



Shell Canada Limited

Applications for Well, Facility, and Pipeline Licences
Waterton Field

Cost Awards

November 7, 2011

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2011-008: Shell Canada Limited, Applications for Well, Facility, and Pipeline Licences, Waterton Field

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**SHELL CANADA LIMITED
APPLICATIONS FOR WELL, FACILITY,
AND PIPELINE LICENCES
WATERTON FIELD**

**Energy Cost Order 2011-008
Applications No. 1614134, 1614144,
1614145, 1614198, and 1614210
Cost Application No. 1670412**

1 INTRODUCTION

1.1 Background

Shell applied to the ERCB for a licence to drill a well, referred to by Shell as the Waterton 68 well (WT68 well), and submitted four related applications to construct and operate two pipelines and one facility and to amend an existing facility licence (collectively referred to as the project).

The Board received a number of objections from landowners, residents, traditional land users, recreational users, and a community group, stating concerns about, among other things, public safety, the environment, personal impacts, the location of the proposed well, and Shell's operational history. Shell engaged in the ERCB Appropriate Dispute Resolution program with some of the parties that objected to its applications; however, not all issues were resolved.

The Board held a prehearing meeting in Pincher Creek, Alberta, which commenced and concluded on February 10, 2010, before Board Members M. J. Bruni, Q.C. (Presiding Member), J. D. Ebbels, and T. L. Watson, P.Eng.

After having participated in the prehearing meeting, but prior to the issuance of the prehearing decision report, Board Member J. D. Ebbels passed away. The remaining two panel members constituted a quorum and their decisions with respect to the prehearing meeting are set out in *Decision 2010-021*.

The Board issued a Notice of Hearing on May 25, 2010, setting a final submission date of August 30, 2010, for all interested parties and a final response submission date of September 27, 2010, for the applicant. In the months leading up to the hearing of the applications, the Board received and dealt with numerous motions, requests for extensions of deadlines, and late filings from a number of interested parties.

The Board held a public hearing in Pincher Creek, Alberta, which commenced on October 19, 2010, and concluded on November 1, 2010, before Board Members M. J. Bruni, Q.C. (Presiding Member), T. L. Watson, P.Eng., and B. T. McManus, Q.C. A site visit was held on Tuesday, October 19, 2010, on the first afternoon of the hearing.

2 HEARING PARTICIPANTS

2.1 Participants listed in *Decision 2010-021* and *2011 ABERCB 007*

Participants at the hearing included persons and groups listed at Page 3 of *Decision 2010-021* and Appendix 1, Pages 31 and 32 of *2011 ABERCB 007*. Of those, the Castle Crown Wilderness Coalition (CCWC), the Sheppard-Barbero Group, and Mike Judd participated in the proceeding and at the hearing of the applications, and submitted cost claims following the hearing. As well, the Board also received cost claims following the hearing from David Laskin and from Stuart McDowall on behalf of himself and a group of members of the Pikanii nation. The claims of these particular participants are the subject of this Cost Order, and each will be dealt with in turn below.

2.2 Participants and Groups

The CCWC is composed of the members listed in the response to the undertaking given by counsel for the CCWC to the Board at the Prehearing Meeting on February 10, 2010. The CCWC's response was sent in an undated letter by counsel for the CCWC to the Board in an email dated March 22, 2010. The CCWC took the position that the Board should deny the applications as the need to preserve the Castle area as a special place and to preserve the landscape of Mount Backus outweighed the need for the applications. They also took the position that the applications were not in the public interest and expressed concerns about, among other things, wildlife, vegetation, proliferation of sour gas development, public safety, emergency response, and roads and traffic.

The Sheppard-Barbero group, composed of David and Jean Sheppard and Kim and Sylvia Barbero, took the position that the applications should be denied as they were not in the public interest. They expressed concerns about, among other things, flaring, roads and traffic, emergency response, air quality and monitoring, well site location, vegetation, health, and public safety.

Mr. Judd took the position that the applications should be denied and expressed concerns about, among other things, well site location, emergency response, public safety, wildlife, vegetation, air quality and monitoring, and health.

Mr. Laskin expressed concerns about, among other things, well site location and impacts on limber pine trees in the area of the proposed well site.

Mr. McDowall expressed concerns about, among other things, impacts on ranching and livestock, public safety, health, well site location, vegetation, wildlife, First Nations traditional land uses, and the historical, spiritual and cultural importance of the area for First Nations peoples.

2.3 Advance Funding Awards

On June 16, 2010, Mr. Judd applied to the Board requesting an award of advance funding in the amount of \$170,000.00. Shell submitted its response to the request on June 30, 2010, and Mr. Judd submitted a final reply on July 4, 2010. The Board then made an award of advance funding to Mr. Judd in the amount of \$10,000.00 on July 19, 2010.

2.4 Advance Funding Awards made by Shell

As a result of discussions between Shell and the CCWC and the Sheppard-Barbero Group, Shell agreed to provide both groups with advance funding without being directed to do so by a Board Energy Cost Order. Accordingly, in letters dated August 23, 2010, Shell paid both the CCWC and the Sheppard-Barbero Group \$37,500.00, respectively, in advance funding.

3 COST CLAIMS

3.1 Costs Claims submitted to the Board following the hearing

On November 26, 2010, the Sheppard-Barbero group filed a costs claim in the amount of \$211,227.30. On January 10, 2011, Shell submitted its comments on the costs claim and on January 31, 2011, the Sheppard-Barbero group responded to Shell's comments.

On December 1, 2010, Mr. Judd filed a costs claim in the amount of \$154,596.37. On January 10, 2011, Shell submitted its comments on the costs claim and on January 31, 2011, Mr. Judd responded to Shell's comments.

On December 1, 2010, the CCWC filed three cost claims. The first cost claim (Cost Claim 1) concerned the legal fees and expenses claimed by Ackroyd LLP, fees and expenses for a number of consultants, and intervener honoraria and expenses, in the amount of \$184,733.21. The second claim (Cost Claim 2) concerned the professional fees and expenses claimed by the CCWC and Mr. Judd for five experts, in the amount of \$60,879.64. The third claim (Cost Claim 3) was originally filed on December 1, 2010, and concerned the professional fees and expenses claimed by the CCWC, Mr. Judd, and the Sheppard-Barbero group on behalf of three witnesses, in the amount of \$154,650.29. Subsequently, counsel for the CCWC, Ms. Bishop, purported to send a revised Cost Claim 3 to the Board, on January 4, 2010, in the amount of \$155,581.94. On January 10, 2011, Shell submitted its comments on those costs claims. The CCWC submitted a response to the comments of Shell on January 31, 2011.

On November 22, 2010, Stuart McDowall filed a costs claim on his own behalf in the amount of \$3,480.00, as well as a claim of \$3,020.00 on behalf of the Piikani members. On January 10, 2011, Shell submitted comments on the cost claims and Mr. McDowall responded to Shell's comments on January 10, 2011.

On November 17, 2010, David Laskin filed a costs claim in the amount of \$695.18. Shell responded to that costs claim on January 31, 2011. Mr. Laskin did not thereafter respond to the comments provided by Shell.

4 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.

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

Section 57(1) of the *Rules of Practice* states:

57(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.

In addition to the legislative provisions that govern and apply when the Board is considering awards for costs to persons who qualify as local interveners, the Board is also guided by the common law and the applicable legal principles regarding a tribunal's jurisdiction to award costs. The recent decision of the Supreme Court of Canada in *Smith v. Alliance Pipeline Ltd.* (2011 SCC 7) dealt with, among other things, the jurisdiction of tribunals (in that case the National Energy Board's Pipeline Arbitration Committee) to award costs. The Court found that awards for costs are invariably fact-sensitive and generally discretionary, attracting a standard of review of reasonableness in accordance with the categories contained in *Dunsmuir v. New Brunswick* (2008 SCC 9). In *Smith v. Alliance Pipeline Ltd.*, the Court found that the statutory language of Section 99(1) of the *National Energy Board Act (NEBA)* reflected a legislative intention to vest in the Pipeline Arbitration Committee the sole responsibility for determining the nature and amount of costs to be awarded. Section 99(1) of *NEBA* contains language similar to that of Section 57(1)(a) of the *Rules of Practice*. It is clear from the applicable legislative provisions, as well as the common law, that the Board has considerable discretion when making cost awards to persons who qualify as local interveners which stem from proceedings that have taken place before it.

In reaching the determinations contained in each part of this decision, the Board has considered all relevant materials constituting the record of this proceeding, including the written and oral evidence and the arguments provided by each party. Accordingly, references in each part of this decision to specific parts of the record are intended to assist the reader in understanding the Board's reasoning relating to a particular matter and should not be taken as an indication that the Board did not consider all relevant portions of the record with respect to that matter.

4.1 Views of the Board—Local Intervenors Eligible for Costs Consideration

As outlined above in Section 3.1, the Board has received costs claims from a number of hearing participants. However, pursuant to Section 28 of the *ERCA*, the Board is only able to award costs to persons or groups who have an interest in or are entitled to occupy lands that are or may be directly and adversely affected by a decision of the Board. Persons or groups who satisfy those criteria may be considered to be local intervenors by the Board. Once a person or group is found

to be a local intervener, the Board may then proceed to consider cost claims submitted by that person or group and may make an award of costs as it sees fit.

The Board will address the local intervener status of the participants in Section 3.1 above who submitted cost claims arising from the hearing of these applications in turn below.

4.2 Dave and Jean Sheppard, Kim and Sylvia Barbero, Elaine and Will Voth, and Mike Judd

Based on all of the evidence at the hearing, the Board's decision on the applications in *2011 ABERCB 007*, and all of the submissions of the parties, the Board finds that Jean and Dave Sheppard, Kim and Sylvia Barbero, Elaine and Will Voth, and Mike Judd qualify as local interveners pursuant to Section 28 of the *ERCA*. The Board finds that the lands owned and occupied by these persons are or may be directly and adversely affected by the decision of the Board on these applications. The Board will therefore proceed to consider the costs claims of these parties in turn below, commencing at Section 5.

4.3 Mr. McDowall and Mr. Laskin

Based on all of the evidence at the hearing, as well as all of the submissions of the parties, the Board finds that neither Mr. McDowall nor Mr. Laskin qualifies as a local intervener pursuant to Section 28 of the *ERCA*. In *Decision 2010-021*, at Page 2, Section 5.3, the Board found that Mr. McDowall and Mr. Laskin had not satisfied the test contained in Section 26(2) of the *ERCA*. Mr. McDowall then requested a review of that decision on October 6, 2010. In its letter dated October 18, 2010, the Board denied Mr. McDowall's review request. A participant who does not meet the test in Section 26(2) of the *ERCA* will generally not meet the more restrictive test in Section 28.

Further to the Board's decision in *Decision 2010-021*, neither was able to show at the hearing or in their submissions that they had interests in or occupied lands that were or may be directly and adversely affected by a decision of the Board on these applications. Accordingly, the Board declines to consider the cost claims submitted by these participants.

The Board also notes that Mr. McDowall submitted cost claims on behalf of some members of the Pikanii nation who attended the hearing on October 22, 2011, to give a presentation to the Board. The Pikanii nation did not object to the applications and was not an active participant at the hearing of the applications. While the Board is unable to consider the cost claims submitted on their behalf as the Pikanii nation members are not local interveners pursuant to Section 28 of the *ERCA*, the Board appreciated the opportunity to see their presentation and hear their views.

5 COSTS CLAIM OF THE SHEPPARD-BARBERO GROUP

On November 25, 2010, Klimek Law, on behalf of the Sheppard-Barbero group, filed a costs claim for legal fees and expenses in the amount of \$120,638.92, expert fees and expenses in the amount of \$59,969.15, intervener honoraria in the amount of \$18,400.00, intervener expenses in the amount of \$3,053.41, and GST in the amount of \$9,165.82, for a total claim of \$211,227.30.

5.1 Views of Shell

With regard to the claimed legal fees and hours, Shell submitted they exceeded what was reasonable under the circumstances and should be reduced based on the nature and complexity of the applications, Ms. Klimek's over 25 years of experience at the bar, her experience in appearing before the Board, her familiarity with the applications given the fact she had represented interveners at the 2007 hearing, and because of the shared work with other intervener groups and experts throughout the hearing. Shell submitted that the legal time claimed did not reflect the efficiencies that should have resulted from these factors and, as such, the time she claimed for preparation, argument and reply should be reduced.

Shell also expected that dividing the issues among intervener representatives would reduce the workload of each and avoid duplication; however, the issues and concerns of the Sheppard-Barbero group were similar to those of other participants in the hearing.

Shell submitted that 120.5 hours was claimed for hearing attendance, but no basis for this total was provided. Based on the transcripts, it submitted the hearing took a total of 99 sitting hours, and that the reasonable time claimed for hearing attendance should not exceed 104 hours.

Shell submitted that further context for what constitutes reasonable costs is provided by the Board's costs award in *Highpine Oil and Gas Limited ECO 2009-004 (ECO 2009-004)*. A hearing was held from September 23 to October 23, 2009 for three sour gas well licence applications. One intervener counsel claimed legal fees of \$120,842.50, consisting of 327 hours for preparation, argument and reply. The Board concluded that the preparation time claimed by that intervener counsel was extreme compared to that of others, and reduced the claim for time by fifty percent (50%), ultimately awarding \$53,986.00 in legal fees. In that decision, the Board also awarded Klimek Law \$57,686.77 in legal fees. Shell submitted that any costs awarded to Ms. Klimek should be more consistent with the amounts awarded in *ECO 2009-004*.

Shell stated that in *Shell Canada Limited ECO 2009-003 (ECO 2009-003)*, the cost decision arising from the 2007 hearing, counsel for the primary intervener group at the eight day hearing was awarded \$57,698.07 in legal fees. Shell submitted the legal fees awarded to Ms. Klimek should be more consistent with those awarded in *ECO 2009-003*.

With regard to the claimed legal expenses, Shell submitted that a number of these should be reduced.

Shell submitted that the claim of \$2,418.27 in accommodation expenses, representing 17 nights at \$140.00 per night should be reduced. Appendix E of *Directive 031* provides that claims for accommodation and meals are restricted to the hearing phase of a proceeding. Shell submitted that a number of hotel receipts were incurred outside of the hearing phase of the proceeding. Ms. Klimek's hotel receipts during the hearing indicated that she checked in on October 18, 2010, and checked out on October 29, 2010. Shell submitted that the claimed hotel costs should be reduced to \$1,680.00 to reflect the 12 nights stayed during the hearing.

Shell submitted that the claim for meal expenses of \$960.00, representing 24 days of meals at \$40.00 per day should be reduced. Based on the records provided, a number of the expenses were incurred outside of the hearing phase of the proceeding and the claimed expenses should be

reduced by \$400.00 given that costs for meals are also restricted to the hearing phase of the proceeding.

With regard to the fees and expenses of Mr. Duncan, Shell argued that the claimed \$61,236.00 in expert fees, based on 216 hours at \$270.00 per hour, was excessive given the nature of the proceedings and his role.

In the advance intervener funding claim, Ms. Klimek stated that Mr. Duncan was retained to “assess pipeline integrity and Shell’s proposal for dealing with corrosion” for the proposed Waterton 68 pipeline. However, he spent a significant amount of time assessing matters that, in Shell’s view, were not relevant to or necessary for the proceeding or his review. In particular, his timesheets indicated that he spent time reviewing and considering the following: sweet gas facilities, drilling, completions, Rilsan sources, Rilsan data from the Shell Screwdriver 61 pipeline, and requirements in British Columbia.

Shell submitted that the sections of his report addressing these topics were not well developed or informed, and were therefore not particularly helpful to the Board. As its applied-for pipeline was to be lined with HDPE, not Rilsan, and as the gas from its applied-for well would not flow into any Rilsan lined pipelines, Shell submitted it was not necessary for Mr. Duncan to research or review in detail information relating to Rilsan liners. Further, it was unclear why Mr. Duncan needed to review British Columbia requirements, when the applied-for pipeline was to be constructed in Alberta.

Shell submitted that it had worked cooperatively with Mr. Duncan to provide him with the information he required to conduct his review through information requests and through discussions with Shell’s Pipeline Materials, Corrosion and Inspection Manager. However, while Mr. Duncan provided both written and oral evidence, his seven page report consisted largely of a summary of the findings from the investigations of the Carbondale and Screwdriver Creek pipeline leaks, as well as a summary of Shell’s operating practices that would apply to the Waterton 68 pipeline. While the report provided comments, it did not identify significant issues or concerns, and did not provide substantial analysis or discussion.

Shell noted that Mr. Duncan’s time sheets indicated approximately 175 preparation hours were incurred. It argued that this claim for time exceeded the 168.2 hours in legal time claimed by counsel for the Sheppard-Barbero group, as well as the legal fees awarded in *ECO 2009-004* and *ECO 2009-003*, and was significantly greater than any of the expert fees awarded in those proceedings. For these reasons, Shell submitted that the fees claimed for Mr. Duncan were not reasonable and should be reduced.

Shell expressed the following concerns with respect to Mr. Duncan’s travel time and office expenses:

- Mr. Duncan’s time sheets indicate it took 5 hours one way to reach Pincher Creek from Canmore, and he made two round trips during the hearing for a total of 20 travel hours. His final hours should therefore be reduced by 10 hours to account for the reduction in fees he should have billed for his travel time.
- Mr. Duncan claimed costs for office supplies totaling \$308.28. However, these were not supported by the cost claim and without justification, these costs should be denied.

With regard to intervener honoraria, Shell took no issue with the attendance honoraria claimed, but submitted that the preparation honoraria claimed should be reduced to be more consistent with prior Board cost decisions.

The Sheppard and Barbero families were represented by counsel and a variety of experts shared with other intervener groups. Shell submitted that in such cases, the Board generally will not provide an honorarium to an intervener for his or her preparation efforts.

It cited *West Energy ECO 2009-009 (ECO 2009-009)* where the Board discussed the awarding of honoraria to interveners assisted by counsel and experts and stated as follows:

Honoraria are awards in recognition of personal time and efforts and typically range from \$300 to \$500. The Board is prepared to increase the honoraria awarded to interveners in exceptional situations where there is a clear need for such a substantial intervention. In cases where the group is assisted by counsel and experts, the group may not qualify for an honorarium.

It cited *Polaris Resources Ltd. ECO 2004-04 (ECO 2004-04)* and *Highpine Energy Ltd. ECO 2008-015 (ECO 2008-015)* where preparation honoraria were claimed by interveners and hearing participants assisted by counsel that were primarily responsible for preparing the intervention. The Board recognized the efforts of some of those individuals, awarding preparation honoraria ranging from \$200.00 to \$400.00 amounts, the latter being in *ECO 2008-015* for recognition of rather extraordinary preparation.

