West Energy Ltd.

Application for a well licence
Pembina Field

Cost Awards

September 11, 2012

ENERGY RESOURCES CONSERVATION BOARD
Energy Cost Order 2012-008: West Energy Ltd., Application for a Well Licence, Pembina Field

September 11, 2012

Published by

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CONTENTS

ENERGY RESOURCES CONSERVATION BOARD
Calgary Alberta

WEST ENERGY LTD. **Energy Cost Order 2012-008**
APPLICATION FOR A WELL LICENCE **Application No. 1623557**
PEMBINA FIELD **Cost Application No. 1649070**

INTRODUCTION

Background

[1] West Energy Ltd. (West) applied to the ERCB in accordance with Section 2.020 of the *Oil and Gas Conservation Regulations* for a licence to drill a directional well from a surface location in Legal Subdivision (LSD) 11, Section 32, Township 49, Range 5, West of the 5th Meridian to a projected bottomhole location in LSD 4-32-49-5W5M. The maximum hydrogen sulphide (H_2S) concentration is predicted to be about 211.5 moles per kilomole (21.15 per cent) and the cumulative drilling H_2S release rate would be 1.51 cubic metres per second with a corresponding emergency planning zone of 2.10 kilometres (km). The purpose of the well would be to obtain oil production from the Nisku formation. The proposed well would be located about 4.8 km northwest of Lindale.

[2] Daylight Energy (Daylight) is the corporate successor by amalgamation to West, the applicant in Application No. 1623557. Following the close of the hearing and the cost submissions process in this matter, Daylight amalgamated into Sinopec Daylight Energy Ltd. effective December 23, 2011. The Board will refer to the applicant throughout this decision as West for ease of reference, and any order of costs it makes herein is binding upon all corporate successors of West, including Sinopec Daylight Energy Ltd.

[3] The Board issued a Notice of Hearing on February 2, 2010, a Notice of Postponement of Hearing on March 15, 2010, and a Notice of Rescheduling of Hearing on March 16, 2010.

[4] The Board held a public hearing in Drayton Valley, Alberta, beginning on April 7 and concluding on April 9, 2010, before Board Members G. J. Miller (Presiding Member), B. T. McManus, Q.C., and R. J. Willard, P.Eng.

[5] The Board issued its decision on the application via *Decision 2010-027*, dated July 6, 2010.

[6] John Logan and Bonnie Logan (the Logans) sought a determination from the Board that they met the requirements of subsection 26(2) of the *Energy Resources Conservation Act* (ERCA) by way of letters dated January 20, 2009, and October 2, 2009, prior to the commencement of the hearing. On or about February 2, 2010, the Board found that the Logans had met the requirements of subsection 26(2) of the ERCA and that they qualified as subsection 26(2) hearing participants for the purposes of this application. The Logans filed interventions regarding the application prior to the hearing and participated at the hearing.

[7] Cheryl Kerpan and Dr. Timothy Losey (the Loseys) sought a determination from the Board that they met the requirements of subsection 26(2) of the ERCA on February 19, 2010, prior to the commencement of the hearing. By way of letter dated March 3, 2010, the Board

found that the Loseys had not met the requirements of subsection 26(2) of the ERCA and that as such they did not qualify as subsection 26(2) hearing participants. In that same letter, the Board advised the Loseys that they would be given an opportunity to make a brief submission of relevant information at the hearing of the application as discretionary participants if they so wished, that this opportunity was being advanced to them by virtue of the fact that there were other parties that had been granted subsection 26(2) standing to trigger and participate in a hearing, and that should the parties with subsection 26(2) standing withdraw their objections to the proposed well, the Board could cancel the hearing.

Cost Claims submitted to the Board following the hearing

[8] On April 28, 2010, the Loseys submitted a cost claim to the Board in the amount of $2200.96. On May 7, 2010, the Logans submitted a cost claim to the Board in the amount of $66 494.18. On May 19, 2010, and May 25, 2010, West submitted comments to the cost claims of the Loseys and the Logans, respectively. On June 4 and June 24, 2010, respectively, the Loseys and the Logans submitted their final replies.

[9] The Board considers the cost process to have closed on or about July 1, 2010.

[10] Following the closure of the costs process, the Board deferred making the costs decisions herein pending the conclusion of litigation in the Alberta Court of Appeal. Upon completion of same, the Board then proceeded to make its decision on the cost claims arising from this hearing, which follows below.

