



Burlington Resources Canada Ltd.

Applications for Three Well Licences
Pembina Field

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2007-002: Burlington Resources Canada Ltd.
Applications for Three Well Licences
Pembina Field

Application Nos. 1448800, 1460293, 1460301
Cost Application No. 1483833

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1 INTRODUCTION

Burlington Resources Canada Ltd. (Burlington) applied to the Alberta Energy and Utilities Board (EUB/Board), pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, for licences to drill three level-3 critical sour oil wells from an existing well site in Legal Subdivision (LSD) 6 of Section 6, Township 49, Range 8, West of the 5th Meridian (6-6).

Barney Olynyk and Darlene Olynyk (the Olynyks), residents within the EPZ, objected to the applications based on concerns regarding emergency response planning, cumulative effects, proliferation, and the impact of the wells on their health.

The Board held a public hearing in Drayton Valley, Alberta, on September 11, 2006, before Acting Board Members C. A. Langlo, P.Geol. (Presiding Member), F. Rahnama, Ph.D., and N. G. Berndtsson, P.Eng. On November 7, 2006 the Board issued [Decision 2006-110](#).

On October 3, 2006, the Board received an application for intervener funding from Jennifer J. Klimek Professional Corporation, on behalf of the Olynyks. On November 17, 2006, Burlington submitted comments regarding the cost claim, and on November 29, 2006 Debbie Bishop filed a response.

For the purposes of this Cost Order, the Board considers the cost process to have closed on November 29, 2006.

2 VIEWS OF THE BOARD – Authority to Award Costs

In determining local intervener costs, the Board is guided by its enabling legislation. In particular, by section 28 of the *Energy Resources Conservation Act* (ERCA) which reads as follows:

- 28(1) In this section, “local intervener” means a person or a group or association of persons who, in the opinion of the Board,
- (a) has an interest in, or
 - (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

It is the Board's position that a person claiming local intervener costs must establish the requisite interest in land and provide reasonable grounds for believing that such an interest may be directly and adversely affected by the Board's decision on the project in question.

When assessing costs, the Board will have reference to Part 5 of the *Rules of Practice* and to its *Scale of Costs*.

Section 55(1) of the *Rules of Practice* reads as follows:

- Section 55(1) The Board may award costs in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:
- (a) the costs are reasonable and directly and necessarily related to the proceeding and;
 - (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

3 VIEWS OF THE BOARD – Cost Claim

The cost claim submitted on behalf of the Olynyks totals \$10,387.91. The following table summarizes the details of the claim.

	Fees/Honoraria	Expenses	GST	Total
Jennifer Klimek	\$1,100.00	\$0.00	\$66.00	\$1,166.00
Debbie Bishop	\$7,812.00	\$420.56	\$493.95	\$8,726.51
Barney Olynyk	\$200.00	\$70.00	\$4.20	\$274.20
Darlene Olynyk	\$200.00	\$20.00	\$1.20	\$221.20
Sub-Total				\$10,387.91

3.1 Jennifer J. Klimek Professional Corporation

Views of the Parties

With respect to the costs incurred by counsel, Jennifer Klimek and Debbie Bishop; Burlington submits that the costs are associated with an ADR process which focused primarily on matters outside of the subject of the hearing. Burlington is of the view that the issues raised in ADR did not play a significant role at the hearing. In addition, Burlington questions Ms. Bishop's hourly rate given her call to the Bar in January of 2006. Burlington suggests an hourly rate similar to that of articling student.

Ms. Bishop notes the tight deadlines that existed with ADR. The Olynyks did not retain counsel until the Board issued a Notice of Hearing on July 12, 2006. The ADR meeting took place on August 9, written submissions were due on August 18, and on September 11 the Board held the hearing. Ms. Bishop submits that the ADR process and other related communication brought the parties very close to resolution. These efforts were apparent at the hearing and in Decision 2006-116, which reflects many of the commitments made by Burlington.

With respect to the hourly rate, Ms. Bishop submits that she is qualified to practice law at a first year level. Prior to her call to the Bar, she articulated for 18 months in order to complete three different articling rotations.

Views of the Board

The Board has considered the comments and responses submitted. The Board recognizes that the majority of the costs incurred are reflective of participating in the ADR process. While the Board appreciates and encourages parties to attempt to resolve concerns as much as possible themselves, it is the Board's view that compensation for such negotiations is to be dealt with in the context of the negotiations themselves and not through the Board's cost recovery process. The Board notes that a cost regime exists for those costs incurred for negotiations and facilitations. In that regard the Board notes the following statement from Informational Letter [2001-1](#).

For the Preliminary ADR Meeting, industry participants should be responsible for the costs, including the direct third-party costs of landowners and the public. Costs and payment for future ADR options should be discussed and agreed to at the Preliminary ADR Meeting.

The Board is not prepared to approve legal fees related to ADR. The Board recognizes that when ADR took place, the Olynyks were also preparing for the scheduled hearing. Therefore, it is reasonable to expect that, to some extent, preparing and attending ADR also resulted in preparing for the hearing. The Board has taken this into account when reviewing the statement of account. The Board finds that the following entries are not eligible for cost recovery.

- 06/19/06 Telephone conference with Karen Trace re: Burlington
- 06/21/06 Telephone conference with Karen Trace (Mediator)
- 06/23/06 Telephone conference with Karen Trace; with client
- 07/25/06 Meeting with Debbie Bishop; telephone conference with Karen Trace
- 07/25/06 Telephone conference with Karen Trace; meeting with Jennifer Klimek; file review
- 08/09/06 Attending at ADR
- 08/10/06 Drafting of agreement
- 08/15/06 Telephone conference with Karen Trace; with clients; review of agreement; fax copy to clients
- 08/16/06 Telephone conference with Karen Trace; with clients; review of agreement
- 08/17/06 Various telephone conferences with clients; with Karen Trace; redraft agreement; conference call with Karen Trace and Burlington
- 08/18/06 Various telephone conference with Karen Trace; with clients; redrafting of agreement

Of these entries, 2.1 hours (\$525.00) relate to Ms. Klimek, and 23.5 hours (\$3,290.00) relate to Ms. Bishop. That is a reduction of \$3,815.00 to the legal fees.

The Board has reviewed the disbursements incurred by counsel, and finds that they are in relation to preparing for, and attending, the hearing. Therefore, the Board approves the disbursements in full.

In summary, the Board approves legal fees in the amount of \$5,097.00, disbursements of \$420.56, and GST in the amount of \$331.05, for an overall award of \$5,848.61.

3.2 Barney and Darlene Olynyk

Mr. and Mrs. Olynyk each claim attendance honoraria of \$100.00, and preparation honoraria of \$100.00, for an overall claim of \$400.00. The Board notes that Burlington did not discuss this portion of the claim.

The Board recognizes the participation of the Olynyks at the hearing, and the associated preparation efforts, and therefore does not take issue with the honoraria claimed. Therefore, the Board approves \$400.00 for the Olynyks preparation and participation.

In addition to the honoraria, the Board also approves the expenses incurred by the Olynyks in full, being \$95.40.

4 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Burlington Resources Canada Ltd. shall pay intervener costs in the amount of \$6,344.01.
- (2) Payment is to be made to the following:

Jennifer J. Klimek Professional Corporation
240, 4808 – 87th Street
Edmonton, AB T6E 5W3

Attention: Debbie Bishop

Dated in Calgary, Alberta on this 1st day of February, 2007.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member