Sinopec Daylight Energy Ltd.

Application for Well Licences
Pembina Field

Cost Awards

March 26, 2013

ENERGY RESOURCES CONSERVATION BOARD
Energy Cost Order 2013-001: Sinopec Daylight Energy Ltd., Applications for two well licences, Pembina Field

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

SINOPEC DAYLIGHT ENERGY LTD. **Energy Cost Order 2013-001**
APPLICATION FOR A WELL LICENCE **Application Nos. 1623169, 1657852**
PEMBINA FIELD **Cost Application Nos. 1722483, 1722484**

INTRODUCTION

Background

[1] West Energy Ltd. (West) originally applied on April 3, 2009, to the ERCB for a licence to drill a directional oil well from a surface location in Legal Subdivision (LSD) 16, Section 5, Township 50, Range 6, West of the 5th Meridian, to a projected bottomhole location in LSD 12-4-50-6W5M (application No. 1623169; hereinafter Well 1). The maximum hydrogen sulphide (H_2S) concentration was anticipated to be about 211.5 moles per kilomole (21.15 per cent) and the cumulative drilling H_2S release rate was anticipated to be 1.51 cubic metres per second (m^3/s), with a corresponding emergency planning zone (EPZ) of 2.11 kilometres (km). The proposed well would have been located about 7.7 km east of the Hamlet of Rocky Rapids. The process to deal with West's application involved an unusual number of steps described hereafter.

[2] Pre- and post-application objections to the above-noted application were filed by, among others, Robert Domke, Linda McGinn, Susan Kelly, and Lil Duperron, in letters dated February 24, March 24, March 12, and May 20, 2009, respectively.

[3] After having considered the parties' objections and concerns, the Board proceeded to make determinations on whether or not the parties met the test contained in section 26(2) of the *Energy Resources Conservation Act* (ERCA).

[4] In letters dated January 19, 2009 [sic], which were actually issued on January 19, 2010, and in a letter dated February 1, 2010, the Board advised Mr. Domke and Mrs. McGinn that they had satisfied the test in section 26(2) of the ERCA and that they were thereby entitled to participate in a hearing on application no. 1623169. In letters dated January 19, 2009 [sic], the Board also advised Ms. Kelly and Mrs. Duperron that they had not satisfied the test in section 26(2) of the ERCA and that, as such, their objections would be dismissed.

[5] On February 11, 2010, the Board issued a Notice of Hearing for application no. 1623169 advising, among other things, that the hearing was scheduled to begin on June 22, 2010.

[6] On April 14, 2010, West applied pursuant to section 39 of the ERCA for a review of the Board's decision dated January 19, 2009 [sic], that Mrs. McGinn had satisfied the test in section 26(2) of the ERCA. The Board considered West's review application; the reply of Mrs. McGinn dated May 17, 2010; and West's final response dated June 11, 2010. In a letter dated September 21, 2010, the Board advised the parties of its decision that West had met the test under section 39 of the ERCA and subsection 48(2) of the *Energy Resources Conservation Board Rules of Practice* (*Rules of Practice*) and that accordingly, the

Board's decision of January 19, 2009 [sic], with regard to Mrs. McGinn should be reviewed. The Board advised in that letter that the review proceeding would be conducted in written form. West filed further submissions with the Board in support of its position on the review application dated November 15 and December 13, 2010, and Mrs. McGinn filed a submission in support of her position on the review application dated November 29, 2010. On February 2, 2011, the Board issued decision 2011 ABERCB 002, which granted West's review application and reversed its January 19, 2009 [sic], decision. As a result, Mrs. McGinn was found not to have satisfied the test in section 26(2) of the ERCA.

[7] On February 10, 2010, Susan Kelly and Lillian Duperron applied pursuant to sections 39 and 40 of the ERCA for a review of the Board's decision of January 19, 2009 [sic], that they had not satisfied the test in section 26(2) of the ERCA. The Board considered their review application and correspondence dated February 10, March 23, March 30, and May 17, 2010, as well as letters from their physicians dated September 20, 2006, and March 16, 2010. The Board also considered the submissions of West dated March 16 and May 4, 2010. By way of letter dated June 1, 2010, the Board advised Mrs. Kelly and Mrs. Duperron that their review applications had been dismissed and that the Board was upholding its January 19, 2009 [sic], decision that they had not satisfied the test in section 26(2) of the ERCA.