Accordingly, Shell submitted that the \$2,000.00 preparation honoraria requested by Dave Sheppard, Jean Sheppard, Kim Barbero, and Sylvia Barbero, respectively, should be reduced.

Lastly, Shell submitted that *Directive 031* provides that it is the obligation of the party claiming costs to support its claim and establish that the costs claimed were reasonable and directly and necessarily related to the proceeding. For the reasons provided above, Shell submitted the costs claimed should be reduced to values more appropriate in the circumstances and more commensurate with past Board cost awards.

Shell also submitted that the advance funding in the amount of \$37,500.00 that it paid to Ms. Klimek for legal and joint expert fees should be deducted from any amounts awarded by the Board to Ms. Klimek.

5.2 Views of the Sheppard–Barbero Group

With regard to the claimed legal fees and expenses, Ms. Klimek submitted this was a complex application and that Shell provided a great deal of information which had to be reviewed and analyzed. She submitted that the aim of intervener funding is to not place a financial burden on citizens who are affected and if full compensation is not paid, a financial burden is placed on citizens. She submitted that the costs claimed for hearing preparation were reasonable.

Ms. Klimek submitted that she worked with experts by, among other things, obtaining information for them, reviewing reports, and briefing and preparing them for the hearing. Ms. Klimek submitted that she met with the Sheppards and Barberos on at least three occasions in order to understand their circumstances and concerns, understand their history with development in the area, and advise them how to approach the hearing. She worked collaboratively with the Sheppards and Barberos to prepare their submission, compile questions, and plan their

presentations. She submitted the only way that lawyers can effectively plan an intervention is to meet and work with their clients.

With respect to Shell's submission that counsel should only be paid for actual time spent in the hearing, Ms. Klimek submitted that work does not end when the hearing closes at the end of each day and that she worked with her clients and experts before and after the hearing each day. She also stated she used the first weekend of the hearing to get ready for the next week and to assist clients in finalizing their evidence and that she used the second weekend of the hearing to prepare argument.

Ms. Klimek argued that *ECO 2008-015* was not comparable to this case, as the hearing was not as long, the *Directive 031* tariff was considerably lower then, and there were no existing gas field or pipeline issues.

She submitted that the 2007 submission was not as extensive and did not address as many issues. In *Decision 2008-127, Shell Canada Limited (Decision 2008-127)*, the Board indicated that any new hearing on this well would need to address pipeline integrity and public safety and submissions on the pipeline failure and how that related to the application. She submitted it would have been negligent to rely on her memory to conduct this intervention. Furthermore, the Sheppards' and Barberos' concerns were heightened due to issues and events which took place after the 2007 hearing, but prior to the 2010 hearing.

Ms. Klimek argued that in light of the number of interveners and differing concerns and approaches, it would have been difficult for one lawyer to handle the whole hearing. She argued that one lawyer would not have had the ability to do the necessary work to prepare for all of the issues in the time provided, nor could one lawyer have handled the long hearing days on their own. Coordinating a number of experts would have been problematic and would have required much more work. She argued that as a result, the hearing would have been delayed. The trade off in possibly paying more was to get it done faster.

Ms. Klimek submitted that the Sheppard-Barbero group's emergency planning issues were different than those of others due to their location and history with the project and other development in the area, and as a result they presented different evidence.

With regard to the preparation honoraria claimed by her clients, Ms. Klimek argued it was necessary for them to spend time and effort preparing for the hearing, which can be difficult and requires assistance from counsel. Ms. Klimek submitted that it was clear from their evidence and the questions asked of Shell that "there was a good team effort and that they should be compensated for being part of the team."

With regard to the fees and expenses of Mr. Duncan, Ms. Klimek submitted that he was hired to review the integrity of the wells and pipeline systems. She stated that drilling, completions, surface facilities, sweet system and sour line pipeline aspects of the systems were subjected to a metal integrity and corrosive engineering audit, which indicated concerns with sour pipeline integrity. While he found few concerns with other aspects of the process, his evidence provided Shell, the Board and the interveners' the reassurance that these aspects of the project were handled properly.

Ms. Klimek submitted that the major part of Mr. Duncan's report was to develop an independent account of what happened with the Screwdriver Creek failure. He also stated his concerns regarding the operation of the pipeline system and the efficiency of the inspection provided by the Russell Tool. Further, he provided an opinion about the development of long line corrosive damage at liner grooves, the nature of that type of damage and the consequences if it occurred in a new line. Ms. Klimek argued that an understanding of the previous failure was necessary to determine the chances of a reoccurrence and how to prevent or mitigate future incidents. She argued that the Board's questions made it apparent his evidence was well received and useful, and that Shell too thought it was useful as one of its commitments was to retain Mr. Duncan to look at these issues. Ms. Klimek submitted that Mr. Duncan attended the hearing to assist with cross-examination and then to provide his evidence. As such, his fees were reasonable for the work done and for the product he provided.

The Sheppard-Barbero group argued that the costs they claimed were reasonable and should be granted.

5.3 Views of the Board

Legal Fees and Expenses

Having considered all of the foregoing, the Board finds that some of the legal fees incurred by counsel for the Sheppard-Barbero group were reasonable and necessary in light of the circumstances of this matter. While some of the submissions made by counsel for the Sheppard-Barbero group were of assistance to the Board in its decision on the applications, the Board has also carefully considered the comments and concerns of Shell regarding the group's costs claim. As a result, the Board finds that certain reductions to the legal fees and expenses of the Sheppard-Barbero group are in order, and are detailed below.

The Board notes that Ms. Klimek appears to have claimed hours in her time dockets which precede the issuance of the Notice of Prehearing Meeting, dated December 31, 2009. The Board finds that in accordance with Section 6.3 of *Directive 031*, costs claimed following the issuance of the Notice of Prehearing Meeting will be considered by the Board, and claims for costs which precede the issuance of the Notice of the Prehearing Meeting in this matter will not be considered. Accordingly, the Board declines to award Ms. Klimek the 18.5 hours, composed of 8.5 hours at an hourly rate of \$350 and 10 hours at an hourly rate of \$175, claimed for time spent prior to December 31, 2009.

The Board has considered the submissions of the parties on the time claimed for hearing attendance, and is of the view that the time claimed in that regard is higher than what the hearing time on the record of the proceeding reflects. The Board is prepared to award Ms. Klimek 105 hours of hearing attendance time, and declines to award the 15.5 hours additionally claimed for same.

The Board has also considered the submissions of the parties on the reasonableness of the claimed legal fees generally. The Board finds that some of the claimed legal time was reasonable in light of the scope and nature of the proceedings, the work performed, and the duration of the hearing. However, the Board finds that some of the claimed time was not and appears unnecessary, given Ms. Klimek's previous experience with Shell applications in this area, her experience in appearing before the Board, and the fact that her group and the CCWC and

Mr. Judd collaborated to some extent by sharing witnesses and working together with regard to the content of their submissions. The Board also notes its correspondence of September 21, 2010, to Ms. Klimek regarding the number and lateness of requests made for late filing of submissions in the month prior to the hearing. Repeated failures to comply with Board deadlines are of concern to the Board and it is of the view that such practices should not be condoned. Accordingly, the Board finds that a reduction to the cost award is warranted. The Board orders a further reduction of the total amount of legal fees awarded to the Sheppard-Barbero group in the amount of fifteen per cent (15%).

With regard to the claimed legal expenses, the Board finds that some of these appear to be generally reasonable and necessary in light of the scope and nature of the proceeding. However, the Board declines to make an award of costs for claims relating to two Telus phone conference charges dated February 2, 2010, and September 2, 2010, submitted in the cost claim. These charges were unaccompanied by any receipt or explanation and furthermore do not appear to be reasonable in light of this matter.

With regard to the claimed amounts for accommodation and meal expenses, the Board finds that while some of these appear to be reasonable and necessary in light of the circumstances of this matter, some of the claimed charges are not reasonable or not eligible for reimbursement. Appendix E of *Directive 031* provides that claims for accommodation and meals are restricted to the hearing phase of the proceeding. As such, the Board declines to make an award of costs for the claims for accommodation dated August 1, August 2, and September 23, 2010. Similarly, the Board declines to make an award of costs for the claims for meals dated June 26 and 27, August 1-3, and September 22-24, 2010.

Having regard for the duration of the hearing and the work performed by counsel, the Board is prepared to award the amounts claimed for accommodation during the hearing phase of the proceeding, as supported by the receipts provided in the cost claim, as well as fourteen days of meal expenses, at the maximum allowable rate of \$40.00 per day.

The Board also notes that included in the claimed amounts for accommodation were expenses related to meals, lounge expenses, and long distance phone charges, all of which were charged to hotel rooms. The Board finds that the inclusion of these costs in the costs claim was unreasonable and unacceptable, and declines to make any award for them. The Board considers all properly documented claims for meal costs regardless of where the costs are incurred (i.e. restaurant, room service at a hotel, grocery store), and the \$40.00 maximum for daily meal costs may be incurred through purchases at more than one location. It is, however, inappropriate for a hearing participant to attempt, either intentionally or inadvertently, to subsume additional meal or non-accommodation costs into accommodation expenses and leave the Board to examine hotel and other receipts in order to figure out what was properly included in a given accommodation claim and what was not.

Accordingly, the Board hereby makes an award of costs to Klimek Law for professional fees, expenses, and disbursements as follows:

| Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|------------|
| \$112,332.50 | \$86,855.13 | \$25,477.37 | \$8,306.42 | \$5,653.95 | \$2,652.47 |

Intervener Honoraria and Expenses

With regard to the intervener honoraria claimed for the Sheppards and Barberos, Section 5.1.2 of *Directive 031* provides that the Board will not normally provide a preparation honorarium to a local intervener if a lawyer is primarily responsible for the preparation of an intervention. If both the lawyer and the local intervener prepare an intervention, the Board may consider an honorarium in recognition of the local intervener's efforts. However, given the unique nature of the proceeding, the Board recognizes the time and effort spent by the Sheppards and Barberos and considers that their participation merits a preparation honorarium.

The Board notes that both Dave and Jean Sheppard attended nine days of the hearing and were empanelled as witnesses the evening of October 27, 2010. Accordingly, the Board awards both Dave and Jean Sheppard \$1,800.00 in attendance honoraria, respectively. Further, the Board awards Dave and Jean Sheppard \$1,000.00 in preparation honoraria in recognition of their efforts and the useful evidence they provided to the Board as a result.

With regard to the claimed intervener expenses for the Sheppards, the Board awards both Dave and Jean Sheppard \$360.00 each for meals, respectively, based on their nine days of attendance at the hearing and Appendix E of *Directive 031*, which limits claims for meals to the hearing phase of a proceeding to a \$40.00 daily maximum. With regard to the remainder of the intervener expenses claimed for the Sheppards, the Board finds that these are generally reasonable and awards them in full.

With regard to the intervener honoraria claimed by the Barberos, the Board notes that Kim and Sylvia Barbero attended at ten days of the hearing and were empanelled as witnesses the evening of October 27, 2010. Accordingly, the Board awards both Kim and Sylvia Barbero \$2,000.00 in attendance honoraria, respectively. With regard to preparation honoraria, the Board awards Kim and Sylvia Barbero \$1,000.00 in preparation honoraria in recognition of their efforts in assistance with their intervention and the useful evidence they provided to the Board as a result.

With regard to the claimed intervener expenses for the Barberos, the Board awards both Kim and Sylvia Barbero \$400.00 each for meals, respectively, based on their ten days of attendance at the hearing and Appendix E of *Directive 031*, referred to above. With regard to the remainder of the intervener expenses claimed for the Barberos, the Board finds that these are generally reasonable and awards them in full.

With regard to the intervener honoraria and expenses claimed by Ivan Barbero, the Board notes that he was empanelled as a witness during the hearing on the evening of October 27, 2010. Accordingly, the Board awards him \$200.00 in attendance honoraria and \$100.00 in preparation honoraria in recognition of his efforts in assistance of the intervention and the useful evidence he provided to the Board as a result. The Board also awards him \$40.00 in meal expenses based on his attendance at the hearing on October 27, 2010. With regard to the remainder of the intervener expenses he claimed, the Board finds that these are generally reasonable and awards them in full.

Accordingly, the Board hereby makes an award of costs to Klimek Law for intervener honoraria and expenses as follows:

| Intervener | Honoraria claimed | Honoraria awarded | Reduction | Expenses claimed | Expenses awarded | Increase |
|---------------|-------------------|-------------------|------------|------------------|------------------|----------|
| Dave Sheppard | \$4,500.00 | \$2,800.00 | \$1,700.00 | \$880.09 | \$915.09 | \$35.00 |
| Jean Sheppard | \$4,500.00 | \$2,800.00 | \$1,700.00 | \$620.66 | \$655.66 | \$35.00 |

| Intervener | Honoraria claimed | Honoraria awarded | Reduction | Expenses claimed | Expenses awarded | Reduction |
|----------------|-------------------|-------------------|------------|------------------|------------------|-----------|
| Kim Barbero | \$4,500.00 | \$3,000.00 | \$1,500.00 | \$728.25 | \$728.25 | \$0 |
| Sylvia Barbero | \$4,500.00 | \$3,000.00 | \$1,500.00 | \$400.00 | \$400.00 | \$0 |
| Ivan Barbero | \$400.00 | \$300.00 | \$100.00 | \$424.41 | \$384.41 | \$40.00 |

Expert Fees and Expenses—Colin Duncan

With regard to the fees claimed for Mr. Duncan, the Board finds that his evidence regarding, among other things, corrosion prevention and hydrate control, corrosion detection, and pipeline liner methods, was of assistance to the Board in its decision on the applications, as can be seen in Sections 6.4 and 8 of *2011 ABERCB 007*. The Board also finds that his evidence was technically competent, credible, and objective.

The Board has also taken into account the comments of Shell regarding the travel time claimed in Mr. Duncan's professional fees claim and finds that a reduction of 10 hours is warranted. Accordingly, the Board will proceed to consider the claim for fees based on a total of 206 hours as opposed to the 216 hours claimed.

Regarding the claim for professional fees, the Board found Mr. Duncan's evidence to be useful and of assistance to it in its decision on the applications, as detailed above. Accordingly, the Board awards the amount of 206 hours in professional fees for Mr. Duncan.

With regard to Mr. Duncan's claimed expenses, while the Board finds that some of these are reasonable, some are unsupported by the cost claim or are ineligible for reimbursement pursuant to *Directive 031*. The Board is prepared to award costs for Mr. Duncan's mileage at the rate provided for in Appendix E of *Directive 031* and based on a 300 kilometer one-way trip from Canmore to Pincher Creek. Further, the Board declines to make an award for the claimed \$308.23 in office supplies, as these are unsupported by the materials provided in the cost claim.

Regarding meal expenses, the Board awards Mr. Duncan a total of \$80.00 in meal expenses for his attendance at the hearing on October 21, 2010 where he assisted Ms. Klimek in her cross examination of a Shell witness panel, and for his attendance at the hearing the morning of October 28, 2010, where he was empanelled as a witness. The Board finds that the claim for Mr. Duncan's accommodation appears to be reasonable and awards it in full.

| Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|---------------------------|---------------------------|------------|------------------------------------|------------------------------------|-----------|
| \$58,320.00 | \$55,620.00 | \$2,700.00 | \$1,649.15 | \$946.13 | \$703.02 |

Amounts already paid to the Sheppard-Barbero group

As mentioned above in Section 2.4 of this decision, as a result of discussions between Shell and the Sheppard-Barbero Group, Shell agreed to provide advance funding in the amount of \$37,500.00 without being directed to do so by a Board Energy Cost Order, on or about August 23, 2010. The Board considers that the advance amount has been paid by Shell and therefore it shall be subtracted from any final total amount awarded to the Sheppard-Barbero group.

5.4 Summary of Costs Awarded

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|--------------|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|------------|
| Klimek Law | \$112,332.50 | \$86,855.13 | \$25,477.37 | \$8,306.42 | \$5,653.95 | \$2,652.47 |
| Colin Duncan | \$58,320.00 | \$55,620.00 | \$2,700.00 | \$1,649.15 | \$946.13 | \$703.02 |

| Intervener | Honoraria claimed | Honoraria awarded | Reduction | Expenses claimed | Expenses awarded | Increase |
|---------------|-------------------|-------------------|------------|------------------|------------------|----------|
| Dave Sheppard | \$4,500.00 | \$2,800.00 | \$1,700.00 | \$880.09 | \$915.09 | \$35.00 |
| Jean Sheppard | \$4,500.00 | \$2,800.00 | \$1,700.00 | \$620.66 | \$655.66 | \$35.00 |

| Intervener | Honoraria claimed | Honoraria awarded | Reduction | Expenses claimed | Expenses awarded | Reduction |
|----------------|-------------------|-------------------|------------|------------------|------------------|-----------|
| Kim Barbero | \$4,500.00 | \$3,000.00 | \$1,500.00 | \$728.25 | \$728.25 | \$0 |
| Sylvia Barbero | \$4,500.00 | \$3,000.00 | \$1,500.00 | \$400.00 | \$400.00 | \$0 |
| Ivan Barbero | \$400.00 | \$300.00 | \$100.00 | \$424.41 | \$384.41 | \$40.00 |

6 COSTS CLAIM OF THE CCWC

On December 1, 2010, the CCWC submitted three cost claims, as detailed above in Section 3.1 of this decision. The Board will now proceed to consider Cost Claim 1, which contains claims for legal fees and expenses claimed by Ackroyd LLP, as well as fees and expenses for a number of consultants, and intervener honoraria and expenses, in the amount of \$176,780.10.

Cost Claims 2 and 3 will be considered in Sections 9 and 10 of this decision, respectively.

6.1 Views of Shell

Shell submitted that the costs claim filed by the CCWC should be denied or reduced significantly as they were excessive given the Scale of Costs in *Directive 031*, and were unreasonable given the substance of the CCWC's submissions at the hearing.

Shell submitted that the Board assesses the reasonableness of costs claimed by an intervener based on the criteria set out in Section 57 of the Board's *Rules of Practice* as well as *Directive 031*. Section 57(1) of the *Rules of Practice* indicates that an applicant will be expected to pay a participant's costs if they are reasonable and directly and necessarily related to the proceeding and if the participant acted responsibly in the proceeding and contributed to a better

understanding of the issues before the Board. *Directive 031* provides that an applicant will be required to pay no more for the organization, preparation and presentation of an intervention than is warranted by the nature, scope, and impact of the proposed development. The Scale of Costs is intended to represent the Board's opinion as to what is a fair and reasonable tariff to enable an intervener to retain adequate, competent and professional assistance in making an effective presentation before the Board. The Board specifically notes in *Directive 031* that it may deny costs claimed where it is not satisfied that the intervention in question was conducted economically.

