# Compton Petroleum Corporation

## Non-Routine Well Licence

## Cost Awards

Alberta Energy and Utilities Board

**ALBERTA ENERGY AND UTILITIES BOARD**
Energy Cost Order 2004-14: Compton Petroleum Corporation
Non-Routine Well Licence
Application No. 1339455

Published by
Alberta Energy and Utilities Board
640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

Telephone: (403) 297-8311
Fax: (403) 297-7040

Web site: www.eub.gov.ab.ca

Contents

**ALBERTA ENERGY AND UTILITIES BOARD**

**Calgary, Alberta**

| | |
|---|---|
| **Compton Petroleum Corporation** | **Energy Cost Order 2004-14** |
| **Non-Routine Well Licence** | **Application No. 1339455** |
| **Cost Awards** | **File No. 8000-1339455-01** |

## 1 INTRODUCTION

On March 23, 2004 the Alberta Energy and Utilities Board (Board/EUB) received an application for a non-routine well licence from Compton Petroleum Corporation (Compton) for a surface location of 5-5-79-5 W6M. On April 6, 2004 the EUB received a further letter from Compton advising that Compton had changed the surface location of the proposed well to 12-5-79-5 W6M, with a bottom-hole location of 5-5-79-5-W6M, as Compton and the landowner of 5-5-79-5 W6M, Mr. Ben White, could not agree to a surface lease agreement due to Mr. White's various concerns. As such, to minimize Mr. White's concerns, Compton moved the surface location of the well to 12-5-79-5 W6M.

By letter dated April 6, 2004 the EUB received an objection from Landcore International (Landcore) on behalf of its client Ben White. On April 8, 2004 the EUB forwarded a copy of the objection to Compton for its review and requested Compton to contact Mr. Strom of Landcore directly regarding his client's concerns. The EUB also encouraged Compton to pursue the Appropriate Dispute Resolution (ADR) program and advised that the EUB staff may be required to place the application before the Board for direction on how to proceed with its disposition should the concerns or objections not get resolved. Further on April 8, 2004 the EUB wrote to Landcore to advise that it was in receipt of the objection and also advised Landcore that parties are encouraged to gather as much information as possible to attempt to resolve outstanding matters. Landcore was also advised in the EUB's letter of April 8, 2004 that it has no jurisdiction over matters of compensation for land usage.

By way of letter dated May 21, 2004 Compton advised the EUB that it wished to cancel the subject application due to operational risks. On May 26, 2004 the EUB issued a notice that the subject application had been withdrawn and closed.

On June 25, 2004 the EUB received a cost claim from Landcore on behalf of Ben White totaling $9,075.16. On July 8, 2004 the EUB received comments from Compton's counsel, Lars Olthafer of Fraser Milner Casgrain, regarding the cost claim. Landcore was requested to respond to the comments by July 29, 2004. A response was received on July 9, 2004 and a further response on July 20, 2004. The Board considers the cost process for this particular matter to have closed on July 29, 2004.

## 2 VIEWS OF THE BOARD – Authority to Award Costs

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

> 28(1) In this section, "local intervener" means a person or a group or association of persons who, in the opinion of the Board,
>
> (a) has an interest in, or
> (b) is in actual occupation of or is entitled to occupy
>
> land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

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

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

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

> Section 55(1) The Board may award costs in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:
>
> (a) the costs are reasonable and directly and necessarily related to the proceeding and;
> (b) the participant acted responsibly in the proceeding an contributed to a better understanding of the issues before the Board.

## 3 VIEWS OF THE BOARD – The White Family

The cost claim filed by Landcore on behalf of Ben White and Kelly White (the White Family) included the professional fees incurred by Landcore in the amount of $3,571.65, expenses in the amount of $1,557.00, and GST of $359.01. Ben White claimed an honorarium of $2,475.00 and Kelly White claimed an honorarium of $952.50 as well as expenses in the amount of $160.00. The total amount being claimed is $9,075.16.

In reviewing all cost submissions received by the Board, the Board must first determine the eligibility of a party to receive costs. In doing so, the Board looks to the party's cost claim for submissions as to whether the party is eligible to receive costs. The test for eligibility is outlined in Section 28 of the ERCA and a party must demonstrate that it meets the definition of a "local intervener" in order to be eligible for costs. The Board notes the absence of this vital information from the Whites' cost submission. As a result, the Board is unable to assess whether the Whites are "local interveners" and are eligible for costs.

