



Gwen Misiak

Section 39 Request of Pipeline Licence 30499

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2008-006: Gwen Misiak
Section 39 Review Request of Pipeline Licence 30499
Application Nos. 1470827, 1510928 and 1510444
Cost Application No. 1516189

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**GWEN MISIAK
SECTION 39 REVIEW REQUEST
OF PIPELINE LICENCE 30499**

**Energy Cost Order 2008-006
Application Nos. 1470827, 1510928, 1510444
Cost Application No. 1516189**

1 INTRODUCTION

On July 19, 2006, the Alberta Energy and Utilities Board (EUB or Board) approved Application No. 1470827 and issued Pipeline Licence 30499, Line 4 (the Licence), to Canadian Natural Resources Limited (CNRL), pursuant to Part 4 of the *Pipeline Act*.

Application No. 1470827 was to build a pipeline from an existing well located at Legal Subdivision (LSD) 14-28-29 1 W4M, to a pipeline tie-in point at LSD 10-17-49 1 W4M. The proposed pipeline would have been 4.81 kilometers (km) in length and would have transported natural gas containing no hydrogen sulphide. The proposed pipeline was to be located 3.4 km south of Lloydminster.

On October 30, 2006, the Board received correspondence from Gwen Misiak requesting that the Board hold a review hearing, pursuant to Section 39 of the *Energy Resources Conservation Act*, to consider the Board's decision to issue the Licence. The request for review related to the location of the pipeline on Ms. Misiak's land.

On March 29, 2007, the Board issued correspondence to counsel for Ms. Misiak and CNRL, advising that after considering the positions of the parties, the Board was satisfied that Ms. Misiak was a potentially affected party, and that had her concerns been known to the Board at the time the decision to grant the Licence was made, the Board may have reached a different decision. Therefore, the Board granted Ms. Misiak's request for a review, and advised that a notice of hearing for the matter would be issued in due course.

On May 4, 2007, CNRL notified the EUB that it would not be proceeding with the construction of the pipeline approved under the Licence, pursuant to Section 5(2) of the *Pipeline Regulation*. On May 29, 2007, the Board issued Board Member Report Decision [2007-039](#), acknowledging CNRL's notification, and confirming that a public review hearing is not necessary.

On December 17, 2007, the Board issued Energy Cost Order 2007-009 (ECO 2007-009). In ECO 2007-009, the Board addressed issues related to Ms. Misiak's counsel, Mr. Bodnar. In Part 4 of ECO 2007-009, the Board expressed concern regarding certain detail in Mr. Bodnar's legal accounts. Due to the accounting deficiencies, the Board determined that it could not assess the claim. The Board advised Mr. Bodnar that he had the opportunity to re-file a revised cost claim in accordance with Part 4 of ECO 2007-009, by no later than January 11, 2008.

On January 4, 2008, Mr. Bodnar submitted a revised cost claim. On February 14, 2008, CNRL submitted comments regarding the revised cost claim, and on February 21, 2008, Mr. Bodnar submitted a response.

The Board considers the cost process to have closed on February 21, 2008.

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

3.1 CNRL

By way of letter dated February 14, 2008, CNRL reiterated its comments of June 28, 2007, regarding Mr. Bodnar’s cost claim. CNRL continues to be of the view that the cost claim is unreasonable given that the Board did not hold a hearing. CNRL submits that a cost award of \$500.00 would be appropriate for preparation of the R&V application, and Mr. Bodnar’s response to CNRL’s submission in opposition of the R&V application.

With respect to the revised cost claim, while CNRL recognizes that Mr. Bodnar removed legal fees for certain tasks involving the Surface Rights Board, CNRL submits that there is still insufficient information to determine which portions of Mr. Bodnar’s accounts relate directly to the R&V application. CNRL notes that there are several references to “Parlee”, which law firm

was and is dealing with the surface rights issues and not the R&V application. In addition, specific references in Mr. Bodnar's accounts indicate correspondence being sent in relation to the "SRB and EUB".

