



# Standard Energy Inc.

Application for Four Well Licences  
Grande Prairie Field

Cost Awards

January 6, 2010

**ENERGY RESOURCES CONSERVATION BOARD**

Energy Cost Order 2010-001: Standard Energy Inc., Application for Four Well Licences, Grande Prairie Field

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# ENERGY RESOURCES CONSERVATION BOARD

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Calgary Alberta

**STANDARD ENERGY INC.  
APPLICATION FOR FOUR WELL LICENCES  
GRANDE PRAIRIE FIELD**

**Energy Cost Order 2010-001  
Application No. 1582949  
Cost Application No. 1587830**

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## 1 INTRODUCTION

### 1.1 Background

Standard Energy Inc. (Standard) applied to the Energy Resources Conservation Board (ERCB/Board), pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, for licences to drill four wells from a surface location in Legal Subdivision (LSD) 6, Section 28, Township 71, Range 4, West of the 6th Meridian (6-28 site), to projected bottomhole locations in LSD 6-28-71-4W6M, LSD 2-28-71-4W6M, LSD 4-28-71-4W6M, and LSD 11-28-71-4W6M. The purpose of the proposed wells was to obtain sweet crude oil from the Dunvegan Formation.

Phil Marcy and Audra McKinley filed a joint objection with Ray Marcy and Laurie Marcy (together the Marcys) to the proposed project. Phil Marcy is the executor of the estate of the deceased owner of the portion of the southwest quarter of Section 28-71-4W6M on which the proposed wells were to be located. The Marcys also reside on the southwest quarter section. The Marcys were concerned about Standard's operation practices, the location of the wells, health, safety, environment, and property value.

The Board, by notice of hearing dated February 19, 2009, scheduled a public hearing to be held in Grande Prairie, Alberta on June 4, 2009. On May 1, 2009, the hearing was adjourned to November 4, 2009, and was to be held before Board Members M. J. Bruni, Q.C. (Presiding Member), J. D. Dilay, P.Eng., and J. D. Ebbels.

On August 12, 2009, Standard notified the ERCB that it was withdrawing Application No. 1582949, pursuant to Section 21 of the *Energy Resources Conservation Board Rules of Practice*. The Board accepted the withdrawal of the application and, accordingly, the public hearing was cancelled.

### 1.2 Cost Claim

On September 18, 2009, the Marcys filed a cost claim in the amount of \$36 600.51. On October 5, 2009, Standard submitted comments regarding the Marcys' cost claim. On October 8, 2009, the Marcys filed a response to the comments.

The Board considers the cost process to have closed on October 8, 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 ERCB *Directive 031A: Guidelines for Energy Cost Claims* or, if the matter was the subject of a notice of hearing issued after April 1, 2009, *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 VIEWS OF THE PARTIES**

On September 18, 2009, the Marcys filed a cost claim for legal fees in the amount of \$4305.00, expert fees in the amount of \$24 125.00, honoraria in the amount of \$2500.00, expenses in the amount of \$4046.66, and GST in the amount of \$1623.85, for a total claim of \$36 600.51.

#### **3.1 Views of Standard**

On October 5, 2009, Standard submitted that the amount of the cost claim filed by the Marcys was excessive and should be substantially reduced.

Standard noted that Jennifer Klimek of Klimek Law claimed an hourly rate of \$350.00. Standard assumed that this amount was charged in accordance with the Scale of Costs set out in *Directive 031*. Standard pointed out, however, that this directive was only in effect for applications where the notice of hearing was issued on or after April 1, 2009. The notice of hearing in this matter was issued February 20, 2009. Therefore, Standard was of the view that Ms. Klimek’s rate should be based on the tariff set out in the Scale of Costs in *Directive 031A*, which would be \$250.00 per hour.

Given the foregoing, Standard submitted that Ms. Klimek’s fees should be reduced by \$1230.00, resulting in a total award of \$3075.00.

In relation to the costs associated with Cottonwood Consultants Ltd. (Cottonwood), Standard submitted that the claim for those costs should be denied entirely. Standard noted that when it initially applied to drill the wells at issue there was concern over the fact that the site contained native prairie. After Standard learned of this it voluntarily chose to relocate the surface location to the 6-28 site. The Marcys had retained Cliff Wallis of Cottonwood on the basis of his qualifications as an expert in native prairie ecology. Standard stated that after it relocated the surface location to an alternative site, where it maintained there was no native prairie, it was unreasonable for the Marcys to retain Cottonwood as there was no need for a native prairie expert. For this reason, Standard submitted that the costs associated with Cottonwood's retainer should be denied.

