



Standard Energy Inc.

Application for a Multiwell Licence
Grande Prairie Field

Cost Awards

October 27, 2008

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2008-013: Standard Energy Inc., Application for a Multiwell Licence, Grande Prairie Field

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640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

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

Web site: www.ercb.ca

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**STANDARD ENERGY INC.
APPLICATION FOR A MULTIWELL LICENCE
GRANDE PRAIRIE FIELD**

**Energy Cost Order 2008-013
Application No. 1517825
Cost Application No. 1578554**

1 INTRODUCTION

On July 5, 2007, Standard Energy Inc. (Standard) applied to the Energy Resources Conservation Board (ERCB/Board) for a licence to drill a multiwell pad. The purpose of the wells would be to produce crude oil from the Dunvegan Formation. No hydrogen sulphide would be expected to be encountered in the drilling of the wells.

Phil Marcy, Audra McKinley, and Ray Marcy and Laurie Marcy (the Marcys) filed an objection to the application. Mr. Marcy is the executor of the estate of the deceased owner of a portion of the southwest quarter of one of the sections on which the multiwell pad would be located. The Marcys reside on the southwest quarter of the same section. The Marcys raised a number of concerns, including drainage, groundwater, safety, dust, noise, and adverse impacts on native prairie on their property. Given their proximity to the proposed site, the Board granted standing to the Marcys to appear at the hearing.

The Notice of Hearing on Application No. 1517825 was issued by the ERCB on February 21, 2008.

The Board held a public hearing in Grande Prairie, Alberta, on May 28 and 29, 2008, before Board Member G. M. Miller (Presiding Member) and Acting Board Members T. L. Watson, P.Eng., and J. G. Gilmour, LL.B.

Prior to the close of the hearing, Standard withdrew the application and indicated that it would file a new application for an alternate location in due course.

On July 8, 2008, counsel for the Marcys filed a cost claim totalling \$22 257.66. On July 22, 2008, counsel for Standard submitted comments regarding the cost claim. On July 28, 2008, the Marcys submitted a response.

The Board considers the cost process to have closed on July 28, 2008.

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*, 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 application in question.

When assessing costs, the Board refers to Part 5 of the *Energy Resources Conservation Board Rules of Practice* and Appendix D: *Scale of Costs* in *ERCB Directive 031A: Guidelines for Energy Costs Claims*.

Subsection 55(1) of the *Rules of Practice* states:

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 Views of Standard

On July 22, 2008, counsel for Standard submitted comments regarding the cost claim filed by the Marcys. Standard disputed the costs claimed by Darryl Carter & Company, Klimek Law, and Cottonwood Consultants Ltd. (Cottonwood) and the honoraria claimed by the Marcys.

3.1.1 Darryl Carter & Company

Standard submitted that the costs claimed by Darryl Carter of Darryl Carter & Company were excessive and did not comply with *Directive 031A*.

Mr. Carter claimed fees for the period November 8, 2007, to July 4, 2008. The Notice of Hearing was issued on February 21, 2008. Therefore, Standard submitted that the fees incurred prior to the issuance of the Notice of Hearing should be disallowed. Standard also submitted that the hours claimed by Mr. Carter on July 4, 2008, should not be allowed because they clearly related to the preparation of the cost claim.

Standard also noted that the \$400.00 per hour being claimed by Mr. Carter exceeded the allowable hourly rate in the *Scale of Costs*. The *Scale of Costs* permitted a maximum hourly rate of \$250.00 for counsel of Mr. Carter's seniority. Therefore, Standard submitted that Mr. Carter's claim should be reduced to five hours at \$250.00 per hour, bringing his claim to \$1250.00 plus GST and disbursements.

3.1.2 Klimek Law

Standard submitted that the legal costs claimed by Klimek Law were excessive and should be reduced.

For several months leading up to the hearing, the Marcys were represented by Mr. Carter. Approximately two weeks prior to the hearing, on or about May 15, 2008, the Marcys changed counsel and retained Klimek Law. After reviewing Klimek Law's account, Standard noted that May 21–26, 2008, was entered as hearing preparation time for Jennifer Klimek. However, Debbie Bishop took over the file the day prior to the hearing. Standard took issue with the fact that Ms. Klimek prepared all of the hearing material and Ms. Bishop appeared at the hearing.