Upon review of the statement of account submitted for Landcore's services, the Board notes that the account dates back to November 20, 2003 and time is incurred up to and including March 25, 2004. The Board is also mindful that the application was received on March 23, 2004 and further amended on April 6, 2004.

When determining a local intervener cost award, the Board will recognize all those expenses incurred by the local intervener that it considers reasonable and directly and necessarily related to the preparation and presentation of the intervention[1].

Furthermore, the EUB's usual practice (there are exceptions) is to acknowledge only those costs incurred after the EUB has issued a notice of hearing. It is generally the EUB's position that until a notice of hearing has been issued, there is no certainty that a hearing will be held. The EUB finds that in many cases the pre-notice interactions between interveners and applicants relate to compensation matters and not public interest issues[2]. As noted earlier in the Cost Order, the EUB clearly advised Landcore that the Board does not have jurisdiction over matters of compensation for land usage.

In exceptional situations, the Board will acknowledge costs that have been incurred by an intervening party prior to a notice of hearing being issued where it is reasonable for that party to have thought a hearing would be held with respect to the application. However, the party's cost submission must provide justification as to why it was reasonable for the party to have thought the Board would hold a hearing. The Board notes that this necessary information is lacking in the Whites' cost submission.

The Board expects that Landcore, as representatives for the Whites, would have informed its clients of the Board's cost practices and especially the risks related to the recovery of costs prior to a notice of hearing being issued by the Board.

The Board also notes that Whites' cost claim does not provide a sufficient description of the services provided by Landcore to the Whites in order for the Board to determine whether the fees and expenses incurred were reasonable. For example, Landcore's invoice describes services such as "Ben White", "Compton- John McIntyre", "Office". From these descriptions the Board has no way to assess what activities were performed by Landcore. Similarly the Whites' costs claim does not provide the Board with the ability to assess whether the fees and expenses were directly and necessarily related to a potential hearing of Compton's application or to surface lease negotiations between the Whites and Compton.

Upon review of the statement of account submitted for Ben White and Kelly White, the Board notes that Ben White's claim is based on a daily charge of $825.00 for 3 days. The account reflects meetings, phone calls and faxes with Compton personnel, as well as further meetings, phone calls and faxes with Landcore.

Kelly White's portion of the account is based on an hourly wage of $75.00. The account reflects meetings with landman, surveyors, and agents of Compton to discuss proposed wellsite; travel to Grande Prairie to meet with Landcore to discuss proposals made by Compton; cleaning up brush slashed by surveyors and removal of lathe and steel pins driven in field; and phone calls with Compton and Landcore.

With respect to honorarium claims the Board does not provide cost awards based on daily or hourly wages, rather the Board will recognize the efforts put forward by an individual intervener with respect to preparing their intervention and award an appropriate honorarium. In determining

[1] Part 5, Guide 31A
[2] Part 7, Guide 31A

the amount of the honorarium the Board will consider the scope and complexity of the issues involved in the application and will also take into account whether or not the intervener has obtained representation by way of a lawyer, consultant, or agent. Part 6.1.1 of Guide 31A, Guidelines for Energy Cost Claims (Guide 31A), provides the following:

> If an individual intervener hires a lawyer to assist with the intervention and the lawyer is primarily responsible for the preparation of the intervention, the Board generally will not provide an honorarium to the individual for his or her preparation efforts.

In this particular matter the Whites have chosen to be represented by Landcore and although Landcore is not legal representation, the Board acknowledges their role as being an agent/representative for the White family and views Part 6.1.1 of Guide 31A as applicable to this particular situation.

For the reasons expressed above, the Board has determined to deny the White's cost application in full. However, should the Whites wish to submit information to satisfy the deficiencies noted in this order, they may do so by submitting this information within 30 days of the issuance of this Cost Order.

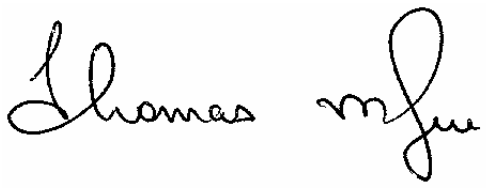
## 4 ORDER

IT IS HEREBY ORDERED THAT:

(1) The cost claim filed by Landcore International on behalf of Ben White and Kelly White in the amount of $9,075.16 is denied in full.

Dated in Calgary, Alberta on this 22 day of October, 2004.

**ALBERTA ENERGY AND UTILITIES BOARD**



Thomas McGee
Board Member