



**Highpine Oil & Gas Ltd.
(formerly Vaquero Energy Ltd.)**

**Application for a Oil Effluent Pipeline
Chip Lake Field**

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD
Energy Cost Order 2005-009: Highpine Oil & Gas Ltd.
Application for a Oil Effluent Pipeline
Chip lake Field
Application No. 1375120
Cost Application No. 1402056

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Calgary, Alberta

**Highpine Oil & Gas Ltd.
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1 INTRODUCTION

Highpine Oil & Gas Ltd. (Highpine), formerly Vaquero Energy Ltd. (Vaquero), applied to the EUB for a licence to construct and operate an oil effluent pipeline and two spare crossings pursuant to Part 4 of the *Pipeline Act*.

The Board received a letter of objection on January 18, 2005 from David Jacobs and Claudette Jacobs (the Jacobs Family), landowners along the proposed pipeline route, expressing their concerns about the pipeline on the basis of its potential interference with their future land development plans.

The Board scheduled a public hearing that was held in Edmonton, Alberta, on May 17, 2005, before an examiner panel consisting of W.G. Remmer, P.Eng. (presiding member), T.J. Pesta, P.Eng., and D.K. Boyler, P.Eng.

Following the acquisition of Vaquero by Highpine, the EUB determined that it was necessary to reopen the hearing to consider this change in circumstances. This decision was communicated to interested parties by way of a letter from Board counsel to all parties on June 20, 2005. Highpine responded to this letter on June 21, 2005. The Jacobs Family, however, did not respond to either the EUB or to Highpine by the submission deadline of July 7, 2005. As such, the hearing was considered closed as of July 15, 2005.

On August 2, 2005 the Board issued Decision [2005-080](#).

The Board received one cost claim with respect to the proceeding from Mr. Richard Dion of Netcom Consulting Services Inc. (Netcom), on behalf of the Jacobs Family. The cost claim totals \$8,250.30. By way of letter dated June 15, 2005 Highpine was advised that comments to the claim were to be filed by June 22, 2005 and Netcom was advised that a response to any comments filed was to be submitted by June 29, 2005. The Board received comments from McLennan Ross, counsel for Highpine, and a response from Netcom. Accordingly, for the purposes of this Cost Order the Board considers the cost process to have closed on June 29, 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 *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 of this Cost Order the Board finds that the Jacobs Family are local interveners as per section 28 of the ERCA and are therefore eligible to apply for cost recovery.

4 VIEWS OF THE BOARD – Assessment

Netcom claimed professional fees in the amount of \$6,625.00 for the services provided by Mr. Dion and \$665.00 for Ms. Line Thivierge, an administrative assistant. Netcom also claimed expenses in the amount of \$450.00 together with GST in the amount of \$510.30. Upon review of the claim the Board notes that Mr. Dion incurred 44 hours for preparation and 9 hours for attendance and Ms. Thivierge incurred 19 hours for preparation.

It is the Board’s view that Mr. Dion performed two roles during this proceeding: he acted as the Jacobs Family’s agent or representative, and also acted as a consultant and provided evidence relating to the concerns expressed by the Jacobs.

With respect to the hourly wage being claimed, the Board notes Highpine’s concern that Mr. Dion is charging a professional hourly rate, yet does not have a professional designation. The Board notes the following from Decision [2004-101](#) in that regard.

In summary, it is the Board Member’s view that interveners are entitled to be represented by an agent of their choosing, be it a lawyer, a consultant with expertise in a particular subject matter, or a family friend. The Board Member finds that such participation will be appropriate as long as an

intervener's chosen representative assists the intervener and contributes to a better understanding of the issues before the Board. Such participation will enable cost recovery, but only according to the requirements of the *Board's Rules of Practice and Guide 31A*.

In light of the above and as noted earlier, the Board does find that the Jacobs were entitled to retain Mr. Dion as a representative and agent to represent them at the hearing. The Board further notes that Netcom does carry on a consulting business that specializes in property acquisitions and dispositions including environmental assessments and the Board understands that it was on the basis of this claimed expertise that he was retained by the Jacobs Family. As such the Board accepts as reasonable Netcom's claim for professional fees on behalf of Mr. Dion at his standard professional rate of \$125.00/hr.

Regarding Mr. Dion's role as a consultant, the Board notes that Vaquero raised the question of whether Mr. Dion possessed the necessary education, knowledge or experience to provide expert evidence on the topics discussed in Netcom's written submission. The Board notes in that regard that the Netcom submission focused on two issues. The first issue was the history and development of the 6 of 34 wellsite located across the highway from the Jacobs Family's property. This portion of the evidence included a section that dealt specifically with hydrogeology and the potential for contamination of the Jacobs' aquifer.

The Board did not find the information provided by Netcom with respect to this first issue to be of particular assistance when assessing the subject application. The Board recognizes that the past practices of a company may sometimes be relevant when considering a new application from that company. However, other than providing some background information about the relationship between Vaquero and the Jacob's family, the Board was not assisted in its assessment of the application by this information. Further, the Board finds that Mr. Dion does not possess the necessary expertise to provide expert evidence with respect to hydrogeological issues or aquifer contamination. As such, the Board gave the evidence prepared by Netcom in this regard no weight in its deliberations.

Regarding the potential impacts of the proposed pipeline on the Jacobs' cabin project, the Board is of the view that Mr. Dion possesses some specialized knowledge in this area. The Board accepts that Mr. Dion possesses specialized knowledge with respect to project planning and land use based upon his previous experience in the real-estate departments of Rogers Cantel and Telus. The Board found this portion of the evidence provided to be of some use to it in its deliberations.

Based on the foregoing discussion the Board finds it appropriate to reduce Mr. Dion's fees by 40% (\$2,650.00), thereby approving professional fees in the amount of \$3,975.00. The Board does not take issue with the expenses being claimed and are therefore approved in full.

The Board has also considered the 19 hours of administrative assistance (\$665.00), and based on the Board's determination with respect to Mr. Dion's contribution to the proceeding, the Board finds these hours to be excessive for the purposes of cost recovery. The Board finds 10 hours to be more commensurate with what was produced throughout the course of this application. Therefore based on the hourly wage of \$35.00, the Board approves fees for administrative support in the amount of \$350.00.

In conclusion the Board approves professional fees in the total amount of \$4,325.00, expenses in the amount of \$450.00, and GST in the amount of \$334.25 for an overall award of \$5,109.25

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Highpine Oil and Gas Ltd. shall pay intervener costs in the amount of \$5,109.25.
- (2) Payment under this order shall be made to Netcome Consulting Services Inc., attention: Richard Dion, 10770 Winterburn Road N.W., Unit 3301, Edmonton, AB., T5S 2R8.

Dated in Calgary, Alberta on this 15 day of August, 2005.

ALBERTA ENERGY AND UTILITIES BOARD

<Original Signed By Thomas McGee>

Thomas McGee
Board Member