[8] On April 29, 2010, counsel for Mr. Domke and Mrs. McGinn requested an adjournment of the scheduled hearing. In a letter dated May 3, 2010, West advised it opposed the adjournment request. In a letter dated May 11, 2010, the Board denied the adjournment request.

[9] On May 12, 2010, Daylight Energy Ltd. (Daylight) acquired West in a corporate transaction. On May 14, 2010, West formally amalgamated with Daylight and Daylight became its corporate successor for the purposes of the above noted application.

[10] On June 2, 2010, the Board issued an Amended Notice of Hearing which advised that the scheduled hearing which was to start on June 22, 2010, was being held at a different venue than that listed in the original February 11, 2010, Notice of Hearing.

[11] On June 11, 2010, Daylight requested an adjournment of the scheduled hearing. In a letter dated June 14, 2010, the Board advised the parties that counsel for Mr. Domke and Mrs. McGinn had advised Board Counsel that they did not oppose the adjournment request. In that same letter, the Board granted the adjournment request *sine die*. On June 15, 2010, the Board issued Notice of Postponement of Hearing, again, *sine die*.

[12] On June 25, 2010, Mrs. Kelly and Mrs. Duperron filed a Notice of Motion in the Alberta Court of Appeal for leave to appeal the Board's June 1, 2010, decision. Leave to appeal was granted on October 15, 2010, and the appeal was heard on October 5, 2011.

[13] On August 11, 2010, Daylight submitted application no. 1657852 for another oil well in Section 5, located at LSD 11-5-50-6W5M, with a projected bottomhole location in LSD 1-7-50-6W5M (Well 2). Well 2 would be licensed for a maximum H_2S concentration of 21.15 per cent and a maximum H_2S release rate of 2.5 m^3/sec. Well 2 would be designated as a Category E610 critical sour well with an EPZ of 1.33 km for drilling, 0.41 km for completions/servicing, and 0.26 km for production/suspension. Well 2 would be located

about ½ mile east of the North Saskatchewan River and 4 miles east of the hamlet of Rocky Rapids.

[14] In a letter dated February 4, 2011, Daylight formally communicated to the Board its request to have the applications for Wells 1 and 2 both heard at the same hearing. In a letter dated April 12, 2011, the Board advised the parties that if a determination was made that the application for Well 2 should proceed to hearing, it was the intention of the assigned Board Panel to hear both applications together in a single proceeding.

[15] In a letter dated May 6, 2011, the Board advised the parties that it was deferring its decisions in relation to persons who had met the test in section 26(2) of the ERCA with regard to the Well 2 proceeding until the Alberta Court of Appeal had rendered its decision in the October 5, 2011 appeal from the Board's June 1, 2010, decisions dismissing the review and variance applications relating to whether or not Mrs. Kelly and Mrs. Duperron had met the test in section 26(2) of the ERCA.

[16] The Court of Appeal rendered its decision on that appeal in a decision dated November 15, 2011. That decision, namely *Kelly v. Alberta (Energy Resources Conservation Board)* 2011 ABCA 325 (*Kelly*), remitted the matter to the Board for reconsideration. Following the issuance of that decision, the Board in a letter dated November 25, 2011, asked Daylight how it wished to proceed in light of the Court's decision.

[17] Daylight responded by way of letter dated December 16, 2011, advising that it intended to proceed with both applications and asking that the Board make decisions with respect to those persons who objected to the Well 2 application and whether or not they met the test in section 26(2) of the ERCA.

[18] The Board was in the process of making these determinations and scheduling a public hearing in Drayton Valley, Alberta, before Board Members Brad McManus, Q.C. (Presiding Member), Alex Bolton, P.Geo., and Terry Engen, when in letters dated February 1 and 2, 2012, Daylight notified the ERCB that it was withdrawing application nos. 1623169 and 1657852.

[19] On February 13, 2012, the Board issued Decision 2012 ABERCB 006, noting the withdrawal of the applications and stating that a public hearing would not be held.

[20] On December 23, 2010, Sinopec Energy Ltd. (Sinopec) acquired Daylight in a corporate transaction and became its corporate successor for the purposes of the above noted applications.

