



Pengrowth Corporation

Application for a Compressor Station Licence
Harmattan East Field

Cost Awards

October 25, 2010

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2010-008: Pengrowth Corporation, Application for a Compressor Station
Licence, Harmattan East Field

October 25, 2010

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

PENGROWTH CORPORATION

APPLICATION FOR A COMPRESSOR STATION LICENCE

HARMATTAN EAST FIELD

Energy Cost Order 2010-008

Application No. 1613402

Cost Application No. 1652058

1 INTRODUCTION

1.1 Background

Pengrowth Corporation (Pengrowth) submitted an application to the Energy Resources Conservation Board (ERCB/Board), in accordance with Section 7.001 of the *Oil and Gas Conservation Regulations*, for a licence to construct and operate a 30-kilowatt electric wellhead compressor unit in Legal Subdivision 5, Section 3, Township 31, Range 2, West of the 5th Meridian, in the Harmattan East Field.

Interventions were filed by Ian Taylor and Mary Taylor, Marie Barkley and Barry Barkley, and Henry Kuelker and Ursula Kuelker. All intervening parties are residents within the EPZ.

The interveners raised concerns regarding personal consultation, public safety, and existing pipelines that would tie into the compressor.

The Board issued its decision on the application in *Decision 2010-025: Pengrowth Corporation, Application for a Compressor Station Licence, Harmattan East Field*, dated July 13, 2010.

1.2 Cost Claim

On June 9, 2010, the ERCB received cost claims from Mrs. Barkley, Mr. and Mrs. Taylor and Mr. Kuelker. On June 28, 2010, Julian Bodnar, on behalf of the interveners, informed the Board that a settlement had been reached with Pengrowth on all outstanding costs claims with the exception of Mr. Kuelker's personal costs. On July 16, 2010, Tom Owen, on behalf of Pengrowth, confirmed that there was agreement on the cost settlement.

On June 9, 2010, Mr. Kuelker filed a cost claim in the amount of \$9049.20 for his personal costs. On June 23, 2010, Pengrowth submitted comments to Mr. Kuelker's cost claim. On June 28, 2010, Mr. Kuelker submitted a response to Pengrowth's comments.

The Board considers the cost process to have closed on July 27, 2010.

2 HENRY KUELKER'S COST CLAIM

On June 26, 2010, Mr. Kuelker filed a cost claim for fees and honoraria in the amount of \$8809.20 and expenses in the amount of \$240.00, for a total claim of \$9049.20.

2.1 Views of the Applicant

Pengrowth submitted that Mr. Kuelker's claim should be reduced from \$9049.20 to \$350.00. Pengrowth submitted that awarding Mr. Kuelker an hourly rate of \$120.00 was not justified as there was no evidence of his claimed expertise. Pengrowth noted that Mr. Kuelker's intervention focused on the pipeline running through his land and not the compressor that was the subject of the application.

Pengrowth agreed to Mr. Kuelker's claim of \$100.00 for 200 kilometres (km) of travel.

Pengrowth did not agree that Mr. Kuelker should be awarded \$40.00 for the two land title searches, stating that they would be irrelevant to the compressor issue if they were searches for his own land.

Pengrowth submitted that since Mr. Kuelker did not provide evidence to support his claim of \$100.00 for miscellaneous items, the amount awarded to him should be reduced to \$50.00.

Pengrowth submitted that as the Board does not award compensation for participation in appropriate dispute resolution (ADR), Mr. Kuelker's claim in the amount of \$960.00 for the ADR meeting on March 26, 2010, should be denied.

Pengrowth also submitted that Mr. Kuelker's claim in the amount of \$960.00 for the ERCB hearing should be reduced to \$200.00 for his two half days of attendance in accordance with the ERCB's honoraria for attendance set out in *Directive 031: Guidelines for Energy Proceeding Cost Claims*.

