



Ketch Resources Ltd.

Review of Well Licence No. 0313083 and
Application for Associated Battery and Pipeline

Pembina Field

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2006-002: Ketch Resources Ltd.

Review of Well Licence No. 0313083 and

Application for Associated Battery and Pipeline

Pembina Field

Application Nos. 1397909 and 1407749

Cost Application No. 1427309

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**Ketch Resources Ltd.
Review of Well Licence No. 0313083 and
Application for Associated Battery and Pipeline**

**Energy Cost Order 2006-002
Application Nos. 1397909 and 1407749
Cost Application No. 1427309**

1 INTRODUCTION

On August 12, August 20, and September 2, 2004, the EUB received review and variance applications from potentially affected parties requesting that the Board conduct a review hearing relating to Well Licence No. 0313083, pursuant to Section 40 of the *Energy Resources Conservation Act*. On April 11, 2005, the Board granted the requests for a review hearing. The Board registered the review hearing as Proceeding No. 1397909.

Ketch Resources Ltd. (Ketch) submitted an application on June 28, 2005, in accordance with Section 7.001 of the *Oil and Gas Conservation Regulations*, requesting approval to construct and operate a single-well gas battery at LSD 1-27-46-2W5M. Ketch also applied on June 28, 2005, 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 the well at LSD 1-27-46-2W5M to a pipeline tie-in point at LSD 8-26-46-2W5M. On August 15, 2005, Ketch amended its original application to add two alternative pipeline routes to be considered at the hearing.

The Board held a prehearing meeting in Pigeon Lake, Alberta, on July 11, 2005 and held a public hearing in Westeros, Alberta, which commenced on October 5 and concluded on October 7, 2005. The public hearing was held before Board Members J. R. Nichol, P.Eng. (Presiding Member), T. M. McGee (Member), and D. K. Boyler, P.Eng (Acting Member).

On December 1, 2005, the Board issued Decision [2005-129](#).

The Board received various intervener cost claims totaling \$59,914.76, the details of which are outlined in [Appendix A](#) attached. By way of letter dated December 8, 2005 Ketch provided comments to the various claims. Following Ketch's comments the Board received responses from the following parties:

- Mr. Richard Secord, counsel for the Battle Lake Families
- Mr. Ian Heacock, representative for the Battle Lake Natural Area Preservation Society
- Karl Zajes, representative for Mr. Craig Neilson and Mr. Wayne Neilson

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* (ERCA) 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 project in question.

When assessing costs, the Board will have reference to Part 5 of the *Rules of Practice* and to its *Scale of Costs*.

Section 55(1) of the *Rules of Practice* reads as follows:

Section 55(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 BOARD – General Comments

3.1 Costs Incurred for Preparing Claim

With respect to costs incurred as a result of preparing and filing cost claims and responding to comments made by Ketch regarding the cost claims, the Board recognizes the following from part 5.1 of Directive 031A, Guidelines for Energy Cost Claims ([Directive 031A](#)).

Some examples of costs that might not be considered reasonable include

...

- costs relating to the preparation of the claim for an award of costs by local interveners.

It is the Board’s view that costs incurred for these types of activities are incurred after the record for the proceeding has closed and are not directly and necessarily related to assisting the Board with understanding the issues that were raised at the hearing.

For the foregoing reasons the Board will not award costs that are directly related to the preparation and administration of an intervener’s cost claim.

3.2 Representation by Agent or Representative

It is the Board's practice to allow those who do not hold a law degree to appear before it as an agent or representative of an intervener. As noted in [Decision 2004-101](#), this custom is consistent with the principles of openness and flexibility that characterize administrative tribunals and in the Board's view the hiring of an agent generally provides for a more efficient and effective intervention. In that regard the Board expects that all agents who represent interveners at a Board proceeding are knowledgeable about the industry and fully understand the Board's governing legislation, *Rules of Practice*, and Directive 031A.

