



EOG Resources Canada

Pipeline Application
Provost Field

Cost Awards

ENERGY RESOURCES CONSERVATION BOARD
Energy Cost Order 2008-012: EOG Resources Canada
Pipeline Application, Provost Field
Application No. 1512009
Cost Application No. 1578419

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ENERGY RESOURCES CONSERVATION BOARD

Calgary, Alberta

**EOG RESOURCES CANADA
PIPELINE APPLICATION
PROVOST FIELD**

**Energy Cost Order 2008-012
Application No. 1512009
Cost Application No. 1578419**

1 INTRODUCTION

EOG Resources Canada Inc. (EOG) applied to the ERCB, pursuant to Part 4 of the *Pipeline Act*, for approval to construct and operate a high-density polyethylene pipeline for the purpose of transporting natural gas from an existing well site to a tie-in point. The proposed pipeline would be about 1.2 kilometres (km) in length, and the hydrogen sulphide (H₂S) content of the gas in the pipeline would be zero.

Robert Somerville, the holder of Metallic and Industrial Minerals Permit (MIMP) No. 9306040782, the area of which includes a portion of the proposed pipeline right-of-way, objected to the proposed pipeline. Mr. Somerville was concerned that the proposed pipeline would restrict his ability to explore for minerals, in particular for diamond-bearing rocks, in the area.

The Board held a public hearing in Stettler, Alberta on June 3, 2008, before Board member J. D. Dilay, P. Eng. (Presiding Member) and Board Members M. J. Bruni, Q.C., and G. Eynon, P.Geol.

The Board considers the hearing to have closed on June 6, 2008, the date of which EOG and Mr. Somerville filed their responses to undertakings given during the hearing.

On July 4, 2008, counsel for Mr. Somerville filed a cost claim totalling \$4,034.67, comprised of legal costs incurred by Debbie Bishop on behalf of Mr. Somerville in the amount of \$3,034.67, as well as the amount of \$1,000.00 for preparation and attendance honoraria and mileage costs incurred by Mr. Somerville himself. On July 21, 2008, counsel for EOG submitted comments regarding the cost claim. On July 28, 2008, counsel for Mr. Somerville submitted a response.

The Board considers the cost process to have closed on July 28, 2008.

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 intervenor 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 PARTIES

3.1 EOG Resources Canada Inc.

On July 21, 2008, counsel for EOG submitted comments regarding the cost claim filed by Mr. Somerville. EOG submits that it does not object to the legal costs being claimed by Ms. Bishop on behalf of Mr. Somerville and that the amount claimed is reasonable.

EOG does object to the honoraria claim of \$700.00 and the mileage claim of \$300.00 made by Mr. Somerville for several reasons.

The first reason for EOG's objection to Mr. Somerville's honoraria claim is because EOG is of the view that the matter never should have proceeded to a hearing and that the commitments they made to mitigate the issues of the impact of the pipeline on Mr. Somerville's mineral exploration activities adequately addressed his concerns.

In addition, Mr. Somerville retained legal counsel and as a result, EOG is of the opinion that the claim of \$500.00 for preparation honoraria is unreasonable. The submission filed just prior to the hearing was prepared by Ms. Bishop and not Mr. Somerville himself and therefore, EOG submits that this claim is not reasonable.

Mr. Somerville also made a claim of \$200.00 for attendance honoraria. In accordance with Directive 31A, EOG submits that Mr. Somerville only be awarded \$50.00 for each half day he was in attendance at the hearing. Being that the hearing only lasted for one day, EOG submits that Mr. Somerville's attendance honoraria claim be reduced to \$100.00.

Finally, EOG takes issue with Mr. Somerville's mileage claim being \$300.00 (\$0.30/km x 1000 km). EOG submits that since the hearing took place in Stettler, Alberta, which is relatively close

to Mr. Somerville's residence, his claim for 1000 km is extensive. EOG is of the opinion that some of the mileage being claimed by Mr. Somerville was for Mr. Somerville's trips to Calgary to meet with EOG prior to the hearing. EOG makes reference to Directive 31A wherein an intervener may only claim mileage for reasonable costs incurred to prepare for a hearing and given the fact that these meetings occurred prior to the hearing, EOG submits that a significant reduction in mileage be made accordingly.

3.2 Robert Somerville

On July 28, 2008, counsel for Mr. Somerville submitted a response to EOG's comments. Counsel for Mr. Somerville submitted that Directive 56 requires that affected members of the public meet with the Applicant prior to the Notice of Hearing in order to understand the application. Accordingly, counsel for Mr. Somerville submits that the expenses incurred with respect to Mr. Somerville's two trips to Calgary to meet with EOG to understand how he would be affected by the application are reasonable. In addition, counsel for Mr. Somerville stated that prior to retaining counsel, Mr. Somerville prepared his own submission, which was filed prior to the hearing and without the help of counsel. Counsel for Mr. Somerville also submits that Mr. Somerville was required to respond to two appeals by EOG of the Board's decision to grant him local intervener status and therefore he should be compensated for his time in the preparation of those responses.

