



EOG Resources Canada Inc.

Application for a Licence for a Natural Gas Well
Jumping Pound West

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD
Energy Cost Order 2004-16: EOG Resources Canada Inc.
Application for a Licence for a Natural Gas Well
Jumping Pound West
Application No. 1237299

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Alberta Energy and Utilities Board
640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

Telephone: (403) 297-8311
Fax: (403) 297-7040

Web site: www.eub.gov.ab.ca

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**EOG Resources Canada Inc.
Application for a Licence for a Natural Gas Well
Jumping Pound West**

**Energy Cost Order 2004-16
Application No. 1327299
File No. 8000-1327299**

1 INTRODUCTION

On January 7, 2004, EOG Resources Canada Inc. (EOG) applied to the Alberta Energy and Utilities Board (Board/EUB) pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations* for a licence to drill a well at a surface location at Legal Subdivision (LSD) 10, Section 35, Township 23, Range 5, West of the 5th Meridian.

On May 23, 2004, D. and K. Deere and D. O’Nions filed objections to EOG’s well licence application. Both parties are residents of Wintergreen Woods, a subdivision within the expanded portion of the EPZ for the well. The Deeres raised concerns about the emergency response plan (ERP), air quality, safety, and property devaluation. Mr. O’Nions raised concerns about health, property devaluation, and restriction on property sale to home seekers.

On August 4, 2004, P. Cook filed an objection to EOG’s well licence application. She raised concerns regarding the ERP, inadequate notification, and health and safety.

On August 23, 2004, V. Pedenko filed an objection to EOG’s well licence application. He raised concerns regarding health and safety, well site selection, emergency response planning, and notification. Mr. Pedenko appeared at the hearing to make a brief statement respecting his concerns but he did not file an Intervener’s Cost Claim respecting his participation in this hearing.

The Board held a public hearing in Bragg Creek, Alberta, on August 31 and September 1, 2004, before Board Members J. R. Nichol, P.Eng. (Presiding Member), T. M. McGee (Member), and D. D. Waisman, C.E.T. (Acting Member).

During the hearing, a number of undertakings were requested. EOG completed the last outstanding undertaking on September 13, 2004, and therefore the Board considers the hearing to have been closed on that date. On October 19, 2004 the Board issued Decision [2004-090](#).

On September 8, 2004 the EUB received a cost claim from Richard Secord of Ackroyd, Piasta, Roth & Day LLP, on behalf of his clients, David Deere, Duncan O’Nions, and Patricia Cooke (the Interveners). By way of letter dated September 22, 2004 the EUB received comments concerning the claim from Daron Naffin of McLennan Ross, counsel for EOG. By way of letter dated October 7, 2004, the EUB received a response from Mr. Secord to Mr. Naffin’s comments. Taking the foregoing into account, the Board considers the cost process for this proceeding closed on October 7, 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 LOCAL INTERVENER STATUS

For the purposes of this Cost Order the Board has determined that David Deere, Kristine Deere, Duncan O’Nions, and Patricia Cooke each meet the requirements of section 28 of the ERCA and are therefore eligible to apply for recovery of the costs incurred for their intervention.

4 VIEWS OF EOG

As noted above, EOG submitted comments regarding the Interveners’ cost claim on September 22, 2004. Although EOG does not take issue with the honoraria being claimed for each of the Interveners, it does take issue with the legal fees and expenses being claimed by counsel.

EOG submitted that the intervention presented by the Interveners' counsel did not represent the true concerns of the Interveners for the following reasons. Although the Interveners' submission raised the issues of location of the proposed well and well design; environmental impacts; health and safety impacts; land use impacts; and adequacy of public consultation efforts, EOG argues that the issue that received the highest degree of attention by Mr. Secord in cross examination of the EOG witness panel was the issue of the specific surface location of the proposed 10-35 well. EOG notes that neither Mrs. Cooke or Mr. and Mrs. Deere raised the issue of surface location of the well, further, that although Mr. O'Nions did briefly address the issue he did so in the context of public consultation rather than having actual concerns over the appropriate specific location. In addition, EOG points out that the cross-examination conducted by EOG's counsel confirmed that the issue of the specific surface location of the well was not a matter of legitimate concern to the Interveners. EOG states that the Interveners were not concerned about the specific issues relating to the well. Rather, the Interveners were concerned and opposed the well on more philosophical grounds. EOG adds that no additional substantive evidence beyond that contained in the Interveners written submission was presented at the hearing.