Shell stated that in determining the reasonableness of the costs claimed and the amount of costs to be awarded, *Directive 031* and the *Rules of Practice* indicate the Board will have regard to the nature and scope of a participant's involvement, as well as the substance of the information provided. Section 57(2) of the *Rules of Practice* lists a number of factors that the Board may consider when evaluating a costs claim and, in particular, the Board may consider whether the intervener seeking costs did one or more of the following:

- asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by that participant's witness;
- made reasonable efforts to ensure that the participant's evidence was not unduly repetitive of evidence presented by another participant;
- made reasonable efforts to cooperate with other participants to reduce the duplication of evidence and questions or to combine the participant's submission with that of similarly interested participants;
- presented in oral evidence significant new evidence that was available to the participant at the time the participant filed documentary evidence but was not filed at that time;
- failed to comply with a direction of the Board, including a direction on the filing of evidence;
- submitted evidence and argument on issues that were not relevant to the proceeding;
- needed legal or technical assistance to take part in the proceeding; or
- engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs.

Further, in *Directive 031*, the Board provides examples of submissions for costs that might not be considered reasonable, some of which include

- arguments about things not being considered or not related to the application;
- arguments about matters already decided; or
- arguments about government policy or legislative changes that should more properly be placed before the government or a Member of the Legislative Assembly.

Shell submitted that in the Board's *Decision 2010-021 - Shell Canada Limited Prehearing Meeting Applications for Well Licences and Associated Pipeline and Facility Licences Waterton Field (Decision 2010-021)*, three members of the CCWC (Will Voth, Elaine Voth and Carita Bergman) were granted standing under Section 26 of the *ERCA*, but many other members of the group were not. Shell noted that Ms. Voth attended the hearing and gave evidence which focused on health and safety concerns for her and her guests at her bed and breakfast business, and on how potential future sour gas development in the area and being located in the Waterton 68 well

EPZ could affect her business. Shell noted that the Voth property is already currently in EPZs for other projects in the area.

Shell submitted that other members of the CCWC who participated in the hearing, or who were represented by the CCWC at the hearing but did not attend, own or occupy lands a considerable distance from Shell's applied-for facilities, and that most own land outside EPZs for the project. Shell submitted that much of the evidence presented by the CCWC focused on general environmental concerns, broad policy concerns for the Waterton area, and general health and safety concerns.

Shell submitted that if only some CCWC members are determined to be local interveners, any portion of the CCWC's costs claim, including any legal and expert fees, disbursements and honoraria that were incurred on behalf of CCWC members who are not local interveners should be denied, reducing the overall costs claim of the CCWC accordingly

With regard to the claimed legal fees, Shell submitted that given the general nature of the CCWC's intervention and the duration of its cross-examination and direct evidence at the hearing, the claimed time for preparation time and argument and reply was excessive. Shell did not take issue with the hearing attendance hours claimed for Ms. Bishop, provided the attendance hours claimed for Mr. Cheng were denied.

Shell submitted Ms. Bishop's time should be commensurate with that claimed and awarded in hearings of a similar nature, such as in *ECO 2009-004*, and should be reduced to no more than 135 hours. Shell pointed out that in the 2007 Waterton 68 hearing, the CCWC was awarded costs of \$40,386.00. It submitted that Ms. Bishop's claimed costs for legal fees and expenses were beyond excessive and should be significantly reduced to reflect what was reasonable given the CCWC's sharing of issues and experts with other hearing participants, the length of the hearing, and the nature of its intervention.

Shell also argued that all of the fees, expenses, and disbursements claimed for Mr. Cheng should be denied. Shell submitted it was unnecessary for the CCWC to retain two lawyers, and there was no indication that the use of Mr. Cheng reduced Ms. Bishop's time spent or the legal fees claimed. Shell pointed out that in *ECO 2004-04* and *Canadian Natural Resources Ltd. ECO 2009-001 (ECO 2009-001)*, the Board stated it does not generally award costs for the attendance of two counsel at a hearing and that these costs are only awarded in exceptional circumstances, such as where the issues under consideration by the Board and the intervention itself are both complex. It argued the issues and intervention of the CCWC were not sufficiently complex to warrant costs for the attendance of two counsel at the hearing. Ms. Bishop claimed she was able to work cooperatively with counsel for other interveners at the hearing, that the interests of the intervener groups were sufficiently similar that the issues were largely divided among the intervener groups, and that experts were shared. It pointed out that Mr. Cheng's attendance hours were identical to those claimed by Ms. Bishop, suggesting that both were present at the same time and no efficiencies were garnered as a result. Shell submitted that should the Board accept any of Mr. Cheng's attendance hours, Ms. Bishop's attendance hours should be further reduced by an equal amount of hours.

With regard to the reasonableness of the claimed legal fees generally, Shell submitted the Board must also evaluate the claim on the basis of the criteria set out in Section 4.1 of *Directive 031* and Section 57(2) of the *Rules of Practice*. These criteria represent the basis upon which to

assess whether an intervention was directly and necessarily related to issues before the Board, whether an intervention was conducted in an efficient and responsible manner and whether the intervention was of assistance to the Board in determining the issues before it. Shell submitted that having regard for the manner in which the intervention was conducted in light of the Section 57(2) criteria, the amounts claimed by the CCWC for legal fees and expenses should be further reduced.

Shell submitted that despite the Board's caution at the outset of the hearing not to repeat through examination questions what had already been provided in evidence, much of Ms. Bishop's cross-examination repeated questions already posed in the information request process or previously addressed fully by Shell in its Reply Submission filed prior to the hearing. Shell submitted that this duplication unnecessarily lengthened the proceedings and Ms. Bishop's time should be reduced as a result.

Shell submitted that on a number of occasions during the hearing, Ms. Bishop and her witnesses attempted to introduce evidence that was available prior to the hearing and could have been filed in advance of the hearing along with the CCWC's submissions. Shell submitted that at the outset of the hearing Ms. Bishop attempted to file information relating to an alleged bear den on Mr. Judd's land. Board counsel reminded her of the process for the late filing of evidence that had been established prior to the hearing, and she provided assurances that no further filings were required. However, she further attempted to present or allow her witnesses to present new evidence during the hearing, including internet articles and slides to accompany their presentations. Shell argued this disregard for the Board's Rules and Practice was extremely disruptive to the hearing process. Each time the new evidence was presented, Shell, the Board and the other interveners were required to take time during the proceedings to consider and respond to it.

In *ECO 2009-04*, the Board considered a "consistent" failure on the part of an intervener counsel to file substantive submissions and documentary evidence in advance of the hearing. The Board determined that, among other things, this demonstrated a disregard for clear Board direction and was disruptive to the hearing process, further reducing the hours awarded by an additional fifteen percent (15%). Shell submitted that any hours awarded by the Board to the CCWC for Ms. Bishop's claimed time for preparation, hearing attendance, and argument and reply should be reduced by at least fifteen percent (15%), given her failure to comply with Board direction and process during the hearing.

Shell also stated that Ms. Bishop consistently disregarded the Board's directions on the filing of evidence and that on a number of occasions she debated rulings and determinations made by the Board in the hearing and saw fit to do so even when motions or matters being ruled upon did not concern her clients.

Shell submitted that the intervention conducted by the CCWC was primarily that of an advocacy group, or a group of individual advocates, as opposed to an intervention that represented the specific concerns of local stakeholders directly and adversely affected by Shell's applications. Further, this was reflected in the evidence presented by the CCWC's lay witness panel, which addressed historical concerns of Shell's operations in the area, issues of global climate change, and general anti-development views. Shell submitted that this evidence did little to assist the Board in arriving at a determination of whether or not Shell's applications were in the public interest.

Shell submitted that the CCWC's presentations at the hearing were focused on the broader Waterton/Castle area instead of the specific area where Shell's project would be located. Evidence was presented regarding concerns about wildlife and plant species in the region, operational issues arising from other Shell facilities in the area, and evidence regarding recreational experiences in the broader region. Shell submitted that the evidence of the CCWC's expert witnesses related to broader regional concerns and prospective regional land use plans and policies that were not in force.

Accordingly, Shell argued that the content of the CCWC's intervention was not relevant to the proceedings given the nature of Shell's applications for a single exploratory well on a pre-disturbed site along an existing access road, and that it addressed issues beyond the scope of the hearing. The Board has confirmed on several occasions, including in *EUB Decision 1983-8: Local Interveners' Costs Hearings Respecting the Jumping Pound Gas Processing Plant, the Quirk Creek Gas Processing Plant, and the Proposed Moose and Whiskey Fields Pipeline Hearings (Jumping Pound) (Decision 1983-8)*, and *Energy Cost Order 2003-02- TrueNorth Energy Corporation Application to Construct and Operate an Oil Sands Mine and Cogeneration Plant in the Fort McMurray Area (ECO 2003-02)*, that conducting such an intervention is done at that party's own risk and expense. Shell submitted it should not have to bear the costs occasioned by this type of intervention, and that the legal time claimed for representing such an intervention should be reduced as a result.

With regard to the expenses and disbursements claimed for Ackroyd LLP, Shell raised, among other things, the following concerns:

- Accommodations and meals—Shell submitted the \$3,815.17 claimed for accommodation costs and the \$1,360.00 claimed for meal costs for Ms. Bishop and Mr. Cheng should be reduced by fifty percent (50%) on the basis that Mr. Cheng's attendance at the hearing was unnecessary.
- Internal photocopying—Shell submitted that the \$2,627.40 claimed in costs for internal photocopying was extreme compared to that claimed by other participants in the hearing. No justification was provided for the claim and Shell was of the view that it should be significantly reduced.
- Miscellaneous 1-3—\$337.44 was claimed for these items, but no descriptions were provided. Accordingly, Shell submitted these should be denied.

With regard to the fees and expenses claimed for Dianne Pachal, Shell submitted that her evidence related to broader land-use based environmental advocacy concerns, and that very little, if any, of her report or evidence related specifically to Shell's applications. Shell stated that perhaps more than any other witness called in the proceedings, Ms. Pachal's evidence fit squarely into the Board's description in *Directive 031* of what constitutes unreasonable costs. Ms. Pachal's evidence related to arguments about government policy or legislative changes, which should more properly be placed before the government or a Member of the Legislative Assembly. Shell noted that the Board has consistently held that claims relating to broad-based policy matters will not be allowed, and for this reason, Shell submitted these costs should be denied or significantly reduced.

Additionally, Shell submitted it was excessive for Ms. Pachal to have spent 138 hours preparing a 20 page report on subject matter that she was very familiar with and that was primarily a

summary of land use policies in the region. Shell asserted that since she requested fees for services rendered as a consultant at the hearing, she should not also be entitled to an honorarium as a member of the CCWC, and the claim for an additional \$200.00 in intervener honoraria should be denied.

With regard to the claimed fees and expenses for James Tweedie and Judy Huntley, Shell submitted that their roles in these proceedings were not clearly defined, and they are not entitled to costs as they are not local interveners within the meaning of Section 28 of the *ERCA*. Also, they are not entitled to costs as agents, as the CCWC was represented by legal counsel. Shell submitted that although they may be entitled to costs as consultants, their claim should be significantly reduced. It submitted that their evidence was general in nature and largely unrelated to Shell's applications. Shell submitted their combined preparation time of 250 hours was excessive given the nature of the evidence they presented, and given that they were assisted by two counsel in the preparation of the CCWC intervention.

Shell submitted that the \$2,500.00 intervener honorarium for forming a group requested by Ms. Huntley was also excessive and far exceeded what is reasonable under the circumstances, given that *Directive 031* states such awards are generally in the range of \$300.00 to \$500.00, and given that Ms. Huntley is not a local intervener. Shell was of the view that the claimed honorarium should be denied outright or reduced to a maximum of \$500.00.

With respect to Mr. Tweedie and Ms. Huntley's claims for \$560.00 in meal expenses, *Directive 031* provides that meals are restricted to the hearing phase of a proceeding, and the maximum allowable claim is \$40.00 per day. As such, their claims should be reduced to \$400.00 each for meals. Shell further submitted that the \$92.93 in expenses claimed for "Miscellaneous 1 & 2" should be denied as no justification was provided.

With regard to the intervener honoraria and expenses claimed by the CCWC in Form E3 in its December 1, 2010, cost claim for Jim Cameron, Jolaine Kelly, Kevin Kelly, Mark Sandilands, Phil Hazelton, Tim Grier, Cathy Scrimshaw, David McNeil, Dianne Pachal, Donna Zoller, and Chris Gilbertson, Shell argued that none of these members were entitled to costs for intervener honoraria and expenses as they are not local interveners pursuant to section 28(1) of the *ERCA*.

In *Petro-Canada Oil Sands Inc. ECO 2009-006 (ECO 2009-006)*, the Board acknowledged its practice of allowing persons who do not satisfy the definition of local intervener to participate in a proceeding as a member of a local intervener group. Shell argued that, however, in such situations, the Board has awarded expert and legal fees to the intervener group and awarded honoraria only to those individuals within the group that qualified as local interveners. As such, it submitted that members of the CCWC who are not local interveners should not be entitled to the costs claimed on their behalf for honoraria and disbursements. It submitted that the Board's decision in *Compton Petroleum Corporation ECO 2005-014 (ECO 2005-014)* further supports the position that individuals who participate in a hearing but are not local interveners cannot recover costs. Although the Board acknowledged that a hearing participant there had made a helpful contribution to the proceeding, the Board concluded that the individual did not qualify as a local intervener and was therefore not eligible to apply for cost recovery.

Shell argued that should the Board decide to award intervener honoraria and expenses to all or any of the individuals listed above, any such awards should be limited to those members who were empanelled as lay witnesses at the hearing, and any such costs should be limited to the one

day these individuals attended the hearing in order to do so. Shell noted that Elaine Voth, Jolaine Kelly, Kevin Kelly, Mark Sandilands, and Phil Hazelton were empanelled as the CCWC lay witness panel the evening of October 27, 2010.

According to *Directive 031*, non-expert witnesses are entitled to claim a daily fee of \$200.00 for each day that they provide evidence at a hearing. It submitted each of the abovementioned members would be entitled to \$200.00 for their attendance at the hearing as a part of the CCWC lay witness panel, and \$40.00 for their meal expenses. As most of these individuals reside locally, Shell submitted they should not be entitled to mileage.

Shell submitted that the members of the CCWC that were empanelled as lay witnesses should not also be entitled to an attendance honorarium for any additional days they attended the hearing but did not participate. Further, it submitted that other CCWC members who attended the hearing but did not participate should not be entitled to honoraria or disbursements, including Gord Petersen, Cathy Scrimshaw, David McNeil, and Donna Zoller. Shell noted that *Directive 031* limits awards for attendance honoraria for large intervener groups to no more than six individuals unless there are exceptional circumstances. Shell argued that no such exceptional circumstances exist here, as the Board found in *Decision 2010-021* that these individuals did not meet the criteria set out in Section 26 of the *ERCA*, the CCWC was represented by legal counsel, and other representatives of the CCWC were present at the hearing.

Shell stated that Ms. Bishop never advised Shell or the Board that she represented the following individuals listed in Form E1 for whom she has claimed costs: Carolyn Aspeslet (\$3,720.65), Jim Cameron (\$480.00), Tim Grier (\$2,280.00), and Chris Gilbertson (\$600.00). These parties did not file objections to the project, nor was it ever indicated in letters, meetings or submissions that they were her clients. Shell submitted that while professional fees were claimed for Ms. Aspeslet for hearing preparation, neither Shell nor the Board was advised of the use of Ms. Aspeslet as a consultant or expert. Shell took exception to the fact that Ms. Bishop would claim costs for individuals she never indicated she represented, leaving the onus on Shell and the Board to identify the inappropriateness of such costs. Shell indicated that this conduct represents a disregard for the Board's process, and submitted that the \$7,080.65 claimed for these individuals should be deducted from any award for legal fees made to the CCWC by the Board.

In Form E1, the CCWC claimed \$2,206.73 in professional fees for Mr. Petersen. The attendance record indicates he attended the hearing on November 1, 2010. Ms. Bishop never indicated her intention to use him as a consultant, and no work product of his was filed or presented to the Board. Ms. Bishop did not justify these claimed professional fees and expenses whatsoever, and no evidence was presented to justify why Mr. Peterson is a local intervener entitled to costs. Shell submitted these costs should be denied.

With regard to the \$37,500.00 in advance funding paid by Shell to Ms. Bishop prior to the hearing for legal and joint expert fees, Shell submitted this amount should be deducted from any amounts awarded by the Board to the CCWC.

6.2 Views of the CCWC

The CCWC submitted that the Board generally encourages hearing participants to work together and share resources to the extent possible. The CCWC submitted it had facilitated many of the expert reports relied upon by other participants and had hosted joint conference calls attended by

some or all of the groups, legal counsel, representatives and experts. The CCWC submitted it made significant efforts to fit in its contributions with those of other hearing participants to ensure increased efficiency in the hearing process.

The CCWC argued it was formed as a “catch all group” and included members who intended to participate in the hearing. In *Decision 2010-021*, the Board found that some of the persons listed therein had participatory rights, many of whom were represented by the CCWC. Had all of these participants chosen to participate on their own, this would have lengthened the hearing and decreased efficiency in the hearing process. The CCWC suggested it would be unfair not to recognize that legal counsel and experts assisted the Board in understanding the concerns of these participants.

With regard to Shell’s suggestion that the Board should only award partial costs to the CCWC, it submitted that the Board has previously awarded costs to large groups on the basis that once some of the members of the group are eligible for costs, it is more efficient for others to participate within the group than to participate on their own. The CCWC referred the Board in this regard to previous costs decisions of the Board made in proceedings involving applications for upgraders and associated facilities, as well as a decision of the Alberta Utilities Commission regarding transmission lines.

The CCWC represented all four bed and breakfast business owners in the Beaver Mines area and stated that its written submissions devoted an entire section on how these businesses could be directly and adversely affected by these sour gas developments. It argued that the Board is often open to allowing participation to those who request it when it is likely that they have standing, and that it often encourages those with common evidence to appoint a spokesperson so that evidence is not repetitive.

The CCWC submitted that Ms. Voth provided evidence on how approval of these applications would affect the value and viability of her home business as a massage therapist and a retreat owner. She gave evidence that if the application for an exploratory well was approved, she was concerned that it would affect her business and the use of their land. She also gave evidence that she thought that further proliferation of sour gas in the area would have an adverse effect upon the tourism industry in the area. She gave evidence that her clientele are typically those who are getting away to her retreat and that they might not return if advised that they were staying within an emergency protection zone and might be evacuated.