VIEWS OF THE BOARD – AUTHORITY TO AWARD COSTS

[11] In determining local intervener costs, the Board is guided by its enabling legislation, in particular by section 28 of the 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.

[12] 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).*

Subsection 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.

[13] In addition to the above-mentioned legislative provisions that apply when the Board is considering awards for costs to persons or groups 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. In *Smith* v. *Alliance Pipeline Ltd.*, 2011 SCC 7, the Supreme Court of Canada dealt with, among other things, the jurisdiction of administrative tribunals 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. Accordingly, the Board has considerable discretion when making cost awards to persons or groups who qualify as local interveners which stem from proceedings that have taken place before it.

[14] 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.

COST CLAIM OF THE LOGANS

[15] On May 7, 2010, the Logans filed a cost claim for legal fees and expenses of $37 022.36, expert fees and expenses of $25 640.88, intervener honoraria in the amount of $2000.00, and GST in the amount of $1830.94, for a total claim of $66 494.18.

[16] With regard to their claimed legal fees and expenses, the Logans submitted that they retained Klimek Law to represent them at the hearing. Their claimed legal fees are for time spent by their counsel explaining the hearing process to them and meeting with them and for time spent by their counsel preparing for and attending the hearing. The Logans submitted that all of this work was necessary in order for them to be adequately prepared, and that reducing any of this time would have meant a less effective intervention.

[17] With regard to the claimed expert fees and expenses, the Logans submitted that they retained Dr. Shuming Du, a meteorologist, to conduct dispersion modelling of SO_2 with a focus on flaring and the potential effects of a release from the well. The Logans have health sensitivities and were concerned about being exposed to SO_2. While the Board and *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry* do not require the calculation of SO_2 response zones, due to their health sensitivities, they wished to understand what they could be exposed to in various scenarios.

[18] With regard to the claimed local intervener honoraria, the Logans submitted they had to deal with West, understand the hearing process, read the application, discuss it with family members, and participate in the hearing. They argued that since the hearing involved "very long hours," they should be granted above-average honoraria for attending the hearing.

Views of West

[19] West responded on May 25, 2010 to the cost claim of the Logans. West submitted that the amount of the Logan cost claim was seriously excessive and should be significantly reduced.

[20] With regard to the claimed legal fees and expenses, West submitted that counsel for the Logans, Ms. Klimek, was responsible for the preparation of their intervention, evidence, and participation at the hearing, including the decision to retain Dr. Du, whose evidence added very little to the record that was of assistance to the Board in determining whether to approve the application filed by West. West submitted that not only should Dr. Du's costs be significantly reduced or eliminated, but so should Ms. Klimek's, as it was her decision to retain Dr. Du.

[21] West submitted that similarly, it was Ms. Klimek's decision as counsel to have the Logans submit confidential information and to have them provide that evidence to the Board in an in camera session. Neither the confidential information submitted by the Logans nor the evidence relating to their health sensitivities tendered during the in camera session was of any real assistance to the Board. West submitted that there are people all over Alberta living next to sour wells who have health conditions. This means that operators must be aware of and account for such individuals in their emergency response planning, but this does not mean that sour development is not permitted.

[22] West submitted that the Logans refused to talk to West prior to the hearing in any meaningful way, including giving West information relating to their health sensitivities. Instead, the Logans chose to withhold this information until the hearing, at which their counsel pursued a line of cross-examination the thrust of which was that West would not be able to locate the Logans should an emergency occur if the Logans continued to refuse to provide West with important personal information. West submitted this was not appropriate and not of assistance to the Board.

[23] West noted four different time entries in the Klimek Law account for legal fees for meeting with clients, totaling 10.5 hours, and submitted this was excessive. West also noted a claim for 9.5 hours of paralegal time, which it submitted was not in accordance with *Directive 031*.

[24] With regard to the claimed expert fees and expenses for Dr. Du, West noted that his Statement of Account indicated he spent 120 hours on this matter, with 89 hours for preparation, 19.25 hours for travel, 10.25 hours for hearing attendance, and 1.5 hours for argument and reply. West submitted that the amount of time spent and the amount of costs claimed were excessive, and that Dr. Du's written report and oral evidence added very little to the record that was of assistance to the Board in determining whether to approve the application filed by West.

