



Bumper Development Corporation Ltd.

**Review of Well Licence No. 0287658
Davey Field**

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2004-13: Bumper Development Corporation Ltd.

Review of Well Licence No. 0287658 (Davey Field)

Application No. 1334386

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**Bumper Development Corporation Ltd.
Review of Well Licence No. 0287658
Cost Awards**

**Energy Cost Order 2004-13
Application No. 1334386
File No. 8000-1334386**

1 INTRODUCTION

On May 27, 2003, Bumper Development Corporation Ltd. (Bumper) applied to the Alberta Energy and Utilities Board (EUB/Board) pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations* for a licence to drill a well and construct an access road at Legal Subdivision 7, Section 35, Township 33, Range 28 West of the 4th Meridian (the 7-35 well). On May 28, 2003, the Board issued Well Licence No. 0287658 to Bumper for the 7-35 well on the understanding that there were no outstanding issues.

On June 4, 2003, Bumper completed construction of the 7-35 well site and access road. On August 1, 2003, Mr. Gary Norman and Mr. Glenn Norman, of H.G. Norman & Sons, (collectively the Normans) filed a request (Application No. 1334386) under Section 40 of the *Energy Resources Conservation Act* for the Board to review Well Licence No. 0287658. The Normans are adjacent landowners whose lands are immediately north of the constructed access road. The Normans expressed concern that the location of the access road would increase the water level on their land and impact the drainage of their land. The Board determined that the Normans might be parties who would be adversely affected and granted the review, directing that a hearing be scheduled to reconsider the well licence in light of the Normans' concerns with the access road.

The Board held a public hearing at the Nesbitt Community Hall, located at the intersection of Township Road 342 and Range Road 282, Alberta, on June 7, 2004, before Board Member Tom McGee. The Board Member and EUB staff conducted a site visit at the 7-35 well on June 7, 2004, prior to opening the hearing. On July 13, 2004 the Board issued Decision 2004-56.

On June 30, 2004 the EUB received a cost claim from Gavin Fitch, of Lawson Lundell (formerly of Rooney Prentice), on behalf of his client H.G. Norman and Sons. The claim totals \$25,713.41. On July 20, 2004 the Board received comments to the claim from Bumper and on August 4, 2004 a response from Gavin Fitch was submitted. The Board considers the cost process for this particular matter to have closed on August 4, 2004.

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 Board has reviewed the cost claim submitted by Mr. Fitch which includes the services of Rooney Prentice, Matrix Solutions Inc., AFC Agra Services Ltd., and Hydroconsult EN3 Services Ltd. Each party has incurred professional fees, expenses, and applicable GST. The cost application also includes an honorarium claim for each Gary Norman and Glen Norman as well as various expenses. The cost claim submitted totals \$25,713.41, the details of which are outlined in Appendix A attached.

The Board finds that H.G. Norman & Sons does meet the definition of ‘local intervener’ and as such is eligible for cost recovery in accordance with Guide 31A, [Guidelines for Energy Cost Claims \(Guide 31A\)](#).

In its July 20, 2004 submission Bumper argued that most of the costs incurred by the Normans should be disallowed on the basis that they were incurred prior to the issuance of notice of hearing.

While the Board generally uses the issuance of a Notice of Hearing as a starting point for the consideration of reasonable costs, it is of the view that it may vary this practice when it is considering a proceeding pursuant to section 40 of the ERCA Act. Section 40 provides that the Board must hold a public hearing in one of two circumstances:

- Upon application of a directly affected party when the Board has made a decision without holding a hearing, and
- Upon application of a directly affected party after a hearing where the directly affected party was not provided notice of the hearing.

In both situations, the party requesting a review must file that request with the Board within 30 days of the date upon which the Board's original decision was made. In essence this provides directly affected parties without notice with an opportunity to participate in the EUB's decision making process.

As noted in EUB Decision [2004-056](#), the Board was of the view that, given the proposed location of the access road, Bumper ought to have consulted with the Normans during its consultation process for the well. In this situation, the Board is of the view that the Normans are entitled to reimbursement of all costs directly and necessarily related to the proceeding. As such, the Board finds that it is appropriate for Bumper to bear those costs associated with the Norman's request for the review and all subsequent activities related to the proceeding.