Where an agent representing interveners possesses a more general background which is not specific to the technical issues before the Board, does not retain expert evidence, or is not in a position to provide evidence himself or herself, the Board is of the view that great efficiencies can still be reached in terms of costs, hearing duration, and the overall process. An agent who comes before the Board for the purposes of efficiently demonstrating the client's concerns for the Board, acting as a liaison between the client and the Board, and successfully preparing the client to appear before the Board with a clear and concise intervention, in the Board's view is an agent that brings value and assistance to the proceeding. For the purposes of this application the Board finds that Mr. Karl Zajes and Mr. Vasseau have filled such a role and it is the Board's view that an hourly rate of \$100.00 is appropriate for such a role in this proceeding.

4 VIEWS OF THE BOARD - Assessment

4.1 Battle Lake Families

The Battle Lake Families Group (BLF) submitted a cost claim totaling \$33,435.41. The claim represents the costs incurred for legal and consulting services as well as individual honorariums. The details of this claim are outlined in [Appendix A](#) attached.

By way of letter dated December 8, 2005 Ketch submitted the following general comments regarding the BLF.

Ketch has a general concern that a great deal of the issues addressed by the BLF in the hearing extended beyond issues specifically related to Ketch's pipeline and facility application and the review of the 1-27-46-2W5 well licence. While Ketch recognizes that protection of the Battle Lake watershed is a relevant issue in respect of Ketch's subject facilities we are not of the view that much of the evidence presented by the BLF witnesses went far beyond matters related specifically to the Ketch facilities.

Interveners

Attendance honorariums are claimed in the amount of \$250.00 for each Tim Belec, Donna Belec, and Michael Black, as well as a \$200.00 attendance honorarium for Donna Haut for an overall honorarium claim of \$950.00. Ketch submitted in its comments of December 8, 2005 that while it believes the scope of the testimony of Messrs. Belec and Black went beyond the issues specifically relevant to the Ketch facilities, it does not object to the honorariums being claimed.

The Board finds that the attendance honorarium is claimed in accordance with [Directive 031A](#) and therefore approves this portion of the claim in full, the details of which are outlined in [Appendix A](#) attached.

Ackroyd, Piasta, Roth & Day LLP

Mr. Richard Secord of Ackroyd, Piasta, Roth & Day LLP incurred legal fees in the amount of \$22,500.00, expenses of \$470.54, and related GST in the amount of \$1,607.94 for a total claim of \$24,578.48.

By way of letter dated December 8, 2005 Ketch submitted the following with respect to Mr. Secord's portion of the claim.

Ketch considers Mr. Secord's recorded time to be reasonable up to October 4, 2005. On that day, Mr. Secord reviewed with the BLF witnesses, their examination in chief. As counsel, Mr. Secord is responsible to advise his client on the relevant scope of its hearing participation and evidence. Due to the Board scope that the total hearing hours were greater than what would have otherwise be needed if the scope of the BLFs evidence had been confined to matters more specific to the Ketch facilities. Ketch submits that there should be an appropriate disallowance of part of the claim for Mr. Secord's time for October 4 and during the hearing.

By way of letter dated December 22, 2005 Mr. Secord provided the following responses.

In the Board's Prehearing Meeting Decision 2005-088 dated August 3, 2005, the Board stated that the issues it would hear at the hearing included:

- Location of the Ketch 1-27 well and its proposed pipeline & facility;
- Environmental effects relating to locating the well in a swamp and drilling the well in a water recharge area;
- Cumulative effects;
- Coordinated development with other operators; and
- Public interest.

Mr. Secord also went on to note that it appeared from the Board's Decision [2005-129](#), that the Board found the BLF evidence helpful and the issues to be important. Mr. Secord illustrated his point by reproducing section 7 of [Decision 2005-129](#).

