.00	\$5,712.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Gerry Phillips	\$90,000.00	\$45,000.00	\$32,400.00	\$425.62	\$1,641.28	\$34,466.90	\$10,530.00	\$223.62	\$537.68	\$11,291.30	(\$33,708.70)
	Brian Zelt	\$68,400.00	\$34,200.00	\$47,580.00	\$1,141.42	\$2,394.00	\$51,115.42	\$47,580.00	\$669.95	\$2,412.50	\$50,662.45	\$16,462.45
	<i>Total for Experts</i>	<i>\$217,352.25</i>	<i>\$108,676.13</i>								<i>\$108,072.37</i>	
PARTICIPANTS	Susan Kelly		\$10,800.00	\$1,668.07	\$43.41	\$12,511.48	\$1,700.00	\$700.42	\$35.02	\$2,435.44	\$2,435.44	
	Lil Duperron		\$1,000.00	\$293.93	\$14.44	\$1,308.37	\$1,000.00	\$95.00	\$4.75	\$1,099.75	\$1,099.75	
	Linda McGinn		\$600.00	\$122.16	\$5.88	\$728.04	\$500.00	\$34.40	\$1.72	\$536.12	\$536.12	
	Robert Domke		\$1,000.00	\$121.68	\$5.93	\$1,127.61	\$1,000.00	\$93.00	\$4.65	\$1,097.65	\$1,097.65	
	Charlene Ehbrecht		\$800.00	\$322.28	\$16.11	\$1,138.39	\$100.00	\$88.08	\$4.40	\$192.48	\$192.48	
	Tim Losey		\$900.00	\$261.85	\$13.09	\$1,174.94	\$900.00	\$224.48	\$11.22	\$1,135.70	\$1,135.70	
	Cheryl Kerpan		\$900.00	\$75.00	\$3.75	\$978.75	\$900.00	\$75.00	\$3.75	\$978.75	\$978.75	
	Arnold Warnock		\$200.00	\$42.42	\$2.12	\$244.54	\$200.00	\$0.00	\$0.00	\$200.00	\$200.00	
	Donna Warnock		\$200.00	\$0.00	\$0.00	\$200.00	\$200.00	\$0.00	\$0.00	\$200.00	\$200.00	
	<i>Total for Participants</i>									<i>\$7,875.90</i>		
<b>Total</b>	<b>\$348,952.25</b>	<b>\$174,476.13</b>	<b>\$310,381.00</b>	<b>\$11,640.54</b>	<b>\$15,113.92</b>	<b>\$337,135.46</b>	<b>\$202,673.40</b>	<b>\$5,730.28</b>	<b>\$10,095.18</b>	<b>\$218,498.86</b>	<b>\$44,022.73</b>	

\* Amounts applicable to all lawyers at Klimek Buss Bishop Law Group.

\*\* The claim and advance for Al Bessel are not included as those costs were dealt with outside of the costs claim process.