



Canadian Natural Resources Limited

Applications for Well Licences and a Battery

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2005-005: Canadian Natural Resources Limited
Applications for Well Licences and a Battery
Application Nos.: 1331326 1331327 1331970 1358471

Published by

Alberta Energy and Utilities Board
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Calgary, Alberta
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Web site: www.eub.gov.ab.ca

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

Canadian Natural Resources Limited
Applications for Well Licences and a Battery

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1 INTRODUCTION

Canadian Natural Resources Limited (CNRL) applied to the Alberta Energy and Utilities Board (EUB/Board) on January 29, 2004, pursuant to Section 2.020 of the Oil and Gas Conservation Regulations (OGCR), for licences for two wells. On February 3, 2004, CNRL applied for a well licence to drill a slant oil well pursuant to Section 2.020 of the OGCR, and on August 26, 2004 CNRL applied to construct and operate a multiwell oil battery pursuant to Section 7.001 of the OGCR.

In March 2004, objections were received by the EUB from Scriber Farms Ltd. (Scriber Farms), Pete Scriber, Phyllis Margaret Scriber (Phyllis Scriber), Dan and Betty Scriber, and Ted Scriber (collectively the Scribers). Ted, Dan, Betty, Margaret, and Pete Scriber are shareholders or officers of Scriber Farms, they own land individually, and they rent land to Scriber Farms for it to conduct its farming operations. Phyllis Scriber owns the southeast (SE) quarter of section 10-52-1W4M and Pete Scriber owns the SE quarter of section 4-52-1W4M. The Scribers expressed concerns about the impact of the proposed wells and facility on the health and safety of themselves and their children and the impacts on property values and farming operations. Concerns were also raised about the negative effects of noise and possible contamination of water, air, and soil.

The Board held an examiner hearing commencing on November 24, 2004, before examiners W. G. Remmer, P. Eng., C. A. Langlo, P.Geol., and B. A. Austin, P.Geol. On December 15, 2004, the Scribers submitted a response to undertakings given during the hearing. On December 20, 2004, CNRL provided a reply to the Scribers' undertaking response. The Board therefore considers the hearing to have closed on December 20, 2004. On March 15, 2005 the Board issued Decision [2005-016](#).

The Board received one cost claim from Timothy Weiss of Trevoy Weiss LLP, on behalf of Scriber Farms and the Scribers, including their witness GCHEM Ltd., in the total amount of \$66,298.34. On January 27, 2005, CNRL's counsel Patrick McGovern of Thackray Burgess submitted comments on the cost claim. Mr. Weiss filed a response to those comments on February 16, 2005. The Board received further comments from Mr. McGovern on February 18, 2005.

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 *Alberta Energy and Utilities Board 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 – Intervener Standing

For the purposes this Cost Order the Board finds that Scriber Farms and each of Dan, Betty, Phyllis and Pete Scriber have met the definition of “Local Intervener” as set out in Section 28(1) of the ERCA and are therefore eligible to apply for cost recovery. The Board considers that Ted Scriber’s participation in the proceeding was on his own behalf and as an officer and representative of Scriber Farms.

4 VIEWS OF THE BOARD – Cost Claim Assessment

4.1 Trevoys Weiss LLP (Trevoys Weiss)

Trevoys Weiss claimed \$54,780.00 in legal fees, \$1,711.44 in disbursements, and \$3,954.40 in GST, for a total claim of \$60,445.84. Upon review of the claim the Board notes that three lawyers from Trevoys Weiss provided legal services: Timothy Weiss, Allan Damer, and Vida McLeod, with Mr. Damer and Ms. McLeod indicated in the claim as being senior counsel. In total 220.90 hours were claimed for preparation, 58 hours for attendance, and 1 hour for argument and reply.

In general, the costs claimed by Trevoys Weiss appear to the Board to be excessive in comparison to the concerns presented by the interveners and the nature of the development proposed by the Applicant. The claim is in an amount that under most circumstances the Board would not consider to be reasonable unless the issues in the hearing were numerous or complex, and the interveners’ participation added greatly to the Board’s understanding of the issues. That is not the case in this instance. In this proceeding the interveners raised some issues in their written

submission that they did not address at the hearing, or were not adequately prepared to address. Counsel for the interveners used considerable hearing time for questions that he stated were for the purpose of "giving comfort" to the interveners. The Board appreciates that the interveners had concerns regarding the applications, however in the Board's view an excessive amount of hearing time was used to solicit information that should have been requested outside of the hearing.