EOG submits that there was a fundamental disconnect between the actual position of the Interveners and that presented by counsel. EOG asserts that this conduct unnecessarily lengthened the duration of the proceeding resulting in unnecessary costs in the form of legal fees and the Board should not expect EOG to bear the costs.

In addition, EOG submits that much of the written submission of the Interveners and the direct evidence presented by them focused on policy issues, such as the dangers of sour gas and the Interveners' concerns relating to alleged adverse health effects of sour gas, and did not require legal representation to advance these concerns.

With respect to the disbursements incurred, EOG takes issue with the photocopying expense of \$950.00 which correlates to over 9,500 photocopies. EGO finds this number exorbitant for a two day hearing.

Taking all of the above into account EOG submits that Mr. Secord's legal costs should be significantly reduced or denied outright.

5 VIEWS OF THE INTERVENERS

Mr. Secord responded to EOG's comments by way of letter dated October 7, 2004. With respect to EOG's position that the intervention presented by Mr. Secord for the Interveners did not represent the true concerns of the Interveners, Mr. Secord argues that this statement is simply not true. Mr. Secord states that EOG's counsel does not appear to have a clear understanding of the process actually undertaken by the landowners leading up to their submissions. In that regard, Mr. Secord notes that the first meeting held with David Deere and Duncan O'Nions dealt with a number of concerns that they each had, including the location of the proposed well, environmental impacts, health and safety impacts, including emergency response planning, land use impacts, and adequacy of public consultation efforts. He adds that at this meeting Mr. Deere and Mr. O'Nions asked how it was possible that one landowner could choose the location of a sour gas well in such a way as to put neighbouring homes inside an EPZ.

Again on August 18, 19, and 20, 2004, Mr. Deere and Mr. O’Nions had lengthy discussions with their counsel regarding the submission. A draft of the submission was prepared by counsel and forwarded to the respective interveners for their review on August 20, 2004 and a second draft was provided on August 21, 2004. The drafts reviewed by the interveners contained the issues noted above and a record of the meetings and discussions is reflected in the statement of account for Mr. Secord. As a result, Mr. Secord asserts that it is fiction on the part of EOG’s counsel to suggest that the concerns set out in the written submission did not represent the true concerns of the Interveners.

With respect to EOG’s position that no mention of the well’s specific location was made by the interveners in their direct evidence, Mr. Secord questions whether EOG’s counsel was suggesting that each of the interveners should have read all 21 pages of the written submission into the record and takes the position that the Board may not approve of such an approach.

Mr. Secord also notes that counsel for EOG focused on selected quotes from the transcripts in order to suggest that the interveners were not concerned about the specific location. However, Mr. Secord submits that counsel did not set out a number of other quotes where the specific location was discussed by the Interveners, particularly, hearing transcript, p.419, L.26 to p.420, L.4; p. 420, L. 26 to p.421, L.3; and p.365, L.16 to p.370, L.11. Mr. Secord also noted that absent from the analysis regarding the amount of time spent on the specific location was an analysis with respect to the amount of time the Chairman of the Panel spent cross-examining the EOG panel of the issues of location and public consultation.

Mr. Secord questioned EOG’s claim that the Interveners “unnecessarily lengthened the duration of the proceeding.” In response to this comment, Mr. Secord noted that the hearing was scheduled for 3 days and it was his view that the hearing was run very efficiently given it was completed comfortably in 2 days. Further, Mr. Secord notes that no complaints or oral objections were made by EOG counsel during the course of the hearing regarding the relevancy of the issues bringing brought forward by the Interveners.

With respect to the photocopying expenses, Mr. Secord attributed some of the cost to the lackadaisical effort on the part of EOG with respect to providing a copy of the Application to Mr. Secord’s office. In that regard Mr. Secord advises that a request for a copy of the Application was made on August 3, 2004 and receipt, of a portion of the material, was not received until August 13th with the ERP being provided on August 16th and additional material not being provided until August 23rd. This resulted in additional photocopying of material off of the EUB’s website. Mr. Secord advised that additional photocopying would not have been required if EOG had provided the requested material in a more timely manner.

