



Advantage Oil & Gas Ltd.

Applications for a Multiwell Oil Battery Licence
and Two Multiwell Oil Satellite Licences
Chip Lake Field

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2006-003: Advantage Oil & Gas Ltd.

Applications for a Multiwell oil Battery Licence
and Two Multiwell Oil Satellite Licences

Chip Lake Field

Application Nos. 1428608, 1428443, 1428444

Cost Application No. 1438533

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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

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

Advantage Oil & Gas Ltd.
Applications for a Multiwell Oil
Battery Licence and Two Multiwell
Oil Satellite Licences
Chip Lake Field

Energy Cost Order 2006-003
Application Nos. 1428608, 1428443, 1428444
Cost Application No. 1438533

1 INTRODUCTION

Advantage Oil & Gas Ltd. (Advantage) applied to the Alberta Energy and Utilities Board (EUB/Board), in accordance with Section 7.001 of the *Oil and Gas Conservation Regulations (OGCR)*, for approval to allow operation of a multiwell oil battery at LSD 5-13-53-10W5M (multiwell oil battery) and two existing multiwell oil satellites at LSD 16-11-53-10W5M (16-11 satellite) and LSD 3-12-53-10W5M (3-12 satellite).

The Board received interventions to the application from several landowners who were represented by L. Vankosky and Grand Chief M. Gros-Louis (the Interveners). The parties expressed concerns with respect to pollution, health, safety, flaring, location, property value, traffic, dust, life expectancy, and possible future expansion of the multiwell oil battery.

The Board considered the applications and interventions at a public hearing in Wildwood, Alberta, on November 23 and 24, 2005, before Board Member J. D. Dilay, P.Eng. (Presiding Member) and Acting Board Members F. Rahnama, Ph.D., and W. G. Remmer, P.Eng. The Board Members and EUB staff conducted a site visit on November 22, 2005. On February 7, 2006 the Board issued [Decision 2006-007](#).

The Board received one cost claim totaling \$44,409.63 from Mr. William McElhanney of Ackroyd, Piasta, Roth & Day LLP (Ackroyd Piasta) on behalf of the Interveners. By way of letter dated February 3, 2006 counsel for Advantage, Mr. Keith Miller, filed comments with respect to the cost claim, and on February 17, 2006 Mr. McElhanney responded to those comments.

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 PARTIES

As noted earlier, on February 3, 2006 the Board received comments from Mr. Miller on behalf of Advantage with respect to the costs being claimed by the Interveners.

Mr. Miller took issue with the amount of preparation time incurred by Mr. McElhanney given the generalized nature of the submission; the high level of cross-examination; and the late date on which Mr. Simonar's report was provided to Advantage. With respect to Mr. Simonar, Mr. Miller noted that the total preparation time incurred was 133.5 hours and that the attendance time of 24 hours is 9 hours greater than Mr. McElhanney's attendance time. In addition, the 7 hours for argument appears unusual given it is twice that incurred by Mr. McElhanney and given that Mr. McElhanney was responsible for argument.

With respect to the expenses incurred by Mr. McElhanney, Mr. Miller noted that the car rental claim was for 5 days in light of the hearing being conducted for 2 days and also took issue with the transcript expense of \$1,244.00. Mr. Miller argued that the hearing lasted for less than two days and as such the transcripts were not required to assist the Interveners during the course of the hearing.

With respect to the honorariums being claimed for the Interveners, Mr. Miller argued that attendance honorariums should be denied for Steve Roga, Maria Herman, and Donna Anderson as they did not appear as witnesses at the hearing. Mr. Miller also indicated that it would be inappropriate to approve a preparation honorarium for any of the Interveners given that the generalized submission was prepared by counsel, and lastly, Mr. Miller, while recognizing the benefits of group formation, did not find it appropriate to award all Interveners an honorarium for forming a group. In that regard Mr. Miller noted that Ms. Vankosky candidly admitted during cross-examination that she was the driving force behind the group.

On February 17, 2006 Mr. McElhanney responded to Mr. Miller's concerns and arguments.

With respect to the "high level of cross-examination" Mr. McElhanney is of the view that this allowed for better contribution to the Board's understanding of the issues.

With respect to submitting Mr. Simonar's evidence at a late date, Mr. McElhanney argued that Advantage did have an opportunity to seek an adjournment but chose not to. This was further reiterated by reproducing dialogue from the transcripts on page 109, at line 26 and in light of this dialogue Mr. McElhanney argued that Advantage was not prejudiced. With respect to Mr. Simonar's preparation hours, this amount represents two site visits, researching Advantage's documents, corresponding with various contractors, landowners, residents, and arriving at the estimates, writing and completing reports. Mr. McElhanney is of the view that these activities warrant the amount of preparation time set out in the claim.

With respect to Mr. Simonar's attendance time, Mr. McElhanney clarified that this included travel time as Mr. Simonar is not bound by the same requirement as lawyers to record travel time at one half of their hourly rate. With respect to the time incurred for argument, Mr. McElhanney clarified that he requested Mr. Simonar to provide argument which assisted counsel.

