



# Penn West Petroleum Ltd.

Application for a Natural Gas Pipeline

Cost Awards

**ALBERTA ENERGY AND UTILITIES BOARD**

Energy Cost Order 2005-006: Penn West Petroleum Ltd.

Application for a Natural Gas Pipeline

Application No. 1385638

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# ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

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**Penn West Petroleum Ltd.**  
**Application for a**  
**Natural Gas Pipeline**

**Energy Cost Order 2005-006**  
**Cost Application No. 1385638**  
**File No. 8000-1385638-01**

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## 1 INTRODUCTION

Penn West Petroleum Ltd. (Penn West) submitted an application to the Alberta Energy and Utilities Board (Board / EUB) on June 2, 2004, which was subsequently amended on October 14, 2004, in accordance with Part 4 of the *Pipeline Act* for approval to construct and operate a pipeline for the purpose of transporting natural gas from an existing well to an existing tie-in point.

Peter and Elizabeth Froland own the northwest quarter of Section 7-42-7 W4M, the land on which a portion of the pipeline would be located. The Frolands raised concerns regarding safety, routing, soil handling including, in particular, preservation of the quality of the topsoil reclamation, and livestock management along the pipeline route.

The application was considered at a public hearing in Wainwright, Alberta, on January 17, 2005, by Board-appointed examiners T. J. Pesta, P.Eng. (Presiding Member), G. A. Habib, M.A., and M. P. Vandenbeld, C.E.T. A site visit was conducted on January 16, 2005. On March 29, 2005 the Board issued [Decision 2005-020](#).

The Board received one cost claim from Terry Roberts of Nickerson Roberts Holinski and Mercer (Nickerson Roberts) on behalf of his client Mr. Froland in the amount of \$17,212.14. Comments to the cost claim were submitted by Swist and Company on March 11, 2005 and Nickerson Roberts filed a response on March 22, 2005. For the purposes of this Cost Order, the Board considers the cost process to have closed on March 22, 2005.

## 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 and contributed to a better understanding of the issues before the Board.

### **3 VIEWS OF THE BOARD – Intervener Standing**

For the purposes of this Cost Order the Board finds that Mr. Froland has met the definition of "Local Intervener" as set out in Section 28(1) of the ERCA and is therefore eligible to apply for cost recovery.

### **4 VIEWS OF THE BOARD – Cost Claim Assessment**

#### **4.1 Nickerson Roberts Holinski & Mercer (Nickerson Roberts)**

Nickerson Roberts incurred \$11,615.00 in legal fees and \$813.05 in GST for a total claim of \$12,428.05. Upon review of the claim the Board notes that Mr. Terry Roberts, Q.C. and Sean Sexton, student at law, incurred a total of 42.3 hours for preparation, 7.5 for attendance, and 0.5 hours for argument and reply.

The Board has reviewed Mr. Robert's account and does not take issue with the legal fees being claimed. The Board does however take issue with respect to the services provided by AMEC Earth & Environmental (AMEC) and Hughalta Hoe Service (Hughalta). AMEC's services for completing soil tests and reporting on the same resulted in fees of \$1,400.00. Further, in order to complete the soil tests the rental service of Hughalta was engaged resulting in fees of \$280.00. In that regard the Board notes the following from Decision [2005-020](#).

The examiners note that the Frolands produced a soils report at the hearing without prior notice. Additionally, the author was not present to speak to the material. In the result, the examiners accepted the report as an exhibit but are unable to weigh its contents.

The Board must further recognize section 16 of the EUB's *Rules of Practice* which states the following:

- 16(1)** Unless the Board otherwise directs, if a party intends to present documentary evidence at an oral hearing or electronic hearing, or is directed to do so by the Board, the party shall file the documentary evidence and serve a copy of it on the other parties before the hearing takes place.
- (2)** The documentary evidence must be accompanied with a statement setting out the qualifications of the person who prepared the documentary evidence or under whose direction or control the evidence was prepared.

Taking the above into account the Board finds that the backhoe rental from Hughalta and the report produced by AMEC did not directly and necessarily assist the Board with the issues before it and as such finds that these expenses were not incurred in accordance with section 55(1) of the *Rules of Practice*. Accordingly the Board denies this portion of the claim.

Taking all of the foregoing into account the Board approves legal fees in the amount of \$11,615.00 together with GST in the amount of \$813.05 for an overall award of \$12,428.05. The Board denies the claim of \$1,400.00 regarding AMEC and \$280.00 regarding Hughalta as well as the associated GST.

#### **4.2 Preparation Honoraria**

A preparation honorarium is claimed by Peter Froland in the amount of \$1,640.00, by Elizabeth Froland in the amount of \$200.00, and by Andrew Froland in the amount of \$100.00. The total preparation honoraria being claimed is \$1,940.00.

In considering claims for preparation honoraria, the Board is mindful of part 6.1.1 of Guide 31A which states in part the following.

...an intervener who personally prepares a substantial submission without expert help may, depending upon the complexity of the submission, receive an honorarium in the range of \$300 to \$500. In very exceptional cases, and when the necessary preparation time is substantial, honoraria in excess of \$500 to a maximum of \$2500 may be considered. There must, of course, clearly be a need for any such substantial intervention.