With respect to Mr. Kuelker's claim of \$1200.00 for his hearing submission preparation, Pengrowth noted that no time records were provided to support the claim. Since the majority of the hearing preparation was done by Mr. Kuelker's counsel, Pengrowth referred to *ECO 2010-003: Trilogy Blue Mountain Ltd.*, which states

The evidence suggests that the majority of Todorow-Steinke's submissions were prepared by Ms. Klimek. Accordingly, the Board is not prepared to approve preparation honoraria in this case. Therefore the Board hereby disallows their claim for preparation honoraria in its entirety.

Pengrowth also submitted that Mr. Kuelker's claim in the amount of \$300.00 for meetings with Pengrowth landmen and safety personnel should be denied as he provided no particulars regarding these meetings and the meetings likely took place prior to the issuance of the Notice of Hearing on October 7, 2009.

Pengrowth submitted that Mr. Kuelker's claim in the amount of \$300.00 for phoning ERCB staff included no particulars and should be denied.

Pengrowth requested that Mr. Kuelker's claim in the amount of \$3079.20 for reading the 770 pages of material, provided by legal counsel, should also be denied since it would be considered under the awarding of an honorarium. Pengrowth also noted that this is a common skill.

Pengrowth submitted that Mr. Kuelker's claim for bill preparation and filing of papers, in the amount of \$180.00, should be denied as it would also be covered by the honorarium.

2.2 Views of the Intervener

Mr. Kuelker submitted that Pengrowth's offer of \$350.00 as settlement for his cost claim was insufficient. Mr. Kuelker stated that he had been dealing with this matter for two years and he believed that he had become an expert, allowed to charge a fee of \$120.00 per hour.

2.3 Views of the Board

The hearing of the application was triggered by concerns raised by Mr. Kuelker with respect to a natural gas pipeline crossing his land into which the applied-for compressor would ultimately be tied. The Board finds that his participation in the hearing helped the Board to understand and consider some of the issues related to the application. The Board notes that the costs related to the participation of the other interveners and the counsel who represented all the interveners have been settled. The Board notes that Pengrowth did not contest Mr. Kuelker's entitlement to some costs.

Section 5.1.2 of *Directive 031* provides for costs in the range of \$300.00 to \$2500.00 to a local intervener who personally prepares his or her own submission without expert help. If both the lawyer and local intervener prepared an intervention, the Board may consider an honorarium in recognition of the local intervener's efforts. Section 5.1.3 provides for an attendance honorarium to the local intervener in the amount of \$100.00 for each half day in attendance at a hearing. Section 5.1.4 provides for the disbursement costs incurred by local interveners, including travel.

The Board does not agree with Mr. Kuelker's assertion that his dealings with Pengrowth have resulted in him becoming an expert and finds that the honoraria for interveners is appropriate for the circumstances. The Board also notes that Mr. Kuelker was represented by a lawyer until shortly before the hearing date and that this lawyer was involved in the intervention.

Accordingly, while the Board is of the view that an honorarium is reasonable in recognition of Mr. Kuelker's preparation of his submission, it falls at the bottom of the range at \$300.00. The Board awards \$200.00 to Mr. Kuelker for his attendance at the one day hearing. Finally, the Board is prepared to award Mr. Kuelker his travel costs, claimed in the amount of \$100.00.

In regard to the remaining costs claimed by Mr. Kuelker, the Board does not consider these costs as reasonable or necessary for Mr. Kuelker's intervention. Further, the Board does not award costs for participating in ADR unless the circumstances are unique, which the Board finds not to be the case.

3 ORDER

The Board hereby orders that Pengrowth pay intervener costs totalling \$600.00 to Mr. Kuelker.

Dated in Calgary, Alberta, on October 25, 2010.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

G. Eynon, P.Geol.
Presiding Member

<original signed by>

B. McManus, Q.C.
Vice-Chairman

<original signed by>

A. Warren, P.Eng.
Acting Board Member

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED



Microsoft Excel
Worksheet