Cost Claims

Well 1

[21] On March 1, 2012, Mrs. Kelly filed a cost claim on behalf of herself and Mrs. Duperron in the amount of $5787.78. On March 9, 2012, Mr. Domke and Mrs. McGinn filed a cost claim in the amount of $22 650.19. On March 29, 2012, Daylight submitted comments to both claims. On April 5, 2012, Mr. Domke and Mrs. McGinn submitted a response to the

comments of Daylight. On April 11, 2012, Ms. Kelly responded on behalf of herself and Mrs. Duperron.

Well 2

[22] On March 1, 2012, Mrs. Kelly filed a cost claim in the amount of $2613.56. On March 9, 2012, Mr. Domke filed a cost claim in the amount of $1135.25. On March 12, 2012, Mrs. Duperron filed a cost claim in the amount of $1000.00. On March 29, 2012, Daylight submitted comments to the cost claims of Mrs. Kelly, Mr. Domke, and Mrs. Duperron. On April 5, 2012, Domke submitted a response to the comments of Daylight, and on April 12, 2012, Mrs. Kelly submitted a response on behalf of herself and Mrs. Duperron.

[23] The Board considers the cost process to have closed on April 12, 2012.

VIEWS OF THE BOARD—AUTHORITY TO AWARD COSTS AND DATE FROM WHICH COSTS SHALL BE CONSIDERED

Authority to Award Costs

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

[25] When assessing costs, the Board is guided by Part 5 of the *Rules of Practice* and Appendix E: Scale of Costs in ERCB *Directive 031: Guidelines for Energy Proceeding Cost Claims*.

> 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.

[26] In addition to the applicable legislative provisions the Board is guided or bound by when considering awards for costs, the common law and the applicable legal principles regarding an administrative tribunal's jurisdiction to award costs also guide the Board. The Supreme Court of Canada in *Smith* v. *Alliance Pipeline Ltd.* (2011 SCC 7) (*Smith*) 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*, 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 subsection 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 which stem from proceedings which have taken place before it.

Date From Which Costs Shall be Considered

[27] Section 6.3 of *Directive 031* states that the Board does not normally award costs incurred before a Notice of Hearing is issued in any given proceeding. It further states that sometimes local interveners may incur costs prior to its issuance that are reasonable and directly and necessarily related to their intervention, and that the Board considers all claims for costs on a case-by-case basis.

[28] Having regard to all of the foregoing, the Board finds that, given the unique, complex, and lengthy circumstances of this matter, a reasonable date from which it will consider cost claims relating to the Well 1 proceeding is the date of West's original application dated April 3, 2009. Given that no Notice of Hearing had been issued for the Well 2 proceeding, nor had the hearing in the Well 1 proceeding been rescheduled at the time both applications were withdrawn, the Board will consider cost claims relating to Well 2 on a discretionary basis, and in conjunction with any claims for the Well 1 proceeding, as the Board accepts there may in some cases have been some overlap with respect to the work performed.

COST CLAIM OF MR. DOMKE AND MRS. MCGINN

[29] Mr. Domke and Mrs. McGinn were represented by Klimek Law with respect to application no. 1623169. On March 8, 2012, they filed a cost claim for legal fees of $19 495.00, legal expenses of $1124.94, intervener preparation honoraria of $500.00 each, and GST of $1030.25, for a total claim of $22 650.19.

[30] Mr. Domke was represented by Klimek Law with respect to application no. 1657852. On March 8, 2012, Klimek Law filed a cost claim for legal fees of $595.00, legal expenses of $10.00, an intervener preparation honorarium of $500.00, and GST of $30.25, for a total claim of $1135.25.

Views of Klimek Law

[31] Mr. Domke owns lands located at NW 8-50-6-W5M. He was concerned about potential adverse effects on his lands from Wells 1 and 2. He and his family use the lands for hay crops, cattle pasture, camping, and other recreational uses. He does not have a cell phone and was concerned about notification in the event of an emergency while he was on his

land, as well as the potential risks and health effects from a release of H_2S during drilling and toxic emissions from flaring.

[32] Mrs. McGinn owns and resides on lands located at SE 18-50-6-W5M. Her land is partially cultivated and treed. She raises horses, gardens, and engages in other activities on her lands. She was concerned with potential health effects from flaring and other emissions during the drilling and operations phases of Well 1.