Mr. McElhanney acknowledged the oversight of the car rental for 5 days given the hearing occurred over the course of two days and that the claim should be adjusted accordingly. With respect to transcripts, these were necessary for the purposes of having a full and complete record of the proceedings. In addition, they were of assistance in preparing the cost claim and will also provide some guidance to the Interveners in the future.

With respect to the comments regarding the honorarium claims, Mr. McElhanney noted that a total of 25 people encompassed the intervening group and that the interveners listed in the claim were integral to the substance of Ms. Vankosky's testimony. These particular interveners devoted significant personal time to arrange meeting, contact other interveners, and review documents. Mr. McElhanney argued that if it was not for the involvement of these interveners, the scope and length of the hearing may not have been as efficient and timely as it was.

4 VIEWS OF THE BOARD – General Comments

In considering the cost claim filed for this matter the Board has taken into account the conduct and approach taken by Advantage throughout the proceeding. In that regard the Board recognizes that Advantage failed to meet personal consultation requirements and failed to provide an evaluation of reasonable alternatives, as discussed at page 18 of [Decision 2006-007](#).

Advantage should have seriously evaluated other sites within the field to address the concerns raised by the interveners and entered into serious discussions with them in this regard.

The Board is also very concerned about the interveners' serious misunderstanding of the differences in distances for notification, personal consultation, evacuation, and emergency response planning. The Board believes that this misunderstanding results primarily from the failed effort by Defiant initially and later by Advantage with respect to participant involvement. The Board concludes that Advantage failed to take the necessary steps to understand the interveners' concerns in sufficient detail and to take account of them in its application. The Board expects Advantage to review and improve on internal

procedures to ensure that the planning and implementation of their participant involvement programs properly include both notification and personal consultation at an early stage, prior to filing an application, and throughout the lifetime of any proposed development.

It is the Board's view that these types of deficiencies can result in parties incurring costs and spending additional personal time that would not otherwise be necessary.

5 VIEWS OF THE BOARD – Assessment

In assessing the cost claim filed for this proceeding, the Board has reviewed and considered the comments and response filed.

Interveners

The Board has considered the honoraria claims bearing in mind sections 6.2.1, 6.2.2, and 6.2.3 of Directive 031A which provides guidance with respect to the ranges of honoraria the Board will approve for organizing a group¹, preparation time², and attendance time³.

Ms. Vankosky claims preparation honoraria of \$500.00, attendance honoraria of \$200.00, and honoraria for forming a group in the amount of \$250.00, for an overall claim of \$950.00.

Grand Chief Gros-Louis claims attendance honoraria in the amount of \$100.00.

Steve Roga, Maria Herman, and Donna Anderson, each claim preparation honoraria of \$300.00, attendance honoraria of \$200.00, and honoraria for forming a group in the amount of \$250.00. The total honorarium claimed by these interveners is \$2,250.00.

The Board recognizes that the Interveners consisted of 25 members 5 of whom attended the actual hearing. Ms. Vankosky appeared as a witness at the hearing as did Grand Chief Gros-Louis with Steve Roga, Maria Herman, and Donna Anderson attending as representatives for the group.

With respect to the honoraria claims for forming a group, the Board finds that all 4 claims are reasonable and in accordance with [Directive 031A](#) and are therefore approved in full.

With respect to the preparation honoraria the Board recognizes that it generally does not approve this category of honoraria where a party is being represented by counsel and or consultant. In this case the Interveners had the benefit of both a lawyer and expert consultant. However, the Board must also recognize the history of this matter and the assistance available from the Interveners as they have been involved throughout the life of this project. Taking that into account as well as the general comments in [section 4](#) above, the Board finds that unique circumstances exist and is therefore prepared to approve the preparation honoraria as claimed in this instance.

¹ One to four organizers may receive honoraria in the range of \$300-\$500, Directive 031A, page 9

² One to four people who participated in the preparation of the submission without expert help may receive between \$300-\$500, Directive 031A, page 9

³ Two representatives assisting the lawyer and up to six witnesses may each receive \$50 for each half day, Directive 031A, page 10

With respect to attendance honoraria, the Board notes that [Directive 031A](#) provides that two representatives from a group may attend the hearing to work with their counsel, even if the two representatives do not appear in support of the submission. While the Board finds that this approach to attendance honoraria is adequate for most proceedings it does find that this particular proceeding provided for unique circumstances, again given the 25 members of the group and the general comments in [section 4](#) above. The Board is prepared to apply its discretion and allow three representatives attending the hearing to recover their attendance honoraria as claimed.

Taking all of the foregoing in account, the Board approves all honorariums as claimed.

Ackroyd, Piasta, Roth & Day LLP (Ackroyd Piasta)

Mr. McElhanney claims legal fees in the amount of \$18,575.00, expenses in the amount of \$2,499.02, and related GST in the amount of \$1,475.18 for an overall claim of \$22,566.87.

