



Canadian Natural Resources Limited

Applications for Well Licences and Batteries
Lloydminster Field

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2005-010: Canadian Natural Resources Limited

Applications for Well Licences and Batteries

Lloydminster Field

Application Nos. 1357009, 1357010, 1357011,

1357012, 1366460, 1366462

Cost Application No. 1396829

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640 – 5 Avenue SW

Calgary, Alberta

T2P 3G4

Telephone: (403) 297-8311

Fax: (403) 297-7040

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

Contents

1	INTRODUCTION.....	1
2	VIEWS OF THE BOARD – AUTHORITY TO AWARD COSTS.....	1
3	VIEWS OF THE BOARD – LOCAL INTERVENER STATUS	2
4	VIEWS OF THE BOARD – ASSESSMENT	2
	Trevoy Weiss LLP	2
	Aplin Farms Inc.	3
	John and Colleen Aplin.....	4
5	ORDER	4
	APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED	5

ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

Canadian Natural Resources Limited
Applications for Well Licences
And Batteries
Lloydminster Field

Energy Cost Order 2005-010
Application Nos. 1357009, 1357010,
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1 INTRODUCTION

Canadian Natural Resources Limited (CNRL) applied pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations* to drill nine crude bitumen wells. In addition CNRL applied pursuant to Section 7.001 of the *Oil and Gas Conservation Regulations* requesting approval to construct and operate four multiwell crude bitumen batteries.

John Aplin and Colleen Aplin, owners of the south half of Section 17-51-1W4M, as well as the northwest quarter and most of the south half of Section 16-51-1W4M, filed objections to the application on January 14 and 28, 2004. CNRL and the interveners had been engaged in discussions in an effort to resolve the interveners' concerns. On March 1, 2005, counsel for the interveners notified the Board that the Aplins were withdrawing their objection.

The Panel assigned to consider these applications consisted of T. M. McGee (Presiding), R. N. Houlihan, Ph.D., P.Eng., and K. G. Sharp, P.Eng. On April 6, 2005 the Board issued Decision [2005-022](#).

On April 1, 2005 the Board received a cost claim from Timothy Weiss of Trevoy Weiss LLP, on behalf of the Aplin family. By way of letter dated April 19, 2005 Thackray Burgess, counsel for CNRL, and Mr. Weiss were advised that comments to the cost claim were to be filed by May 2, 2005 and a response to any comments to be filed by May 16, 2005. The Board did receive comments and a response. Accordingly, for the purposes of this Cost Order, the Board considers the cost process to have closed on May 16, 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 – Local Intervener Status

As noted earlier in this Order Mr. and Mrs. Aplin own the south half of Section 17-51-1W4M as well as the northwest quarter and most of the south half of Section 16-51-1W4M. Further, their residence is located in 2-17-51-1W4M. The Board finds for the purposes of this Cost Order, Mr. and Mrs. Aplin meet the requirements set out in section 28 of the ERCA and are therefore eligible to apply for cost recovery.

4 VIEWS OF THE BOARD – Assessment

Trevoy Weiss LLP

Trevoy Weiss incurred legal fees in the amount of \$17,010.00 together with disbursements in the amount of \$695.00 and GST of \$1,239.35 for a total legal bill of \$18,944.35. Upon review of the claim the Board notes that 94.50 hours were incurred for preparation of the intervention with the statement of account reflecting January 11, 2005 as the time when legal consultation began and February 27, 2005 as the time when legal consultation concluded.

Counsel for CNRL responded to the cost claim stating that it was unreasonable given the nature of the applications and the fact that no hearing took place. CNRL also indicated that the interveners did not act responsibly or economically in conducting the intervention and that the interveners' position and the conditions they asked the Board to impose were not responsibly presented. CNRL suggested that legal fees should fall within the range of \$1,800 to \$2,700, plus GST and reasonable disbursements.

Counsel for the interveners replied that CNRL had filed a large amount of material in relation to the applications and all of it had to be reviewed in preparation for the hearing. In addition, counsel stated that the time spent preparing for the hearing was necessary and responsible.

With respect to the claim for legal fees the Board notes that 24 hours was claimed for the preparation of the interveners' submission and for consultation with the interveners regarding the submission. The Board also notes that the submission itself is very similar in form and substance to a submission previously filed by Trevoy Weiss on behalf of another intervener in a previous

Board hearing¹. As such it is the Board's view that the submission filed was prepared with the assistance of a strongly related precedent and therefore the Board finds that the amount of time claimed for the preparation of the submission is excessive. Given this circumstance the Board finds it appropriate to reduce the time awarded for preparation of the interveners' submission by 17 hours (\$3,060.00), thereby approving 7 hours (\$1,260.00).