The CCWC submitted that its intervention was not only reasonable, directly and necessarily related to the proceeding, but also efficient and cost effective. The CCWC argued that this was a complicated matter involving a number of applications, many landowners, and a nine day hearing. The CCWC argued its members would be directly and adversely affected by an approval of these applications and gave evidence before the Board about the hazards and risks of the applications, Shell’s operational history, potential effects of proliferation of sour gas development on their livelihood and safety, the inappropriateness of the applied-for well location, and the potential effects of sour gas development on wildlife and rare plants in the proposed development area.

The CCWC pointed to the Board’s *Rules of Practice*, which state that one of the factors the Board should consider when awarding costs is whether or not the intervention helped the Board to understand the nature of the concerns. The CCWC submitted that its presentation at the

hearing did just that. The CCWC argued that the Board should consider whether or not the professionals retained by the CCWC helped the Board in understanding the CCWC's concerns and how its members might be affected by the proposed development. The CCWC submitted that this was accomplished in a reasonable and efficient manner.

The CCWC disagreed with Shell's suggestion that the use of two legal counsel was not necessary and submitted that it significantly reduced the amount of legal fees claimed. The CCWC submitted that having Mr. Cheng assist in preparing for the hearing, interact with expert witnesses, organize conference calls, prepare and deliver a portion of the cross examination and final argument was useful and achieved at a lower hourly rate than that of Ms. Bishop.

The CCWC submitted that the Board has previously recognized that the use of two counsel may sometimes lead to cost savings, as tasks that can be completed by a junior lawyer can be done more cost effectively. It cited previous Board decisions involving, among other things, applications for expansion of oil sands mines, construction of upgraders, and applications involving numerous wells and facilities, and argued that these were similar to the present applications and costs should be similarly awarded. The CCWC submitted that the use of two counsel in this matter allowed for the work to be divided and allowed for one counsel to work with clients and experts during the hearing in order to not add additional delays to the hearing process. Due to the length of the hearing, often while one counsel was in the hearing, the other was briefing witnesses.

With regard to the fees and expenses claimed for Dianne Pachal, the CCWC submitted that she gave evidence about the framework provided by the government for this area and discussed past Board decisions within which scope and direction these applications should be considered. The CCWC submitted that this evidence was of assistance to the Board, given the nature of this hearing and the applications, and that these do not constitute unreasonable costs for the purposes of *Directive 031*.

With regard to the fees and expenses claimed for James Tweedie and Judy Huntley, the CCWC argued that as consultants, and representatives of the CCWC, they contributed specialized knowledge, expertise, and experience and their evidence provided background and regional context for the applications proposed by Shell. They helped interpret Shell's applications and materials for local landowners and residents, and provided the CCWC with assistance in coalescing the group. They also acted as liaison between the CCWC and other groups, and provided support at the hearing. It submitted the fees and expenses claimed for Mr. Tweedie and Ms. Huntley, along with CCWC support staff Carolyn Aspeslet, for both hearing preparation and hearing attendance were reasonable. The CCWC advised that the extra expenses claimed by Mr. Tweedie were expenses incurred for meals of other CCWC members.

The CCWC pointed to the Board's decision in *ECO 2009-003*, where the Board found that it was appropriate under the circumstances for the CCWC to retain Mr. Tweedie and Ms. Huntley as representatives or agents to represent them at the hearing, that they had many years of environmental experience, that they had participated in a number of government and industry studies and on committees, that they were both knowledgeable in their respective fields, and that they provided assistance to the Board.

The CCWC submitted that the Board has broad discretion when ordering honoraria to hearing participants. It stated that the amounts involved in its costs claim represented the nature and

length of the hearing process, the subject matter of the various applications before the Board, and the number of interveners represented. It submitted it had made substantial efforts to cooperate with others and work together wherever possible in order to avoid duplication, reduce costs, and increase efficiency in the hearing process, and that its costs claim was reasonable and justifiable.

6.3 Views of the Board

Legal Fees, Expenses, and Disbursements

Having considered all of the foregoing, the Board finds that some of the legal fees incurred by counsel for the CCWC were reasonable and necessary in light of the circumstances of this matter. While some of the submissions made by counsel for the CCWC were of assistance to the Board in its decision on the applications, the Board has also carefully considered the comments and concerns of Shell regarding its costs claim. As a result, the Board finds that certain reductions to the claimed legal fees and expenses of the CCWC are in order, and are detailed below.

With regard to the claimed legal fees for Ackroyd LLP, the Board notes that legal fees were claimed for two counsel, Mr. Cheng and Ms. Bishop. The Board has considered the submissions of the parties on the reasonableness of the costs claimed for two counsel, and notes specifically its usual practice, as outlined in *ECO 2004-04* and *ECO 2009-001*, namely, that the Board does not generally award costs for the attendance of two counsel at a hearing, and only does so where there are exceptional circumstances present.

The Board finds that the applications and issues in this matter, as well as the intervention of the CCWC itself, were not sufficiently exceptional or complex such that two counsel were required at all times on behalf of the CCWC throughout the proceeding.

While it was argued that the claimed fees for two counsel were reasonable because, among other things, the length and complexity of the hearing required at times that one counsel be in attendance in the hearing and that the other be in attendance with experts briefing them, the time sheets submitted do not support this argument. For example, the time sheets show instances where both counsel billed for similar tasks undertaken either together or at the same time. On Sunday, October 24, 2010, both counsel billed 7 hours for meeting with clients. On October 26, 2010, Mr. Cheng billed 8.20 hours for meeting with clients and experts and Ms. Bishop billed 14 hours for same. On October 27, 2010, both counsel billed approximately 16 hours for meeting with clients and experts, and on October 28, 2010, Mr. Cheng billed 5 hours and Ms. Bishop billed 15 hours for meeting with clients and experts. As such, the Board finds that there are instances which demonstrate that the CCWC's use of two counsel did not serve to reduce the legal time claimed, avoid duplication, or garner any increased efficiencies in the time leading up to the hearing or at the hearing itself.

The Board is, however, mindful of the number of members of the CCWC, the time and effort spent organizing shared witnesses, the length of the hearing, and the cross-examination and other assistance provided by Mr. Cheng. While the Board is of the view that the applications and issues in this matter, as well as the intervention of the CCWC itself, were not sufficiently exceptional or complex such that two counsel were required at all times on behalf of the CCWC throughout the proceeding, it is prepared to make a reduced award for Mr. Cheng's legal fees in recognition of his time and efforts spent in the proceeding. Accordingly, the Board hereby

awards Mr. Cheng twenty-five per cent (25%) of his claimed legal fees. The Board wishes to emphasize that this reduction is not intended to reflect in any way on Mr. Cheng's conduct at or contribution to the hearing; it simply gives effect to the Board's decision that two counsel were not required for the CCWC intervention. Similarly, the Board also declines to award the time for Mr. Secord in the claim for legal fees submitted by the CWCC. The Board will also proceed to consider the expenses of Mr. Cheng, below.

With regard to the remainder of the legal fees claimed by the CCWC, the Board has carefully considered the submissions of the parties regarding the reasonableness of the claim for legal fees generally relative to the amount of time claimed as well as the conduct of counsel for the CCWC throughout the proceeding.

The Board finds that some of the claimed legal time was reasonable in light of the scope and nature of the proceedings, the work performed, and the duration of the hearing. However, the Board finds that some of the claimed time was not reasonable or necessary, or was excessive given the nature and scope of the proceeding, the nature and scope of the CCWC's intervention, the evidence presented and whether or not it was of assistance to the Board in its decision on the applications, and the conduct of counsel for the CCWC throughout the proceeding.

The Board notes that at the Prehearing Meeting for these applications, held on February 10, 2010, counsel for the CCWC gave an undertaking to the Board to provide an accurate and up-to-date list of all persons who sought to be included in the CCWC, including legal land description details as well as whether or not these persons resided on those lands. Over a month passed following the Prehearing Meeting and the Board received no correspondence from counsel for the CCWC in fulfillment of her undertaking given to the Board. The Board was forced to write to counsel for the CCWC on March 17, 2010, to remind her of her outstanding undertaking and what the substance of that undertaking was, and to direct her prompt attention to the matter. A few days later, the Board received an undated letter from counsel for the CCWC, sent via email on March 22, 2010, which purported to fulfill the outstanding undertaking.

The Board also notes that as a result of the CCWC's submission to the Board dated September 7, 2010, the Board had to write a letter to the CCWC dated September 22, 2010, in which a number of matters had to be addressed. In its letter the Board reminded counsel for the CCWC of the difference between Sections 26 and 28 of the *ERCA* and how those differences could impact the CCWC in the proceeding, and further reminded the CCWC that none of its members had been found by the Board to be a local intervener within the meaning of Section 28 of the *ERCA* and thus the CCWC's reference in its submission to itself and/or its members as local interveners was incorrect.

In that same letter, the Board also addressed the matter of the membership of the CCWC. Further to the abovementioned undertaking given by counsel for the CCWC at the Prehearing meeting, as well as its Board-prompted response sent on March 22, 2010, in its September 7, 2010, submission, the CCWC filed a list of members which differed from that provided in its prior response to the undertaking it gave to the Board. The Board pointed out the discrepancy to counsel and advised that the new members would not be entitled to participate in the hearing nor to submit any claim for costs arising therefrom. The Board notes further that the constituent members of the CCWC continued to change until and even at the commencement of the hearing, with no advance notice to the Board or other parties by counsel for the CCWC whatsoever.

Finally, in that same letter, the Board addressed the matter of late filings. In its September 7, 2010, submission, the CCWC advised that one of their experts had prepared a report outlining his concerns, but that he had not visited the project area prior to doing so, and that he might do so sometime after the filing deadline for intervenor submissions had passed and thereafter file an addendum to his report after this visit. The Board advised the CCWC that should it wish to seek leave of the Board for any filings of late materials, it was open to them to make an application pursuant to the Rules of Practice for late filing, that Shell would be entitled to respond and that they would be entitled to a final reply, and that thereafter the Board would consider the submissions of the parties and make a decision on the application. Counsel for the CCWC was also advised that materials sought to be filed late were not to be provided to the Board unless and until an application for late filing was granted.

Inexplicably, and in spite of the directions of the Board detailed above, the CCWC then proceeded to send to the Board an addendum to this expert's report on October 13, 2010, less than a week prior to the commencement of the hearing. Counsel for the CCWC provided no explanation or reasons whatsoever as to why the Board's prescribed process in its September 22, 2010, letter was wholly disregarded.

Shell opposed the filing of the October 13, 2010, material in a letter of the same date, and the CCWC provided a final reply on that same date, which contained no explanation or reasons as to why it had wholly disregarded the Board's process for late filings. In a letter dated October 15, 2010, the Board ruled that the materials as well as the substantive matters they pertained to were inadmissible at the hearing because proper leave of the Board had not been granted for any late filings and because the substance of the materials dealt with were matters Shell had been prevented from addressing.

Furthermore, the Board notes that the cost claim submitted by the CCWC was of extremely poor quality and was deficient or non-compliant with the provisions of *Directive 031* in a number of respects, as demonstrated by, among other things,

- supporting receipts were not provided in many instances;
- numerous errors in calculation were made: in particular, errors in final totals and double counting were noted;
- claims for legal expenses and disbursements were often not explained with sufficient, or any, detail;
- claims were made for persons not previously listed as CCWC members or witnesses, and no explanation or reasons were provided for same;
- claims were made for meals or other ineligible charges to hotel rooms; and
- revised cost claims were submitted after the expiration of the initial deadline to submit cost claims to the Board following the close of the hearing and the purported revisions were not identified, explained, or described in sufficient, or any, detail.

The Board is mindful of the submissions of the parties regarding the criteria set out in Section 57(2) of the *Rules of Practice*. Section 57(1) of the *Rules of Practice* provides that 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 were 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. Section 57(2) provides criteria the Board may consider in determining the amount of costs to be awarded.

Having regard for all of the foregoing, the Board finds that counsel for the CCWC displayed a pattern of non-compliant conduct throughout the proceeding, as well as at the hearing, demonstrated, among other things, by

- repeated instances of non-compliance with Board directions or rulings regarding the admissibility and proper filing of evidence, among other matters;
- attempting to present new evidence at the hearing, much of which was previously available to be filed by filing deadlines;
- presenting evidence which was of little relevance to the proceeding and of little assistance to the Board;
- asking questions of witnesses and submitting arguments which were repetitive of information already exchanged by the parties in the pre-hearing information request process;
- repeatedly seeking “clarifications” on Board rulings made at the hearing;
- presenting cost claims that were of poor quality and unhelpful to the Board as a result, resulting in a great amount of time and work being expended on the part of the Board to process these claims, and further in prolonging the duration of the costs process and therefore the proceeding; and
- engaging in conduct generally that unnecessarily lengthened the duration of the hearing and resulted in unnecessary costs.

Having considered all of the foregoing, the Board finds that a further reduction in the amount claimed by the CCWC for legal fees is warranted. The Board orders a further reduction of the total amount awarded to the CCWC for legal fees for both counsel, inclusive of the already reduced amount for Mr. Cheng’s fees, in the amount of twenty-five per cent (25%). This reduction is ordered with a view to addressing non-compliant conduct and with a view to reinforcing to applicants and interveners that the Board’s *Rules of Practice*, processes, rulings, and directions are to be complied with in order to best ensure the principles of natural justice and procedural fairness they are designed to foster and promote are available to all parties who appear before it.

With regard to the claimed legal expenses and disbursements, the Board finds that some of these appear to be generally reasonable and necessary in light of the scope and nature of the proceeding. The Board hereby awards the amounts claimed for mileage, parking, car rental/gas, postage, courier/delivery, external printing, and expenses for claims entitled Miscellaneous 1, 2, and 3, in the total amount of \$2,374.31.

With regard to the amounts claimed for airfare, the Board finds that the expense of \$327.31 for a flight for counsel for the CCWC is reasonable and awards it in full. The Board will consider the claims for airfare expenses for the respective witnesses in Sections 9 and 10 of this decision, below. With regard to the expense for Spot Imagery data, the Board will consider this claimed expense in Section 9, below.

With regard to the claim for accommodation, the Board is prepared to award accommodation expenses for Ms. Bishop and Mr. Cheng in the amounts of \$1,103.83 based on fourteen nights

and \$1,063.21 based on thirteen nights accommodation for each, respectively. The Board will consider the accommodation expenses claimed for the respective witnesses in Sections 9 and 10 of this decision, below.

With regard to the amount claimed for meals, the Board declines to award the amount claimed, as it is not in accordance with the provisions of *Directive 031*. However, the Board is prepared to award meal expenses based on fourteen hearing days for Ms. Bishop and thirteen hearing days for Mr. Cheng at the maximum allowable rate of \$40.00 per day. Accordingly, the Board awards Ackroyd LLP \$1,080.00 in meal expenses for two counsel.

With regard to the claimed amounts for telephone/long distance charges and internal photocopying, the Board declines to award the claimed amounts as these are not only unsupported by any documentation or explanation, they also appear to the Board to be excessive under the circumstances. However, based on its experience the Board finds that some award on account of these expenses is warranted and accordingly it awards half of the amounts claimed for each expense, reflecting what has been reasonably incurred in similar circumstances.

Professional Fees, Expenses, and Disbursements

With regard to the claimed professional fees of Mr. Tweedie, Ms. Huntley, Ms. Aspeslet, and Mr. Peterson, the Board notes that Section 5.2.2 of *Directive 031* contemplates the filing of copies of their accounts containing sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding. The Board notes that neither the Cost Claim of the CCWC dated December 1, 2010, nor its final reply dated January 31, 2011 contain any such accounts or other supporting documentation for these claimed professional fees, nor is there any explanation provided as to why the Board should consider these claimed expenses in the absence of same.

In light of the foregoing, the Board declines to make any award of costs for the professional fees, expenses, or disbursements of these individuals. The Board will, however, proceed to consider amounts for non-expert witnesses for Ms. Huntley in her capacity as part of the CCWC lay witness panel, as per Sections 5.2.2 and 5.3 of *Directive 031*.

With regard to the claimed professional fees and expenses of Ms. Pachal, and as per Section 5.2.2 of *Directive 031* as mentioned in the preceding paragraph, neither the Cost Claim of the CCWC dated December 1, 2010, nor their final reply dated January 31, 2011, contain any accounts or other supporting documentation for her claimed costs, nor is there any explanation provided as to why the Board should consider them in the absence of same. The Board notes that Ms. Pachal was empanelled as an expert witness on October 27, 2010, by the CCWC, and that her evidence was of no assistance to the Board in its decision on the applications, as much of it related to government policy or legislative change matters. Section 4.1 of *Directive 031* provides that claims for such costs are generally not considered reasonable.

In light of the foregoing, the Board declines to award the claimed amounts for Ms. Pachal's professional fees and expenses. However, the Board is prepared to make an award of costs for her claimed hearing attendance fees, travel time, mileage, fax, printing charges, and \$40.00 in meal expenses.

Fees and Expenses for Non-Expert Witnesses

In its December 1, 2010, cost claim the CCWC submitted a number of claims for professional fees, expenses and disbursements as well as intervener honoraria and expenses. While the Board will proceed to consider the amounts claimed for intervener honoraria and expenses in the next section of this decision, the Board will proceed below to consider amounts for non-expert witnesses under Section 5.3 of *Directive 031*.

On October 27, 2010, the CCWC presented a lay witness panel composed of Jolaine and Kevin Kelly, Judy Huntley, Mark Sandilands, and Phil Hazelton. As such, the Board is prepared to make awards of costs of \$200.00 to each of them for attendance at the hearing as non-expert witnesses, \$40.00 each in meal costs, and their claimed mileage, if any.

Accordingly, the Board hereby makes an award of costs to the CCWC for legal, professional, and non-expert fees, expenses, and disbursements as follows:

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|-----------------------------|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|-------------|
| Ackroyd LLP | \$104,427.00 | \$62,638.50 | \$41,788.50 | \$20,020.55 | \$8,348.84 | \$11,671.71 |
| Diane Pachal | \$10,067.23 | \$866.77 | \$9,200.46 | \$766.57 | \$312.29 | \$454.28 |
| Non-Expert Witnesses | | Fees awarded | | | Expenses awarded | |
| Jolaine Kelly | | \$200.00 | | | \$184.29 | |
| Kevin Kelly | | \$200.00 | | | \$40.00 | |
| Judy Huntley | | \$200.00 | | | \$206.65 | |
| Mark Sandilands | | \$200.00 | | | \$134.27 | |
| Phil Hazelton | | \$200.00 | | | \$165.05 | |

Intervener Honoraria and Expenses

In its December 1, 2010, cost claim the CCWC submitted a number of claims for intervener honoraria and expenses on behalf of fourteen individuals. At Section 4.2 of this decision, above, and for the purposes of this proceeding, the Board found that Elaine and Will Voth qualify as local interveners pursuant to Section 28 of the *ERCA*. The Board notes that in its letter dated September 22, 2010, the rest of the CCWC members were found not to be local interveners under Section 28 of the *ERCA*.