Given the foregoing, Standard contended that the cost claim of Klimek Law should be reduced by 25 per cent of its total claim, for total allowable costs of \$4930.50 plus GST of \$246.52, for a total of \$5177.02.

Standard submitted that all expenses claimed by Klimek Law were reasonable except for the cost of the transcripts of the hearing. Standard submitted that because the hearing only lasted a day and a half, it was unnecessary for Klimek Law to order transcripts on behalf of the Marcys and therefore the transcript costs should not be allowed.

3.1.3 Cottonwood Consultants Ltd.

Standard submitted that the costs claimed by Cottonwood should be reduced by a total of 50 per cent given that Cliff Wallis did not appear at the hearing and did not prepare an expert report but only wrote a single letter to Ms. Klimek. Therefore, Standard submitted that Cottonwood's claim of \$525.00 was unreasonable.

3.1.4 The Marcys

Standard submitted that the Marcys' claim for preparation and attendance honoraria was not in accordance with *Directive 031A*. Standard noted that *Directive 031A* allowed lump sum honoraria to be claimed by interveners for hearing preparation and attendance; it did not allow interveners to claim their time on an hourly basis. Standard submitted that since the Marcys were represented by legal counsel throughout this matter, it would be duplicative if they were awarded both legal fees and preparation honoraria. Standard submitted that the Marcys were not entitled to costs for hearing preparation, but acknowledged that they were entitled to attendance honoraria for two full hearing days.

3.2 Views of the Marcys

3.2.1 Darryl Carter & Company

The Marcys did not provide a response to Standard's comments on Mr. Carter's cost claim.

3.2.2 Klimek Law

The Marcys submitted that Standard was being unreasonable and was in error in submitting that the legal fees claimed by Klimek Law should be reduced by 25 per cent.

The Marcys also submitted that given Ms. Klimek's extensive experience in dealing with issues pertaining to native prairie grasslands, she completed the preparation work more efficiently than a junior lawyer such as Ms. Bishop could have. The Marcys also submitted that the only reason Ms. Bishop attended the hearing instead of Ms. Klimek was because Ms. Klimek was unavailable. Also, as Ms. Bishop's hourly rate was lower than Ms. Klimek's, the involvement of Ms. Bishop in the hearing significantly reduced the total legal fees. In light of the above, even though two lawyers worked on the case, the Marcys argued that no duplication of work occurred.

In relation to the costs claimed for the transcripts of the hearing, the Marcys submitted that they requested the transcripts of day one of the hearing at the end of the first day in order to prepare their arguments for day two. As soon as the transcripts were requested, an invoice was rendered. The Marcys did not and could not foresee that Standard would withdraw the application the next day. The Marcys contended that they should not be denied reimbursement of this cost because the application was withdrawn by Standard.

3.2.3 Cottonwood Consultants Ltd.

The Marcys submitted that the small amount claimed by Mr. Wallis was reasonable given that his opinion was useful. The Marcys stated that the only reason Mr. Wallis did not appear as a witness was because he was unavailable on the hearing dates.

3.2.4 The Marcys

The Marcys submitted that Standard was being unreasonable in its position respecting costs incurred prior to the issuance of the Notice of Hearing. The Marcys did not feel that it would be fair for all of these costs to fall on them. The Marcys asserted that had they not met with Standard prior to the Notice of Hearing being issued, they would have not obtained any information regarding the application.

In relation to costs claimed prior to the Notice of Hearing being issued, the Marcys stated in their submission that:

...In fact, the Marcy's had requested advance funding for their Counsel to participate in the consultation process, however, Standard refused. This cannot be the process envisioned by Directive 56. The results of such a process would be that the public is expected to understand detailed technical reports and write detailed submissions about their concerns on their own without legal or technical advice. If they do seek assistance in order to understand how the application will affect them and learn that it will directly and adversely affect them, they have done so at their own cost. All of this would happen before the Board has determined that they have standing and issue a Notice of Hearing. With all due respect, this does not foster a level playing field. What it would do is leave parties who are directly and adversely affected out of the process entirely as they do not have the time or resources to access the process.