[33] Klimek Law, counsel for Mr. Domke and Mrs. McGinn, submitted they both met the test in section 28(1) of the ERCA and were thus eligible to submit cost claims to the Board. They submitted that costs are important for interveners who may be directly and adversely affected to enable or assist them to participate in a hearing, and that costs ensure both the accessibility of the hearing process and its effectiveness, citing the Alberta Court of Appeal decision in *Kelly* v. *Alberta* 2012 ABCA 19, at para 3. They submitted that eligibility for costs depends on an intervener having a legally recognized interest in land, such as occupation or entitlement to use and enjoyment, and whether the intervener reasonably believed their interest was potentially adversely affected by a decision of the Board. They also submitted that the costs incurred must be reasonably necessary.

[34] Because of the overlap with respect to the issues for Wells 1 and 2, Klimek Law submitted they were generally dealt with concurrently, but that most costs were incurred in relation to Well 1.

[35] Klimek Law also submitted that Mr. Domke and Ms. McGinn had to do work and obtain legal assistance to understand the applications and prepare for the hearing. They stated that, based on the information provided, they reasonably believed they were either in the EPZ, a flaring zone, or otherwise in an area where their air quality could be impaired by Wells 1 and 2. Mr. Domke and Mrs. McGinn were concerned they could also be affected by mishaps during the drilling, work-over, and operations phases of Wells 1 and 2. As such, it was reasonable for them to believe that they could be adversely affected which led them to prepare for the hearing.

[36] Klimek Law further submitted that its costs were incurred necessarily to respond to various decisions by the successive proponents of the wells, including unsuccessful challenges to standing, changes in ownership, and hearing adjournments, none of which were caused by their clients. It submitted that its clients' costs are eligible for reimbursement pursuant to section 28 of the ERCA and *Directive 031*.

Views of Daylight

[37] In its March 29, 2012, letter, Daylight accepted there was significant overlap with respect to the issues for Wells 1 and 2 and that they were dealt with concurrently, but that most of the costs were incurred in relation to the Well 1 proceeding. Daylight took no specific issue with the cost claim submitted in respect of the Well 2 proceeding.

[38] Daylight took the position that some award of costs was appropriate with respect to the Well 1 proceeding, but that the amount claimed was unreasonable and should be reduced. It argued that:

- legal costs had been claimed for the "pre-application" period,
- Mrs. McGinn was ultimately found by the Board to not have standing, and
- some costs associated with mediation and the Appropriate Dispute Resolution (ADR) process were included.

[39] Daylight submitted that the first seven time entries in the Klimek Law account predated the application date for Well 1. It argued that, based on previous Board authority, the claimed pre-application costs of 1.1 hours or $385.00 should be disqualified.

[40] Daylight submitted that while Mrs. McGinn was initially advised she had met the test in section 26(2) of the ERCA on January 19, 2009 [sic], she was advised by way of ERCB Decision 2011 ABERCB 002 on February 2, 2011, that this decision had been reversed. Accordingly, one of the two clients in respect of whom Klimek Law claimed costs for is not a person who was granted standing by the Board.

[41] Daylight accepted that work was done and would have had to be done in any event by Klimek Law representing Mr. Domke, but that the costs associated with the issue of Mrs. McGinn's standing should be eliminated, as time spent dealing with that issue was not time spent representing Mr. Domke on the substantive issues raised by the Well 1 application.

[42] Daylight submitted that it appeared a number of time entries totalling 6.7 hours and $2345.00,were included in the Klimek Law account for the Well 1 proceeding and were related to the issue of Mrs. McGinn's standing. Daylight submitted the cost claim should be reduced by this amount.

[43] Daylight also submitted that the Klimek Law account included a number of time entries totalling 1.3 hours and $455.00 which were related to mediation and the ADR process. Daylight submitted that these costs were not properly part of the cost claim for the Well 1 proceeding. Daylight stated that it and Klimek Law had an agreement about the costs associated with the mediation, pursuant to which it paid Mr. Domke's legal and personal attendance costs for a pre-meeting with the mediator and an ADR session with Daylight. There was no further agreement between Mr. Domke and Daylight regarding ongoing mediation costs.

