



# Petro-Canada Oil and Gas

Sullivan Field

Interim Cost Awards

December 15, 2009

**ENERGY RESOURCES CONSERVATION BOARD**

Energy Cost Order 2009-012: Petro-Canada Oil and Gas, Sullivan Field, Interim Cost Awards

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# **ENERGY RESOURCES CONSERVATION BOARD**

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**Calgary Alberta**

**PETRO-CANADA OIL AND GAS  
SULLIVAN FIELD**

**Energy Cost Order 2009-012  
Applications No. 1520388, 1513051, 1520922,  
1520923, 15171748, 1517151, 1517160, 1517168,  
1517170, 1517176, 1574366, 1574414, and 1574409  
Cost Application No. 1569214**

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## **1 INTRODUCTION**

### **1.1 Background**

The proceedings with respect to applications for natural gas wells, a gathering system, and trunk line submitted by Petro-Canada Oil and Gas (Petro-Canada) have taken a long time to conclude. The prehearing meeting was held on March 18, 2008. The hearing itself commenced November 12, 2008, and concluded at the end of January 2009. There followed proceedings related to a possible reasonable apprehension of bias, which included the filing of Court of Appeal applications during the spring and summer of 2009. Written argument was submitted by the parties between May 2009 and July 2009. Additional written argument on the issue of public interest was sought by the Board by letter dated September 22, 2009, and those submissions were concluded by November 23, 2009. At that time the Energy Resources Conservation Board (ERCB/Board) was ready to commence its final deliberations and work toward issuing a decision on the merits of the applications.

### **1.2 Cost Claim**

On July 30, 2009, Royal Adderson and Bar AD Ranches (RABADR) filed a cost claim in the amount of \$267 469.03. On August 12, 2009, Petro-Canada submitted comments regarding RABADR's cost claim. On August 28, 2009, RABADR submitted a response to Petro-Canada's comments.

By letter dated November 4, 2009, RABADR inquired about the status of the Board's review of its cost claim and set forth an expectation that the Board's decision on its costs claim would not be delayed because of the other local interveners' costs claims having been made to the Board at later dates.

The Board believed that upon the anticipated receipt of submissions by the third week of November in connection with its September 22, 2009, questions to the hearing participants, it would be in a position to embark upon its final deliberations. Believing that there would not likely be any further delay in the proceedings, the Board decided on November 19, 2009, that it would not make a cost award to RABADR because no decision on the merits of the application had yet been issued and because cost orders typically follow the release of a decision on the merits of a given application.

On November 20, 2009, RABADR made a claim for interim funding based upon the relevant unique circumstances of how long the proceedings had been going on and the alleged hardship

faced by counsel and experts, who had been working while unpaid. RABADR relied upon *Energy Cost Order 2008-002 (AltaLink Management Ltd.)* as an instance of the Board providing interim awards of costs in a matter that had taken much longer than anticipated to reach final resolution. Petro-Canada responded to this reiterated claim for costs on November 26, 2009, stating, among other things, that there was an expectation on the part of counsel for Petro-Canada that the Board could now make a final decision to be released sometime during the first quarter of 2010. RABADR replied by letter dated December 1, 2009, raising a change in circumstance.

## 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 031: Guidelines for Energy Proceeding Cost Claims*.

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 THE CHANGE IN CIRCUMSTANCE

A change in circumstance has led the Board to reconsider its decision of November 19, 2009. On Friday, November 27, 2009, two interveners, the Big Loop Group and the Pekisko Group, filed motions to reopen the hearing to receive further evidence arising out of the merger of Petro-Canada and Suncor Energy Inc. and to address considerations that flow from that corporate arrangement, together with considerations arising out of the current market for natural gas.

The Board set a timetable for submissions with respect to the two new motions, and those submissions are currently scheduled to close on December 21, 2009. It is therefore reasonable for parties to expect that at least another month will pass while those submissions are gathered and then considered by the Board.

If the above motions are granted, further delay will ensue.

Due to this change in circumstance, the Board is prepared to award some interim funding of RABADR costs.

#### **4 INTERIM COST ORDER**

The Board has not scrutinized or otherwise evaluated the costs claimed by RABADR for the purposes of this order. It will, however, do so in the final cost order. If costs have been requested that exceed the Scale of Costs in *Directive 031*, the Board will take that into consideration in its final cost order.

The costs requested by RABADR for legal fees, honoraria, expert witness fees, and consultant fees, exclusive of disbursements and exclusive of GST, total \$245 706.50. The Board considers it reasonable to award 25 per cent of this amount, rounded for convenience to \$65 000.00.

In giving this interim funding award, the Board makes no determination respecting the value of any intervener's participation or the value of any expert or consultant's participation.

Acceptance of interim funding pursuant to this interim cost order by RABADR means that RABADR accepts the risk that if its final cost award relating to the proceedings is less than the amount of the interim funding advanced pursuant to this interim cost order, it will be required to repay the difference.

#### **5 ORDER**

It is hereby ordered that

- 1) Petro-Canada/Suncor Energy Inc., shall pay interim funding in the amount of \$65 000.00 on an interim refundable basis.
- 2) Payment shall be made to McLennan Ross LLP, at 1600, 300 – 5 Avenue SW, Calgary AB T2P 3C4

Dated in Calgary, Alberta, on December 15, 2009.

**ENERGY RESOURCES CONSERVATION BOARD**

*“Original Signed by J. D. Dilay, P.Eng.”*

J. D. Dilay, P.Eng.  
Presiding Board Member

*“Original Signed by B.T. McManus, Q.C.”*

B. T. McManus, Q.C.  
Board Member

*“Original Signed by J. D. Ebbels”*

J. D. Ebbels  
Board Member