Calgary Health Region
City of Calgary

Review of Decision 2005-060
Applications for Licences to Drill Six Critical Sour Natural Gas Wells, Reduced Emergency Planning Zone, Special Well Spacing, and Production Facilities Okotoks Field (Southeast Calgary Area)

Cost Awards

Alberta Energy and Utilities Board

ALBERTA ENERGY AND UTILITIES BOARD
Energy Cost Order 2006-005: Calgary Health Region and City of Calgary
Review of Decision 2006-060
Application Nos. 1419088 and 1419395
Cost Application No. 1443627

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1 INTRODUCTION

By way of letter dated September 19, 2005 the City of Calgary (Calgary) applied to the Alberta Energy and Utilities Board (EUB/Board) for a review and variance (R&V) of Decision 2005-060 with respect to emergency planning zone issues, application number 1419088.

On September 20, 2005 the Board received a further R&V application from the Calgary Health Region (CHR). CHR also raised issues with respect to the emergency planning zone as well with the emergency awareness zone, application number 1419395.

By way of letter dated September 22, 2005 the EUB requested that any comments with respect to the R&V applications be submitted by October 3, 2005. The Board received comments from the Coalition of Concerned Communities, Ollerenshaw Ranch and A.G. Soutzo, the Front Line Residents Group, and Compton Petroleum Corporation. Following the filing of comments, the EUB received a reply from Calgary and the CHR.

By way of letters dated January 11 and 12, 2006 Calgary and CHR advised the EUB that they were withdrawing their respective R&V applications.

The Board received one cost claim for this matter from the Front Line Residents Group in the amount of $8,804.23.

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 PARTIES

3.1 Compton Petroleum Corporation (Compton)

By way of letter dated March 15, 2006 Compton argued that the majority of the FLRG cost claim should be denied for the following reasons.

- The Board has in the past made it clear that costs are not to be considered automatic and do not follow merely because costs have been awarded in connection with the matter in which a review has been requested. To the contrary, it is Compton's view that the Board has indicated that costs may be awarded if a review request is successfully prosecuted.

- There was no direct and adverse affect. Compton noted that FLRG was neither an applicant nor a respondent with respect to these R&V applications. In Compton's opinion, FLRG's only interest was its desire to see the results sought by the R&V applicants and although the Board did invite all parties to comment on the applications, Compton argues that those parties did so at their own risk in terms of cost recovery.

- The costs were not reasonably and necessarily incurred. Compton argues that the FLRG did not demonstrate what, if any, contribution was made by its participation in the R&V applications that was not already being provided by the review applicants themselves. Compton noted that the FLRG had the opportunity to seek its own R&V application or to apply jointly with one of the review applicants but chose not too.

- Lastly, Compton argues that the fact that the FLRG's costs for participating have not been justified on the basis of a direct and adverse affect being shown and the costs have not otherwise been shown to be reasonably and necessarily incurred, should not stand the FLRG in a better and stronger position to recover costs than the applicants.

Compton did not dispute the costs incurred between October 28 and November 29, 2005 and between December 15 and 22, 2005[1] as these costs relate to matters initiated by Compton.

[1] 4.2 hours X $250.00 = $1,050.00

3.2 Front Line Residents Group (FLRG)

By way of letter dated March 29, 2006 Gavin Fitch of McLennan Ross responded to Compton's comments. Mr. Fitch submitted that Compton's opinion that the FLRG would not be directly or adversely affected by the Board's decision in the R&V applications was clearly wrong. Mr. Fitch argued that the review applications and the submissions filed by the FLRG were filed within the context of an existing EUB proceeding which was not closed as the Board had not yet issued the well licences.

Mr. Fitch also argues that it is not relevant that the FLRG participated as an intervener in the R&V applications as opposed to applying for their own R&V. The FLRG was seeking grounds of relief which were different from that of the R&V applicants and the FLRG's approach to the R&V proceeding was for the sake of efficiency.

With respect to Compton's comments arguing that the FLRG should stand in no better position than the review applicants, Mr. Fitch submits that the FLRG's participation was necessary and reasonable to protects its interests and advocate its own position. Mr. Fitch reiterated that the FLRG's participation was in the context of an en existing and not yet closed proceeding.

4 VIEWS OF THE BOARD

The FLRG submitted a cost claim in the total amount of $8,804.23. The claim represents legal fees of $8,225.00, disbursements of $2.35, and related GST of $575.98. In considering the cost claim the Board has considered the comments and response that was filed.

In considering the cost claim filed by the FLRG the Board must recognize that the R&V proceeding did not advance past the first stage of the two stage process. While the Board in the past has made partial cost awards for the first stage of an R&V proceeding, it has done so where it has found that unique circumstances exist. Energy Cost Order 2004-010 states the following:

> The Board does recognize that the review request was denied on the basis that there was no substantial question as to the correctness of the original decision either as a result of error or change in circumstance[2].**Ordinarily in such circumstances it would be the Board's determination that Ms. Bordeleau's application did not contribute to a better understanding of the issues before the Board and the cost claim would be denied** *[emphasis added]*. In these circumstances however, the Board notes that a number of issues, which were involved in the review request, concerned the fulfillment by Bonterra of commitments it made to Ms. Bordeleau during the hearing in this matter.

In the absence of unique circumstances it has been the Board's determination that costs are not awarded in first stage of R&V proceedings.

With respect to FLRG's participation in the first stage of Calgary's and CHR's R&V proceeding, the Board has determined that no unique circumstances are present and as such an award of costs is not justified. The Board therefore denies the claim in full.

[2] Board letter to Richard Secord, March 9, 2004

5 ORDER

IT IS HEREBY ORDERED THAT:

(1) The cost claim of the Front Line Residents Group is denied in full.

Dated in Calgary, Alberta on this 18th day of July, 2006.

ALBERTA ENERGY AND UTILITIES BOARD

<Original Signed by B.T. McManus, Q.C.>

B.T. McManus, Q.C.
Board Member