[25] West submitted that Dr. Du's report and evidence consisted of three parts. The first part compared ERCBH2S Model v. 1.19 (update) to v. 1.20. Under cross-examination at the hearing, Dr. Du acknowledged that he understood that West had filed its application under ERCBH2S v. 1.19 (update), not v.1.20. He stated he addressed this issue because he felt strongly that the Board should not move to v. 1.20 but rather that it should stay with v.1.19. Dr. Du agreed this was a policy question for the Board that did not relate to West's

application. Dr. Du acknowledged at the hearing that a portion of his report was directed at attempting to persuade the Board to change its regulations so that when a company submits an application for a sour well, not only should it run the ERCBH2S Model to create the EPZ for the proposed well, it should also do other modelling. He also opined on the propriety of using a fifteen minute ignition time in the event of an uncontrolled well release, a matter in which he acknowledged he is not an expert.

[26] West submitted that the second part of Dr. Du's report and evidence was a critique of the Flare Assessment and Dispersion Modelling Report prepared for West by Integrated Modelling. Dr. Du stated that, in his view, the modelling should have been conducted using the CALPUFF model instead of the ISC-PRIME model, and that the Board should not accept ISC-PRIME modelling. West submitted this was essentially a policy issue for the Board which had nothing to do with West's application. Dr. Du also recommended that the Board not accept West's hypothetical flare management plan, notwithstanding that he stated he understood it was hypothetical only.

[27] West submitted that the third part of Dr. Du's report and evidence addressed potential sulphur dioxide concentrations at the Logans' seasonal residence. Under cross-examination, Dr. Du acknowledged his modelling showed that flaring at the proposed well would not result in exceedances of the ERCB low-risk criteria limit, as did West's modelling.

[28] West submitted that the vast majority, if not all, of Dr. Du's evidence was not relevant or of assistance to the Board in assessing West's application as he also frequently strayed outside his area of expertise. When he remained within his area of expertise, his evidence addressed policy issues for the Board and not issues specific to West's application. West submitted it should not be required to pay Dr. Du's costs in these circumstances, and that the Board should either award no costs at all to Dr. Du or significantly reduce his costs in recognition of the issues identified.

[29] With regard to the claims for intervener honoraria claimed by the Logans, West submitted that their claims for $1000.00 in preparation honoraria and $1000.00 in attendance honoraria were excessive. West requested that the Board use its discretion in awarding an appropriate amount.

Views of the Logans

[30] The Logans provided their final reply on June 23, 2010. They argued that the Board has a mandate to provide a forum for citizens to raise their concerns, that the awarding of costs for a Board hearing is not based on who "wins the debate," and that the Board should consider whether interveners who want to bring their concerns to the Board should be compensated.

[31] The Logans argued that section 26 of the ERCA allows those who are potentially directly and adversely affected to participate in a hearing, and that *Directive 031* allows for interveners to be reimbursed their costs for participating in the hearing. They argued that in order to award costs, the Board does not have to agree with everything or anything the interveners submit and that the question is whether the Logans acted reasonably and diligently. The Logans submitted that they did so.

[32] The Logans argued that West's position was essentially that since wells are drilled near sick people in other areas of Alberta, the Logans' health status and concerns about the effect of H_2S and SO^2 were irrelevant. The Logans argued that the Board has previously denied applications or imposed conditions on approvals due to residents' health and pointed to *Decision 2001-09*, where they submitted the Board refused a license because of its impact on a resident who had health concerns and *Decision 2008-135*, where they submitted the Board imposed conditions as a result of the health concerns of a resident. The Logans submitted that individual circumstances are and should be relevant and that if the Board is not interested in them, this should be made clear.

[33] The Logans argued that West's position was that the Logans should be punished because they did not disclose their health concerns to West prior to the hearing and had refused to give important information to West. The Logans argued that West was well aware of some of their health concerns and that they did not disclose them to West because West had been the subject of a privacy investigation and was found to have disclosed residents' private information. The Logans argued that West had disclosed their health concerns prior to and at the hearing of the application, when they were aware that there was going to be an in camera session regarding same, and that West had also disclosed their health concerns following the hearing.

[34] The Logans argued that they were not specifically asked for information that West claims they refused to provide, but that even if they had, they were under no obligation to disclose it to West.

[35] With respect to their claim for legal fees and expenses, the Logans submitted that these should not be reduced. They submitted that meetings were required to determine if they would retain Klimek Law, to discuss the approach to their intervention, to provide relevant information to their counsel, to review their submission and provide input, and finally to prepare them for the hearing. The Logans submitted that to cut back on time that counsel spends with interveners means that they will be less prepared and that their submissions will not deal with their issues in a thoughtful way.