The Board finds that the submissions and arguments provided by Mr. Secord with respect to his clients' concerns to be of particular assistance when assessing the subject applications. Furthermore, the concerns raised in his clients' submissions were supported by independent expert analysis and opinions to which the Board could apply weight to during its deliberations. For these reasons the Board finds it appropriate to approve the legal fees and disbursements in full.

Taking all of the foregoing into account the Board approves legal fees in the amount of \$22,500.00, expenses in the amount of \$470.54, and related GST in the amount of \$1,607.94 for an overall award of \$24,578.48.

David Morris, Strategic Communications

Mr. Morris claims professional fees in the amount of \$5,200.00, expenses in the amount of \$1,579.13, and related GST of \$109.65 for an overall claim of \$6,888.78.

While Ketch does not take issue with the role played by Mr. Morris to assist Mr. Secord in the submission preparation phase of the proceeding, it believes that the time associated with Mr.

Morris' attendance at the hearing should be disallowed as Mr. Secord is a very experienced counsel in this type of hearing and there is no justifiable need for "second counsel". Ketch also submitted that Mr. Morris' expenses related to attending the hearing should be disallowed.

Ketch expressed concern regarding Mr. Morris' amount of hours (84) incurred prior to the hearing given what Ketch considers to be a submission very general in nature and research that it considers to be in respect of broader policy issues.

Mr. Secord responded to these issues by submitting that Ketch's assessment of Mr. Morris' hours spent in preparation of the hearing is wrong. Mr. Secord submitted that the hours were reasonable and necessary to meet and discuss issues with the interveners, witnesses from the County of Wetaskiwin, and the West Central Planning Agency (WCPA), and ultimately assist them with their submissions and testimony. In addition, Mr. Secord noted that Mr. Morris charges much less than counsel does, specifically \$50.00/hr compared to \$250.00/hr. As such, the time spent contacting interveners, the County of Wetaskiwin, WCPA, discussing evidence, and preparing drafts for counsel reduced the BLF's overall costs. Mr. Secord argued that this approach speaks to the efficiency and effectiveness of this intervention.

The Board has discussed the assessment of cost claims when parties use a legal counsel and general consultant team in [UCO 2003-013](#). The Board noted that the general consultant's role is basically to assist legal counsel and expert witnesses to cost-effectively participate in the proceeding. In the Board's view, effective use of general consultants could result in a lower overall cost claim, due to reductions in legal and expert fees. However, ineffective use of general consultants could also result in a higher overall cost claim, due to significant duplication of effort. The Board, in [UCO 2003-013](#), stated that it expected that those parties who have adopted such an approach would be diligent in ensuring minimal duplication.

Where parties use this approach, the Board said it would consider the combined costs of the legal counsel and general consultant team in assessing the value of the contribution. The Board recognized that any efficiency achieved by using a legal counsel/general consultant team, or any duplication of efforts, would manifest itself in the combined costs claimed.

The Board would expect legal counsel (or a legal counsel/general consultant team) fees to be lower for parties who did not present evidence, or who did not cover the full range of issues before the Board in the proceeding.

With respect to general consultants, as the Board noted earlier, the Board will allow recovery of the costs of general consultants where the use of general consultants has resulted in an offsetting reduction to what otherwise would have been claimed for legal fees.

The Board finds that the preparation hours incurred by Mr. Morris are high however the Board recognizes that Mr. Morris did assist in the coordination of 4 individual interveners and witnesses which would require slightly more time than where only one or two interveners are involved with no expert evidence being provided. As such the Board finds it appropriate to approve the 84 hours incurred in respect of preparation.