Having considered all of the foregoing, as well as the evidence and argument in the hearing, the Board finds that, of the fourteen individuals for which the CCWC claimed local intervener honoraria and expenses, only Elaine and Will Voth meet the test in Section 28 of the *ERCA* and qualify as local interveners eligible to submit claims for costs for the Board's consideration. The Board declines to make any award of intervener honoraria and expenses for the other twelve individuals on behalf of which claims were submitted.

With regard to the claimed honoraria and expenses for the Voths, the Board finds that these claims were generally reasonable under the circumstances, and awards both Elaine and Will Voth their claimed honoraria and expenses in full.

| | Honoraria claimed | Honoraria awarded | Reduction | Expenses claimed | Expenses awarded | Reduction |
|-------------|-------------------|-------------------|-----------|------------------|------------------|-----------|
| Elaine Voth | \$1,400.00 | \$1,400.00 | \$0 | \$510.86 | \$510.86 | \$0 |
| Will Voth | \$600.00 | \$600.00 | \$0 | \$120.00 | \$120.00 | \$0 |

Amounts already paid to the CCWC

As mentioned above in Section 2.4 of this decision, as a result of discussions between Shell and the CCWC, on or about August 23, 2010, Shell agreed to provide advance funding in the amount of \$37,500.00 without being directed to do so by a Board Energy Cost Order. The Board considers that the advance amount has been paid by Shell and therefore it shall be subtracted from any final total amount awarded to the CCWC.

6.4 Summary of Costs Awarded

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|--------------|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|-------------|
| Ackroyd LLP | \$104,427.00 | \$62,638.50 | \$41,788.50 | \$20,020.55 | \$8,348.84 | \$11,671.71 |
| Diane Pachal | \$10,067.23 | \$866.77 | \$9,200.46 | \$766.57 | \$312.29 | \$454.28 |

| Non-Expert Witness | Fees awarded | Expenses awarded |
|--------------------|--------------|------------------|
| Jolaine Kelly | \$200.00 | \$184.29 |
| Kevin Kelly | \$200.00 | \$40.00 |
| Judy Huntley | \$200.00 | \$206.65 |
| Mark Sandilands | \$200.00 | \$134.27 |
| Phil Hazelton | \$200.00 | \$165.05 |

| Intervener | Honoraria claimed | Honoraria awarded | Reduction | Expenses claimed | Expenses awarded | Reduction |
|-------------|-------------------|-------------------|-----------|------------------|------------------|-----------|
| Elaine Voth | \$1,400.00 | \$1,400.00 | \$0 | \$510.86 | \$510.86 | \$0 |
| Will Voth | \$600.00 | \$600.00 | \$0 | \$120.00 | \$120.00 | \$0 |

7 COSTS CLAIM OF MICHAEL JUDD

On December 1, 2010, Hayduke & Associates (Hayduke), on behalf of Mr. Judd, filed a costs claim for professional fees in the amount of \$131,125.00, expert fees in the amount of \$11,000.00, attendance honoraria in the amount of \$2,200.00, expenses in the amount of \$3,715.12, and GST in the amount of \$6,556.25, for a total costs claim of \$154,596.37.

7.1 Views of Shell

Shell submitted that the costs claimed by Mr. Judd should be significantly reduced or denied as the claims were excessive and unreasonable under the circumstances. It submitted that, among other things, Mr. Sawyer's level of experience and role in the proceeding, the hourly rate and time claimed, and his conduct in the proceeding and the value of Mr. Judd's intervention all

justified a denial or substantial reduction in any cost awarded to Mr. Judd for professional fees and expenses.

Shell pointed out that Mr. Sawyer is not a lawyer, has no formal legal training, and that while he claimed to have 20 years of experience in environmental consulting, he did not appear in the subject proceeding as an environmental consultant or an expert witness, but instead as a representative of Mr. Judd. Shell submitted that Mr. Sawyer's environmental consulting experience was not relevant to his appearance on Mr. Judd's behalf and should not entitle him to the hourly rates for consultants and experts set out in *Directive 031*.

Demonstrated expertise and assistance to the Board are the primary considerations when determining the reasonableness of the costs claimed for this kind of lay representation. In the 2007 Waterton 68 hearing, Mr. Sawyer requested and was provided with the hourly rate of \$125.00. Shell submitted that an hourly rate of no more than \$125.00 is warranted for Mr. Sawyer's fees in this instance as well. Shell also submitted that Mr. Sawyer represented a party in the 2007 Waterton 68 hearing and therefore was familiar with the application and related materials. In Shell's view, these factors should have resulted in a high degree of efficiency regarding both the time to prepare and undertake the intervention.

Shell submitted that Mr. Sawyer is properly characterized as a lay representative. The Board in *EUB Decision 2004-101 Review and Variance Application by Mitch Bronaugh of Energy Cost Order 2004-04 (Decision 2004-101)* and *ECO 2009-003* has stated that when interveners use such individuals as their representatives, they are not to be paid an amount equal to what lawyers or expert witnesses are paid as per Appendix A of *Directive 031*. In considering the appropriate amount for lay persons who represent interveners, the Board has awarded less than would typically be awarded for the services of lawyers and experts.

Shell also submitted that the hourly rate and quantum of time claimed were excessive and not reflective of the value of the intervention brought before the Board. Mr. Sawyer's hourly rate of \$250.00 represents the mid-range rate set out in *Directive 031* for lawyers and nearly the maximum rate of \$270.00 per hour established for experts and consultants with more than 12 years of experience.

Shell submitted that the claimed hourly rate was excessive and that any award of costs made should be reduced based upon Mr. Sawyer's level of experience and role in the proceeding, and the fact that the rates claimed were not in accordance with the provisions of *Directive 031*.

Directive 031 provides that the Board does not award the maximum hourly rates as a matter of course, but only when it has been demonstrated these are warranted by the work performed. Shell submitted Mr. Sawyer acted as Mr. Judd's lay-representative throughout the hearing, did not participate as an expert witness or consultant and frequently did not conduct himself in accordance with the Board's direction, and that therefore his claimed hourly rate was not justifiable or warranted under the circumstances.

Shell submitted that the claims for over 380 hours of preparation time, over 151 hours of time spent at the hearing, and a further 12 for argument and reply were extreme and unreasonable given Mr. Sawyer's past experience in the 2007 hearing, his familiarity with the applications and issues, the duration of the hearing, the number of other intervener representatives who appeared

at the hearing, the preparation time claimed by those representatives, and the time claimed and awarded in past hearings of a similar nature to lay representatives.

A total of four other counsel represented other intervener groups, all of whom were composed of a number of persons, whereas Mr. Sawyer represented one person. Yet, despite this fact, the 380 hours of preparation time claimed by Mr. Sawyer far exceeded that of all other counsel in this matter. Shell argued that the hours claimed by Mr. Sawyer for preparation, argument, and reply should be at most 135 and that hours claimed for hearing attendance should be at most 104, as it had also argued with respect to the Sheppard-Barbero costs claim for legal fees and based on its review of the transcripts.

Shell submitted that not only should Mr. Sawyer's claim for professional fees be reduced for the foregoing reasons, but that the Board must also scrutinize the costs claim on the basis of the criteria set out in Section 4.1 of *Directive 031* and Section 57(2) of the *Rules of Practice*.

Shell submitted that while Mr. Sawyer claimed at the hearing and in his cost submission to have been mindful of questions asked by previous intervener representatives and to have avoided unnecessary repetition, he failed to do so, as reflected by the length of time he spent in cross-examining Shell's witness panel when compared to other counsel who preceded him. Given that counsel had already questioned Shell's witness panel and a number of issues had already been addressed prior to Mr. Sawyer's cross examination, it was reasonable to expect that his cross examination would be briefer than those which had preceded him. However, his cross-examination was not only longer than any of the other parties, but was often repetitive, irrelevant, or argumentative. This, as well as the numerous valid objections by counsel for Shell and subsequent rulings by the Board made as a result, all further extended the duration of the hearing.

Shell submitted that that Mr. Judd's intervention could have been combined with that of other hearing participants and that his evidence and questions were often repetitive in nature. Shell submitted that his concerns were not sufficiently distinct from many or all of the other participants in the hearing to have justified his separate representation and that his shared experts demonstrated that he had similar issues and concerns with other interveners. Consequently, he could have joined one of the other groups and avoided the unnecessary expense of retaining separate representation. Shell submitted that any award made to Mr. Judd for professional fees ought to be reduced further given that he should have joined another group.

Shell submitted that a great deal of time was spent during the hearing discussing new evidence that should have been filed with Mr. Judd's submissions filed prior to the hearing. Mr. Sawyer repeatedly attempted to enter evidence in the form of both an addendum to Dr. Gilbert's report and photographs, as well as animal hair and fecal matter, all of which were available to Mr. Sawyer in advance of the hearing. Dr. Gilbert's testimony included further new evidence in the form of a slide presentation, which appeared to contain information available to him in advance of the hearing. In addition, Dr. Norman's slide presentation at the hearing contained new evidence that was also available in advance of the hearing. Shell noted that attempts to present new evidence through representatives and witnesses that was available in advance of the hearing were inappropriate and led to significant delays and inefficiencies in the hearing process.

Shell submitted that Mr. Sawyer repeatedly failed to comply with directions from the Board, including directions on the filing of evidence. He repeatedly attempted to enter evidence of an

alleged bear den during the hearing in deliberate disregard for directions of the Board. Despite the Board's ruling, he repeatedly attempted to enter the evidence in a manner which was disrespectful to the Board and its process, which was so disruptive that it required the Board to recess on two separate occasions during the hearing in order to maintain order, further increasing the length and cost of the hearing. Given that Mr. Sawyer consistently disregarded the Board's directions and was disruptive to the hearing process, Shell submits that his hours should be reduced by at least an additional fifteen per cent (15%), consistent with *ECO 2009-009*.

Shell submitted that Mr. Sawyer submitted evidence that was not relevant to the proceeding. Dr. Norman presented evidence related to area sour gas plants and associated sulphur deposition, which had no relevance to Shell's applications. Shell submitted that the professional fees claimed for both Mr. Sawyer and Dr. Norman should be reduced to reflect their presentation of irrelevant evidence.

Shell submitted that Mr. Sawyer also exhibited disregard for due process prior to the hearing. In late June 2010, Mr. Sawyer directly contacted a Shell employee and requested information regarding her employment history. This was done after he was asked by Shell's internal counsel in March 2010 not to contact Shell employees and consultants directly and after he had provided an undertaking that he would refrain from doing so and that he would direct all such requests to Shell counsel. It argued his inappropriate conduct continued in July 2010 when, as part of the Board's advance funding process and as referenced in the Board's letter of July 19, 2010, he refused to disclose the identity of Mr. Judd's expert witnesses prior to filing Mr. Judd's intervenor submission. In response, the Board stated in its letter dated July 19, 2010, that it was concerned about the position taken by Hayduke that it did not intend to disclose its proposed experts prior to the filing of intervenor submissions. The Board further stated that it strives to ensure fairness and transparency in its processes and proceedings, and permitting a party to expressly conceal its experts not only runs contrary to its own legislation and regulations, but to the principles of natural justice and procedural fairness generally.

Shell submitted that a further example of Mr. Sawyer's inappropriate conduct occurred in August 2010 in connection with the parties' submissions and correspondence around the issue of advance funding. In response to his submissions regarding an alleged delay in Shell's payment of the advance funding award granted by the Board to Mr. Judd, Shell advised the Board that the allegations made were unfounded, given that Mr. Sawyer had directed the timing of Shell's payment and Shell had conducted itself in accordance with those directions. In a letter of August 23, 2010, the Board expressed its concern with Mr. Sawyer's conduct and cautioned him regarding any further instances of same.

In summary, Shell submitted that Mr. Sawyer's conduct of Mr. Judd's intervention showed a deliberate disregard for the Board's process and for the directions of the Board both before and during the hearing.

Shell was of the view that a number of other claims for professional fees should be significantly reduced or denied, particularly:

- Costs claimed relating to the preparation of cost applications: The time sheets indicate that on June 15, 2010, he billed 6.7 hours for preparing an advance funding application, and in November 2010 he billed 12.3 hours for preparing a costs claim. These costs should therefore be discounted entirely, as per Section 4.1 of *Directive 031*.

- Costs claimed for travel: There is no indication that Mr. Sawyer separately accounted for his travel time and reduced his hourly rate for travel time. Assuming 2.5 hours per one-way trip from Calgary to Pincher Creek, Mr. Sawyer spent a total of 30 hours travelling. His total fees should therefore be reduced by an additional 15 hours to account for the reduced billing rate that he failed to apply. Shell suggested that the amounts set out above should be deducted from the 380.8 preparation hours claimed by Mr. Sawyer, prior to any other discounts being applied, which would reduce the hours of preparation to 346.8 hours.

Shell was of the view that the principles established in prior Board decisions and the specific deductions outlined above should be applied to Mr. Sawyer's claim as follows:

- 380.8 preparation hours reduced to 346.8 hours to account for unreasonable charges in the time sheets;
- 346.8 preparation hours reduced by more than fifty percent (50%) to reflect the excessive nature of the claim as per *ECO 2009-004*. Time for preparation, argument and reply should be consistent with that awarded to counsel who participated in the hearing and should not exceed 135 hours;
- The 151.4 hours claimed for hearing attendance be reduced to no more than 104 hours to reflect the actual duration of the hearing;
- 135 hours for hearing preparation, argument and reply, and 104 hours for hearing attendance result in a maximum total of 239 hours; and
- The 239 hours should be further reduced by at least fifteen percent (15%) as per *ECO 2009-004* to account for inefficiencies, irrelevant evidence and disregard for the Board direction, bringing the total hours to 203 hours.

Shell was of the view that the total hours awarded for Mr. Sawyer's representation should not exceed 203 hours given the circumstances in this case, and that Mr. Sawyer's hourly rate should be a maximum of \$125/hour. Shell submitted that at this hourly rate, the total fees for Mr. Sawyer would be reduced to \$25,393.75, which in Shell's view should be the maximum given the nature of Mr. Judd's intervention and Mr. Sawyer's representation. Shell did not take issue with Mr. Sawyer's claim for \$2,847.10 for disbursements.

Thus, Shell is of the view that the maximum award Mr. Sawyer should be provided by the Board is: \$25,393.75 total fees + 2,847.10 disbursements + \$1,412.04 GST = \$29,652.89.

Shell requested that the \$10,000.00 advance funding already provided to Mr. Judd be deducted from any final award of costs made.

With regard to the professional fees and expenses claimed for Dr. Norman, as noted above, Shell submitted that her evidence was outside her area of expertise, irrelevant, and therefore of no assistance to the Board in assessing Shell's applications. Her CV and her testimony under cross-examination revealed that she is not an expert in air dispersion modelling, nor is she a toxicologist, yet she purported to lead evidence on both of these topics and, in particular, air dispersion modelling. Shell submitted that she made the following admissions during the hearing that erode the credibility and correctness of her evidence and serve to make her report of no use to the Board in assessing Shell's applications:

- She acknowledged in her testimony that much of her report had been prepared by undergraduate students working under her direction as part of the Friends of Mt. Backus' evidence presented at the 2007 Shell Waterton 68 hearing.
- She conceded that the portion of her report dedicated to addressing sulphur deposition from area sour gas plants did not involve a consideration of emissions from Shell's proposed well, given that it had no continuous emissions.
- She used input data from the 2007 Shell Waterton 68 applications, rather than using the correct current data that was available to her.
- She failed to take into account Shell's flare management plan in assessing Shell's flaring activities.

Shell submitted that Dr. Norman should not be compensated for information that was undertaken as part of undergraduate studies at the University of Calgary particularly where that evidence is of no relevance to Shell's application. Shell submitted that her dispersion modelling evidence was wrong as she had incorrectly assumed continuous emissions from the Waterton 68 well and did not take Shell's flare management plan into account. For these reasons, Shell submitted that the portion of Mr. Judd's costs claim relating to Dr. Norman's fees for professional services should be denied outright.

Shell did not take issue with the \$2,200.00 in honoraria (\$400.00 preparation honorarium and a \$1,800.00 attendance honorarium) requested by Mr. Judd.

7.2 Views of Michael Judd

Hayduke submitted that the costs claim was an accurate reflection of the cost of participation in the proceeding. Mr. Sawyer argued that he has professional environmental experience with many aspects of the upstream oil and gas industry and specifically with Shell's operations in Alberta and in the Castle-Carbondale region, as well as regulatory experience, more than many lawyers who appear before the Board representing landowners. He argued further that while he is not a lawyer, his education, work experience, and previous experience with the hearing process supported his hourly rate as fair, reasonable, and appropriate.

He further argued that the time he claimed for preparation related to, among other things, preparing for and attending at the Prehearing Meeting, reviewing Shell's application materials, contacting potential expert witnesses, communicating with Shell, the Board and other interveners, reviewing prior Board decisions, cross referencing the current application materials to the 2007 application materials, reviewing the 2007 hearing transcripts, preparing or reviewing information requests, reviewing expert reports, reviewing submissions of other intervenor groups, and preparing Mr. Judd's intervention.

Mr. Sawyer argued that much of the time he spent organizing expert witnesses benefited other intervenor groups in that they were able to use witnesses he identified and arranged. He submitted that the sharing of Dr. Batterman, Mr. Wallis, Mr. Wershler, Dr. Gilbert, Mr. Lee, and Mr. Smith and the time he spent facilitating this contributed to the preparation efficiency of other intervenor counsel. He also submitted that he facilitated both Dr. Batterman's and Mr. Smith's field trips to the project area prior to the preparation of their evidence.

With respect to the claim for 151 hours of hearing attendance, Hayduke agreed it might have been more appropriate to include the 16.0 hours of final argument preparation, which included review of the transcript and writing final argument, under the Argument and Reply column in Form E2, reducing the total hearing attendance claim to 135.4 hours.

Mr. Sawyer argued that he did not become involved in the 2007 hearing until after it had commenced and therefore had no time for application review or hearing preparation, and so Shell's comparison of his fees in that hearing versus his fees in this hearing was of no value. He submitted that the Board has broad discretionary powers in determining the reasonableness of any cost award, whether for a lay person, a lawyer or an expert witness.