During the hearing counsel for the Scribers spent significant time attempting to advance the position that failures by CNRL to give proper notice of the applications to the interveners and to Transport Canada should result in the applications being dismissed by the Board as incomplete. In the Board's view an inordinate amount of hearing time was consumed in both evidence and argument in pursuit of this position, which ultimately the examiners found to be without merit.

The Scribers' and Scriber Farms' written submission included a number of conditions that they requested the Board to impose as conditions of any licences that may be issued by the Board. The proposed conditions were an important part of the interveners' submission, however, during the hearing the Scribers were unable in many cases to provide useful responses to questions about the need for the conditions or the Board's jurisdiction over the subject matter of some of the conditions. A number of the conditions were clearly beyond the Board's authority to impose, yet hearing time was spent addressing those and almost all of the other proposed conditions.

The Scribers undertook to provide further information on the proposed conditions in a written response to questions from Board counsel. The undertaking response was vital to the examiners' understanding of the interveners' need for the conditions and the Board's authority to impose the conditions. However, in the Board's view the undertaking response failed to add any substantive value to the submission itself or to the evidence provided by the interveners during the hearing. Accordingly, the Board is prepared to grant only twenty five percent of the costs claimed in respect of the undertaking response provided by the Scribers, resulting in a reduction of \$3,191.25 ($\$4,255.00 \times 75\%$) to legal fees. In that regard, the Board determined from a review of the legal account that 20.8 hours were incurred with respect to the undertakings (\$4,255.00) as shown in the following table.

Counsel	Hours and Rate	Total Fees
Timothy Weiss	13.5 x \$180.00	\$2,430.00
Allan Damer	6.8 x \$250.00	\$1,700.00
Vida McLeod	.5 x \$250.00	\$125.00
Sub-Total	20.8 hours	\$4,255.00

The Board finds that the interveners' submission and evidence did not assist the examiners to fully understand the issues the interveners themselves presented. The interveners failed in some respects to provide relevant information as part of or in relation to their written submission. The interveners should have anticipated that certain additional information alluded to but not contained in their written submission would be needed by the Applicant and the Board in order to fully address the interveners' evidence in the hearing. Prior to the hearing Board counsel was required to provide direction on this matter in a letter to the interveners' counsel.

The Board has considered the disbursements that were claimed and it finds that those have been incurred in accordance with Guide 31A, and they are therefore approved in full.

Taking all of the foregoing into account, and after awarding twenty-five percent of the legal fees claimed for preparing and providing responses to the undertaking, the Board finds it appropriate to reduce the balance of the legal fees (\$50,525.00) by fifty percent (\$25,262.50). GST on legal fees is adjusted accordingly. The Board therefore approves legal fees in the amount of \$26,326.25, disbursements in the amount of \$1,711.44, and applicable GST in the amount of \$1,962.64, for a total award of \$30,000.33, as shown in [Appendix A](#) attached. Notwithstanding the portion of the cost claim that is not approved, in the Board's view the amount awarded reflects the higher end of legal fees that would reasonably be incurred in relation to the intervention made by the Scribers and Scriber Farms.

For ease of reference the Board's calculations with respect to the legal fees are shown in the table below.

Calculation 1	
Fees Related to Undertaking Work	\$4,255.00
Less 75% Reduction	-3,191.25
Amount Awarded (a)	\$1,063.75
Calculation 2	
Total Legal Fees Claimed	\$54,780.00
Less Fees Related to Undertaking Work	-\$4,255.00
Balance of Legal Fees	\$50,525.00
Less 50% Reduction on Balance of Legal Fees	-25,262.50
Amount Awarded (b)	\$25,262.50
Total Legal Fees Awarded (a + b)	
	\$26,326.25

4.2 GCHEM Ltd. (GCHEM)

GCHEM's portion of the claim consists of professional fees in the amount of \$750.00 together with GST in the amount of \$52.50 for a total claim of \$802.50. The Board notes that GCHEM's account described its role as follows.

Provide expert testimony related to surface gas migration and invasion of natural gas into surface casing vents, soils near resource wells and shallow potable aquifers.

Multiple telephone conversations, pre-hearing meeting, e-mail correspondence, data-gathering and information distribution.