[44] Daylight submitted that the reductions to the cost claim should be as follows: $385.00 for pre-application costs, $2345.00 for costs associated with the issue of Mrs. McGinn's standing, and $455.00 for costs related to ADR/mediation, totalling $3185.00 plus GST.

Final Response of Klimek Law

[45] Klimek Law stated on April 5, 2012, that its claimed costs were reasonable and encompassed work and time that was essential to their clients' interventions and should therefore be compensated.

[46] Klimek Law submitted that Mrs. McGinn had standing for a time and her preparation costs were reasonably incurred and should be compensated. They submitted that if Mrs. McGinn had been denied standing originally, she would have been part of the appeal to the Court of Appeal and could have been granted standing in the Board's hearing through that process, as she lived closer to the proposed Well 1 than either Mrs. Kelly or Mrs. Dupperon. The

Board, on the basis of the result in *Kelly*, may have granted her standing in its hearing if the application had not been withdrawn.

[47] Klimek Law submitted that her clients entered into an ADR/mediation agreement with Daylight but that part way through the mediation, Daylight withdrew. They submitted that the time claimed was for clarification of its termination of the mediation and how they were going to proceed.

Views of the Board

[48] The Board finds most of the legal fees claimed by Klimek Law to be reasonable and necessary in light of the particular circumstances of this matter. They appear to the Board to have been incurred reasonably and they appear to have been directly and necessarily related to the interventions of Mr. Domke and Mrs. McGinn.

[49] The Board does, however, find that a small reduction to some of the claimed legal fees is in order. As per the submissions of Daylight, it appears to the Board that there were some costs claimed that related to Mrs. McGinn's review and variance application and ADR/mediation, and not to the Well 1 or Well 2 proceedings. In light of the above, and based on the tables set out in Daylight's letter of March 29, 2012, the Board finds that a reduction of 1.8 hours for review- and variance-related entries and 0.6 hours for ADR/mediation–related entries is in order. Of those items listed by Daylight, these entries, totalling 2.4 hours and $840.00, appear to the Board to be the most directly ineligible costs.

[50] The Board also finds that Klimek Law's claims for legal expenses and disbursements appear to be generally reasonable in light of the particular circumstances of this matter and awards them in full.

Intervener Honoraria – Mr. Domke and Mrs. McGinn

[51] Mr. Domke and Mrs. McGinn claimed $500.00 each in preparation honoraria for the Well 1 proceeding. Mr. Domke claimed a preparation honorarium of $500.00 for the Well 2 proceeding.

[52] Section 5.1.2 of *Directive 031* states that where a lawyer was primarily responsible for the preparation of an intervention, the Board will not normally award preparation honoraria to a local intervener. It also states that 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.

[53] Due to the circumstances in this matter and the work performed by counsel throughout, the Board finds that counsel appeared primarily responsible for the preparation of this intervention. As such, the Board declines to award the claimed amounts of intervener preparation honoraria for the Well 1 and 2 proceedings. However, in recognition of the work undertaken by Mr. Domke and Ms. McGinn in those proceedings, the Board finds that each is entitled to a $300.00 preparation honorarium.

[54] In summary of all of the costs awarded as outlined above, the Board hereby makes an award of costs to Klimek Law for legal fees, legal disbursements and expenses, and intervener honoraria as follows:

Legal fees claimed	Legal fees awarded	Reduction
$20 090.00	$19 250.00	$840.00

Legal disbursements and expenses claimed	Legal disbursements and expenses Awarded	Reduction
$1134.94	$1134.94	$0

Mr. Domke Honoraria claimed	Honoraria awarded	Reduction
$1000.00	$300.00	$700.00

Mrs. McGinn Honoraria claimed	Honoraria Awarded	Reduction
$500.00	$300.00	$200.00

COST CLAIM OF MRS. KELLY AND MRS. DUPERRON

[55] With respect to the Well 1 proceeding, Mrs. Kelly filed a cost claim on March 1, 2012, on behalf of herself and Mrs. Duperron as follows: an intervener preparation honorarium for Mrs. Kelly of $2500.00, an intervener forming a group honorarium for Mrs. Kelly of $500.00, an intervener preparation honorarium for Mrs. Duperron of $2500.00, intervener expenses for Mrs. Kelly of $282.79, and GST of $4.99, for a total claim of $5,787.78.