Standard submitted that the account of SamEng Inc. (SamEng) was excessive and should be reduced significantly. Standard disagreed strongly with much of the report SamEng provided. Standard submitted that the purpose of the SamEng report was to support a legal argument that the 6-28 site was a water body although it was pastureland. Standard was also of the view that Nico Wyngaarden of SamEng did not stay within the boundaries of his expertise, but instead offered legal opinions as to the application of the *Water Act* and the jurisdiction of Fisheries and Oceans Canada over this pasture. Standard questioned the quality of the opinions offered in the SamEng report and stated that had a hearing occurred, it would have vigorously cross-examined on those opinions.

Standard submitted that the Board should not countenance, through its costs claim process, scientists giving opinion designed to support a legal argument.

Lastly, regarding the honoraria claim for the Marcys, Standard noted that they claimed \$2500.00, based on spending 50 hours at \$50.00 per hour meeting with experts, counsel, and among themselves in order to prepare for the hearing. Standard argued that this was clearly not within the scope of *Directive 031A*. Standard noted that the Board has repeatedly denied honoraria claims based on an hourly rate and submitted that it should not be any different in this case. Standard also argued that since the Marcys hired legal counsel and experts to assist with their submissions for the hearing, they should receive little to no preparation honoraria. Standard submitted that should the Board feel that an award for honoraria is warranted, it should be a very modest lump sum.

### **3.2 Views of the Marcys**

The Marcys advised that there had been an error made on the account for legal fees. Ms. Klimek had inadvertently included all of the legal fees under her time when in fact some of the time related to Debbie Bishop. Having corrected this error and applying the Scale of Costs under *Directive 31* for Ms. Klimek and Ms. Bishop, the Marcys resubmitted the claim for legal fees at \$3810.00 plus GST.

The Marcys were of the view that the new tariff set out in the Scale of Costs in *Directive 031* should be applied in this case given that the matter was adjourned after the initial notice of hearing had been sent out and a new notice of hearing was sent in June 2009, resulting in the legal fees being incurred primarily after the new tariff was in place. The Marcys also submitted that Ms. Klimek and Ms. Bishop were very efficient in their use of time.

The Marcys attempted to clarify the background of this application. They noted that this was Standard's second application for these wells. Standard had withdrawn its first application for these wells part way through the hearing on that application. The Marcys were of the view that Standard brought forward this second application prematurely as Standard did not have enough evidence to assess the viability of the proposed wells. In the opinion of the Marcys, had Standard waited to obtain data from other wells, it would have been unnecessary to bring this application forward and the Marcys would not have had to suffer the inconvenience and expense of preparing for another hearing.

The Marcys retained Cottonwood and SamEng for assistance in defining and addressing issues in relation to this application. While Standard took the view that these experts were not relevant, the Marcys submitted that Standard was not in a position to make that argument because the Marcys did not have an opportunity to put their case before the panel in this matter. Relevancy would have been demonstrated at a hearing. The Marcys submitted that Standard chose to submit and then withdraw this application; therefore, the benefit of the doubt on relevancy should go to the Marcys.

With respect to the cost claim submitted on behalf of Mr. Wallis of Cottonwood, the Marcys stated that Mr. Wallis was hired to visit the site to review the vegetation along the access road and to determine whether or not Standard had addressed all concerns with respect to vegetation by moving the well site. Mr. Wallis concluded after his visit to the 6-28 site that there were still vegetation concerns. Mr. Wallis did not prepare a report but would have done so had the matter proceeded further and would have attended the hearing.

Regarding SamEng, the Marcys disagreed with Standard's characterization of SamEng's report. The Marcys submitted that the SamEng report makes clear that SamEng visited the 6-28 site and did a thorough assessment to determine surface water flow and the potential impacts that an alteration to the flow would have on the Marcys land and its productivity. The Marcys stated that these issues were extremely important to them as they affected the ownership of their land and their ability to earn their livelihood.

The Marcys noted that Standard also took issue with the fact that SamEng looked at legislation pertaining to water bodies and characterized the nature of the flow in light of the legislation. They were of the view that this issue was something that could have been cross-examined had the hearing taken place. The Marcys noted that they were not given an opportunity to examine Standard on the basis of its conclusions on impacts. Accordingly, the Marcys position was that the Board could not weigh the evidence and that it would be unfair to look at the value of one piece of evidence in isolation of the other evidence.

The Marcys noted that SamEng has prepared numerous reports for many approvals and was aware of the legislation.

Regarding honoraria, the Marcys asked the Board to consider the fact that this matter was not a one-time application. This was the second application the Marcys were forced to deal with and it caused them to expend a great deal of time. The Marcys were awarded costs for the first hearing, which occurred without Standard having due regard for the topography of the lands. Standard then chose to file the current application without having properly assessed the viability of the proposed wells, thereby causing additional stress and time commitments to the Marcys. The Marcys submitted that in this situation, they should be awarded more than the usual honoraria.



