



Teck Resources Limited

Application for Oil Sands Evaluation Well Licences
Undefined Field

Costs Awards

April 10, 2014

ALBERTA ENERGY REGULATOR

AER Costs Order 2014-003: Teck Resources Limited, Application for Oil Sands Evaluation Licences, Undefined Field

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Alberta Energy Regulator
Suite 1000, 250 5 – Street SW
Calgary, Alberta
T2P 0R4

Telephone: 1-855-297-8311
Fax: 403-297-7040
E-mail: infoservices@ercb.ca
Website: www.aer.ca

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ALBERTA ENERGY REGULATOR

Calgary, Alberta

**TECK RESOURCES LIMITED
APPLICATION FOR OIL SANDS
EVALUATION WELL LICENCES
UNDEFINED FIELD**

**AER Costs Order 2014-003
Applications No. 1749543, 1749567, 1749568,
1749569, 1749570, 1749572, 1749605,
1749607, 1749620, 1751999, 1752756,
1763318, 1763325, 1763326, 1763327
Costs Application No. 1774199**

INTRODUCTION

Background

[1] Teck Resources Limited (Teck) applied under section 2.030 of the *Oil and Gas Conservation Regulations* for licences to drill 177 vertical crude bitumen oil sands evaluation wells within Townships 99 and 100 of Ranges 10 and 11, West of the 4th Meridian. The purpose of the wells is to evaluate oil sands in the McMurray Formation, including defining the extent of the bitumen resource and determining the economic viability of oil sands development in the area.

[2] The Alberta Energy Regulator (AER) received submissions from Athabasca Chipewyan First Nation (ACFN), Mikisew Cree First Nation (MCFN), and Fort Chipewyan Métis Local 125 (FCM). ACFN, MCFN, and FCM were permitted to participate at a hearing on the applications.

[3] The AER held a hearing of the applications in Fort McMurray, Alberta, from August 19 to 22, 2013, before hearing commissioners R. C. McManus (presiding), A. H. Bolton, and B. McNeil (the Panel). ACFN, MCFN, and FCM provided evidence at the hearing.

[4] The Panel issued its decision approving the applications on October 21, 2013, in *Decision 2013 ABAER 017: Teck Resources Limited, Application for Oil Sands Evaluation Well Licences, Undefined Field*.

Costs Claim

[5] On September 17, 2013, Sunrope Consulting Services Ltd. (Sunrope) filed a costs claim of \$110 832.22 on behalf of FCM. On October 9, 2013, Teck submitted comments on FCM's costs claim. On October 23, 2013, Sunrope submitted a response to Teck's comments.

[6] On September 19, 2013, Janes Freedman Kyle Law Corporation (JFK) filed a costs claim of \$118 823.79 on behalf of MCFN. On October 9, 2013, Teck submitted comments on MCFN's costs claim. On October 25, 2013, JFK submitted a response to Teck's comments. On December 20, 2013, MCFN withdrew its costs claim.

[7] On September 19, 2013, Woodward & Co. Lawyers LLP (Woodward) filed a costs claim of \$71 743.56 on behalf of ACFN. On October 9, 2013, Teck submitted comments on ACFN's costs claim. On October 25, 2013, Woodward submitted a response to Teck's comments. On April 2, 2014, ACFN withdrew its costs claim.

THE AER'S AUTHORITY TO AWARD COSTS

[8] In determining who is eligible to submit a claim for costs, the AER is guided by division 2 of part 5 of the *Alberta Energy Regulator Rules of Practice (Rules of Practice)*; in particular, sections 58 and 62, which state the following:

58(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, 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.

62(1) A participant may apply to the Regulator for an award of costs incurred in a proceeding by filing a costs claim in accordance with the Directive.

(2) A participant may claim costs only in accordance with the scale of costs.

(3) Unless otherwise directed by the Regulator, a participant shall

(a) file a claim for costs within 30 days after the hearing record is complete or as otherwise directed by the Regulator, and

(b) serve a copy of the claim on the other participants.

(4) After receipt of a claim for costs, the Regulator may direct a participant who filed the claim for costs to file additional information or documents with respect to the costs claimed.

(5) If a participant does not file the information or documents in the form and manner, and when directed to do so by the Regulator under subsection (4), the Regulator may dismiss the claim for costs.