[56] With regard to the Well 2 proceeding, Mrs. Kelly also filed a cost claim on March 1, 2012, for an intervener preparation honorarium of $2500.00, intervener expenses of $108.15, and GST of $5.41, for a total claim of $2613.56. On March 12, 2012, Mrs. Duperron filed a cost claim for an intervener preparation honorarium of $1000.00.

[57] No substantive submissions were provided along with these claims.

Views of Daylight

[58] Daylight submitted that the awarding of honoraria to interveners who are not represented by counsel is an inherently discretionary matter, and cited section 5.1 of *Directive 031*, which sets out guidelines the Board follows when exercising that discretion. Section 5.1.2 of *Directive 031* states that a local intervener who personally prepares a submission without expert help may receive an honorarium in the range of $300.00 to $2500.00, depending on the complexity of the submission.

[59] In the cost claim for the Well 1 proceeding, Mrs. Kelly claimed a preparation honorarium in excess of $2500.00, the maximum amount contained in Section 5.1.2 of *Directive 031*. Mrs. Duperron also claimed the maximum amount, $2500.00. Daylight submitted that, having regard to the circumstances of this case, preparation honoraria at and exceeding the maximum awarded by the Board were not warranted.

[60] First, the application filed by Daylight was for approval of a single well, not a complex matter. Second, pursuant to section 5.1.2 of *Directive 031*, a preparation honorarium may be awarded where a local intervener personally prepared and presented an intervention to the Board. In the case of Mrs. Kelly and Mrs. Duperron, they were originally denied standing by the Board in the Well 1 proceeding. However, Daylight acknowledged that Mrs. Kelly and Mrs. Duperron were ultimately successful at the Court of Appeal on their standing issue, and that no costs were awarded in the review and variance process. Therefore, Daylight submitted that an award of intervener preparation honoraria above the minimum of $300.00 might be appropriate, but that an award of the maximum amount of $2500.00 or greater would not be appropriate.

[61] With respect to the cost claim submitted by Mrs. Kelly for the Well 2 proceeding, an intervener preparation honorarium of $2500.00 is again claimed. Klimek Law in its letter of March 15, 2012, stated that the issues in the Well 2 proceeding were more or less identical to those in the Well 1 proceeding. Daylight pointed out that Mrs. Kelly never actually prepared any submissions in the Well 2 proceeding, because the Well 2 licence application was never set down for hearing by the Board before Daylight withdrew the application. Daylight submitted that, in the circumstances, an intervener preparation honorarium in the maximum amount allowable by *Directive 031* would not be appropriate, but that an honorarium at or close to the minimum would be.

[62] In conclusion, Daylight submitted that the honoraria which the Board chooses to award to Mrs. Kelly and Mrs. Duperron should be considerably less than the maximum amounts permissible under *Directive 031* which have been claimed.

Views of Mrs. Kelly and Mrs. Duperron

[63] Mrs. Kelly submitted that it was her understanding that, according to *Directive 031*, if the issues in conflict are common, a "group" intervention is often appropriate, and this approach allows those with common interests and purposes to band together and present an intervention that addresses the group's common concerns. She submitted that the formation of a group can result in a more balanced and complete intervention that addresses the group's common concerns and reduces the duplication of information. She also submitted that "one to four organizers" may receive honoraria in recognition of their efforts in coordinating and representing the group, but that while such awards are generally $300 to $500, honoraria representing costs for "group" organization in excess of $500 to a maximum of $2500 may be considered.

[64] Mrs. Kelly stated that she provided submissions on behalf of Mrs. Duperron and herself on February 10, March 30, May 5, and May 17, 2010, and that these were group submissions.

[65] Mrs. Kelly and Mrs. Duperron stated they prepared these group submissions without expert help, including researching, gathering information, drafting, photocopying, typing, and meeting. They also stated they individually reviewed letters, including application and audit materials, and prepared responses, and that all of this took personal time and effort.

[66] They submitted that *Directive 031* does not provide firm guidelines to identify in each case what type and what amount of costs will be reasonable, but that their cost claims were reasonable.

Views of the Board

[67] Section 5.1.2 of *Directive 031* outlines when claims for preparation honoraria may be made. It provides that where local interveners personally prepare submissions without expert help, they may be eligible to receive preparation honoraria in the range of $300.00 to $2500.00, depending on the complexity of the submission.