In considering GCHEM's portion of the claim the Board notes that GCHEM's evidence focused largely on the products or services GCHEM was in the process of making available. However, GCHEM's evidence did assist the examiners to understand some aspects of gas migration detection, and the Board notes that only a modest amount is claimed. Taking the foregoing into account the Board approves seventy-five percent of GCHEM's professional fees and therefore awards the amount of \$562.50 together with applicable GST in the amount of \$39.38, for a total award of \$601.88, as shown in [Appendix A](#) attached.

4.3 SCRIBER, Dan, Betty, Ted, Phyllis, Pete (the Scrivers)

Each of the Scrivers claimed a preparation honorarium in the amount of \$500.00, and an attendance honorarium of \$300.00, for a total honoraria claim of \$3,200.00. In that regard, the Board notes that each of the Scrivers' preparation honorarium claim is at the upper end of the honorarium allowance available under Section 6.2.2 of Guide 31A, which states:

When a substantial submission is prepared on behalf of a large group of interveners, up to four people who participated in the preparation of the submission without expert help may qualify for honoraria. Such awards are intended to recognize personal time and efforts and generally are in the amount of \$300 to \$500. In exceptional cases, honoraria in excess of \$500, to a maximum of \$2500, may be considered. There must be a clear need for any such substantial intervention.

With respect to honoraria claims generally, Sections 6.1.1 and 6.1.2 of Guide 31A, state 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.

Except when an intervener is represented by someone else and takes no active part in a public hearing, an intervener may normally recover some of the costs of appearing at a hearing. Appearing in support of an intervention refers to coming to the front when so requested by the Chairperson of the hearing and answering any questions about the intervention. Mere attendance is not participation. Participation may include giving evidence, being cross-examined, assisting counsel/consultants, and presenting closing argument. Such an intervener does not receive a witness fee, but could claim an honorarium of \$50 for each half day actually present at a hearing to listen to the evidence of others, question others, present an intervention, or confer with the intervener's own solicitor or expert.

The Board does not have difficulties with the attendance honoraria claims for the members of the Scriber family who attended as witnesses, and therefore approves a \$300.00 attendance honorarium for each Dan Scriber, Betty Scriber, Ted Scriber, and Phyllis Scriber. With respect to Pete Scriber, who is the landowner of the SE quarter of section 4-52-1W4M, while he may have attended portions of the hearing as an observer he did not participate in the hearing. The Board therefore does not award him an attendance honorarium.

With respect to the preparation honoraria claimed, the Board must recognize that the Scrivers were represented by three legal counsel, two of whom are indicated as having senior lawyer status. The Scrivers were also assisted by GCHEM on the issues relating to gas migration. Taking into account the number of hours claimed by counsel, the Board finds that the Trevo Weiss firm assumed the primary role of coordinating the intervention and therefore the Board does not find it reasonable for each member of the Scriber family to receive a preparation honorarium. The Board awards a preparation honorarium in the amount of \$500.00 to each of Ted Scriber and Betty Scriber. The other claims for preparation honoraria are denied.

Dan Scriber claimed \$250.00 for the costs of forming an intervener's group. Costs of this nature can be awarded by the Board where issues are common to a number of local interveners and a group intervention is made. The Board notes that the Scrivers are closely related, and for the most part they comprise all the shareholders and officers of Scriber Farms. The Board does not

find that an award of costs for forming a group is warranted in this case and therefore that part of Dan Scriber's cost claim is denied.

Taking all of the foregoing into account, the Board approves honoraria for the Scribers in the total amount of \$2,200.00, the details of which are shown in [Appendix A](#) attached.

4.4 Scriber Farms Ltd. (Scriber Farms)

Scriber Farms submitted a claim for \$800.00, representing a \$500.00 preparation honorarium and \$300.00 attendance honoraria. The Board notes that Scriber Farms was represented throughout the proceedings by the same counsel as the Scribers, and that no witnesses other than the Scribers were presented on behalf of Scriber Farms. There was little if any evidence provided to indicate that the interests and concerns of Scriber Farms were to be distinguished from those of the Scribers themselves. It is the Board's view that separate honoraria for Scriber Farms is not warranted in this case, and therefore the honoraria claimed by Scriber Farms are denied in full.

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Canadian Natural Resources Limited shall pay intervener costs in the amount of \$32,802.20 to Scriber Farms Ltd.;
- (2) Payment under this order shall be made to Trevoy Weiss LLP, attention Timothy Weiss, Suite 680, 10180 – 101 Street, Edmonton, Alberta, T5J 3S4.

Dated in Calgary, Alberta on this 18th day of May, 2005.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



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Appendix A (CNRL W

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