[9] When determining whether to exercise its discretion to award costs, the AER is guided by the *Rules of Practice* and by appendix D, "Scale of Costs," of *AER Directive 031: REDA Energy Cost Claims*. Both of these documents were amended on November 30, 2013, following the closing of submissions on the costs applications. In recognition that the parties submissions were prior to the November 30, 2013 amendments, the Panel intends to limit its consideration of the factors set out in the new section 58.1 of the *Rules of Practice* to those factors that were also under the AER's previous cost regime.

COSTS CLAIM OF FCM

[10] FCM falls within the definition of participant in section 58(c) of the *Alberta Energy Regulator Rules of Practice*. Sunrope represented FCM at the hearing and filed a costs claim on its behalf on September 17, 2013. FCM claimed legal fees of \$75 410.00, expert fees of \$12 337.60, honoraria of \$2000.00, disbursements/expenses of \$15 951.60, and GST of \$5133.12, for a total amount of \$110 832.22.

[11] FCM submitted that its intervention helped the regulator and that the costs incurred were reasonable considering the issues in the hearing. FCM submitted that it worked with the other interveners to avoid overlap or duplication and worked on a shoestring budget. FCM argued that without participant costs, it likely would not be able to participate in future hearings. Out of necessity, FCM kept its costs to the bare minimum and submitted that all claimed costs were reasonable and necessary for the hearing.

[12] Teck submitted that it had concerns about the reasonableness of the amount of legal fees claimed, the fees and travel costs submitted for Ms. Labour, the cost of FCM's notice of question

of constitution law (NQCL), and FCM's submission of costs associated with preparing its cost claim.

Legal Fees and Costs Related to Withdrawn NQCL

[13] Teck submitted that FCM's claimed legal fees are excessive. Teck submitted that because FCM withdrew its NQCL prior to the hearing, the legal fees associated with preparing the NQCL should not be recovered as these costs were not necessary for FCM's intervention. Teck stated that this included roughly 15 hours of legal fees claimed by Ms. Bertolin, plus fees claimed by Witten LLP and, potentially, Lisa Weber. Teck noted that Ms. Bertolin claimed the second highest professional rate for lawyers under *Directive 031*, despite the fact that she is not a practising lawyer in Alberta. Since she is non-practising, Teck submitted that a more appropriate fee would be the maximum fee for a consultant allowed under *Directive 031* (\$270/hr). Teck also said that FCM claimed that fees for Witten LLP are disproportionate to its contribution to the hearing process. Witten LLP was retained after FCM filed its NQCL and hearing submissions, and its involvement in the hearing process appears to have been related entirely to helping Ms. Bertolin with hearing preparation and closing arguments. Despite this, Witten LLP claimed roughly 90 hours in legal fees.

[14] FCM submitted that many of Ms. Bertolin's costs and associated professional fees for preparing, filing, and serving the FCM NQCL had been removed from the Bertolin/Sunrope invoice. FCM submitted that withdrawing the FCM NQCL showed reasonableness and restraint. They also submitted that it is their right to raise constitutional issues and that any remaining costs or fees associated with the NQCL are both reasonable and minimal.

[15] The Panel notes that FCM withdrew its NQCL after the Panel received submissions from interested parties. This resulted in other parties, including Teck, needlessly incurring costs. The Panel finds it would be inappropriate and unfair to require Teck to put any more resources toward the withdrawn NQCL. To this end, the Panel reduces the 156.3 hours claimed by Ms. Bertolin by the 30 hours spent preparing the NQCL. The Panel also denies the fees claimed by Witten LLP for the 7 hours spent on the NQCL, with 0.6 hours allocated to Ms. Lambert and 6.4 hours to Ms. Majeau.

[16] With respect to Teck's argument that Ms. Bertolin is not a practising lawyer in Alberta, FCM pointed out that she was called to the Alberta Bar in 1991. FCM submitted that the venue or mode Ms. Bertolin chooses to work under, such as a limited partnership, a sole proprietorship, a corporation, or even a society is not relevant.

[17] While the Panel recognizes that Ms. Bertolin has been called to the Alberta Bar, it also understands that her current status with the Alberta Law Society is listed as "non-practising." The Panel notes that the Law Society of Alberta defines "non-practising" as a lawyer who has chosen not to practise law in Alberta for the time being, except as provided for in the National and Territorial Mobility Agreements. As the Panel has not been provided with any information to suggest that Ms. Bertolin is practising under such an agreement, the Panel is unable to accept that Ms. Bertolin was acting as a lawyer for the purposes of the Teck proceeding. Accordingly, the Panel reduces Ms. Bertolin's hourly rate to the highest that can be requested for a consultant (\$270/hr). The Panel further reduces the 156.3 hours claimed by Ms. Bertolin by 20 per cent as the Panel finds the claimed amount to be excessive given the nature of FCM's submissions, which focused on consultation deficiencies rather than on the merits of Teck's application and

potential impacts on FCM. The foregoing reduces the Panel's award for legal fees requested by Ms. Bertolin to \$27 280.80.