4 VIEWS OF THE BOARD

The cost claim submitted by Mr. Somerville includes legal fees of \$2,741.55, expenses of \$460.16, preparation and attendance honoraria in the amount of \$700.00 and GST of \$132.96, for an overall claim of \$4,034.67.

In relation to Mr. Somerville's submission for preparation honoraria in the amount of \$500.00, the Board notes section 6.1.1 of Directive 31A which provides as follows:

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.

While the Board notes that Mr. Somerville filed a submission with the Board relative to this hearing prior to retaining

5 VIEWS OF THE BOARD

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While the Board notes that Mr. Somerville filed a submission with the Board relative to this hearing prior to retaining counsel, as well as a brief response to the correspondence from EOG challenging the Board's decision to grant him local intervener status, the Board notes that Mr. Somerville was represented by counsel at the hearing, who was primarily responsible for the preparation of Mr. Somerville's intervention. Given the foregoing, the Board does wish to recognize Mr. Somerville's efforts in the preparation of his submission and response to EOG regarding his local intervener status and accordingly awards Mr. Somerville a preparation honorarium of \$300.00.

With respect to the attendance honoraria being claimed by Mr. Somerville of \$200.00 for a one day hearing, the Board is not prepared to vary from the rules set out in the *Scale of Costs* which allows for \$50.00 per half day of attendance at a hearing. Therefore, the Board is prepared to award Mr. Somerville \$100.00 for attendance honoraria.

Finally, with regard to the mileage claim of \$300.00 submitted by Mr. Somerville, the Board notes that the majority of the mileage appears to have been incurred as a result of Mr. Somerville's two trips to Calgary prior to the hearing to meet with EOG. The Board refers to section 7 of Directive 31A which states

The EUB's usual practice (there are exceptions) is to acknowledge only those costs incurred after the EUB has issued a notice of hearing. It is generally the EUB's position that until a notice of hearing has been issued, there is no certainty that a hearing will be held. The EUB finds that in many cases the prenotice interactions between interveners and applicants relate to compensation matters and not public interest issues. The EUB recognizes, however, that it is sometimes necessary for local interveners to incur costs prior to the notice and that such costs may be reasonable and directly and necessarily related to the intervention in question.

Given the above, the EUB considers all claims for costs incurred prior to the notice of hearing on a case-by-case basis, including such factors as

- the nature of the disagreement or dispute between the applicant and the local intervener;
- the nature of the applicant's public consultation process;
- whether or not the applicant had filed an application with the EUB at the time the costs had been incurred;
- whether the costs incurred by the local intervener are reasonable given the nature of the project proposed; and
- whether the costs incurred by the local intervener were directly and necessarily related to the issues in dispute.

The Board also notes that counsel for Mr. Somerville stated that *Directive 56* requires that affected members of the public meet with the applicant prior to the Notice of Hearing being issued by the Board in order to understand the applicant's application. Counsel for Mr.

Somerville stated that, to this effect, Mr. Somerville travelled to Calgary on two occasions to meet with EOG in order to understand how Mr. Somerville would be affected by the proposed development.

While *Directive 56* requires that project applicants conduct face-to-face or telephone conversations with affected parties as a part of their personal consultation process, the Board wishes to clarify that such consultation may take place in a number of ways, such as over the phone or face-to-face at the affected party's residence.

Based on the above, the Board is of the view that the mileage amount claimed by Mr. Somerville is excessive and should therefore be reduced to reflect travel to and from the hearing only. Directive 031A provides that the Board's mileage rate for automobile travel is \$0.30/km, including GST. Therefore, the Board is prepared to award Mr. Somerville \$48.00 for mileage, which amount reflects travel from his residence to the hearing and back.

6 ORDER

IT IS HEREBY ORDERED THAT:

- (1) The Board approves intervenor costs in the amount of \$3,482.67.
- (2) Payment shall be made to Klimek Law, Barristers & Solicitors at #240, 4808 – 87 Street, Edmonton, Alberta T6E 5W3.

Dated in Calgary, Alberta on this 4th day of September, 2008.

ENERGY RESOURCES CONSERVATION BOARD

“Original Signed by G. Eynon, P.Geol”

G. Eynon, P.Geol

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

J. D. Dilay, P.Eng.

“Original Signed by M. J. Bruni, Q.C”

M. J. Bruni, Q.C.