



Pennine Petroleum Corporation

Application for a Pipeline Licence
Pincher Creek Field

Cost Awards

October 29, 2009

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2009-010: Pennine Petroleum Corporation, Application for a Pipeline Licence,
Pincher Creek Field

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**PENNINE PETROLEUM CORPORATION
APPLICATION FOR A PIPELINE LICENCE
PINCHER CREEK FIELD**

**Energy Cost Order 2009-010
Application No. 1571005
Cost Application No. 1608240**

1 INTRODUCTION

1.1 Background

Pennine Petroleum Corporation (Pennine) submitted an application in accordance with Part 4 of the *Pipeline Act* for approval to construct and operate a pipeline for the purpose of transporting natural gas from a wellhead at Legal Subdivision (LSD) 2, Section 11, Township 4, Range 29, West of the 4th Meridian, to a pipeline tie-in point at LSD 3-11-4-29W4M. The proposed pipeline would be about 0.26 kilometres (km) in length, with a maximum outside diameter of 114.3 millimetres, and would transport natural gas with no hydrogen sulphide. The proposed pipeline would be located about 4.5 km east of Twin Butte.

Butte Ranches Ltd., represented by Terry Bonertz (Butte Ranches), is the landowner where the proposed pipeline would be located. Butte Ranches filed an intervention in opposition to the subject application, raising concerns regarding consultation practices, width of the pipeline right-of-way, and further development plans in the area.

The Board opened a public hearing in Pincher Creek, Alberta, which commenced and concluded on January 28, 2009, before Board Member G. J. Miller (Presiding Member) and Acting Board Members T. L. Watson, P.Eng., and R. C. Clark. During the course of the hearing, the parties requested and were granted a break in the proceedings. The hearing reconvened and the Board was advised that the landowner's objection to the proposed pipeline had been withdrawn.

As a result of the intervener's withdrawal of objection to the proposed pipeline and because other participants had not been granted intervener status, the Board closed the hearing.

The Board considers the record to have closed on January 28, 2009.

1.2 Cost Claim

On February 27, 2009, Butte Ranches filed a Summary of Total Costs Claimed (Form E1) totalling \$20 000.00 and a copy of a settlement agreement dated January 28, 2009, between Butte Ranches and Pennine that stated, "Pennine Petroleum will pay costs to Terry Bonertz/Butte Ranches in the sum of \$20,000.00." On March 5, 2009, Pennine submitted comments regarding the cost claim. On March 30, 2009, Butte Ranches submitted its response.

After reviewing all of the submissions received, the Board through its counsel, wrote to Butte Ranches on June 5, 2009, explaining that the court, not the Board, enforced private agreements between parties; the Board's authority extended only to costs that are reasonable and directly and necessarily related to the proceeding. The Board requested that in accordance with the enclosed *Directive 031A: Guidelines for Energy Costs Claims*, Butte Ranches provide sufficient

information to support its claim for costs to allow the Board to properly assess the claim. The additional information was to be received by the Board no later than June 26, 2009. The Board also advised Butte Ranches that the claims for interest that it had been forwarding to the Board each month in relation to the cost claimed under the settlement agreement would not be considered by the Board, since the Alberta Courts have jurisdiction over claims for interest in relation to private agreements.

On June 25, 2009, the Board received correspondence from Butte Ranches requesting that the Board set aside the cost proceedings in this matter to allow Butte Ranches the opportunity to bring the matter before the Alberta Court of Queen's Bench and that Butte Ranches wished to reserve its right to revisit cost proceedings before the Board pending the outcome of its court action.

The Board forwarded correspondence to both Pennine and Butte Ranches on June 29, 2009, advising that the Board would consider the request to hold open the proceedings, but that it would continue the cost process with the information it had received to date.

The Board considers the cost process to have closed on June 29, 2009.

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*, 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 application in question.

When assessing costs, the Board refers to Part 5 of the *Energy Resources Conservation Board Rules of Practice* and Appendix D: Scale of Costs in *ERCB Directive 031A*.