[18] FCM submitted that Witten LLP's involvement saved Teck time and money and helped Ms. Bertolin with FCM submissions, evidence, cross-examination, participation, and final arguments. FCM advised that Ms. Lambert of Witten LLP also served as the scheduler between FCM and other participants' lawyers.

[19] The Panel notes that in addition to the 156.3 hours of work claimed by Ms. Bertolin, FCM counsel from Witten LLP is claiming 90 hours of work. The Panel also notes Teck's concern that Witten LLP's claimed amount may be excessive given that the firm was retained shortly before the hearing and neither conducted examination at the hearing nor made any submissions. In reviewing the costs submitted, the Panel notes that there appears to be duplication between some of the work done by Witten LLP and work done by Ms. Bertolin. While the Panel appreciates that counsel from Witten LLP may have been helping Ms. Bertolin in prepare for the hearing, it is not clear to the Panel that all of the costs claimed were necessary or reasonable under the circumstances. Accordingly, the Panel is reducing the fees claimed by Witten LLP by 50 per cent. This reduces the requested legal fees for Witten LLP to \$11 313.

[20] The \$2000 in fees and \$1193.39 in disbursements submitted for Ms. Weber appear to be solely in relation to the NQCL and duplicate work done by Witten LLP and Ms. Bertolin. The Panel denies the amounts claimed in their entirety.

Fees Submitted for Preparation of Costs Claim

[21] Teck pointed out that FCM claimed costs associated with preparing its cost claim, which *Directive 031* explicitly states are not recoverable. The amount Ms. Bertolin claimed on behalf of FCM is \$480 (1.5 hours).

[22] FCM submitted that if the *Rules of Practice* does not allow it to claim costs associated with preparing a costs submission, then FCM will concede this point. FCM submitted that based on the work done to submit a *Directive 031* filing and respond to post-hearing correspondence, *Directive 031* cost preparations should be covered. FCM submitted that excluding post-hearing costs is an artificial barrier to public involvement.

[23] As noted by Teck and conceded by FCM, *Directive 031* states that costs associated with preparing cost claims are not recoverable. Accordingly, the costs associated with preparation of the cost claim are denied. The total amount awarded to Ms. Bertolin is \$26 800.80, plus GST.

Fees and Travel Expenses Submitted for Ms. Labour

[24] Teck pointed out that FCM claimed approximately \$13 000 for the services of Sherri Labour; however no statement of account was provided to allow Teck to assess the reasonableness of these costs. Teck also noted that Ms. Labour claimed costs for travel between Calgary and Edmonton in July without any explanation as to why the costs were necessary.

[25] In response, FCM submitted a task summary sheet for Ms. Labour. FCM also advised that the purpose of Ms. Labour's trip to Edmonton was to attend an in-person client meeting to discuss the correspondence between AER, Osler, MCFN, and ACFN; to examine Teck applications; to attend to scheduling and logistics; to review a draft of the FCM submissions,

including the NQCL; to discuss the hearing process; and to discuss next steps and financial management issues.

[26] The Panel recognizes that Ms. Labour has specialized experience in traditional land use and traditional ecological knowledge studies and impact assessments. However, the Panel heard conflicting testimony during the hearing on the nature of Ms. Labour's relationship with FCM, and it is unclear to the Panel in what capacity she was acting leading up to and during the hearing. FCM said that at the time of the hearing, Ms. Labour was acting as an interim industry relations person for FCM, whereas she was referred to in other instances as a consultant. The Panel also notes that Ms. Labour filed a witness statement but did not prepare or file an expert report, making it unclear whether she was acting as a community witness, an expert witness, or both. The AER has not traditionally awarded expert fees to IRC employees because of the difficulty distinguishing the work they would have done in the normal course of their duties as IRC employees from the more specialized work required to prepare for a hearing. In recognition of the fact that some of the evidence Ms. Labour provided was based on her expertise as a traditional knowledge facilitator and the work she did when she was a consultant for FCM, the Panel is prepared to award 50 per cent of the fees she has claimed. The costs awarded for Ms. Labour are therefore reduced to \$6 168.75 plus GST and reasonable expenses.