4 VIEWS OF THE BOARD

4.1 Darryl Carter & Company

The Board issued the Notice of Hearing with respect to Application No. 1517825 on February 21, 2008. Regarding the costs incurred prior to the issuance of the Notice of Hearing, the Board notes that Section 7 of *Directive 031A* states:

The ERCB's usual practice (there are exceptions) is to acknowledge only those costs incurred after the ERCB has issued a notice of hearing. It is generally the ERCB's position that until a notice of hearing has been issued, there is no certainty that a hearing will be held. The ERCB finds that in many cases the prenotice interactions between interveners and applicants relate to compensation matters and not public interest issues. The ERCB recognizes, however, that it is sometimes necessary for local interveners to incur costs prior to the notice and that such costs may be reasonable and directly and necessarily related to the intervention in question.

The Board has considered Mr. Carter's submission regarding his claim for time spent prior to the Notice of Hearing being issued. In the Board's view, there was no certainty that this matter would proceed to a hearing. Accordingly, the Board finds that 7.6 hours (\$3040.00) are ineligible for recovery under this order and will therefore reduce Mr. Carter's cost claim by that amount.

The Board finds that the hourly rate of \$400.00 claimed by Mr. Carter significantly exceeds the maximum allowable hourly rate of \$250.00 set out in the *Scale of Costs*. Therefore, the Board will reduce Mr. Carter's cost claim by \$150.00 per hour.

The Board also finds that Mr. Carter is not entitled to claim any costs following the date on which Klimek Law was retained (May 15, 2008). Accordingly, the Board disallows the fees claimed by Mr. Carter for legal services rendered on July 4, 2008, and will therefore reduce Mr. Carter's cost claim by 0.3 hours.

To summarize, the Board will reduce Mr. Carter's total cost claim from 12.9 hours to 5.3 hours and the hourly rate claimed from \$400.00 per hour to \$250.00. This will bring the allowable portion of Mr. Carter's cost claim to \$1250.00¹ plus GST of \$62.50 and disbursements of \$21.00, for a total award of \$1333.50.

4.2 Klimek Law

With respect to Standard's submission that Klimek Law duplicated legal fees for hearing preparation because of the Marcys' decision to change counsel two weeks prior to the hearing, the Board notes that Section 5.1 of *Directive 031A* provides examples of costs that might not be considered reasonable, such as costs related to replacing solicitors or experts after preparation of a submission is started. Although it is apparent that a certain amount of overlap did occur, the Board does not find, given the amount of hours claimed for hearing preparation, that all of the preparation time was duplicated. However, the Board does not generally award costs for two counsel involved in a hearing. In exceptional circumstances, such as when issues in the hearing are novel or complex and/or the hearing involves a large number of interveners, the Board may find that the involvement of multiple counsel in the preparation for and attendance at a hearing is reasonable.

¹ 5.3 hours x \$250.00/hour.

The Board notes the Marcys' submission that Ms. Klimek did the majority of the preparation work and Ms. Bishop attended the hearing. The Board concludes that this resulted in at least some duplication of effort. Given Ms. Klimek's expertise on the issues addressed in the hearing and previous preparation efforts, it would have been more beneficial for her to have attended the hearing as opposed to Ms. Bishop. This is especially so given that Ms. Bishop appears to have needed additional time to prepare for cross examination and argument on behalf of the Marcys because she was not actively involved in the file prior to the hearing.

For the foregoing reasons, the Board will reduce Ms. Klimek's claim for legal fees by 25 per cent. This results in a reduction of Ms. Klimek's fees from \$2150.00 to \$1612.50. In addition, the Board notes from the statement of account submitted by Klimek Law that Ms. Bishop claimed her full hourly rate for her travel time to and from the hearing. *Directive 031A* provides that lawyers and experts may claim only half of their hourly rate for travel time. Therefore, Ms. Bishop's legal fees will be reduced to reflect that her travel time of 2.5 hours to and from Grande Prairie should be charged at \$70.00 per hour, not \$140.00 per hour.