He further submitted that Shell was wrong in its submissions regarding his numerous instances of non-compliance with Section 57(2) of the *Rules of Practice*. He argued that his client had agreed to conduct most of the questioning related to environmental matters, and that, for the most part, his questions were asked with regard for avoiding duplication with other counsel. He argued that where duplication seemed apparent, closer review showed that his duplicative questions were of considerably greater detail and depth than previous questions. He argued that the number of objections made by Shell's counsel during Mr. Judd's intervention was not a measure of his efficiency or the relevance of his questions because the Board's hearing process is inherently adversarial and objections from the Applicant's counsel are to be expected.

He further argued that while Mr. Judd's interests appeared to be aligned with those of other interveners, they were not, as his intervention focused on matters that concerned his personal interests as well as the broader public interest. He also argued that directly affected persons are entitled to representation of their choice.

With regard to the presentation of new evidence during the hearing that should have been filed in advance of the hearing within the Board's prescribed process, and the other failures to follow Board directions, Mr. Sawyer argued that once the Board made its ruling during the hearing with respect to the inadmissibility of Dr. Gilbert's addendum, he made no further attempt to place that one particular piece of evidence on the record.

With respect to the numerous instances during the hearing when he raised the issue of a grizzly bear den, with subsequent rulings then being made on those matters by the Board, Mr. Sawyer argued that he misunderstood the Board's original ruling, and then made repeated attempts to have evidence of the grizzly bear den that did not originate with Dr. Gilbert placed on the record also based on that misunderstanding. He also argued that he had only objected to each of the Board's numerous rulings on his attempts based on his misunderstanding of the Board's original ruling.

Mr. Sawyer argued that the grizzly bear matter kept being raised because of his and the CCWC's inability to file Dr. Gilbert's evidence in a timely manner and in compliance with the Board's established time lines. He stated he was confused about and had misunderstood the Board's ruling regarding Dr. Gilbert's addendum and further stated he felt he was obligated out of duty to his client, to make all reasonable attempts to have the evidence placed on the record of the proceeding. He stated that while he made those attempts persistently, he was not willfully disregarding Board rulings.

Mr. Sawyer admitted that during his argument with respect to the grizzly bear den, his passions were running high and he may have offended the Board, but that this had only occurred during a long hearing where he was required to conduct himself well into the evenings. He argued that because he had already apologized to the Board at the hearing, and that his apology had been accepted by the Board, there was no need for the Board to further chastise him in the costs claim process.

With respect to the fees and expenses claimed for Dr. Norman, Mr. Sawyer argued that her evidence on cumulative effects associated with sour gas or sulphur dioxide emissions was relevant in a general sense to this proceeding. He further argued that her evidence was relevant to this proceeding due to the fact that she had participated in the 2007 Shell hearing.

Mr. Sawyer stated that he had received direction from Shell to not communicate directly with its employees or contractors, but that despite this, he chose to contact the Shell employee directly. He felt this in no way breached his undertaking to Shell and that his conduct did not bring the Board's process into disrepute.

He further stated that he understood that the Board disagreed and was concerned about his decision to not provide the identities of Mr. Judd's proposed witnesses to the parties and the Board when he filed his client's advance funding application, but he argued that his conduct did not and was not intended to bring the Board's process into disrepute.

With respect to Shell's observation that *Directive 031* does not generally allow for cost recovery relating to expenditure incurred either submitting an advance funding application, or a costs claim, Hayduke admitted it was unaware of this and agreed with the reduction of its costs claim by 19.0 hours to reflect its error.

Mr. Sawyer also submitted that his travel time had been submitted in Form E2 of Mr. Judd's cost claim in accordance with *Directive 031*. He stated that his travel time was documented and discounted by half, and that he had also summarized his monthly travel time as well as his associated expenses. He also stated that in an effort to reduce costs he did not stay in a hotel in Pincher Creek and instead stayed with Mr. Judd at his home west of Beaver Mines.

Finally, Mr. Sawyer submitted that Mr. Judd's cost claim was fair, reasonable, and accurately reflected his intervention in the proceeding. He submitted that his professional fees, save the reduction in 19 hours for the time claimed for preparation of cost related applications, should be granted, as should the claimed intervener honoraria and expenses for Mr. Judd and the professional fees and expenses of Dr. Norman.

7.3 Views of the Board

Professional Fees and Expenses

Having considered all of the foregoing, the Board finds that not all of the professional fees incurred by Hayduke were reasonable and necessary in light of the circumstances of this matter. While some of the submissions made by Mr. Judd were of assistance to the Board in its decision on the applications, the Board has also carefully considered the comments and concerns of Shell in this regard and is also mindful of Mr. Sawyer's conduct throughout the proceeding. As a

result, the Board finds that certain reductions to Mr. Judd's claimed professional fees and expenses are in order, and are detailed below.

With regard to the hourly rate claimed, the Board notes the submissions of the parties concerning what the appropriate hourly rate should be in light of all the circumstances. The Board finds that while Mr. Sawyer has a number of years of educational and work experience in the environmental consulting field, his experience as a lay representative of an intervener before administrative tribunals is much more limited. Further, he is not a member of the legal profession, nor does he possess any formal legal training. The Board notes that pursuant to the Consultants', Analysts', and Experts' Fees section of Appendix E of *Directive 031*, persons with one to four years of experience may be awarded an hourly rate of \$120.00. The Board also notes that for the 2007 Shell hearing, Mr. Sawyer received an award of costs based on an hourly rate of \$125.00. Having regard to all of the foregoing, the Board declines to award Hayduke its claimed hourly rate for professional fees. The Board finds that an hourly rate of \$125.00 is appropriate under the circumstances and will proceed to consider the costs claim based on, among other things, that hourly rate.

The Board notes the reduction in professional fees claimed which was agreed to by Hayduke and Shell relating to 19 hours of time spent on preparing cost applications as being not in accordance with the provisions of *Directive 031*. The Board finds that this reduction is appropriate.

As mentioned earlier in the Sheppard-Barbero cost claim at Section 5.3, the Board finds that based on the record of the proceeding, a claim for 105 hours of hearing attendance time may be reasonable under the circumstances. Accordingly, the Board declines to award Hayduke its claimed time for hearing attendance but it will proceed to consider the costs claim based on, among other things, 105 hours of hearing attendance time being reasonable and necessary.

Having regard to the foregoing reductions, the Board will proceed to consider the claim of Hayduke for professional fees based on, among other things, 494 hours of professional fees at the hourly rate of \$125.00, and 21.3 hours of travel time at an hourly rate of \$62.50.

The Board has carefully considered the submissions of the parties on the appropriateness and reasonableness of Hayduke's claim for professional fees generally relative to the amount of time claimed as well as the conduct of Mr. Sawyer throughout the proceeding.

The Board finds that the time claimed for professional fees by Hayduke is excessive given the nature and scope of the proceeding, the nature and scope of Mr. Judd's intervention, the evidence presented and whether it was of assistance to the Board in its decision on the applications, and the conduct of Mr. Sawyer throughout the proceeding.

In a letter dated May 24, 2010, Mr. Sawyer requested that the Board provide him with confirmation that environmental matters would be considered at the hearing, that the Board "put its mind to resolving" his concern regarding common experts and provide him with "direction on a process or procedure that would encourage and facilitate the sharing of common experts while not exposing parties to unacceptable risks", and that he be provided with guidance as to the meaning of "participate fully in the hearing" in Section 5.3 of *Decision 2010-021*.

In a letter dated June 16, 2010, he requested advance local intervener funding in the amount of \$170,000.00 and advised that he did not intend to disclose his experts prior to the hearing. He

requested a review of the Board's July 19, 2010, decision on that request that same day. In letters dated June 25 and 29, 2010, he expressed concerns about a Shell employee. In letters dated July 7 and 15, 2010, he discussed relocation allowances agreed to privately by Shell and landowners. In a letter dated July 16, 2010, he requested clarification as to if and how his review of Shell's risk assessment would potentially affect the Board's cost awards considerations for similar work undertaken by other interveners. In a letter dated August 16, 2010, he requested an extension to the deadline for intervener submissions for reasons relating to, among other things, advance funding.

The Board provided its answers to and rulings upon these requests in its letters of June 16, June 17, July 19, and August 23, 2010. Further to its answers and rulings in those letters, the Board is of the view that in some instances, the requests made were unreasonable or inappropriate and demonstrated Mr. Sawyer's inexperience with practice and procedure before administrative tribunals. Having regard to all of the foregoing, the Board finds that some of the time claimed for matters leading up to the hearing and related to such requests was not reasonable or directly and necessarily related to the proceeding, as not only were some of these requests denied as being inappropriate, some concerned matters that were irrelevant to the proceeding and thus resulted in unnecessary costs.

The Board has also carefully considered the submissions of the parties regarding Mr. Sawyer's conduct at the hearing. The Board finds that Mr. Sawyer displayed a pattern of non-compliant and inappropriate conduct at the hearing, demonstrated, among other things, by

- repeated instances of non-compliance with or arguing over Board directions or rulings, for example regarding the admissibility and filing of evidence;
- attempting to present new evidence at the hearing which was previously available;
- presenting evidence which was of little relevance to the proceeding and of little assistance to the Board;
- asking questions of witnesses and submitting arguments which were repetitive;
- conducting himself in an argumentative and at times disrespectful manner towards the Board and other participants at the hearing; and
- engaging in conduct generally that unnecessarily lengthened the duration of the hearing and resulted in unnecessary costs.

The Board notes the submissions of the parties regarding the criteria set out in Section 57(2) of the *Rules of Practice*. Section 57(1) of the *Rules of Practice* provides that 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 were 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. Section 57(2) provides criteria the Board may consider in determining the amount of costs to be awarded.

Having considered all of the foregoing, and with regard to the professional fees claimed by Hayduke, the Board finds that the fees claimed were excessive in light of the nature and scope of the proceeding, the nature and scope of Mr. Judd's intervention, and the usefulness and effectiveness of his representation in the proceedings. The Board also finds that some of Hayduke's requests made prior to the hearing were unreasonable, inappropriate, or irrelevant,

and that time was claimed for hours spent relating to matters which are proscribed by Section 57(2) of the *Rules of Practice*. The Board also finds that Mr. Sawyer engaged in conduct that was contrary to the spirit and intent of the *Rules of Practice* and the standard of professional conduct appropriate at Board hearings generally.

Accordingly, the Board finds that a reduction in the amount claimed by Hayduke for professional fees is warranted. The Board orders a reduction of the total amount awarded to Mr. Judd for professional fees in the amount of fifty-five per cent (55%). This reduction is ordered with a view to recognizing non-compliant conduct and with a view to reinforcing to applicants and interveners that the Board's *Rules of Practice*, processes, rulings, and directions are to be complied with in order to best ensure that the principles of natural justice and procedural fairness they are designed to foster and promote are available to all parties who appear before it.

With regard for the claimed professional expenses of Hayduke, the Board finds that these appear to be generally reasonable in light of the circumstances of this matter, and awards them in full.

As such, the Board hereby makes an award of costs to Hayduke and Associates for professional fees and expenses in relation to its representation of Mr. Judd as follows:

| Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|---------------------------|---------------------------|--------------|------------------------------------|------------------------------------|-----------|
| \$131,125.00 | \$28,386.56 | \$102,738.44 | \$2,847.10 | \$2,847.10 | \$0 |

Intervener Honoraria and Expenses

With regard to Mr. Judd's claimed intervener honoraria and expenses, the Board finds that these are generally reasonable under the circumstances and award them in full as follows:

| | Intervener honoraria claimed | Intervener honoraria awarded | Reduction | Intervener expenses claimed | Intervener expenses awarded | Reduction |
|--------------|------------------------------|------------------------------|-----------|-----------------------------|-----------------------------|-----------|
| Michael Judd | \$2,200.00 | \$2,200.00 | \$0 | \$632.50 | \$632.50 | \$0 |

Expert Fees and Expenses – Ann Lise Norman

With regard to the claimed professional fees and expenses of Dr. Norman, the Board finds that the evidence she submitted in the proceeding was of limited assistance to the Board, was outside of her area of expertise, and was not directly relevant to the Board's consideration of the applications. The Board finds in particular that her evidence on matters relating to sulphur deposition from area sour gas plants and flaring was of limited assistance to the Board in its decision on these applications, as can be seen at page 13 of *2011 ABERCB 007*. Accordingly, the Board declines to award the claimed costs for Dr. Norman's professional fees. However, the Board is prepared to make an award of costs in the amount of \$1,000.00, representing her attendance at one day of the hearing as a witness. With regard to Dr. Norman's claimed professional expenses, the Board finds that these are generally reasonable under the circumstances and awards them in full.

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|---------------------|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|-----------|
| Dr. Ann-Lise Norman | \$11,000.00 | \$1,000.00 | \$10,000.00 | \$235.52 | \$235.52 | \$0 |

Amounts already paid to Mr. Judd

As mentioned above in Section 3.1 of this decision, the Board made an award of advance funding to Mr. Judd in the amount of \$10,000.00 on July 19, 2010. This amount shall be subtracted from any final total amount awarded to Mr. Judd.

7.4 Summary of Costs Awarded

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|------------------------|---------------------------|---------------------------|--------------|------------------------------------|------------------------------------|-----------|
| Hayduke and Associates | \$131,125.00 | \$28,386.56 | \$102,738.44 | \$2,847.10 | \$2,847.10 | \$0 |
| Dr. Ann-Lise Norman | \$11,000.00 | \$1,000.00 | \$10,000.00 | \$235.52 | \$235.52 | \$0 |

| | Intervener honoraria claimed | Intervener honoraria awarded | Reduction | Intervener expenses claimed | Intervener expenses awarded | Reduction |
|--------------|------------------------------|------------------------------|-----------|-----------------------------|-----------------------------|-----------|
| Michael Judd | \$2,200.00 | \$2,200.00 | \$0 | \$632.50 | \$632.50 | \$0 |

8 COSTS CLAIMS FOR SHARED EXPERT FEES AND EXPENSES

In its cost claim dated December 1, 2010, the CCWC submitted claims for experts shared by it and Mr. Judd (Cost Claim 2), as well as claims for experts it shared with Mr. Judd and the Sheppard-Barbero group (Cost Claim 3). Each of these claims will be considered in turn below.

The Board notes that none of the interveners advised the Board in relation to Cost Claim 2 or Cost Claim 3 as to which party or parties an award of costs should be made or how any award should be shared between them. Accordingly, any award of costs made in Sections 9 or 10 of this order will be made to the CCWC as the submitter of the claims. The Board trusts that the parties who shared these experts have agreed or can come to agreement on how an award of costs is to be shared, and the Board does not intend to make any orders in that regard.

9 COST CLAIM 2

In Form E1 of its cost claim, the CCWC claimed a total amount of \$51,582.50 in professional fees and \$4,607.23 in professional expenses and disbursements for Cliff Wallis, Cleve Wershler, Peter Lee, Matt Hanneman, and Barry Gilbert. Shell provided its response to these claims on January 10, 2010, and the CCWC submitted a final reply on January 31, 2011. Each of these claims will be considered in turn below.

9.1 Cliff Wallis and Cleve Wershler, Cottonwood Consultants

In its December 1, 2010 cost claim, the CCWC claimed \$11,687.50 in professional fees and \$825.84 in expenses for Mr. Wallis and \$12,625.00 in professional fees and \$406.08 in expenses for Mr. Wershler. It submitted that they had visited the area and that their evidence regarding Shell's environmental assessment, environmentally sensitive areas near the project area, wildlife, and rare plants was relevant and helpful to the Board in its decision on the applications.

9.1.1 Views of Shell

With regard to the professional fees claimed, Shell submitted that the evidence of these witnesses was of little assistance to the Board in its decision on the applications, and that the costs claimed for their fees should be significantly reduced. It also pointed out that the claim for \$2,412.77 in GST for Mr. Wallis was a calculation error and should be adjusted accordingly.

Shell submitted that much of these witnesses' evidence related to general environmental policy concerns related to the broader Castle region. They also took issue with existing development in the area, as opposed to focusing on Shell's proposed project, and they indicated that they would like to see an "unbuilding" of existing oil and gas development in the area of Shell's proposed project. Shell submitted that much of their evidence was not directly and necessarily related to the applications or of assistance to the Board in considering the issues before it, as much of their evidence was reflective of general environmental advocacy and a broad opposition to oil and gas development.

Shell noted that these experts gave evidence that Shell had failed to undertake a breeding bird survey when, in fact, one had been prepared and filed with the Board. Shell argued that such errors limited the utility and credibility of their report.

Shell submitted that based on the foregoing, the costs claimed for these experts should be significantly reduced, and that previous Board decisions should serve as a guide in determining an appropriate reduction. It cited *ECO 2004-04*, where the Board concluded that the evidence provided by Cottonwood was broad in scope and did not focus on the impacts of the well on the specific area where it was to be located. The Board found that much of its evidence proved unhelpful and in part strayed into the arena of advocacy, and reduced its claimed costs by fifty percent (50%). Shell submitted that Cottonwood's evidence in the subject hearing suffered from the same shortcomings as that in *ECO 2004-04*, and that a similar or greater reduction in costs should therefore be applied to its current claim.

9.1.2 Views of the CCWC

The CCWC replied that the evidence of Cottonwood provided an examination of site-specific concerns, including wildlife and rare plant species not provided by Shell, and that it was therefore of assistance to the Board in its decision on the applications. It also agreed with the error in its GST calculation for Mr. Wallis.

9.1.3 Views of the Board

Having considered all of the above, and with regard to the claimed professional fees, the Board finds that while some of the evidence regarding rare plants provided by Mr. Wallis and Mr.

Wershler was of assistance to it in its decision on the applications, as can be seen in 2011 *ABERCB 007*, the portions of it that were advocacy or policy based or focused were of limited assistance to the Board and had minimal relevance to the proceeding. In accordance with Section 4.1 of *Directive 031*, reasonable submissions for cost purposes do not generally include claims for arguments concerning government policy or legislative changes, which are more properly placed before the government or a Member of the Legislative Assembly. As such, the Board finds that a reduction in the claimed amounts for professional fees is warranted, and reduces the amount claimed for these experts' professional fees by fifty per cent (50%).