[36] With respect to their decision to put their evidence on their health concerns before the Board in an in camera session, the Logans submitted they wanted the Board to understand their situation and it would have been stressful for them to do so in a public forum.

[37] The Logans submitted that paralegal costs are permitted in *Directive 031*, and that the claimed paralegal time for compiling a part of the submission, reviewing noncompliance documents, and summarizing them would have been considerably higher if Ms. Klimek had completed these tasks.

[38] With regard to their claim for expert fees and expenses for Dr. Du, the Logans submitted that he is qualified, has appeared before the Board on several occasions, and was retained to conduct refined modelling on SO_2 due to the Logans' health concerns, their desire to know what they would be exposed to during flaring and in the event of a release, and West's refusal of their request to conduct the modelling. The Logans submitted that he reviewed the application, the flare permit application, and ran models to determine what the levels of SO_2 would be at their property.

[39] The Logans acknowledged that Dr. Du discussed what model the Board should use to determine an Emergency Planning Zone (EPZ) but that it was a small part of his report and that it is important for the Board to hear how interveners view these models.

[40] Dr. Du took the position that the Board should be cautious about accepting the fifteen minute ignition time in West's flare permit application because an increase in time would increase the EPZ and because while West stated they could ignite the well within fifteen minutes of making a decision, they would not advise how long it would take them to make the decision to ignite.

[41] The Logans argued that West's position was that flaring is a hypothetical situation, but that they have only one chance to bring their concerns with all aspects of the application before the Board and that while flaring may be hypothetical at the hearing stage, it was still a possibility.

[42] The Logans argued that Dr. Du gave important and useful evidence to the Board in which he stated, among other things, that Alberta Environment did not recommend the model used by the Board, that CALPUFF would give a more accurate prediction of what the Logans would be exposed to, and that the flare management plan discussed at the hearing would not ensure that Alberta Environment's (as it then was) Alberta Ambient Air Quality Objectives (AAAQO) would be met, contrary to the requirements of *Directive 060: Upstream Petroleum Industry Flaring, Incinerating, and Venting* (*Directive 060*) and in the face of the Logans' health concerns.

[43] With regard to their claimed intervener honoraria, the Logans took the position that their costs were reasonable under the circumstances, as they prepared for and attended the hearing at great personal costs and strain to them.

Views of the Board

Legal Fees and Expenses

[44] Having considered all of the foregoing, the Board finds that most of the legal fees incurred by counsel for the Logans were reasonable and necessary in light of the circumstances of this matter. While some of the submissions made by or through their counsel were of assistance to the Board, as can be seen in *Decision 2010-027*, the Board finds that certain reductions to the legal fees and expenses of the Logans are in order, which are detailed below.

[45] With regard to the claimed legal fees, the Board notes that Ms. Klimek appears to have claimed hours in her time dockets which precede the issuance of the Notice of Hearing dated February 2, 2010, without any explanation or argument as to why these fees should be awarded contrary to the provisions of *Directive 031*. In accordance with section 6.3 of *Directive 031*, claims for costs which precede the issuance of a Notice of Hearing will not generally be considered by the Board, absent an explanation proffered by the claiming party as to why these are being claimed in the particular circumstances. In this case, as no explanation or argument was provided by the claiming party as to why they should be awarded by the Board in the circumstances, contrary to the provisions of *Directive 031*, the Board declines to award Ms. Klimek the 13.7 hours at an hourly rate of $350.00 claimed for time spent prior to issuance of the Notice of Hearing dated February 2, 2010.

[46] The Board notes West's comments regarding the legal fees incurred by counsel for the Logans for time spent meeting with them to view their lands and understand the nature of their concerns, among other things. While what constitutes a reasonable amount of time spent in this regard varies in each case depending on the circumstances, the Board encourages such useful expenditures of time by counsel with their clients, with a view to preparing concise, relevant, and meaningful submissions in support of their position on an application before the Board. The claimed time for meeting with clients in this matter does not appear to the Board to be unreasonable under the circumstances.

[47] Accordingly, the Board awards the claimed legal fees minus those which were incurred prior to the Notice of Hearing dated February 2, 2010 as described above in paragraph 45.