With respect to the 20 hours incurred in respect of attending the hearing and expenses for accommodation and meals in the amount of \$422.88, the Board notes that Mr. Morris did not provide testimony nor did he question or cross-examine any of the witnesses that were providing

testimony. It is the Board's view that Mr. Morris' role during the hearing was primarily to assist Mr. Secord with the organization of the intervention as well as the material being presented at the hearing. The Board has previously noted that it is only in exceptional circumstances, such as where issues and the intervention are complex, will the Board find it necessary for two counsels to have been in attendance at a hearing¹. While Mr. Morris is not a lawyer the Board finds that the same guideline applies to any assistance being provided to counsel, whether it is second counsel or a consultant. The Board also recognizes that the interveners Mr. Secord represented were present at the hearing and available to provide assistance with the organization and presentation of the intervention. In addition, the Board does not find that the intervention was so complex that assistance in addition to counsel was necessary in this instance. In the Board's view, the role played by Mr. Morris at the hearing was an ineffective use of a general consultant which resulted in a higher overall cost claim.

Accordingly, the Board disallows Mr. Morris' attendance time (\$1,000.00) and related expenses of \$422.88.

Taking all of the foregoing into account the Board approves Mr. Morris' fees in the amount of \$4,200.00, expenses in the amount of \$1,156.25, and related GST in the amount of \$80.94 for an overall award of \$5,437.19. With respect to GST the Board notes that GST was not claimed on Mr. Morris' professional fees and therefore the Board has only approved GST with respect to the approved expenses.

West Central Planning Agency (WCPA)

WCPA's portion of the claim includes professional fees in the amount of \$825.00 and expenses in the amount of \$90.72 for an overall claim of \$915.72.

With respect to the WCPA, Ketch questioned whether or not WCPA would normally charge for such involvement. If so, Ketch argued that a partial disallowance should be applied for the time incurred by Mr. Riddett due to the scope of his testimony, which in Ketch's opinion went beyond the issues specific to Ketch's facilities.

In reviewing this portion of the cost claim the Board notes that WCPA did invoice Mr. Secord for fees and expenses through invoice number 200535 dated October 11, 2005 and as such the Board does not find that there is an issue as to whether or not WCPA normally charges for this type of involvement. The Board has also considered Ketch's argument that WCPA's involvement went beyond issues specific to Ketch's facilities. After carefully viewing these submissions, it is the Board's view that the expert analysis and opinions provided by the WCPA greatly assisted the Board's assessment of the subject applications in the context of municipal planning in the Battle River/Lake Watershed.

Taking all of the foregoing into account the Board approves fees for WCPA in the amount of \$825.00 together with expenses in the amount of \$90.72 for an overall award of \$915.72. The Board notes that no GST was claimed in relation to the fees and expenses.

4.2 Battle Lake Natural Area Preservation Society

The Battle Lake Natural Area Preservation Society (the Society) submitted a cost claim totaling \$848.00. The Board notes that the Society originally claimed \$748.00 and subsequent to

¹ Energy Cost Order 2004-04

receiving Ketch's comments regarding the claim requested that an additional \$100.00 be added to the claim to reflect time and mileage for post hearing paper processing.

Ketch submitted that while the claim appears reasonable it does question whether or not the Society is eligible for recovery of local intervener costs. In response to Ketch's argument Mr. Doze submitted that the Society had applied to the Board and received full intervener status.

The Board has considered the issue of intervener standing with respect to the Society and finds that the Society does not comply with section 28(1) of the ERCA and is therefore ineligible to apply for cost recovery. It is the Board's position that in order to qualify as a local intervener, the Society must show that the land its members own or occupy, and for which it has a concern, is land that is directly and adversely affected by the application. The Board notes that no evidence was provided by the Society with respect to its members, the lands that its members owned or occupied, or how its members' lands will be directly and adversely affected by the applications. Accordingly, the Society has not shown that it can claim a legal or formal right to occupy or use the land in question. Accordingly the Board denies the Society's cost claim in full.

4.3 NEILSON, Craig and Wayne

Neilson Family

Mr. Craig Neilson submitted a cost claim totaling \$9,701.31 and Mr. Wayne Neilson submitted a cost claim totaling \$9,711.31.