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 situations where both the lawyer and the individual contribute substantially to the preparation of the intervention, the Board may consider an honorarium in recognition of the individual's efforts.

The Board must recognize that the Frolands were represented by 2 legal counsel, one of which is of senior status and has therefore claimed at the Board's maximum prescribed hourly rate. The Board also notes that no witness was presented by the Frolands at the hearing and that all cross-examination was conducted by their counsel. Taking into account the above as well as the number of hours counsel incurred it is the Board's view that counsel was primarily responsible for the coordination and presentation of the intervention and as such the claims for preparation honorariums must be reduced to reflect this assistance with the intervention.

Although the Board does find that counsel played a key role with the Froland's intervention it has reviewed the time records of the Frolands' activities with respect to the application and notes that the Froland Family recorded 97 hours of preparation time.

The Board recognizes that the time detail submitted by the Froland Family is based on the hourly wage of \$20.00 and includes activity associated with the Alternate Dispute Resolution (ADR) process. In that regard it must be noted that it is not the Board's practice to award honorariums based on hourly wages. With respect to the ADR process it is the Board's view that compensation for such negotiations is to be dealt with in the context of the negotiations themselves and not through the Board's cost recovery process. The Board notes that a cost regime exists for those costs incurred for negotiations and facilitations. In that regard the Board notes the following statement from [Information Letter 2001-1](#).

For the Preliminary ADR Meeting, industry participants should be responsible for the costs, including the direct third-party costs of landowners and the public. Costs and payment for future ADR options should be discussed and agreed to at the Preliminary ADR Meeting.

For all of the foregoing reasons the Board does not find that the total claim being made for preparation honoraria is appropriate in the circumstances, however the Board does recognize the work performed by the Frolands, in particular the number of phone calls made to various engineering firms, soil sampling firms, environmental companies, and pipeline construction companies. The Board also recognizes that the Frolands took responsibility for coordinating and organizing soil samples, as well as reviewing hearing material in order to prepare for their intervention. For these reasons the Board finds that exceptional circumstances exist in so far as the prescribed preparation honoraria allowed under Guide 31A, particularly \$300.00 - \$500.00, does not appropriately reflect the work done by the Frolands. In that regard the Board finds it appropriate to approve a total preparation honorarium for the Frolands in the amount of \$1,000.00. Honorarium awards are not subject to GST and therefore no GST is approved in relation to this award.

#### **4.3 Attendance Honoraria**

An attendance honorarium is claimed by each of the Frolands in the amount \$180.00 for a total attendance honoraria claim of \$540.00.

With respect to attendance honoraria part 6.1.2 of Guide 31A states the following.

##### **6.1.2 Costs of Appearing at a Public Hearing**

Except when an intervener is represented by someone else and takes no active part in a public hearing, an intervener may normally recover some of the costs of appearing at a hearing. Appearing in support of an intervention refers to coming to the front when so requested by the Chairperson of the hearing and answering any questions about the intervention. Mere attendance is not participation. Participation may include giving evidence, being cross-examined, assisting counsel/consultants, and presenting closing argument. Such an intervener does not receive a witness fee, but could claim an honorarium of \$50 for each half day actually present at a hearing to listen to the evidence of others, question others, present an intervention, or confer with the intervener's own solicitor or expert.

Upon review of the claim the Board notes that each of the Frolands has claimed their attendance honoraria based on an hourly wage of \$20.00. The Board finds that this portion of the claim is not in accordance with part 6.2.1 of Guide 31A and must therefore be reduced to comply with the Board's prescribed attendance honoraria. Accordingly the Board approves an attendance honorarium of \$100.00 for each Peter Froland, Elizabeth Froland, and Andrew Froland. As noted above, honorarium awards are not subject to GST and therefore no GST is approved in relation to this award.

#### **4.4 Intervener Expenses**

Expenses of \$231.11 are claimed by Peter Froland for meals, mileage, long distance telephone, and external printing. Elizabeth Froland and Andrew Froland have each claimed meal expenses in the amount of \$40.00 for overall expenses of \$311.11.

The Board has reviewed the disbursements noted and does not take issue with them and as such are approved in full. With respect to GST the Board will approve GST on the long distance

telephone charges and external printing charges in the amount of \$6.57. It is apparent to the Board, based on the flat rates claimed for mileage and meals that actual amounts were not calculated from receipts and therefore the Board is not prepared to approve GST on those amounts.

Taking all of the foregoing into account the Board approves a total of \$317.68 with respect to intervener expenses.

The details of the costs being claimed and awarded are shown in [Appendix A](#) attached.

## **5 ORDER**

IT IS HEREBY ORDERED THAT:

- (1) Penn West Petroleum Ltd. shall pay intervener costs in the amount of \$14,045.73.
- (2) Payment under this Order shall be made to Nickerson Roberts Holinski & Mercer, Attention: Terry Roberts, QC, 1901, 10088 – 102 Avenue, Edmonton, AB, T5J 2Z1.

Dated in Calgary, Alberta on this 27 day of May, 2005.

**ALBERTA ENERGY AND UTILITIES BOARD**

*Original Signed By Thomas McGee*

Thomas McGee  
Board Member

## APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



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Appendix A (Penn We