[68] Given the circumstances in this matter, while Mrs. Kelly and Mrs. Duperron had not formally been found by the Board to have met the test in section 26(2) of the ERCA at the time Daylight withdrew its applications, the Board is mindful of the Court of Appeal's decision in *Kelly* and is guided by it in the exercise of its discretion in this instance.

[69] The Board is of the view that while Mrs. Kelly and Mrs. Duperron did expend considerable time and effort in this proceeding preparing their submissions and other materials without the assistance of counsel up until such time as Daylight withdrew its applications, they were not required to expend time and effort in actual preparations leading up to a hearing of the Well 1 and 2 applications. As such, their preparation does not merit the maximum amount noted in section 5.1.2 of *Directive 031*.

[70] The Board is of the view that the maximum amount may be contemplated generally as an award in proceedings that are lengthy and complex and in which the applications are actually heard at a Board hearing and a decision rendered thereupon. Neither the Well 1 nor Well 2 applications were considered at a Board hearing.

[71] Further, with regard to the claimed honoraria for the Well 2 application, the Board notes that Daylight submitted the Well 2 application over one year after it had submitted the Well 1 application. As such, the Well 2 application was not one that, at the time the costs claims were submitted, had necessitated much or any substantive work on the part of Mrs. Kelly and Mrs. Duperron. The Board notes that Notice of Hearing was never issued for the Well 2 application and that, in any event, it would likely have been considered along with the Well 1 application at a single hearing, had it been rescheduled by the Board.

[72] Accordingly, the Board is of the view that a reduction to Mrs. Kelly and Mrs. Duperron's claimed intervener honoraria amounts is in order. The Board declines to award the full claimed amounts for intervener honoraria and expenses. However, the Board awards Mrs. Kelly and Mrs. Duperron $2000.00 each in intervener preparation honoraria for their efforts in the Well 1 proceeding. The Board also awards Mrs. Kelly and Mrs. Duperron $500.00 in intervener preparation honoraria for their efforts in the Well 2 proceeding.

[73] As the Board is not generally of the view that only two persons can form a group in the sense intended in section 5.1 of *Directive 031*, the Board declines to award any honoraria to Mrs. Kelly for forming a group with regard to the Well 1 and 2 proceedings.

[74] With regard to Mrs. Kelly's claimed intervener expenses for the Well 1 and 2 proceedings, these appear to the Board to be generally reasonable in light of the particular circumstances of this matter. The Board hereby awards them in full.

[75] In summary of all of the costs awarded as outlined above, the Board hereby makes an award of costs to Mrs. Kelly and Mrs. Duperron for intervener honoraria and expenses as follows:

Mrs. Kelly
Well 1

Honoraria claimed	Honoraria awarded	Reduction
$3000.00	$2000.00	$1000.00

Expenses claimed	Expenses Awarded	Reduction
$282.79	$282.79	$0

Well 2

Honoraria claimed	Honoraria awarded	Reduction
$2500.00	$500.00	$2000.00

Expenses claimed	Expenses Awarded	Reduction
$108.15	$108.15	$0

Mrs. Duperron
Well 1

Honoraria claimed	Honoraria awarded	Reduction
$2500.00	$2000.00	$500.00

Well 2

Honoraria claimed	Honoraria awarded	Reduction
$1000.00	$500.00	$500.00

ORDER

[76] It is hereby ordered that Sinopec pay local intervener costs to Mr. Domke and Mrs. McGinn in the amount of $20 984.94 and GST in the amount of $1019.25 for a total of $22 004.19. This amount shall be paid to Klimek Law forthwith as the submitter of the claim at the following address:

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

[77] It is hereby ordered that Sinopec pay local intervener costs to Mrs. Kelly in the amount of $2890.94, and GST in the amount of $10.40 for a total of $2901.34.

[78] It is hereby ordered that Sinopec pay local intervener costs to Mrs. Duperron in the amount of $2500.00.

Dated in Calgary, Alberta, on March 26, 2013.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

Brad McManus, Q.C.
Presiding Member

<original signed by>

Alex Bolton, P. Geo.
Board Member

<original signed by>

Terry Engen
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.