[48] With regard to the claimed legal expenses, the Board finds that most of these appear to be generally reasonable and necessary in light of the scope and nature of the proceeding. The claimed expenses relating to courier services, photocopies, airfare, accommodation, and meals are all generally in accordance with the provisions of *Directive 031* and the Board awards them in full.

[49] The Board notes the claim for the amount of $106.36 for "TD Visa various cancellations [*sic*] fees for rebooking flight from March to April 2010." Appendix E of *Directive 031* is clear that claims for airfare which are supported by receipts and incurred during the hearing phase of a proceeding are eligible for reimbursement. However, this particular claim is a claim for administrative or processing fees which is not supported by any receipts or explanation as to why the Board should make an award of costs for it under the circumstances. The Board may, in limited circumstances, consider exercising its discretion to make awards for such administrative or processing fees. However, it will not generally do so where the claiming party (a) supplies no argument or other submissions as to why special circumstances exist or apply in any given case such that the Board should exercise its discretion, and (b) provides no supporting receipts for the fees being claimed to assist the Board in making its determination. In light of the foregoing, the Board declines to make an award of costs for the amount of $106.36 for "TD Visa various cancellations [*sic*] fees for rebooking flight from March to April 2010."

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

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
$34 832.50	$30 037.50	$4795.00	$2189.86	$2083.50	$106.36

Expert fees and expenses

[51] With regard to the expert fees and expenses of Dr. Du, the Board finds that his evidence regarding flaring, West's Emergency Response Plan (ERP), and SO_2 modelling was of very limited assistance to the Board in its decision on the applications, as can be seen in sections 6.3 and 7.3 of *Decision 2010-027*. Dr. Du gave his evidence at the hearing the afternoon of April 8, 2010.

[52] Counsel for the Logans stated in final argument, at pages 671 and 672 of the hearing transcripts, that Dr. Du was retained to determine what the levels of SO_2, if any, would be at their seasonal residence in the event of an ignited release from the well. She stated that West had obtained confirmation from the Board that SO_2 modelling was not necessary in this case, but that despite this, she and the Logans "determined it would be useful" for the Board to have this information.

[53] Dr. Du is a meteorologist who provided evidence about the meteorological data he used in his modelled scenarios of what the SO_2 levels could be at the Logan's seasonal residence, using models that were not recommended by the Board. He also gave evidence regarding flaring and the Board's models, matters which he acknowledged at the hearing that he is not an expert in.

[54] With regard to flaring, the Board in *Decision 2010-027* stated that West had provided its flare assessment report for informational purposes only, that West would be required to submit a flare permit application prior to flaring, and that West's flare permit application would be reviewed in detail in accordance with the requirements of *Directive 060* at the appropriate time. The Board also found that its required modelling was used by West in its flare assessment report, which showed that the requirements of *Directive 060* would be met, and that the CALPUFF modelling, as recommended by Dr. Du, is not a Board requirement. The Board also found that Dr. Du's recommendation to install a higher flare stack would have the effect of making the flare stack and the flaring activity more visible to the community.

[55] With regard to West's ERP, the Board in *Decision 2010-027* found that it would be protective of the public. The Board also noted that Dr. Du had expressed his views on ERCBH2S models, as compared to alternative calculation tools, in the past. The Board reiterated in *Decision 2010-027* that a hearing is not the most effective forum in which to provide feedback or positions about these models, that opinions about the appropriateness of the conservative assumptions made by the ERCB during the development of the models are best dealt with outside of the hearing process which is designed to address the merits or lack of merits of a licensee's application, and that continued criticism of these models is better directed to the Board and not to applicants that must abide by the requirement to use the ERCBH2S model.

[56] With regard to SO_2 modelling, Dr. Du gave evidence at the hearing that he used CALPUFF modelling to model potential SO_2 concentrations at the Logans' seasonal residence arising from both an ignited well release as well as during flaring, and that in both scenarios, there were no exceedances of ERCB low risk criteria, thereby confirming the findings of West's modelling.

[57] Irrespective of the fact that Dr. Du's modelling showed no exceedances, the Board at paragraph 53 of *Decision 2010-027* stated that it does not require applicants to conduct and submit this type of modelling. West's flare assessment report was a preliminary document prepared for informational purposes. West would be required to file applications with the Board prior to any flaring of the applied-for well, should flaring be necessary, and they would be required to satisfy the requirements of *Directive 060* in so doing. The Board also noted that Alberta Environment and Sustainable Resource Development are responsible for

environmental monitoring and reporting via, among other things, the AAAQO and its Air Monitoring Directive (AMD 1989, 2006).