Each of the Neilsons claimed a preparation honorarium of \$1,500.00 and an attendance honorarium of \$200.00. In considering claims for preparation honoraria, the Board is mindful of part 6.1.1 of [Directive 031A](#) which states in part the following.

...an intervener who personally prepares a substantial submission without expert help may, depending upon the complexity of the submission, receive an honorarium in the range of \$300 to \$500. In very exceptional cases, and when the necessary preparation time is substantial, honoraria in excess of \$500 to a maximum of \$2500 may be considered. There must, of course, clearly be a need for any such substantial intervention.

If an individual intervener hires a lawyer to assist with the intervention and the lawyer is primarily responsible for the preparation of the intervention, the Board generally will not provide an honorarium to the individual for his or her preparation efforts. In situations where both the lawyer and the individual contribute substantially to the preparation of the intervention, the Board may consider an honorarium in recognition of the individual's efforts.

The Board recognizes that while the Neilson family was not represented by legal counsel they did engage the services of Mr. Karl Zajec. The Board has reviewed the summary of time provided by Mr. Craig Neilson and Mr. Wayne Neilson and finds that their contribution to the preparation and presentation of their intervention was substantial. While the Board does not take issue with the attendance honorarium or expenses, it does find that the overall claim for a preparation honorarium of \$3,000.00 is in excess of what is normally provided for pursuant to [Directive 031A](#). The Board finds that a preparation honorarium in the amount of \$350.00 for each Mr. Craig Neilson and Mr. Wayne Neilson is reasonable in light of the submissions filed and given the assistance of a representative.

Taking all of the foregoing into account, the Board approves for Craig Neilson a preparation honorarium in the amount of \$350.00, an attendance honorarium in the amount of \$200.00, and expenses in the amount of \$1,322.95 for an overall award of \$1,872.95.

With respect to Mr. Wayne Neilson the Board approves a preparation honorarium in the amount of \$350.00, an attendance honorarium in the amount of \$200.00, and expenses in the amount of \$1,332.63, for an overall award of \$1,882.63.

The details of these claims and awards are shown in [Appendix A](#) attached.

Karl Zajes

Mr. Zajes claims \$12,200.00 in professional fees, \$303.36 in expenses, and \$854.00 in GST for an overall claim of \$13,357.36. It is the Board's view that Mr. Zajes' capacity was that of a representative or agent for the interveners.

In considering Mr. Zajes' claim, the Board has reviewed and considered the following comments filed by Ketch on December 8, 2005.

Ketch objects to Mr. Zajes' entire claim. In Ketch's view, Mr. Zajes has no apparent qualifications that would justify him playing a representative role in an EUB facility hearing. Further, his hourly rate of \$165.00 would be considered highly excessive, even if he were qualified. In Ketch's view, Mr. Zajes (as contrasted to Mr. Craig Neilson and Mr. Wayne Neilson) did not contribute to the Board's understanding of the facts and issues surrounding the Ketch applications. Mr. Zajes' participation in the hearing resulted in inefficiencies and the introduction of anecdotal and irrelevant information and positions. Ketch submits that Mr. Zajes' participation in the hearing would not be considered helpful to the Board.

In addition the Board has reviewed and considered the response filed by Mr. Zajes which includes but is not limited to the following.

I have had to readjust my busy schedule and have logged many hours reading and reviewing all the material and spend a considerable amount of time and incurred costs discussing and explaining the issue via phone with our clients, Craig Neilson and Wayne Neilson who live in California, USA. I had to advise them and prepare them for the short notice EUB hearing and have them file their submission to the EUB, as they were not aware of what to do.

I have met with the Neilsons prior to the hearing at their properties here in Alberta (Battle Lake area) to assess and evaluate first hand their issues and concerns and adverse implications Ketch's proposed H₂S pipeline route would have on their subdivision plans and the quiet enjoyment of their property.

... took the time to view and evaluate the two other proposed pipeline routings which have existing cleared pipeline right of ways in place, to determine the most feasible option with the least impact on the land, neighboring landowners, water shed, area environment and subdivision plans.