### 3.3 Views of the Board

#### Legal Fees

The notice of hearing in this matter was issued on February 19, 2009. *Bulletin 2009-09: Directive 031: Guidelines for Energy Proceeding Cost Claims Issued* states that *Directive 031* is effective for “any proceeding commenced by a notice of hearing on or after April 1, 2009.” As the notice of hearing in this matter was issued February 19, 2009, *Directive 031A* and its associated Scale of Costs applies and not *Directive 031*. Accordingly, the Board will allow legal fees in the amount of \$2580.00 plus GST.

#### Professional Fees of Cottonwood

In this matter, the Board accepts that the opinion of Mr. Wallis, principal of Cottonwood, was reasonably and directly necessary to determine whether all vegetation concerns of the Marcys were addressed by Standard in its application. The Board notes that Mr. Wallis’s time related to a vegetation assessment necessarily made during the growing season and that Mr. Wallis did not prepare a report, though he would have done so as this matter neared the hearing date. Accordingly, the Board allows the cost claim made in relation to Cottonwood.

#### Professional Fees of SamEng Inc.

The Board finds that in contrast to Cottonwood, SamEng’s professional fees are not reasonable. SamEng prepared its report, dated June 2009, some five months prior to the November hearing date. This was done despite two significant factors. First, the Marcys knew by May 1, 2009, that the hearing would not take place until November 4, 2009. Second, they were aware by May 1 that it was Standard’s intention to assess the viability of the wells proposed in this application and advise by September 1, 2009, as to whether the application would proceed to a hearing on November 4, 2009, or be withdrawn. Thus, the Marcys knew that there was a real question as to whether the hearing would proceed and consequently whether a report from SamEng would be necessary. Despite these matters, SamEng proceeded to prepare its June 2009 report.

The Board finds the Marcys’ explanation for the timing of the SamEng report to be of little assistance. The Marcys say that the report had to be prepared at the time it was because preparation had to occur when the matter was fresh in the minds of the SamEng personnel and because preparation later might have led to scheduling conflicts for SamEng. The Board is not satisfied with this explanation as the assessment of the well site and of the Marcy lands conducted by SamEng took place on November 23, 2008. The Board expects that to be fresh in the minds of SamEng personnel, the report would had to have been drafted shortly after the site visit, not months later. Further, in the Board’s view, the convenience of SamEng does not justify the incursion of unnecessary costs. The Board notes that SamEng’s invoices indicate that between the site visit on November 23, 2008, and January 25, 2009, SamEng spent 51 hours on this matter. Between the latter date and August 21, 2009, SamEng incurred a further 38.25 hours on this matter. The Board considers these extensive hours to be unreasonable given that the report is dated after the adjournment and given the tenuous nature of the ongoing proceeding.

The Board is also troubled by the content of the SamEng report. The Board, in reviewing the report, finds that large parts of it do not contribute to a better understanding of the issues in this

matter. It does not assist the Board to be provided with opinions from scientific experts such as the SamEng personnel on matters that are more properly within the purview of someone trained in the law such as a lawyer. The SamEng opinions on the applicability of the *Water Act* and the jurisdiction of the Fisheries and Oceans Canada are not helpful to the Board.

In a proceeding such as this one where the hearing did not occur, the Board still considers the matters set out in Section 57 of the *Rules of Practice*, including whether the costs claimed are reasonable and directly and necessarily related to the proceeding. The Board notes that the total amount claimed for SamEng's fees in this matter, which was cancelled over two months prior to the hearing date, was \$25 213.13 plus GST. For this reason and the other reasons stated above, the Board finds that the costs claimed for SamEng are excessive and unreasonable. Accordingly, the costs awarded for SamEng shall be reduced to \$14 220.50 plus GST.

### **Honoraria**

The Board has considered the submissions of both parties with regard to the preparation honoraria claimed by the Marcys. The Board notes that it does not normally provide a preparation honorarium to a local intervener if a lawyer is primarily responsible for preparation of the intervention, though the Board can consider awarding an honorarium in recognition of the intervener's efforts.

The Board does recognize the Marcys' efforts; however, it notes that this matter did not proceed to a hearing and, in fact, it was over two months away from the hearing date when it was cancelled. For this reason, the Board awards honoraria to the Marcys of \$1500.00.

## **4 ORDER**

It is hereby ordered that

- 1) Standard Energy Inc. shall pay intervener costs in the amount of \$22 224.99, and
- 2) payment shall be made to the offices of Klimek Law, #240, 4808 – 87 Street, Edmonton AB T6E 5W3.

Dated in Calgary, Alberta, on January 6, 2010.

**ENERGY RESOURCES CONSERVATION BOARD**

*“Original Signed by M. J. Bruni, Q.C.”*

M. J. Bruni, Q.C.  
Presiding Board Member

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

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

*“Original Signed by J. D. Ebbels”*

J. D. Ebbels  
Board Member

## **APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED**



Appendix A