[58] The Board finds that Dr. Du's evidence on policy matters and ERCB models was the same as evidence he was previously cautioned by the Board about providing in the context of an application specific hearing. The Board notes that in three previous cost decisions, namely, *ECO 2009-06*, *ECO 2009-09*, and *ECO 2010-02*, Dr. Du gave this kind of evidence and the Board reduced his claimed costs by forty to fifty per cent. The Board also notes that in *ECO 2011-008* Dr. Du gave this kind of evidence and the Board declined to make any award of costs for his professional fees.

[59] The Board is of the view that it is generally helpful and useful for local interveners to retain independent experts to review application materials and provide evidence regarding same, within the purview of their own expertise. Such expert assistance can produce valuable evidence and information to both assist the landowner to understand complex matters and to assist the Board in making its determination on an application.

[60] However, where such experts give evidence on matters that are not relevant to the application and matters that are outside the scope of the application such as policy decisions, where their evidence ventures outside the boundaries of their expertise, and where any or all of this evidence is given in the face of numerous cautions from the Board that it is not relevant or helpful, the expert and their evidence will generally be found not to be of assistance to the Board in making its decision on an application. The Board discourages such experts and their evidence from attending Board hearings and strives to minimize or eliminate the taking up of valuable hearing time with such irrelevant or improper matters.

[61] In light of the above, the Board finds that Dr. Du's evidence at the hearing was of very limited assistance to it in its decision on the application. However, the Board also notes that his review of West's application materials and the evidence he gave at the hearing regarding same revealed that he had no concerns with the majority of West's application, save the abovementioned matters.

[62] Based on the all of the foregoing, and after careful consideration, the Board is prepared to make an award of costs representing ten per cent (10%) of his professional fees.

[63] The Board is also prepared to make an award of costs for Dr. Du's travel time, which appears to have been included in the claim for his professional fees, based on the information contained in the Logans' May 7, 2010, Cost Claim. Dr. Du's Statement of Account provides that he travelled 9 hours on April 7, 2010, from Sacramento to Drayton Valley and that he travelled 10.25 hours on April 9, 2010, to return to Sacramento from Drayton Valley. As per Appendix E of *Directive 031*, the Board allows professionals half their hourly rate for travel time. The Board is prepared to award half of Dr. Du's $235.00 hourly rate, namely $117.50, for his claimed 19.25 hours of travel time.

[64] With regard to Dr. Du's claimed expenses, the Board finds that these are reasonable and awards the amounts claimed in Form E4 of the Logans' May 7, 2010, Cost Claim.

[65] Accordingly, the Board hereby makes an award of costs to Klimek Law for expert expenses as follows:

Professional fees and travel time claimed	Professional fees and travel time awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
$25 115.63	$4773.51	$20 342.12	$525.25	$525.25	$0

Intervener Honoraria

[66] With regard to the claimed intervener honoraria, 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. Given the nature and scope of this proceeding, the Board is not satisfied that preparation honoraria are warranted. The Logans were represented by counsel, who also employed the assistance of a paralegal in preparing their intervention. Accordingly, the Board declines to make any award for preparation honoraria.

[67] With regard to the claimed attendance honoraria, section 5.1.4 of *Directive 031* provides that local interveners who participate at a hearing, including giving evidence, being cross-examined, and assisting counsel and consultants, among other things, may claim attendance honoraria of $100.00 for each half day of attendance at a hearing. As noted in the hearing transcripts, at page 659, the Logans did not attend the hearing on April 9, 2010. Accordingly, the Board awards both John and Bonnie Logan $400.00 each for their attendance at the hearing on April 7 and 8, 2010.

[68] With regard to local intervener meal and mileage expenses for the Logans, while the Logans' counsel did not properly include these claims specifically in Form E1, E3, or E4 as provided by *Directive 031*, the Board in this unique instance is prepared to exercise its discretion and make awards for these amounts.

[69] As per Appendix E of *Directive 031*, the Board awards John and Bonnie Logan $80.00 each for meals on April 7 and 8, 2010, respectively. The Board also awards John and Bonnie Logan 300 kilometres worth of mileage expenses, representing an approximately 200 kilometre round trip from their residence in Edmonton to Drayton Valley and approximately 100 kilometres in travel from their seasonal residence near Drayton Valley to the hearing venue in Drayton Valley during the hearing. Appendix E of *Directive 031* provides for a mileage rate of $0.505 per kilometre. Accordingly, the Board awards $151.50 to the Logans in mileage expenses, or $75.75 each.