The Board has reviewed the hours incurred by Mr. McElhanney, namely 55.4 for preparation, 15 for attendance, and 3.9 for argument and reply, for an overall amount of 74.3 hours. The Board notes Mr. Miller's concern with the amount of preparation hours and the high level of cross-examination conducted at the hearing.

The Board is of the view that the preparation hours are slightly excessive for a two day hearing and agrees that there was a higher level of cross-examination than was required for the issues at hand. However the Board must also take into account Advantage's conduct and deficiencies, again as reflected in [section 4](#) above. In the circumstances the Board finds it appropriate to apply a reduction of 30% to the preparation fees (\$4,155.00).

In light of the foregoing the Board approves legal fees in the amount of \$14,420.00.

The Board has considered Mr. McElhanney's expenses and notes that the amount being claimed in this Order reflects an adjustment for the car rental charges. With respect to the transcripts the Board notes from Mr. McElhanney's response that the primary benefits included having a complete record, assistance with preparing the cost submission, and for guidance in the future. These benefits do not reflect contributing to the Board's understanding of the issues. For example, the Board may find this type of expense appropriate where the transcripts have been used for the preparation of argument or cross-examination in a lengthy hearing. In addition, as noted in [Directive 031A](#), costs relating to the preparation of a cost claim are an example of those costs that might not be considered reasonable⁴. It also appears from a review of the legal account that the transcripts had not been utilized. The Board is therefore not prepared to approve the transcript expense based on the arguments provided by Mr. McElhanney on the basis of having a complete record and assisting with the preparation of the cost submission. However, given the unique circumstance the Board will allow for guidance in the future.

The Board recognizes that certain issues might continue to have on-going impact in light of the Board's conclusions in Decision [2006-007](#).

Recognizing that the equipment is not operating and has been in place for a lengthy period of time, the Board is prepared to allow the continued storage of the equipment on the 5-13, 16-11, and 3-12 sites, providing that applications are

⁴ Directive 031A, part 5.1

submitted by no later than October 2, 2006; otherwise the equipment must be removed by October 2, 2006. The equipment related to the multiwell oil battery that must be removed includes four oil storage tanks, the water injection component, the group treater, and the group separator. Regarding the 16-11 and 3-12 satellites, the test separator must be removed from each site by October 2, 2006.

While it is not the Board's general practice to approve transcript costs unless there is a clear need for the use of the transcripts during the course of the hearing itself, it is prepared to qualify these as unusual circumstances and will approve the transcript expense based on this conclusion.

Taking all of the foregoing into account, the Board approves legal fees in the amount of \$14,420.00, expenses in the amount of \$2,499.02, and related GST in the amount of \$1,184.33, for an overall award of \$18,103.35.

Dave Simonar

Mr. Simonar claims professional fees in the amount of \$16,450.00, expenses of \$436.58, and related GST of \$1,182.06 for an overall claim of \$18,068.64.

The Board notes Mr. Miller's concern with the amount of preparation time, specifically 133.5 hours. The Board is also mindful that this represents approximately 17 full 8 hour days. In considering this portion of the claim the Board recognizes that it received great value from Mr. Simonar's services and during its deliberations placed a considerable amount of weight to his evidence.

In light of the foregoing and the general comments in [section 4](#), the Board finds it appropriate to approve Mr. Simonar's preparation fees in full, \$13,350.00.

With respect to Mr. Simonar's travel time the Board notes that the Scale of Costs in Directive 031A allows for professionals to claim only half of their hourly rate for travel time. The Board applies this limitation on hourly rates for all professionals, including lawyers, consultants, analysts, and experts. The Board has reviewed Mr. Simonar's time log and while it does not specifically indicate the hours spent traveling the Board estimates that given 600km was claimed for mileage approximately 5 hours would have been spent traveling.

In light of the foregoing the Board reduces Mr. Simonar's attendance fees of \$2,400.00 to \$2,150.00 (5 hrs x \$50.00 = \$250.00).

The Board has also considered the 7 hours (\$700.00) incurred for argument, and again in light of the value and contribution received from Mr. Simonar's participation at this hearing, the Board finds that 7 hours is acceptable for assisting counsel with this portion of the proceeding. The Board also recognizes that counsel for the Interveners incurred a modest amount of hours⁵. Therefore the Board approves these hours in full.

Taking all of the foregoing into account, the Board approves professional fees for Mr. Simonar in the amount of \$16,200.00, expenses in the amount of \$436.58, and related GST in the amount of \$1,164.56, for an overall award of \$17,801.14.

⁵ 3.9 hours

6 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Advantage Oil & Gas Ltd. shall pay intervener costs in the amount of \$39,678.61.
- (2) Payment under this Order shall be made to Ackroyd, Piasta, Roth & Day LLP.

1500, 10665 Jasper Avenue
Edmonton, AB T5J 3S9
Attention: Mr. William McElhanney

Dated in Calgary, Alberta on this 11th day of May, 2006.

ALBERTA ENERGY AND UTILITIES BOARD

<Original Signed by Thomas McGee>

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A