6 VIEWS OF THE BOARD

The cost claim submitted by Mr. Secord on behalf of the Interveners totals \$24,445.37. The amount is comprised of legal fees in the amount of \$20,425.00, expenses of \$1,673.48, and applicable GST in the amount of \$1,546.89. The claim also includes an attendance honorarium of \$200.00 for each David Deere, Kristine Deere, Duncan O’Nions, and Patricia Cooke. The Board notes that Mr. Secord incurred 61.9 hours with respect to preparation and 16.30 hours with respect to attendance. In addition, Mr. Secord also incurred 7 hours of travel time to which one half of his hourly rate has been claimed. The Board notes that the travel rate has been claimed in accordance with Guide 31A.

In considering the claim submitted by Mr. Secord, the Board has considered the comments filed by counsel for EOG, Mr. Naffin, and the response filed by Mr. Secord.

With respect to the honorariums being claimed, the Board finds that this portion of the claim accurately reflects the allowable rate of \$50.00 for each half day a hearing is held as per Guide 31A. The Board recognizes the participation and assistance of each of the interveners and finds that their attendance for both hearing days is a reasonable expectation. Accordingly, the Board approves an attendance honorarium in the amount of \$200.00 for each David Deere, Kristine Deere, Duncan O’Nions, and Patricia Cooke.

With respect to the legal fees claimed by Mr. Secord, the Board does not accept the view of EOG’s counsel that the intervention presented by the Interveners’ counsel did not represent the true concerns of the Interveners. However, the Board is of the view that the reliance by the Interveners on the Final Report of the Provincial Advisory Committee on Public Safety and Sour Gas dated December 2000 was not of assistance to the Board in making its determination on the issues before the Board for the following reasons. No specific evidence was provided at the hearing tying in the provisions of the Final Report mentioned in the Interveners’ submission and the specific Application. The submissions on the Final Report did not add to the Board’s understanding of the specific health and safety concerns of the Interveners in relation to the Application in question, as the concerns expressed on health and safety were general in nature.

In addition, the Board determined that the focus on the proposed well location was useful only to point out the issues that the Interveners had with the public consultation and the inclusion of the Interveners in the emergency planning zone. Any other issues related to the surface well location were not useful as they did not show specific impacts of the proposed well surface location on the Interveners as opposed to any other surface locations. The issues surrounding the proposed well surface location were not succinctly placed before the Board. No expert evidence was presented on behalf of the Interveners in support of their intervention.

Taking the foregoing into account, the Board finds that some of the legal fees claimed were not reasonably incurred in the circumstances and finds it appropriate to reduce Mr. Secord’s legal fees by \$5,000.00, which represents 20 hours.

The Board has also considered the expenses being claimed, in particular the expense of \$950.55 with respect to photocopying. In considering the expense the Board is mindful that Mr. Secord was representing two families to which a 21 page submission was filed for, the Board has also considered the length of the Application and other related material, and has taken into account the drafting and revising of submissions, and accordingly the printing and photocopying of the same. The Board also has regard for and is concerned about the delays sited respecting the provision of application material to the Interveners’ counsel. The Board expects that all relevant application materials will be provided to the Interveners in a timely and effective manner. For these reasons the Board finds that in this case, the photocopying expenses, although high, are acceptable and are approved in full.

Taking all of the foregoing into account, the Board approves a total attendance honorarium of \$800.00, legal fees in the amount of \$15,425.00, expenses in the amount of \$1,673.48, and applicable GST in the amount of \$1,196.89, for a total award of \$19,095.37.

7 ORDER

IT IS HEREBY ORDERED THAT:

- (1) EOG Resources Canada Inc. shall pay intervener costs in the amount of \$19,095.37.
- (2) Payment under this Order shall be made to Ackroyd, Piasta, Roth & Day LLP, attention: Richard Secord, 1500, 10655 Jasper Avenue, Edmonton, AB., T5J 3S9.

Dated in Calgary, Alberta on this 23 day of December, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member