The Board also notes that for the period February 24th to 27th inclusive, 42 hours was claimed for hearing preparation including preparation of cross-examination, examination-in-chief, and argument. Given the nature of the applications and the concerns raised by the interveners, including that the interveners did not indicate an intention to call expert witnesses, the Board finds forty-two hours to be somewhat excessive for preparation. The Board finds it appropriate to reduce the time incurred during this period by 22 hours (\$3,960.00), thereby approving 20 hours (\$3,600.00).

The Board also notes that on January 26th, ten hours was claimed for review of legislation and regulations regarding CNRL application material. Again, given the nature of the applications the Board finds it appropriate to reduce the time awarded for that review by 7 hours (\$1,260.00), thereby approving 3 hours (\$540.00).

The balance of the claim for legal fees, after accounting for the foregoing reductions, is 48.5 hours and relates to various attendances including reviewing and responding to correspondence and telephone discussions. The description of the services provided by Trevoy Weiss for these entries makes it somewhat difficult for the Board to judge the reasonableness of that portion of the claim for legal fees. Generally speaking, in the Board's view legal fees that would be reasonably incurred in relation to a landowners' intervention in response to the CNRL applications would be in a range equivalent to 30 – 40 hours in total. Having regard for that and for the reductions described in the preceding paragraphs, the Board finds it in order to further reduce the award for legal fees by the equivalent of 8.5 hours (\$1,530.00). The Board therefore will approve 40 hours of legal services (\$7,200.00). In doing so, the Board wishes to indicate that this award is at the upper end of the range of cost awards the Board would consider to be reasonable in relation to an effective and reasonable intervention by a landowner responding to the CNRL applications.

For the foregoing reasons, the Board approves legal fees in the amount of \$7,200.00, disbursements in the amount of \$695.00, and applicable GST in the amount of \$552.65, for an overall award of \$8,447.65.

Aplin Farms Inc.

Aplin Farms Inc. has claimed a preparation honorarium of \$500.00 which is in addition to the preparation honorarium being claimed by John and Colleen Aplin. The Board notes that Aplin Farms Inc. was represented by the same counsel as Mr. and Mrs. Aplin. Based on the submissions filed it does not appear to the Board that witnesses other than Mr. and Mrs. Aplin were going to be presented on behalf of Aplin Farms Inc. It is the Board's view that the material filed by the interveners indicates that the interests and concerns of Aplin Farms Inc. are the same and are not distinguished from those of Mr. and Mrs. Aplin themselves. It is the Board's view

¹ Canadian Natural Resources Limited, Applications for Well Licences and a Battery, Lloydminster Field, EUB Decision 2005-016

that a separate honorarium for Aplin Farms Inc. is not warranted in this case and that part of the claim is therefore denied in full.

John and Colleen Aplin

John Aplin and Colleen Aplin both claim a preparation honorarium of \$500.00. The Board notes that these claims are at the maximum prescribed rate provided for in part 6.1.1 of Guide 31A. It is the Board's practice that where an individual intervener retains counsel to assist with the intervention, and counsel is primarily responsible for the intervention (as the Trevoy Weiss Statement of Account indicates), a preparation honorarium will not be provided to the interveners themselves. In that regard however, the Board does recognize from the Statement of Account provided by Mr. Weiss that the Aplins were involved via teleconference with preparation of their submission as well as with witness preparation. While the Board finds it appropriate to recognize the time incurred for these activities it does not find the maximum rate of \$500.00 to be justified.

For the foregoing reasons the Board approves a preparation honorarium of \$150.00 for John Aplin and a preparation honorarium of \$150.00 for Colleen Aplin.

For ease of reference, the amounts that are being claimed and awarded are shown in [Appendix A](#) attached.

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Canadian Natural Resources Limited shall pay intervener costs in the amount of \$8,747.65 to Aplin Farms Inc.
- (2) Payment under this Order shall be made to Trevoy Weiss LLP, attention: Timothy Weiss, 680, 10180 – 101 Street, Edmonton, Alberta, T5J 3S4.

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

ALBERTA ENERGY AND UTILITIES BOARD

<Original Signed By Thomas McGee>

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



ECO 2005-010
Appendix A (CNRL - v

[\(Return to Table of Contents\)](#)