



Sirius Energy Inc.

Application for a Well Licence
Crossfield East

Cost Awards

April 27, 2010

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2010-004: Sirius Energy Inc., Application for a Well Licence, Crossfield East

April 27, 2010

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**SIRIUS ENERGY INC.
APPLICATION FOR A WELL LICENCE
CROSSFIELD EAST**

**Energy Cost Order 2010-004
Application No. 1607112
Cost Application No. 1635925**

1 INTRODUCTION

1.1 Background

Sirius Energy Inc. (Sirius) submitted an application, in accordance with Section 2.020 of the *Oil and Gas Conservation Regulations*, for a licence to drill a vertical gas well from a surface location in Legal Subdivision (LSD) 10, Section 34, Township 27, Range 1, West of the 5th Meridian, to a projected bottomhole location in LSD 10-34-27-1W5M. The maximum hydrogen sulphide release rate would be 0.0294 cubic metres per second. The purpose of the proposed well would be to obtain production from the Ellerslie Member, and it would be located about 5.5 kilometres (km) north of Airdrie.

803969 Alberta Ltd. (803969) had entered into a sales agreement with Robert Hunter, Jean Hunter, and Kenneth Hunter (the Hunters) for Section 34-27-1W5M. 803969 filed a submission raising concerns about health and safety, land development, environmental effects, and consultation.

The Hunters own Section 34-27-1W5M and objected to the proposed well location on their lands. Robert Hunter and Jean Hunter's residence is located at LSD 1-34-27-1W5M, about 0.83 km from the proposed project. The Hunters did not file a submission for or attend the hearing.

The Board held a public hearing in Calgary, Alberta, which commenced and concluded on December 8, 2009, before Board Members J. D. Ebbels, LL.B. (Presiding Member) and T. L. Watson, P.Eng., and Acting Board Member J. Gilmour, B.A., LL.B. The Board panel and ERCB staff conducted a site visit of the general area on Monday, October 26, 2009. Mr. Ebbels passed away on February 25, 2010, and therefore did not participate in the determination of this cost order.

The Board issued its decision on the application in *Decision 2010-004: Sirius Energy Inc. Application for a Well Licence, Crossfield East*, dated February 16, 2010.

1.2 Cost Claim

On December 24, 2009, 803969 filed a cost claim in the amount of \$46 993.54. On January 8, 2010, Sirius submitted comments to 803969's cost claim. On January 25, 2010, 803969 submitted a response to the comments of Sirius.

On January 27, 2010, Sirius submitted additional comments to the cost claim of 803969. The Board used its discretion in this instance and decided to consider the additional submission and also allowed 803969 time to file an additional response to Sirius's comments. 803969 did not file an additional response.

The Board considers the cost process to have closed on March 2, 2010.

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 those lands 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 E: 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 VIEWS OF THE PARTIES

803969 was represented by McMillan LLP (McMillan). On December 24, 2009, 803969 filed a cost claim for legal fees in the amount of \$34 587.75, expert fees in the amount of \$8960.00, attendance honoraria in the amount of \$200.00, expenses in the amount of \$1019.72, and GST in the amount of \$2226.07, for a total claim of \$46 993.54.

3.1 Views of Sirius

Sirius objected to the inclusion of expert fees for Longview Planning & Design (Longview). In the opinion of Sirius, the expert report prepared by Kristi Beunder contained inaccurate information, which Sirius found to be misleading. In addition, Sirius noted that the report seemed to rely on the provisions of the Calgary Metropolitan Plan, which did not apply to the lands on which the proposed well would be located. Sirius took the position that it should not be responsible to pay the fees incurred by 803969 for the preparation and presentation of Longview’s report.

Sirius noted that Ms. Beunder charged premium rates for her appearance at the hearing and charged 10 hours for attendance, although time incurred for counsel in this matter, Aaron Grach and John Gruber, was only noted at 9 hours. Longview also submitted costs for the attendance of David White at the hearing. Sirius stated that it had no knowledge of Mr. White or what his function was at the hearing since Mr. White did not present any evidence that Sirius was made aware of, and therefore the costs claimed in association with Mr. White should be disallowed.

Also at issue for Sirius were the 10.5 hours incurred for “Client Correspondence/Meetings and Sub App Prep,” as it was unclear to Sirius what the meaning of the term “Sub App Prep” was. Sirius assumed that this referred to the preparation of the subdivision application by Longview on behalf of 803969. If that in fact were the case, Sirius submitted that it should not be responsible for any costs incurred for that purpose.

Sirius noted that a parking expense in the amount of \$71.44 was incurred by Ms. Beunder and, after reviewing the invoices, it appeared as though \$26.40 was incurred for parking on the October 2009 invoice. *Directive 031: Guidelines for Energy Proceeding Cost Claims* indicates that parking disbursement charges are restricted to the hearing phase of the proceeding, and therefore Sirius objected to the additional parking cost claim and submitted that it should be responsible for only \$45.04 of the parking expenses claimed.