[27] Of the travel costs Ms. Labour claimed for her trip to Edmonton, the Panel notes that travel costs are only recoverable for travel to and from the hearing. The \$140.96 for Red Arrow and \$28.00 for parking on July 22, 2014, will therefore be deducted from the amount awarded. In determining the expenses to be awarded, the Panel relied on the August 28, 2013, expense form submitted by Ms. Labour.

Honoraria and Expenses for Community Witnesses

[28] Fred Fraser gave evidence on August 21, and the Panel awards a \$400 honorarium for that attendance and one day's witness preparation. The Panel also awards personal disbursements of \$238.09 for airfare, \$386.40 for accommodation (two nights), \$80 for meals (two days), and \$50.50 for mileage.

[29] Ora Campbell gave evidence on August 21, and the Panel awards a \$400 honorarium for that attendance and one day's witness preparation. The Panel also awards personal disbursements of \$238.09 for airfare, \$386.40 for accommodation (two nights), and \$80 for meals (two days).

[30] Barb Hermansen gave evidence on August 21, and the Panel awards a \$400 honorarium for that attendance and one day's witness preparation. The Panel also awards personal disbursements of \$476.32 for accommodation (two nights) and \$80 for meals (two days). With the \$378.75 claimed for mileage, the Panel notes that this amounts to a travel distance of 750 kilometres. No explanation was provided for the amount claimed; accordingly, the Panel denies the claimed mileage.

Other

[31] It is noted that many of the entries on form E4 include double GST. The Panel also notes that with respect to disbursements, FCM has claimed fees above scale of costs including meals for Ms. Labour (\$240), meals for Ms. Bertolin (\$240), and advance seat selection (\$18.90). These expenses are not in accordance with the scale of costs. The meals are reduced to \$200 for each of Ms. Labour and Ms. Bertolin. Ms. Bertolin's claim for advanced seat selection is denied.

[32] Based on the above, the Panel awards FCM \$57 187.03 plus GST.

ORDER

[33] The AER hereby orders that Teck pay costs to FCM of \$57 187.03, plus GST of \$2799.35, for a total amount of \$59 986.38. This amount must be paid to the order of Sunrope Consulting Services Ltd. as the submitter of the claim at 11242-33A Avenue, Edmonton, Alberta, T6J 3W7.

Dated in Calgary, Alberta, on April 10, 2014.

ALBERTA ENERGY REGULATOR

<original signed by>

R. C. McManus
Presiding Hearing Commissioner

<original signed by>

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

<original signed by>

B. M. McNeil
Hearing Commissioner

Teck Resources Limited
Corehole Program
Application No. 1774199

	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
Fort Chipewyan Métis								
Ms. Cynthia Bertoin (Lawyer)	\$49,376.00	\$6,977.87	\$2,829.00	\$59,182.87	\$26,800.80	\$6,905.09	\$1,685.29	\$35,391.18
Ms. Keltie Lambert (Lawyer)	\$16,928.00	\$1,195.42	\$906.17	\$19,029.59	\$8,368.00	\$1,195.42	\$478.17	\$10,041.59
Ms. Justine Majeau (Lawyer)	\$7,106.00		\$355.30	\$7,461.30	\$2,945.00	\$0.00	\$147.25	\$3,092.25
Ms. Lisa Weber (Lawyer)	\$2,000.00	\$1,193.39	\$59.67	\$3,253.06	\$0.00	\$0.00	\$0.00	\$0.00
Ms. Sherri Labour (expert/Panel)	\$12,337.50	\$2,479.80	\$783.04	\$15,600.34	\$6,168.75	\$1,588.17	\$387.85	\$8,144.77
Mr Fred (Jumbo) Fraser (Panel)	\$900.00	\$1,277.29	\$57.90	\$2,235.19	\$400.00	\$754.99	\$37.75	\$1,192.74
Ms. Ora Campbell (Panel)	\$800.00	\$1,001.03	\$50.70	\$1,851.73	\$400.00	\$704.49	\$35.22	\$1,139.71
Ms. Barb Hermansen (Panel)	\$300.00	\$1,826.80	\$91.34	\$2,218.14	\$400.00	\$556.32	\$27.82	\$984.14
Sub-total	\$89,747.50	\$15,951.60	\$5,133.12	\$110,832.22	\$45,482.55	\$11,704.48	\$2,799.35	\$59,986.38