[70] 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	Reduction
John Logan	$1000.00	$400.00	$600.00	$155.75	$155.75	$0
Bonnie Logan	$1000.00	$400.00	$600.00	$155.75	$155.75	$0

COST CLAIM OF THE LOSEYS

[71] On April 28, 2010, the Loseys filed a cost claim for preparation honoraria, attendance honoraria, and honoraria for forming a group in the amount of $1900.00, expenses in the amount of $286.62, and GST in the amount of $14.34, for a total claim of $2200.96.

Views of West

[72] In its May 19, 2010, response, West submitted that the Board dismissed the Loseys' objection by letter dated March 3, 2010, on the basis that they did not have rights or interests that could be directly and adversely affected by the proposed well. West submitted that the key finding underpinning the Board's decision in this regard was that the Loseys resided over 8 kilometres away from the proposed well.

[73] West submitted that the Board in its March 3, 2010, letter advised the Loseys that since a hearing on the application was taking place, the Loseys were welcome to attend the hearing and make brief submissions of relevant information as discretionary participants.

[74] West submitted that as costs pursuant to *Directive 031* are payable to local interveners, since the Loseys were discretionary participants and not local interveners, they were not entitled to claim costs pursuant to *Directive 031*. West submitted that no local intervener costs should be awarded to the Loseys as they are not local interveners.

Views of the Loseys

[75] The Loseys replied that they had applied to the Board for an award of costs in relation to their participation in the hearing but did not receive any determination from the Board on costs prior to the hearing. The Loseys submitted that they were provided with the status of discretionary participants with no definition as to what that status entailed. They submitted that the Board advised them of their participation on the morning of the hearing and that the expenses they incurred were reasonable and directly and necessarily related to the preparation and presentation of their intervention.

Views of the Board

[76] The Board advised the Loseys prior to the start of the hearing by way of letter dated March 3, 2010, that they had not met the requirements of section 26(2) of the ERCA and that they did not qualify as section 26(2) hearing participants.

[77] In that same letter, the Board advised the Loseys that they would be given an opportunity to make a brief submission of relevant information at the hearing of the application as discretionary participants if they so wished, that this opportunity was being advanced to them by virtue of the fact that there were other parties that had been granted section 26(2) standing to participate in a hearing, and that should the parties with section 26(2) standing withdraw their objections to the proposed well, the Board could cancel the hearing.

[78] The Loseys were also advised in the Board's letter that the scope and relevance of their submission would be evaluated by the Board, that their submission was to be provided by way of unsworn oral statement, and that dates for same would be determined after consulting with parties at the beginning of the hearing. The Loseys were also encouraged to

provide a written summary of any oral submission to the Board and other parties at the start of the hearing.

[79] The Board has no record of any advance funding applications being submitted by the Loseys in advance of the hearing on this application.

[80] Generally speaking, participants who do not meet the requirements of section 26 of the ERCA will not generally meet the more restrictive test in section 28 of the ERCA. However, the Board does consider the requests of parties regarding section 26 and 28 entitlements on a case by case basis.

[81] Based on all of the foregoing, the Board finds that the Loseys do not qualify as local interveners pursuant to section 28 of the ERCA. The Loseys were advised of same in the Board's March 3, 2010, letter prior to the start of the hearing, and the Loseys were not able to show at the hearing of this application in their submission that they met the requirements of either section 26 or 28 of the ERCA. Accordingly, the Board declines to consider the cost claims submitted by these participants.

ORDER

[82] In accordance with paragraph 2 herein, the Board hereby orders Sinopec Daylight Energy Ltd. to pay local intervener costs to the Logans in the amount of $38 531.51 and GST in the amount of $1829.86 for a total amount of $40 361.37. This amount shall be paid to Klimek Law as the submitter of the claim at the following address:

Klimek Bishop Buss Law Group
240, 4808 – 87 Street
Edmonton AB T6E 5W3

Dated in Calgary, Alberta, on September 11, 2012.

ENERGY RESOURCES CONSERVATION BOARD

(original signed by)

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

(original signed by)

R. J. Willard, P.Eng.
Acting 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.