



Masters Energy Inc.

Application for a Well Licence
Normandville Field

Costs Award

August 11, 2009

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2009-007: Masters Energy Inc., Application for a Well Licence, Normandville Field

August 11, 2009

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**MASTERS ENERGY INC.
APPLICATION FOR A WELL LICENCE
NORMANDVILLE FIELD**

**Energy Cost Order 2009-007
Application No. 1605721
Cost Application No. 1612040**

1 INTRODUCTION

1.1 Background

Masters Energy Inc. (Masters) submitted an application, in accordance with Section 2.020 of the *Oil and Gas Conservation Regulations*, for a licence to drill a vertical crude oil well from a surface location in Legal Subdivision 15, Section 31, Township 78, Range 21, West of the 5th Meridian. The purpose of the proposed well was to obtain crude oil production from the Montney Formation. The maximum hydrogen sulphide (H₂S) concentration expected to be encountered in the drilling phase of the well would have been 1.8 moles per kilomole, or 0.18 per cent, and the cumulative drilling H₂S release rate would have been 0.0031 cubic metres per second, with a corresponding emergency planning zone of 0.07 kilometres (km). The proposed well would have been located 7.6 km northwest of the Town of Falher.

Louise Roy and Gilles Roy of Fahler Diversified Farms Ltd. (FDFL) own the land on which the proposed well was to be drilled. FDFL filed an intervention in opposition to the subject application, raising concerns about the proposed well location, access road, and target area.

On April 9, 2009, Masters notified the ERCB that it was withdrawing Application No. 1605721, pursuant to Section 21 of the *Energy Resources Conservation Board Rules of Practice*. The Board accepted the withdrawal of the application and determined that a hearing was not necessary.

1.2 Cost Claim

On April 15, 2009, Darryl Carter & Company, counsel for FDFL, filed a cost claim in the amount of \$3018.75. On April 16, 2009, Masters provided comments on the cost claim. On June 17, 2009, counsel for FDFL advised that they would not be providing a response.

The Board considers the cost process to have closed on June 17, 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 Appendix D: *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 FAHLER DIVERSIFIED FARMS LTD.

FDFL submitted a cost claim that included legal fees in the amount of \$2875.00 and GST of \$143.75, for a total claim of \$3018.75.

3.1 Views of Masters

On April 16, 2009, Masters submitted comments to the Board in relation to the cost claim submitted by FDFL wherein it stated that it had initially declined payment of the invoice submitted by Darryl Carter & Company due to the fact that the hourly rate billed was well in excess of the amount allowed in the *Scale of Costs*. Masters also noted that FDFL had resubmitted the invoice of Darryl Carter & Company at a significantly lower rate, but Masters advised that it was still not prepared to pay the invoice.

Masters submitted that it was of the view that because no notice of hearing was issued and because Masters had withdrawn its application after exhausting its efforts to drill a well on the lands at issue, it should not be liable to pay the costs incurred by FDFL.

3.2 Views of FDFL

Counsel for FDFL submitted an e-mail to the ERCB on June 17, 2009, advising that they did not intend to file a response to the comments of Masters.

3.3 Views of the Board

The Board has considered Darryl Carter & Company's submission regarding the hours incurred from November 17, 2008, to April 13, 2009. The Board has also considered the wording and intent of provisions of *Directive 031*, in particular Sections 6.3 and 6.4.

Section 6.3 provides:

Costs Incurred Before a Notice of Hearing Is Issued

As there is no certainty that a hearing will be held until a notice of hearing is issued, the ERCB normally does not award costs incurred before notice is issued. However, the ERCB recognizes that local interveners may sometimes incur costs prior to the notice that are reasonable and directly and necessarily related to their intervention. Accordingly, the ERCB considers all claims for costs incurred prior to the notice of hearing on a case-by-case basis.

Section 6.4 states:

Cost Claims When No Hearing Is Held

The decision to award local interveners costs when no public hearing is held is within the discretion of the Board. The Board considers each claim on its own merits. Some of the factors that it considers are

- 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 an application was filed for the proposed project;
- whether the costs incurred by the local intervener were 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 notes that Mr. Carter commenced his work and preparation in November 2008. On February 24, 2009, the Board decided that the matter warranted a hearing and that the local intervener had status as a party who may be directly and adversely affected by a Board decision on the application, pursuant to Section 26(2) of the *Energy Resources Conservation Act*, as the intervener owned the land upon which the proposed well was to be drilled.

On March 9, 2009, a Board panel was assigned, and in mid-March counsel was canvassed about possible dates for a hearing. Before the notice of hearing could be issued, Masters withdrew its application.

The Board considers that it was reasonable in the circumstances for counsel to commence his work in preparation for a hearing. The objecting party was the owner of the land where the well was proposed to be drilled and had unresolved objections to the location of the well. In these circumstances there was a high likelihood that an application would proceed to a hearing. As such, the risk that preparatory efforts would be wasted or incurred on behalf of a person who was not ultimately accorded standing was very much reduced.

The Board determines that the costs incurred before a notice of hearing would be issued in the normal course were reasonable and were directly and necessarily related to the intervention, as required by Section 6.3 of *Directive 031*.

In assessing the relevant factors listed in Section 6.4 of *Directive 031*, the Board notes that an application was filed for the proposed project and holds that the costs incurred were reasonable given the nature of the proposed project.

4 ORDER

It is hereby ordered that

- 1) Masters Energy Inc. shall pay intervener costs in the amount of \$3018.75, and
- 2) payment shall be made to the offices of Darryl Carter & Company, 103, 10134 – 97 Avenue, Grande Prairie AB T8V 7X6,

Dated in Calgary, Alberta, on August 11, 2009.

ENERGY RESOURCES CONSERVATION BOARD

“Original Signed by J. D. Dilay”

J. D. Dilay, P.Eng.

Presiding Board Member

“Original Signed by G. Eynon”

G. Eynon, P.Geol.

Board Member

“Original Signed by D. McFadyen”

D. McFadyen

Board Member