Regarding the legal fees claimed by McMillan in the amount of \$36 317.14, Sirius denied liability for at least \$249.38 of that claim, which was for 1.9 hours of time incurred by Monika Kazar, a paralegal. McMillan’s account had numerous entries by Ms. Kazar for “litigation support: limitation diary,” and in the opinion of Sirius, since no limitation issues arose in this matter that Sirius was made aware of, the nearly daily reminders and costs incurred by Ms. Kazar were not necessary.

Lastly, McMillan incurred time for discussions with engineering and drilling experts when 803969 had made numerous motions to exclude Sirius’s evidence on the basis that 803969 had no technical evidence to oppose Sirius’s evidence regarding the drilling of the well at issue. Sirius submitted that it should not be responsible for the time spent by 803969 at the hearing arguing that such evidence should be excluded or that 803969 required an adjournment because it lacked the necessary technical evidence. Further, Sirius submitted that it should not be responsible for amounts claimed by 803969 for the time 803969 incurred meeting with technical experts.

Given the above, Sirius submitted that it would be willing to provide \$36 222.21 in intervener costs, which did not include any time billed by Longview other than \$200.00 for Ms. Beunder’s attendance at the hearing.

3.2 Views of 803969

803969 responded to Sirius’s comment regarding the report of Ms. Beunder being misleading by stating that the report brought forth a reality often overlooked, namely that oil and gas infrastructure is typically in place for years, if not decades, and it also addressed 803969’s development plans. Consequently, 803969 submitted that it would be inappropriate for the Board to reduce costs in this instance. 803969 noted that during the hearing, Sirius had Ron Hall respond to Ms. Beunder’s evidence, which in the opinion of 803969 indicates that Ms. Beunder’s evidence likely would have been of assistance to the Board.

Regarding the 10.5 hours on Longview's November 26, 2009 invoice, Ms. Beunder advised 803969 that a portion of those hours should not have been included in the cost claim, and therefore the amount of Longview's claim should be reduced by \$1040.00 plus GST, or 6.5 hours. In addition, regarding the costs associated with Mr. White, 803969 submitted that Mr. White assisted with exhibit preparation but did not attend the hearing, nor did he claim to.

With respect to Sirius's issue with 803969 consulting with experts, 803969 replied by stating that it objected only to Sirius' oral presentation of technical evidence since Sirius chose not to submit a technical report or any written technical evidence. 803969 noted that the Board considered 803969's objection and determined that since the issue of alternative sites was raised by 803969, Sirius did not have to comply with expert disclosure requirements. 803969 submitted that it should not be penalized for anticipating that Sirius might submit technical evidence. 803969 also pointed out that the legal fees incurred on this matter were not substantial and no claim for related expert fees was submitted.

4 VIEWS OF THE BOARD

The Board has considered the claim made by 803969 for legal fees and has also considered the submissions of the parties. The Board notes that the hearing was only one day in length. The Board considers the legal fees claimed in the amount of \$34 587.75 plus GST to be excessive and unreasonable in the circumstances. Further, the Board notes that the fee accounts submitted by counsel for 803969 disclosed a significant amount of duplication in the time spent by junior and senior counsel representing 803969. Duplicative legal fees, particularly for a matter of this nature, are unreasonable and not recoverable.

While the Board appreciates and encourages parties to attempt to resolve concerns among themselves whenever possible, the Board is of the view that claims for cost recovery for negotiations between parties should not form part of the costs of the actual proceeding. Such costs, including legal fees relating thereto, should be handled in the context of the negotiations themselves and not through the Board's cost recovery process. Thus, the legal fees claimed by 803969 for settlement negotiations are disallowed by the Board

Finally, *Directive 031* indicates that lawyers' fees should include overhead expenses such as secretarial work. Accordingly, the Board is of the view that the amounts claimed for "litigation support, re: limitation diary" are not recoverable.

For the foregoing reasons, the Board has decided to reduce 803969's claim for legal costs by \$10 000.00 plus GST.

With regard to the expert costs claimed for Longview, the Board sees no basis for Ms. Beunder receiving an hourly rate for her time spent at the hearing beyond her normal rate. As well, the cost claim for attendance by Ms. Beunder at the hearing should be reduced from 10 hours to 9 hours.

The Board found the Longview report authored by Ms. Beunder to be somewhat unhelpful in that some of the information it contained was misleading. Accordingly, the costs claimed in relation to preparation of that report should be reduced.

As well, the Board considers the claim by Ms. Beunder for parking on the day of the hearing to be unreasonable. The Board considers \$30.00 for parking to be appropriate in the circumstances.

The Board, therefore, reduces the amount of costs to which 803969 is entitled in relation to Longview by \$2500.00 plus GST in addition to the reduction already acknowledged by 803969 of \$1040.00 plus GST.

5 ORDER

It is hereby ordered that

- 1) Sirius shall pay intervener costs totalling \$32 776.54, and
- 2) payment shall be made to McMillan LLP, 1900, 736 – 6 Avenue SW, Calgary AB T2P 3T7.

Dated in Calgary, Alberta, on April 27, 2010.

ENERGY RESOURCES CONSERVATION BOARD

< *original signed by* >

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

< *original signed by* >

J. Gilmour, B.A., LL.B.
Acting Board Member

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A