In relation to the claim for the transcript costs, the Board notes that *Directive 031A* states that transcripts can be included in claims for office disbursements incurred by participants. The Board also notes the Marcys' submission that they ordered transcripts of the first day of the hearing to assist them in preparing their final arguments for the following day. The Board agreed that the Marcys could not have foreseen that Standard would withdraw its application prior to the close of the hearing. Therefore, the Board finds it reasonable to allow the Marcys' claim for the cost of the transcripts.

The Board notes that Ms. Bishop claimed a hotel accommodation expense for three nights. Given that the hearing was only scheduled for two days and that *Directive 031A* permits accommodation expenses only for hearing dates, the Board is of the view that the claim for hotel accommodations should be reduced by one day and will therefore reduce Ms. Bishop's hotel accommodation expense claim from \$552.57 to \$389.08. As a result, the Board allows Ms. Bishop's expenses in the amount of \$2204.50.

To summarize, the Board allows the Klimek Law's claim for legal fees in the amount of \$5861.50 plus GST of \$293.08, for a total of \$6,154.58, and allows Ms. Bishop's expenses in the amount of \$2204.50, for a total award of \$8,359.09.

4.3 Cottonwood Consultants Ltd.

The Board finds that the professional fees claimed by Cottonwood and the time expended in relation to the information provided at the hearing were not excessive. The Board acknowledges that Mr. Wallis did not present evidence at the hearing. However, the Board does not find it necessary to reduce Cottonwood's cost claim.

The Board therefore awards the cost claimed by Cottonwood in full.

4.4 The Marcys

The cost claim submitted by the Marcys included legal and expert costs of \$15 353.66, expenses of \$2822.54, and preparation and attendance honoraria of \$6470.00, for an overall claim of \$22 257.66.

In relation to the Marcys' claim of preparation honoraria totalling \$6470.00, the Board notes Section 6.1.1 of *Directive 031A*:

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.

In addition, the Board notes that the Marcys have claimed preparation honoraria at an hourly rate. The Board recognizes that *Directive 031A* does not provide compensation for interveners by way of an hourly rate, but rather provides for a range of honoraria based on the specific circumstances of the application in question.

The Board is not prepared to approve the costs as claimed by the interveners based on the hourly rates. However, based on the materials submitted, the Board recognizes that each of Phil Marcy, Ray Marcy and Audra McKinley appear to have made significant efforts to understand the ERCB's application and hearing process and to assist with the preparation of submissions and evidence. As such, the Board is prepared to award preparation honoraria in the amount of \$400.00 to each of Phil Marcy, Ray Marcy and Audra McKinley for a total amount of \$1200.00.

With respect to attendance honoraria, Section 6.1.2 of *Directive 031A* provides for an honorarium of \$100.00 per day. Both Ray and Phil Marcy attended both days of the hearing and gave evidence. Ms. McKinley attended the hearing on the second day but did not give evidence. The Board recognizes that the two-day hearing was cut short due to Standard withdrawing its application. Notwithstanding this, the Board is prepared to exercise its discretion and award attendance honoraria to Phil and Ray Marcy for two full hearing days, for a total of \$400.00.

The Board approves in full the expense claims of \$217.00 by both Phil and Ray Marcy for mileage and meals.

In summary, the Board awards preparation honoraria of \$1200.00 and attendance honoraria of \$400.00, for a total amount of \$1600.00 plus expenses of \$434.00.

5 ORDER

It is hereby ordered that

- (1) The Board approves intervener costs in the amount of \$12 251.58, as outlined in Appendix A.
- (2) Payment shall be made by Standard to Klimek Law, 240, 4808 – 87 Street, Edmonton, Alberta T6E 5W3.

Dated in Calgary, Alberta, on October 27, 2008.

ENERGY RESOURCES CONSERVATION BOARD

“Original Signed by G. M. Miller”

G. M. Miller
Presiding Member

“Original Signed by T. L. Watson, P.Eng.”

T. L. Watson, P.Eng.
Acting Board Member

“Original Signed by J. G. Gilmour, LL.B.”

J. G. Gilmour, LL.B.
Acting Board Member

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A