Subsection 57(1) of the *Rules of Practice* states:

57(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 BUTTE RANCHES

3.1 Views of Pennine

On March 5, 2009, Pennine submitted comments in response to Butte Ranches's cost claim. It appeared to Pennine that Butte Ranches was attempting to "double dip" and claim for costs under the settlement agreement and through the Board's cost claim process. Pennine acknowledged the fact that it had signed the agreement on January 28, 2009, to pay financial compensation to Butte Ranches. Pennine was prepared to meet its obligations under the agreement pending the outcome of Butte Ranches's application to the Board for a review and variance of the pipeline license (Review and Variance Application No. 1606782).

3.2 Views of Butte Ranches

In response to Pennine's comments, wherein Pennine referred to the settlement agreement as a commercial agreement, Butte Ranches confirmed that financial compensation was included in the agreement but maintained that the agreement did not provide that payment would be subject to any delay or that it would be contingent on performance of certain elements of the agreement. Butte Ranches indicated that by the date of the submission of its cost claim to the Board, Pennine had not yet provided any form of compensation and, therefore, Pennine was in violation of the terms of the agreement reached on January 28, 2009.

In addition, Butte Ranches disagreed with Pennine's position that payment was contingent on the Butte Ranches's review and variance application or that Butte Ranches intended to claim costs in addition to those set out in the agreement.

3.3 Views of the Board

The Board has been asked to address two issues in this cost proceeding: whether to hold the cost proceedings in abeyance indefinitely and the sufficiency of the information presented in support of an award of costs.

On June 25, 2009, Butte Ranches requested that the Board put the cost proceedings on hold and stated that it also wished to reserve its right to revisit cost proceedings before the Board pending the outcome of its court action.

The Board has a well-established cost claim process (set out in Part 5 of the *Rules of Practice* that the Board endeavours to complete within 90 days of the close of cost proceedings. The process does not contemplate holding cost proceedings open on an indefinite basis. The Board notes that Butte Ranches has elected to proceed to enforce the settlement agreement in the courts and has also elected not to provide further information in support of its claim within the ERCB process. The Board declines to modify its well-established process. Accordingly, the Board has in this instance proceeded to consider the cost information submitted to date in this decision.

In cost proceedings, the intervener (Butte Ranches) bears the onus of substantiating its claim and is obliged to provide sufficient information to allow the Board to assess whether the costs are reasonable and directly and necessarily related to the application.

The only information presented to the Board was the claim for \$20 000 set out on the Board's summary cost claim form, supported by a copy of the settlement agreement. It is evident from the submissions of Butte Ranches and Pennine that the amount in the agreement—subsequently described as “financial compensation” by both parties—is intended to include the costs of proceeding before the Board. No further information or particulars regarding costs was ever provided, despite the Board's request on June 5, 2009, for additional information consistent with requirements in *Directive 31A*.

Clearly, the cost claim as filed does not meet the requirements of Rule 55 requiring cost claims to comply with *Directive 31A* and, more important, it fails to provide the Board with sufficient information to assess the claim independent of any agreement between the parties. Without supporting documentation, the Board is not prepared to assume that the \$20 000.00 represents costs that are reasonable and directly and necessarily related to the application.

To summarize, the Board declines to hold the cost process open on an indefinite basis and finds that Butte Ranches did not provide sufficient information to support its claim for costs in accordance with the requirements in *Directive 31A*.

4 ORDER

It is hereby ordered that no costs be awarded with respect to the claim by Butte Ranches.

Dated in Calgary, Alberta, on October 29, 2009.

ENERGY RESOURCES CONSERVATION BOARD

“Original Signed by G. J. Miller”

G. J. Miller
Presiding Board Member

“Original Signed by T. L. Watson, P.Eng.”

T. L. Watson, P.Eng.
Board Member

“Original Signed by R. C. Clark”

R. C. Clark
Acting Board Member