With regard to the claimed expenses, the Board declines to award the claimed amounts, as these are not in accordance with the provisions of *Directive 031*. Both experts were empanelled on October 27, 2010, and as such, their claimed accommodation and meal expenses exceed the daily tariffs provided for in Appendix E of *Directive 031*. No submissions were provided supporting the exceedances. As such, the Board makes an award of \$145.60 in accommodation costs representing the maximum allowable amount as per Appendix E of *Directive 031* plus provincial hotel tax for one night, \$80.00 in meal costs, and \$212.61 in mileage for Mr. Wallis' expenses. The Board also awards Mr. Wershler his claimed amount for accommodation expenses, \$80.00 in meal costs, and the claimed \$203.44 in mileage.

As such, the Board hereby makes an award of costs to Ackroyd LLP for the fees of Mr. Wallis and Mr. Wershler as follows:

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|----------------|---------------------------|---------------------------|------------|------------------------------------|------------------------------------|-----------|
| Cliff Wallis | \$11,687.50 | \$5,843.75 | \$5,843.75 | \$825.84 | \$438.21 | \$387.63 |
| Cleve Wershler | \$12,625.00 | \$6,312.50 | \$6,312.50 | \$406.08 | \$391.08 | \$15.00 |

9.2 Peter Lee and Matt Hanneman

In its December 2010 cost claim, the CCWC claimed \$11,070.00 in professional fees and \$462.60 in expenses for Mr. Lee and \$7,800.00 in professional fees for Mr. Hanneman. It submitted that their report on the effects of development and changes in the area since 2000 and grizzly bear habitat was relevant to the issue of road management.

9.2.1 Views of Shell

With regard to the professional fees claimed, Shell submitted that their evidence was not relevant, not necessary and not directly related to the applications, and that it was of little assistance to the Board. It submitted the costs claimed for the professional fees of these experts should be denied outright or, at a minimum, significantly reduced. Shell noted in particular the claimed expense of \$3,937.50 for Spot Imagery data upon which their report was based as an unreasonable cost which should be denied.

It submitted the report prepared by Mr. Lee and Mr. Hanneman was not relevant to the applications. It submitted that their evidence related to general road densities in the Castle Area Forest Land Use Zone, which was not relevant given that its applications proposed to use existing roads and would not create any new access. It stated that the witnesses had acknowledged during the hearing that their report was in need of field verification and ground-

truthing, and that its results were not precise and might not be accurate. Shell also stated that Mr. Lee and Mr. Hanneman acknowledged they were not aware of how many of the total linear disturbances discussed were used by motorized vehicles, a fact which Shell argued was critically important when determining vehicular access densities and grizzly bear core security areas. Shell submitted that their report indicated that their work was based at least in part on anecdotal information and that their conclusions, given the lack of precise information available, were speculative.

9.2.2 Views of the CCWC

With regard to the professional fees claimed, the CCWC submitted that the report and study undertaken by Mr. Lee and Mr. Hanneman provided information and context on historic and current road densities within the region. It argued the study results provided a layer of expert analysis and information not readily available from existing scientific sources.

9.2.3 Views of the Board

Having considered all of the above, and with regard to the claimed professional fees, the Board finds that the evidence of Mr. Lee and Mr. Hanneman regarding, among other things, access management, linear disturbances, access densities, grizzly bear core security areas, and policy matters regarding these subjects was of limited assistance to the Board in its decision on the applications, and that some of their evidence was of limited relevance to the applications, as can be seen at Pages 9 and 10 of *2011 ABERCB 007*.

In that decision, the Board found that the report provided by these experts was broad-based in scope and unverified in content and truthed facts. The Board supported the view that access control was key to minimizing effects on wildlife, but noted that it is the role of Alberta Sustainable Resource Development, and not the Board or Shell, to identify and implement regional plans. The Board also noted that the proposed well would create no new access and minimal disturbance. The Board finds that portions of these witnesses' evidence were policy based or focused and were accordingly of little assistance to the Board and little relevance to the proceeding.

The Board notes that Mr. Hanneman did not appear at the hearing. The Board also notes that Mr. Lee was empanelled at the hearing on October 27, 2010 and that he based his claims for fees on an hourly rate of \$270.00.

Having considered all of the above, and in accordance with the provisions of *Directive 031*, the Board finds that a reduction in the claimed fees of Mr. Lee and Mr. Hanneman is warranted. As such, the Board finds that a reduction in the claimed amounts for professional fees of Mr. Lee of seventy-five per cent (75%) is appropriate under the circumstances. With regard to the professional fees for Mr. Hanneman, the Board declines to make any award for these, as they were wholly unsupported by the cost claim and the record of the proceeding.

With regard to Mr. Lee's claimed expenses, the Board declines to award the claimed amount for meal expenses, as it was not in accordance with the provisions of *Directive 031*. No submissions were provided supporting the exceedance. As such, the Board makes an award of \$80.00 in meal expenses, the claimed \$114.49 in accommodation costs, and the claimed \$188.11 in mileage. With regard to the claim for expenses for Spot Imagery data, the Board declines to make any

award of costs for same, as the claim for this expense was wholly unsupported by the cost claim and the record of the proceeding.

As such, the Board hereby makes an award of costs to Ackroyd LLP for the fees and expenses of Mr. Lee as follows:

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|-----------|---------------------------|---------------------------|------------|------------------------------------|------------------------------------|------------|
| Peter Lee | \$11,070.00 | \$2,767.50 | \$8,302.50 | \$4,400.10 | \$382.60 | \$4,017.50 |

9.3 Barry Gilbert

In its December 2010 cost claim, the CCWC claimed \$8,400.00 in professional fees and \$2,912.71 in expenses for Mr. Gilbert. It submitted that he gave evidence of the effects of development and decreasing habitat on grizzly bears, and that the presence of grizzly bears in the area and the effects of development on them were relevant to the proceeding.

9.3.1 Views of Shell

With regard to the professional fees claimed, Shell submitted that Dr. Gilbert's report and his evidence given at the hearing related primarily to his broad regional concerns regarding grizzly bear and elk populations in the area of the applications, and that these concerns were not directly and necessarily related to the applications. Shell stated that his report did not contain substantive evidence or commentary on Shell's applications and potential impacts on grizzly bear and elk populations specifically arising out of Shell's project. Shell argued the report had little credibility and therefore little value.

Shell submitted that the CCWC confirmed in their cost claim that Dr. Gilbert's evidence was directed at establishing there was a likelihood of grizzly bears in the area of Shell's project, a fact which had already been conceded by Shell. It argued that much of his report and evidence at the hearing was related to this and that an unnecessary and excessive amount of hearing time was dedicated to this conceded point.

Shell stated that Dr. Gilbert was not aware of and not familiar with *IL 93-09 - Oil and Gas Developments Eastern Slopes (Southern Portion) (IL 93-09)* and that while he had opined upon area traffic and its impact on bears, he had not reviewed Shell's traffic data or the Traffic Code of Conduct filed in support of Shell's applications. Shell argued that even when his evidence related to Shell's application, his analysis and views were based on limited or incorrect facts and analysis, which undermined its credibility and value to the Board.

Shell further submitted that his evidence demonstrated that at times he appeared to be more of an environmental advocate than an impartial, independent expert witness presented to assist the Board in assessing Shell's applications, and pointed out that he took a position on the applications and supported their denial. Shell submitted that his position and evidence were not those of an impartial expert and that his evidence had limited, if any, credibility.

With respect to Dr. Gilbert's claimed expenses and disbursements, Shell submitted that the \$995.82 claim for accommodation, representing seven nights at \$140/night, and the \$360.00 claim for meals, representing nine days at \$40/day, was excessive, as he had attended the hearing

for one day to provide his evidence. As such, Shell submitted his claim for expenses and disbursements should be reduced to reflect the one day he attended at the hearing to give his evidence.

9.3.2 Views of the CCWC

The CCWC replied that Dr. Gilbert went on site visits prior to the hearing and that he provided site-specific evidence in his sphere of expertise of wildlife biology within the context of regional issues regarding grizzly bear and elk populations. He provided his understanding as a grizzly bear biologist of how the applications might endanger the local grizzly population. When asked by Shell to provide an opinion in the context of the preservation of biodiversity in the regional area, he responded by supporting the denial of Shell's applications.

The CCWC submitted that Dr. Gilbert's evidence, grounded in over 30 years of experience in grizzly bear and wildlife biology, as well as his professional opinion, offered value to the Board in making its decision in this matter.

The CCWC submitted that as supported in its costs claim, Dr. Gilbert's accommodation and meal costs were in part due to his travel from his home location in rural Ontario to the hearing, and that the costs were reasonable given the travel involved.

9.3.3 Views of the Board

Having considered all of the above, and with regard to the claimed professional fees, the Board finds that while some of the fees claimed are reasonable, some of the fees claimed were not reasonable or directly and necessarily related to the proceeding.

The Board finds that Mr. Gilbert's evidence regarding grizzly bears, their denning locations, and the anticipated effects the project could have on local grizzly bear and elk populations was of assistance to it in its decision on the applications, as can be seen at Page 12 of *2011 ABERCB 007*.

However, the Board also finds that at times his report and evidence were broad in scope and not generally focused on or related to the applications before it. The Board also finds that Shell had conceded the presence of grizzly bears in the area and that there was undue time spent by participants in terms of submissions and evidence in relation to this matter. The Board finds further that in the preparation and giving of his evidence, Dr. Gilbert had not reviewed *IL 93-09* or relevant portions of Shell's submissions and evidence relating to traffic and access management. The Board is of the view that at times, portions of his evidence were more akin to advocacy or policy concerns and were accordingly of limited assistance to the Board and relevance to the proceeding. In accordance with the provisions of *Directive 031*, the Board finds that a reduction in the claimed amount for professional fees is warranted, and reduces the amount awarded for Dr. Gilbert's professional fees by one-third (1/3).

With regard to the claimed expenses, the Board is mindful that Dr. Gilbert travelled from Ontario to the hearing. As such, the Board makes an award of costs for Dr. Gilbert's claimed airfare.

The Board declines to award the claimed amounts for accommodation and meal expenses, as these are not in accordance with the provisions of *Directive 031*. Dr. Gilbert was empanelled as a witness on October 27, 2010, and as such, his claimed accommodation and meal expenses

exceed the daily tariffs provided for in Appendix E of *Directive 031*. No submissions were provided supporting the exceedances. In light of the time spent at the hearing and the travel involved, the Board makes an award of \$291.20 in accommodation costs representative of two nights' accommodation, and \$120.00 in meal costs representative of three days of meal expenses for Dr. Gilbert.

The Board however declines to award the claimed amounts for mileage, parking, and car rental/gas, as these are both unsupported by the cost claim and are not in accordance with the provisions of *Directive 031*. The Board is, however, prepared to award \$141.40 in mileage expenses, \$53.33 in parking, and \$266.33 in car rental/gas expenses.

As such, the Board hereby makes an award of costs to Ackroyd LLP for the professional fees and expenses and disbursements of Dr. Gilbert as follows:

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|---------------|---------------------------|---------------------------|------------|------------------------------------|------------------------------------|------------|
| Barry Gilbert | \$8,400.00 | \$5,600.00 | \$2,800.00 | \$2,912.71 | \$1,496.63 | \$1,416.08 |

9.4 Summary of Costs Awarded

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|----------------|---------------------------|---------------------------|------------|------------------------------------|------------------------------------|------------|
| Cliff Wallis | \$11,687.50 | \$5,843.75 | \$5,843.75 | \$825.84 | \$438.21 | \$387.63 |
| Cleve Wershler | \$12,625.00 | \$6,312.50 | \$6,312.50 | \$406.08 | \$391.08 | \$215.00 |
| Peter Lee | \$11,070.00 | \$2,767.50 | \$8,302.50 | \$4,400.10 | \$382.60 | \$4,017.50 |
| Barry Gilbert | \$8,400.00 | \$5,600.00 | \$2,800.00 | \$2,912.71 | \$1,496.63 | \$1,416.08 |

10 COST CLAIM 3

In Form E1 of its January 4, 2011, revised Cost Claim 3, the CCWC claimed \$39,590.45 in professional fees and \$2,029.17 in expenses for Dr. Shuming Du, \$64,327.50 in fees and \$2,057.34 in expenses for Dr. Edelstein, and \$38,880.00 in fees and \$1,278.54 in expenses for Dr. Batterman. Shell responded to the original Cost Claim 3 filed by the CCWC on January 10, 2011, and the CCWC submitted a final reply on January 31, 2011. Each of these claims will be considered in turn below.

The Board notes that the CCWC submitted two differing versions of Cost Claim 3: a December 1, 2010, version and a January 4, 2011, version. It submitted the January 4, 2011, version of Cost Claim 3 to the Board after the expiration of the deadline for submission of those claims, namely, December 1, 2010, and did not obtain leave of the Board to file this late revised version, simply stating in the cover letter of the January 4, 2011, submission that they had neglected to include some receipts for one of their witnesses. Further, in the revised version, the CCWC failed to indicate what had been revised from its original December 1, 2010, version. Both the December 1, 2010, as well as the January 4, 2011, Cost Claim 3 were particularly poorly organized and contained numerous receipts with little or no explanation of on whose behalf these were intended to apply, which claims they had been included in, or what they were for. All of the above

rendered the Board's consideration of the CCWC's Cost Claim 3 much more difficult and time intensive than had it been properly submitted.

While both the December 1, 2010, as well as the January 4, 2011, Cost Claim 3 were particularly poorly organized to the point of almost not being able to be considered by the Board, out of an abundance of fairness to the individual interveners at whose expense the expert witnesses may or may not have been retained, the Board has decided to proceed to consider both versions of Cost Claim 3 as they pertain to the costs claimed on behalf of Dr. Du, Dr. Edelstein, and Dr. Batterman.

10.1 Shuming Du

In Form E1 of its January 4, 2011 Cost Claim 3, the CCWC claimed \$39,590.45 in professional fees and \$2,029.17 in expenses for Dr. Shuming Du.

10.1.1 Views of Shell

Shell submitted that Dr. Du's evidence was of little assistance to the Board given its inherent errors, many of which he conceded during his testimony, and given that portions of his evidence were policy related and contained criticism of the Board's ERCBH2S model.

Shell stated that under cross examination, Dr. Du acknowledged he may have made errors in his modelling with regard to surface roughness, which he conceded would result in an overestimation of the hazard zone relevant to Shell's proposed project. He indicated under cross-examination that he would like the Board to advise him whether his approach to surface roughness was reasonable. Shell stated he also questioned the validity of the Board's ERCBH2S model, which was a policy matter beyond the scope of the hearing.

Shell also submitted that both Dr. Du's hourly rate of \$235.00 and his incurring over 149 hours of preparation time were excessive. Shell pointed to the Board's decision in *ECO 2009-009*, and argued that, similarly, Dr. Du's hourly rate and/or his total costs awarded should be significantly reduced for this proceeding. It stated that, in that decision, the Board reduced Dr. Du's claim by fifty percent (50%) on the basis that his costs for preparation were excessive and because a portion of his report critiqued existing Board directives and dispersion modelling, which are generally policy related matters that do not qualify for costs. Shell also pointed to the Board's decision in *ECO 2010-002*, where Dr. Du's costs claim was reduced by fifty percent (50%) on the basis that it was excessive and that an inordinate amount of time was spent on alternative modelling, critiquing Board models, and on preparing evidence. Shell also referred to *ECO 2009-006*, where the Board reduced his fees by forty percent (40%) on the basis that his work contained errors and omissions that affected the credibility of the evidence that he provided.

Shell argued that since portions of his evidence were beyond the scope of the hearing and contained significant errors, any costs awarded to Dr. Du should be significantly reduced as a result and in accordance with previous Board decisions, and that in this matter, any costs awarded should be reduced by at least fifty percent (50%).

10.1.2 Views of the CCWC

The CCWC disagreed that Dr. Du used the hearing to challenge and critique Board modelling and approaches. It argued that he provided his opinion on how impacts could be assessed alternatively and more appropriately, including the use of CALPUFF modelling as an alternative for the Board to consider, which allows for a higher capability of handling complex terrain.

The CCWC submitted that Dr. Du conducted modelling to assist the Board to reach its decision on Shell's applications, and to provide a critique of Shell's risk analysis. It argued that in *ECO 2009-004* and *ECO 2008-005*, the Board found Dr. Du's evidence to be of some assistance to it in its decisions on those applications.

10.1.3 Views of the Sheppard-Barbero group

In its cost submissions dated November 25, 2010, and January 31, 2011, the Sheppard-Barbero group submitted that Dr. Du performed modelling to determine the concentration of certain pollutants and to critique Shell's risk analysis. They argued that little of his report was a critique of Board modelling and therefore little or nothing should be deducted on account of that assertion.

10.1.4 Views of the Board

Having considered all of the foregoing, and with regard to the claimed professional fees, the Board finds that the evidence given by Dr. Du was of no assistance to the Board in its decision on the applications, as can be seen in *2001 ABERCB 007*. His inputs into the H₂S model he used for these applications, CALPUFF, were not justifiable and the use of default settings resulted in elevated plumes over lower elevations, which was also not appropriate. The Board also notes that in each of three previous cost decisions, namely, *ECO 2009-06*, *ECO 2009-09*, and *ECO 2010-02*, the Board reduced Dr. Du's claimed costs by forty to fifty per cent. As is the case in the current proceeding, his evidence at those previous hearings was not found to be useful or of assistance to the Board in its decision on the applications. In light of all of the foregoing, the Board declines to make any award of costs for his professional fees.

With regard to Dr. Du's claimed expenses, the Board finds that the amount claimed for car rental was reasonable in light of the circumstances, and awards it in full. However, the Board declines to award the amounts claimed for the remainder of his expenses, as these amounts were unsupported by proper, or any, documentation, or were not in accordance with the provisions of *Directive 031*. The Board, however, is prepared to make an award of costs for accommodation expenses in the amount of \$291.20 representing two nights accommodation, \$120.00 in meals representing three days of meal expenses based on his one day of attendance at the hearing, as well as his two days of travel to and from the hearing to his residence in California, and \$137.70 in taxi expenses for his attendance at the hearing on the afternoon of October 28, 2010, where he gave evidence on behalf of the CCWC, Mr. Judd, and the Sheppard-Barbero group. The Board declines to make any award for airfare expenses, as these were wholly unsupported by any documentation. Appendix E of *Directive 031* is clear that claims for airfare must be accompanied by a receipt supporting the claim.

Accordingly, the Board hereby makes an award of costs to Ackroyd LLP for expert fees and expenses for Dr. Du as follows:

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|----------------|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|------------|
| Dr. Shuming Du | \$39,590.45 | \$0 | \$39,590.45 | \$2,029.17 | \$879.52 | \$1,149.65 |

10.2 Roger Edelstein

In Form E1 of its January 4, 2011, revised cost claim, the CCWC claimed \$64,327.50 in fees and \$2,057.34 in expenses for Dr. Edelstein.