3.2 Gwen Misiak

On February 21, 2008, Mr. Bodnar responded to CNRL's comments. Mr. Bodnar confirms that the time he recorded legitimately relates to the R&V application. Where there are any appearances of possible misallocation between ERCB matters and SRB matters, Mr. Bodnar submits that the specific delineation of time between the two matters is often not practically separated. Often Ms. Misiak had to deal with CNRL's land agent on both issues before the SRB and the EUB.

4 VIEWS OF THE BOARD

Mr. Bodnar submitted a cost claim in the total amount of \$4,459.35. The claim represents legal fees of \$4,075.00, disbursements of \$172.00, and related GST of \$212.35. In considering the claim, the Board has considered CNRL's comments and Mr. Bodnar's response.

When considering a claim for local interveners' costs for a EUB proceeding, the Board is governed by section 28 of the *Energy Resources Conservation Act* (ERCA). The Board finds that Ms. Misiak is a 'local intervener' as defined in subsection 28(1) and has determined, in this situation, that Ms. Misiak is eligible to apply for cost recovery.

The Board recognizes that Mr. Bodnar's revised cost claim removes 4.5 hours (\$1,125.00) out of the original 21.3 hours claimed. The time associated with Parlee McLaws, as noted by CNRL, totals 3.3 hours (\$825.00), and time related to both EUB and SRB matters total 2.8 hours (\$700.00).

The Board agrees with CNRL that the 3.3 hours attributed to Parlee McLaws' involvement are not eligible for cost recovery. The Board further agrees with CNRL that Mr. Bodnar has not clearly allocated 2.8 hours related to both EUB and SRB matters. Furthermore, the Board does not agree with Mr. Bodnar's submission that when representing a client before two separate tribunals, it is difficult and not practical to keep separate accounting records. Mr. Bodnar's revised cost claim and response to CNRL's comments do not address these 2.8 hours, nor do they explain the circumstances of Parlee McLaws' involvement in the R&V application. The Board has reviewed the submissions involved in the R&V application and has determined that Parlee McLaws was not an interested party in the application before the Board. Taking all of the above into account, the Board does not find that these 6.1 hours are eligible for cost recovery.

With respect to the remaining 10.7 hours incurred by Mr. Bodnar, the Board notes that in its letter to Mr. Bodnar of March 29, 2007, the Board reviewed the following correspondence in its deliberations regarding whether a review should be granted.

- On behalf of Ms. Misiak
 - October 30, 2006
 - November 16, 2006
 - November 27, 2006
 - December 7, 2006

- On behalf of CNRL
 - November 24, 2006
 - December 6, 2006
 - December 21, 2006

In the Board's view, 10.7 hours for the preliminary stage of the review process is somewhat excessive. The Board notes that this R&V application was not document intensive, nor was it overly complex. In the Board's view 7 hours for senior counsel to address the above submissions is adequate. In addition to the 7 hours, the Board approves the 1 hour of travel time claimed at \$125.00.

With respect to expenses, the Board notes that \$30.00 is claimed for mileage, \$49.00 for long distance telephone, and \$93.00 for faxing. The Board approves the mileage as claimed, however the Board does find the long distance telephone and fax charges to be excessive when compared to the number of submissions that Mr. Bodnar and CNRL filed, and given that Mr. Bodnar traveled to see his client. Given the number of pages of each submission, the Board approves fax charges of \$34.00 and in light of the travel time approved, the Board approves 50% of the long distance charges, being \$24.50.

Taking all of the foregoing into account, the Board approves legal fees of \$1,875.00 and expenses of \$88.50. The Board further approves GST of \$98.17, for an overall award of \$2,061.67.

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) The Board approves intervener costs in the amount of \$2,061.67.
- (2) Payment shall be made to Julian N. Bodnar LL.B. at #607 Lenore Drive, Saskatoon, SK S7K 5G7.

Dated in Calgary, Alberta on this 21st day of May, 2008.

ALBERTA ENERGY AND UTILITIES BOARD

<Original Signed by Thomas McGee>

Thomas McGee
EUB Board Member