H.G. Norman & Sons

Gary Norman and Glen Norman each claimed for an attendance honorarium of \$100.00 and expenses totaling \$854.82. The expenses incurred by the Norman family included \$3.92 for postage, \$16.00 for printing, \$226.50 for testing done by Enviro-Test Laboratories, \$585.00 for secretarial services of P.J. Gardam, and \$23.40 for the purchase of a monitor.

With respect to the attendance honorarium the Board finds that this portion of the claim complies with Guide 31A which allows interveners a \$50.00 attendance honorarium for each half day of a hearing.

With respect to the expenses incurred for postage, printing and testing by Environ-Test Laboratories, the Board finds that these are reasonable expenses to incur as part of an individual's intervention and are therefore approved. As noted above, this was a proceeding pursuant to section 40 and thus it was reasonable for the Normans to seek secretarial assistance prior to hiring counsel to protect their interests. Further, it is the Board's view that the utility of these services was reflected during the proceedings as the documents finalized by P.J. Gardam were indeed filed as evidence. When taking these expenses into account the Board recognizes that the Norman family did not claim for a preparation honorarium which is available under Part 6 of Guide 31A and states, in part, as follows.

If an individual intervener hires a lawyer to assist with the intervention and the lawyer is primarily responsible for the preparation of the intervention, the Board generally will not provide an honorarium to the individual for his or her preparation efforts. In situations where both the lawyer and the individual contribute substantially to the preparation of the intervention, the Board may consider an honorarium in recognition of the individual's efforts.

Taking into account the nature of the proceeding, the usefulness of the services provided, and the fact that no honorarium was claimed for assisting counsel the Board finds the secretarial expenses appropriate in these circumstances.

Rooney Prentice

Gavin Fitch of Rooney Prentice, counsel for the Norman family, submitted a claim for legal fees in the amount of \$14,569.00, expenses in the amount of \$459.06, and applicable GST in the amount of \$1,051.96 for a total claim of \$16,080.02. The Board notes that 55.2 hours were incurred for preparation, 9 hours were incurred for attendance, and 5 hours were incurred for travel time.

The Board finds that the fees and disbursements claimed by Mr. Fitch are reasonable and directs that they be approved in full.

Matrix Solutions Inc. (Matrix)

Matrix was originally retained for the Norman family's intervention, however, due to a scheduling conflict with the Board Member Matrix was unable to act for the Norman family. Matrix incurred \$630.00 in professional fees, \$22.05 in expenses, and GST in the amount of \$45.64 for total claim of \$697.69.

The Board understands that Matrix was originally hired to address hydrology issues but was unable to attend when the hearing date was changed at the request of the Board. As a result the Board does not believe that it would be fair to require Bumper or the Normans to cover these costs. The Board believes that this is a unique situation and has decided to cover these costs from its own budget. A cheque for the above amount will be forwarded under a separate cover letter to Lawson Lundell in the amount of \$697.69 in that regard.

AFC Agra Services Ltd. (AFC)

AFC's portion of the claim included professional fees in the amount of \$3,140.00, expenses in the amount of \$215.88, and GST in the amount of \$234.91 for a total claim of \$3,590.79. The Board found the report submitted by AFC to be useful and considers that it contributed to a better understanding of the issues raised in the hearing. The Board therefore finds that the fees and disbursements incurred by AFC should be approved in full.

Hydroconsult EN3 Services Ltd. (EN3)

EN3's portion of the claim included professional fees in the amount of \$3,812.50, disbursements in the amount of \$141.00, and GST in the amount of \$276.75 for a total claim of \$4,230.25. The Board is of the view that given the Normans' concerns with respect to the affect of the access road on the adjoining slough that it was reasonable to hire a water expert. The Board considers that the information provided by EN3 was useful and that the fees and disbursements claimed in that regard were reasonable. Therefore the Board directs that they be approved in full.

4 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Bumper Development Corporation shall pay intervener costs for H.G. Norman & Sons' intervention in the amount of \$25,015.72 as shown in Appendix A attached.
- (2) Payment under this Order is to be made to Lawson Lundell, 3700, 205 – 5th Avenue S.W., Calgary, Alberta, T2P 2V7, Attention: Gavin Fitch.

Dated in Calgary, Alberta on this 19 day of October, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

(Original Signed by)

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



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