10.2.1 Views of Shell

Dr. Edelstein's evidence focused on some of the psycho-social impacts of Shell's existing facilities and proposed activities in the area on some of the hearing participants. His evidence focused on perceived changes to their quality of life and psychological well-being as a result of Shell's existing operations as well as approval of the subject applications. Shell stated it filed the report of Dr. Murray Lee, which was entered as an exhibit at the hearing and referenced by Dr. Edelstein during his evidence at the hearing.

Shell submitted Dr. Edelstein's evidence was unnecessary as it was duplicative of the written and oral evidence provided by the participants themselves. Shell argued that his report was essentially a summary of the evidence of the various hearing participants he interviewed, often with his own inflammatory commentary added, and that much of the report related to Shell's historical operations in the area rather than the applications before the Board.

Shell was concerned with the quantum of costs claimed for Dr. Edelstein's professional fees, as his report consisted primarily of excerpts and summaries of interviews, along with some commentary added. Shell asserted that the 150 hours of preparation was excessive and unjustified under the circumstances, and that there was no reason for Dr. Edelstein to have attended the hearing for over 88 hours. Accordingly, Shell submitted that the CCWC's claimed costs in connection with Dr. Edelstein's report should be rejected in full, or at a minimum, reduced by at least seventy-five per cent (75%).

With respect to the claimed expenses for Dr. Edelstein, Shell submitted that the \$324.00 charge for a limousine to the airport was excessive and should be reduced to \$60.00 to reflect a reasonable amount for taxi fare or airport parking.

10.2.2 Views of the CCWC

The CCWC submitted that Dr. Edelstein analyzed the effects that Shell's proposed project, as well as its existing operations, had on hearing participants, and that his report provided an expert analysis of their concerns and psycho-social impacts upon them, which was helpful to the Board. The CCWC submitted that Shell did not offer Dr. Lee as an expert available for cross-examination, nor did Dr. Lee attend the hearing, either to provide direct or rebuttal evidence, and that as such, Dr. Lee's evidence could not be properly tendered to contradict that of Dr. Edelstein. The CCWC submitted that the costs claimed for Dr. Edelstein were reasonable and should be granted.

10.2.3 Views of the Sheppard-Barbero group

In its cost submissions dated November 25, 2010, and January 31, 2011, the Sheppard-Barbero group submitted that Dr. Edelstein's expertise was needed to provide a psycho-social perspective on what the hearing participants are and will be experiencing, as they were concerned the Board would not take their evidence on psycho-social impacts as being valuable without such an analysis. In order to provide an opinion, Dr. Edelstein met with many of the hearing participants to understand and assess their concerns. Ms. Klimek did not agree that he spent too much time focusing on past impacts and argued that one of the best predictors of future impacts are past impacts, which also provided the contextual setting in which the applications had to be considered. She also argued that no weight should be given to Dr. Lee's report, as he did not attend the hearing and therefore his evidence could not be tested. She stated that had she been aware of this, Dr. Edelstein would not have incurred time addressing this report in his evidence.

10.2.4 Views of the Board

Having considered all of the foregoing, and with regard to the claimed professional fees, the Board finds that the evidence given by Dr. Edelstein was not useful to the Board in its decision on the applications, as reflected by an absence of any specific reference to it in *2011 ABERCB 007*. The Board finds that his evidence was merely a summary of the concerns of hearing participants, which he had gleaned from brief interviews with them, and to which he had added some of his opinions and impressions.

In stark contrast, the Board found the evidence given by hearing participants themselves to be very useful, and notes the evidence given by the Sheppards, the Barberos, Ms. Voth, and other hearing participants who were empanelled as lay witnesses, and finds that their first-hand evidence was not only helpful to the Board in its decision on the applications, but was also highly preferable to a summary of their evidence given by a third party with additional commentary included. The Board generally prefers hearing the concerns of hearing participants and interveners in a first-hand manner directly from the individuals themselves, as this type of evidence is the most forthright manner in which the Board is able to hear concerns and take them into account in their decision on any given application. The Board encourages this type of often high-value evidence, where appropriate, and was pleased to have received it at the hearing of these applications. Such evidence is invariably to be preferred over that of a third party who interviews local residents and then attempts to provide in evidence a summary of what he heard and an opinion about the psycho-social impacts he believes the individuals he interviewed have experienced or may experience in the future.

The Board also notes the amounts claimed by the CCWC for Dr. Edelstein's travel time and hearing attendance, and also notes the comments of Shell on these matters. In Form E2 of the Cost Claim 3 submitted January 4, 2011, the CCWC claims 88 hours of hearing attendance time for Dr. Edelstein. However, the Board notes that Dr. Edelstein was empanelled as a witness during the afternoon of October 28, 2010, and that the CCWC did not submit that his attendance at the hearing at any other time was required or justifiable.

With regard to the claimed travel time, the Board notes that in the miscellaneous grouping of receipts contained in the January 4, 2011, Cost Claim 3, Dr. Edelstein's Detailed Time Log states that he recorded 20 hours of travel time on October 27, 2010, 4 hours of travel time on October 28, 2010, and 15 hours of travel time on October 29, 2010. However, Dr. Edelstein's flight

information, also contained in the miscellaneous grouping of receipts contained in the January 4, 2011 Cost Claim 3, shows that he arrived in Calgary at 8:57 p.m. on October 27, 2010, and that he departed Calgary for his return to New Jersey at 10:20 a.m. on October 30, 2010. Both flights were shown as non-stop flights. No further breakdown of the claimed travel time was provided by the CCWC to explain these inconsistencies.

Having regard to all of the foregoing, the Board declines to award the amounts claimed for Dr. Edelstein's professional fees. The Board is, however, prepared to make an award of costs for eight hours of hearing attendance time, representing his one day of attendance at the hearing, at the hourly rate of \$270.00. Despite the discrepancies in the travel time recorded by Dr. Edelstein, the Board is prepared to make an award for travel time of 20 hours at half of Dr. Edelstein's hourly rate, namely \$135.00 per hour, representing 10 hours of travel each way (1 hour of travel from Dr. Edelstein's home to the Newark airport, a 6 hour direct flight to Calgary, and 3 hours of vehicle travel from Calgary to Pincher Creek, and vice-versa).

With regard to the claimed expenses for Dr. Edelstein, the Board awards the amounts claimed for mileage, parking, fax, and external printing, as these appear to be reasonable under all of the circumstances.

The Board declines to award the claimed amounts for airfare and meals, as the claimed amounts are not in accordance with the provisions of *Directive 031*. Appendix E of *Directive 031* provides that claims for airfare, accommodation and meals are restricted to the hearing phase of a proceeding, and that claims for airfare must be accompanied by a receipt supporting the claim. As such, the Board is prepared to award \$291.20 representing two nights' accommodation and \$120.00 representing three days of meal expenses based on his one day of attendance at the hearing, as well as his two days of travel to and from the hearing to his residence in New Jersey. The Board declines to make any award of costs for the claimed taxi expenses, as these are not reasonable under the circumstances. The Board also declines to make any award for the claimed airfare expenses, as these were wholly unsupported by any documentation.

Accordingly, the Board hereby makes an award of costs to Ackroyd LLP on behalf of the CCWC, Mr. Judd, and the Sheppard-Barbero group for expert fees and expenses for Dr. Edelstein as follows:

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|---------------------|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|------------|
| Dr. Roger Edelstein | \$64,327.50 | \$4,860.00. | \$59,467.50 | \$2,057.34 | \$601.73 | \$1,455.61 |

10.3 Stuart Batterman

In Form E1 of its January 4, 2011, Cost Claim, the CCWC claimed \$38,880.00 in fees and \$1,278.54 in expenses for Dr. Batterman.

10.3.1 Views of Shell

Shell submitted that Dr. Batterman should not qualify for costs because the bulk of his evidence related to policy matters which were outside of the jurisdiction of the Board and unrelated to the applications, and therefore were of no assistance to the Board in considering the issues before it.

Shell submitted that these claims for costs should be denied in their entirety or significantly reduced.

Shell submitted that a significant portion of Dr. Batterman's evidence involved a review and critique of work undertaken by Alberta Health and Wellness in 2002 regarding the effects of hydrogen sulphide exposure, as well as a review and critique of the Board's ERCBH2S model methodology. As Shell indicated at the hearing and as the Board has confirmed on several occasions, such broader policy considerations are outside the scope of a hearing for a particular application, and such hearings are not the forum in which to debate the criteria or thresholds established by the Board and other government agencies. Dr. Batterman acknowledged under cross-examination that he had little or no experience with or knowledge of the Alberta Health and Wellness study until his preparation for this hearing. Therefore, Shell argued his evidence was not credible given his lack of experience and expertise in these areas.

Shell submitted that Dr. Batterman's evidence was of little utility to the Board because it was contrary to the Board's regulatory requirements and contrary to common and widely accepted understandings of sour gas.

Shell submitted that Dr. Batterman inaccurately opined upon Alberta's environmental legislation and requirements, particularly the role of the Alberta *Environmental Protection and Enhancement Act (EPEA)* and *Canadian Environmental Assessment Act (CEAA)* in evaluating cumulative effects related to applications before the Board. He mischaracterized *IL 93-09* as mandating applicants to prepare and submit a cumulative risk assessment and/or human health risk assessment. Shell submitted that all of these errors reflected a lack of understanding of the Alberta regulatory regime applicable to sour gas development and further undermined Dr. Batterman's credibility and detracted from the usefulness of his evidence.

Shell further submitted that the claimed 116 hours of preparation time was excessive, and that given Dr. Batterman's unfamiliarity with the matters he considered, his preparation took significantly longer than what should otherwise have been required. Given these concerns, Shell submitted that his evidence should not qualify for costs as it focused on policy matters outside the scope of the hearing and contained material errors that undermined its credibility.

10.3.2 Views of the CCWC

The CCWC submitted that Dr. Batterman provided the Board with a critique of Shell's applications within the areas of public safety concerns, risk assessment, and human health hazards and risks. While he did examine and give evidence upon the matter of H₂S guidelines, the CCWC argued that the bulk of his evidence related to possible and probable hazards and risks to human health, historic failures and failure rates in the area and the potential ramifications to public safety in that regard. The CCWC submitted that this evidence was of assistance to the Board, particularly in the context of the direction set out in *Decision 2008-127*.

10.3.3 Views of the Board

Having considered all of the foregoing, and with regard to the claimed professional fees, the Board finds that the evidence given by Dr. Batterman generally, and particularly with regard to risk assessment as well as sulphur dioxide and H₂S modelling, was of limited assistance to the Board in its decision on the applications, as detailed in Sections 5.3.2 and 6.3.3 of *2011 ABERCB*

007. The Board rejected his statement that the risk of ignited H₂S resulting in an SO₂ release may be greater than an un-ignited H₂S release, and found that he was confused as to what endpoints the Board uses in its modelling.

The Board also finds that his evidence regarding the Alberta Health and Wellness study, Alberta's environmental legislation and requirements, and the ERCBH₂S model itself, were not only of no assistance to the Board in its decision on the applications, but are also costs which are not generally considered eligible for reimbursement pursuant to Section 4.1 of *Directive 031*, as they concern policy or legislative changes outside of the scope of the proceeding, and which are more properly placed before the government of a Member of the Legislative Assembly.

The Board notes, however, that Dr. Batterman's evidence regarding risk assessments and the inappropriate failure frequencies used by Shell in its risk assessment was of some assistance to the Board in its decision on the applications, as can be seen at Section 6.3.2 of *2011 ABERCB 007*.

The Board also notes the comments of Shell with regard to the quantum of claimed professional fees and the reasonableness of the hours claimed. The Board notes that Dr. Batterman was empanelled as a witness during the morning of October 29, 2010, and incurred two days of travel time to and from Michigan in order to appear at the hearing.

Having considered all of the foregoing, the Board awards fifty per cent (50%) of Dr. Batterman's claimed professional fees, as the preponderance of his evidence was of limited assistance to the Board in its decision on these applications, for the foregoing reasons.

With regard to the claimed professional expenses, the Board declines to award the claimed amounts, as these were not supported by proper, or in some cases any, supporting documentation or receipts, and were also not eligible for consideration pursuant to the provisions of *Directive 031*.

With regard to the claimed airfare expenses, Appendix E of *Directive 031* provides that claims for airfare expenses are restricted to the hearing phase of a proceeding and must be accompanied by a receipt supporting the claim. As the claimed airfare expenses were either incurred outside of the hearing phase of the proceeding or were wholly unsupported by any documentation whatsoever, the Board declines to make any award for airfare expenses.

The Board declines to award the claimed amount for accommodation expenses, but is prepared to award \$291.20 in accommodation expenses representing two nights' accommodation.

With regard to the claimed meal expenses, the claimed amounts are not in accordance with the provisions of *Directive 031*. Appendix E provides that the maximum allowable claim for meals is \$40.00 per day, and that claims for meal expenses are restricted to the hearing phase of a proceeding. As such, the Board is prepared to award \$120.00 for three days of meal expenses representing his one day of attendance at the hearing, as well as his two days of travel.

With regard to the claimed parking and mileage expenses, not only were the claimed amounts not supported by any proper documentation in the December 1, 2010, or the January 4, 2011, cost claims, but most of the claimed expenses were incurred outside of the hearing phase of the proceeding and are therefore ineligible for reimbursement. The Board declines to award the amounts claimed for these expenses, but is prepared to award \$48.48 in mileage expenses and

\$80.00 in parking expenses, as the materials provided in the cost claims show that these were supported by documentation and incurred during the hearing phase of the proceeding.

Accordingly, the Board hereby makes an award of costs to Ackroyd LLP for expert fees and expenses for Dr. Batterman as follows:

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|----------------------|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|-----------|
| Dr. Stuart Batterman | \$38,880.00 | \$19,440.00 | \$19,440.00 | \$1,278.54 | \$539.68 | \$738.86 |

10.3.4 Summary of Costs Awarded

| | Professional fees claimed | Professional fees awarded | Reduction | Disbursements and expenses claimed | Disbursements and expenses awarded | Reduction |
|----------------------|---------------------------|---------------------------|-------------|------------------------------------|------------------------------------|------------|
| Dr. Shuming Du | \$39,590.45 | \$0.00 | \$39,590.45 | \$2,029.17 | \$879.52 | \$1,149.65 |
| Dr. Roger Edelstein | \$64,327.50 | \$4,860.00 | \$59,467.50 | \$2,057.34 | \$601.73 | \$1,455.61 |
| Dr. Stuart Batterman | \$38,880.00 | \$19,440.00 | \$19,440.00 | \$1,278.54 | \$539.68 | \$738.86 |

11 FURTHER RECOMMENDATIONS

The Board notes that there were a number of witnesses presented at the hearing of these applications who gave evidence primarily or wholly related to government policy matters and legislative change. Section 4.1 of *Directive 031* is abundantly clear that costs related to such evidence are not considered reasonable submissions for cost purposes. The Board also notes that Ms. Klimek, Ms. Bishop, and Mr. Sawyer have all previously filed cost claims with the Board pursuant to *Directive 031* and are presumably familiar with the content of that Directive. In light of all of the above, the Board is particularly disappointed that despite the clear direction in *Directive 031* that such evidence is not considered reasonable for cost purposes and despite the familiarity of the interveners' representatives with this direction of the Board, this evidence was still presented at the hearing of these applications. The Board expects hearing participants and their representatives to follow Board guidance with regard to reasonably incurred costs and not to engage in conduct that contravenes clear Board direction.

The Board also notes the numerous reductions it has made to costs claimed by many of the interveners' expert witnesses in this proceeding. At section 10.2.4 above, the Board stated that it generally prefers hearing the concerns of interveners and other hearing participants in a first-hand manner, directly from the individuals themselves, as this type of evidence is highly valued and is often given in the most forthright manner, which in turn best enables the Board to understand parties' concerns and take them into account in its decision on an application. The Board is nevertheless aware that there are matters which hearing participants themselves may not be able to address and which may therefore necessitate the retention of an expert to give evidence on these issues at a hearing. Decisions to engage an expert should not be taken lightly or without due regard for the prospect that not all (or even any) of the expenses relating to that expert may be eligible for a local intervener cost award. The Board expects counsel or

representatives to discharge their professional responsibilities to their clients, including accurately and realistically advising their clients about what issues in a given proceeding may require expert assistance or evidence, as well as the potential cost implications of accepting their advice and recommendations on retaining expert witnesses. This should be done well in advance of the hearing so that hearing participants are fully informed and understand all of the substantive and cost implications of decisions they may make concerning the nature and content of their intervention in the proceeding.

12 ORDER

It is hereby ordered that

- 1) The Board approves local intervener costs for the Sheppard Barbero group in the amount of \$171,665.92, including GST. The Sheppard-Barbero group received an award of advance funding from Shell on or about August 23, 2010, in the amount of \$37,500.00. This payment is hereby subtracted from the awarded amount of \$171,665.92, for a final total amount awarded of **\$134,165.92**, payable to Klimek Law, 240 4808 - 87 Street, Edmonton, AB T6E 5W3.
- 2) The Board approves local intervener costs for Elaine and Will Voth in the amount of \$80,203.90, including GST. The Board made an award of advance funding to the CCWC in the amount of \$37,500.00 on or about August 23, 2010. This payment is hereby subtracted from the awarded amount of \$80,203.90, for a final total amount awarded of **\$42,703.90**, payable to Ackroyd LLP, 1500 First Edmonton Place, 10665 Jasper Avenue, Edmonton AB T5J 3S9.
- 3) The Board approves local intervener costs for Mr. Judd in the amount of \$36,956.76, including GST. Mr. Judd received an award of advance funding on July 19, 2010 in the amount of \$10,000.00. This payment is hereby subtracted from the awarded amount of \$36,956.76, for a final total amount awarded of **\$26,956.76**, payable to Hayduke & Associates, 1109 Maggie Street SE, Calgary AB T2G 4L8.
- 4) The Board approves local intervener costs claimed for the witnesses listed in Cost Claim 2 in the final total amount awarded of **\$24,393.88**, including GST. This amount is payable to Ackroyd LLP as the submitter of the claims.
- 5) The Board approves local intervener costs claimed for the witnesses listed in Cost Claim 3 in the final total amount awarded of **\$27,636.98**, including GST. This amount is payable to Ackroyd LLP as the submitter of the claims.

Dated in Calgary, Alberta, on November 7, 2011.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

M. J. Bruni, Q.C.
Presiding Member

<original signed by>

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

<original signed by>

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

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED

This appendix is unavailable on the ERCB website. To order a copy of this appendix, contact ERCB Information Services toll-free at 1-855-297-8311.