In addition to the comments provided, Mr. Zajes also provided the Board with letters of reference in argument for his experience from each of the Neilsons, GSM Auctioneers Corp., and Canadian Association of Geophysical Contractors.

While the Board believes that Mr. Zajes assisted his clients in preparing for the hearing, the Board notes that each of his clients prepared and filed their own submissions with the Board. The Board has reviewed the costs claimed by Mr. Zajes and notes that a total of 51 hours for both of his clients were incurred for preparation prior to the hearing. The Board finds this amount of preparation time to be somewhat excessive given that his clients each prepared and filed their own submissions with the Board and no expert evidence was coordinated and presented at the hearing. In the circumstances, the Board finds it reasonable to approve 50% of the preparation time, 25.5 hours. The Board does not take issue with the attendance time (23 hrs) or the time incurred for argument and reply (1 hr).

The Board recognizes that Mr. Zajes has claimed an hourly rate of \$165.00. Given the Board's comments in [section 3.2](#) the Board awards an hourly rate of \$100.00 (49.5 hrs x \$100.00 = \$4,950.00).

With respect to Ketch's comments filed on December 8, 2005 and Mr. Zajes' comments filed on December 20, 2005 the Board is disappointed in the tone and direction of these submissions. The Board considers such tactics not useful to its deliberations and unbecoming of participants in Board proceedings.

Taking all of the foregoing into account, with respect to Mr. Craig Neilson's cost claim, Professional fees are awarded to Mr. Zajes in the amount of \$2,475.00 together with expenses of \$151.68, and GST of \$183.87, for an overall award of \$2,810.55, all of which is outlined in [Appendix A](#) attached.

With respect to Mr. Wayne Neilson's cost claim, professional fees are awarded to Mr. Zajes in the amount of \$2,475.00 together with expenses of \$151.68, and GST of \$183.87, for an overall award of \$2,810.55, all of which is outlined in [Appendix A](#) attached.

4.4 PHIPPEN, Brian and Verna

The Phippen family submitted a cost claim totaling \$6,218.41. The Board notes Ketch's comments that Mr. Vasseau, representative for the Phippen family, conducted the intervention in an efficient, effective, and relevant manner and as such does not object to the Board awarding the full claim of Mr. Vasseau's fees. In addition, Ketch advised that it considers the honoraria and expenses being claimed to be reasonable and does not object to that portion of the claim.

The Board finds that Mr. and Mrs. Phippen have met the criteria set out in section 28 of the ERCA and are therefore considered to be local interveners and are eligible for cost recovery. In that regard the Board recognizes that Mr. Vasseau has claimed an hourly rate of \$110.00. Given the Board's comments in [section 3.2](#) the Board awards an hourly rate of \$100.00.

Although the Board does not take issue with the value and contribution brought to this proceeding it does note that 2 hours has been claimed by Mr. Vasseau for administration of files and preparation of the cost claim² subsequent to the record closing. Given the general comments of the Board in [section 3.1](#) the Board finds it appropriate to approve 43.6 of the 45.6 hours being claimed (43.6 hrs x \$100 = \$4,360.00).

² Time sheet for June 30, 2005 through to October 20, 2005

Taking all of the foregoing into account, the Board approves professional fees for Mr. Vasseau in the amount of \$4,360.00, expenses in the amount of \$523.00, and the GST claim of \$36.61, for an overall award of \$5,355.61.

The Board approves the remaining honorarium claims of \$600.00, intervener expenses of \$40.00, and related GST of \$2.80, for an overall award of \$642.80.

The details of this claim and award are shown in [Appendix A](#) attached.

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Ketch Resources Ltd. shall pay intervener costs in the amount of \$46,922.60, as outlined in [Appendix A](#) attached.

Dated in Calgary, Alberta on this 19th day of April, 2006.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A