



Total E&P Canada Ltd.

Application for an Oil Sands Bitumen Upgrader
Strathcona County

Cost Awards

December 15, 2010

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2010-009: Total E&P Canada Ltd., Application for an Oil Sands Bitumen Upgrader, Strathcona County, Cost Awards

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**TOTAL E&P CANADA LTD.
APPLICATION FOR AN OIL SANDS
BITUMEN UPGRADER
STRATHCONA COUNTY**

**Energy Cost Order 2010-009
Application No. 1551460
Cost Application No. 1655286**

1 INTRODUCTION

1.1 Background

Total E&P Canada Ltd. (Total) applied to the Energy Resources Conservation Board (ERCB/Board), pursuant to Section 11 of the *Oil Sands Conservation Act*, for approval to construct, operate, and reclaim a 47 200 cubic metres per stream day oil sands bitumen upgrader. The proposed project would be located in Strathcona County on all or parts of Sections 17, 18, 19, and 20 of Township 55, Range 21, West of the 4th Meridian, and would include water facilities and water pipelines to be located on all or parts of Sections 24, 25, and 36 of Township 55, Range 22, West of the 4th Meridian.

The Board held a public hearing in Fort Saskatchewan, Alberta, which commenced on June 1, 2010, and concluded on June 11, 2010. Interveners at the hearing included Harvey Visscher/Henryk Farms and the Citizens for Responsible Development (CFRD). The Visschers/Henryk Farms filed a cost claim with the Board following the hearing, and settled their cost claim privately with Total following the hearing.

The Board issued its decision on the application via *Decision 2010-030: TOTAL E&P Canada Ltd., Application to Construct and Operate an Oil Sands Upgrader in Strathcona County*, dated September 16, 2010.

1.2 Cost Claim

On July 12, 2010, the CFRD filed a cost claim in the amount of \$707 622.73. On July 30, 2010, Total submitted comments to the CFRD cost claim. On August 17, 2010, the CFRD submitted a response to the comments of Total.

The Board considers the cost process to have closed on September 16, 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 (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 application in question.

The Board's authority to award costs is derived from Section 28 of the *ERCA*. Pursuant to Section 28(2), a local intervener may be awarded costs. Section 28(1) identifies a local intervener as someone with an interest in or the right (exercised or not) to occupy land that will or may be directly and adversely affected by a decision of the Board. This requires the Board to determine (1) if the party seeking costs has an interest in, occupies, or has the right to occupy certain land; and (2) if that land may be directly and adversely affected by a decision of the Board.

Sections 26(2) and 28(1) of the *ERCA* set out different tests and determine different entitlements. Section 26(2) requires a determination based upon information available prior to a hearing on whether a person has legally recognized rights that may be directly and adversely affected by a Board decision. Section 28(1) entails a consideration by the Board of all evidence provided at the hearing and in the cost proceeding to determine if a party applying for costs has an interest in, occupies, or is entitled to occupy land that could be directly and adversely affected by the Board's decision.

The evidence before the Board clearly indicated that Anne Brown, Karen Berg, and Gordon Visser have interests in and reside on or occupy certain lands. As set out in *Decision 2010-030*, the Board's consideration of the whole of the evidence in the hearing indicated a possibility of effects on the interests and/or lands of Ms. Brown, Ms. Berg, and Mr. Visser resulting from the Board's decision to approve the application. As such, the Board finds that Ms. Brown, Ms. Berg, and Mr. Visser are local interveners pursuant to Section 28(1) of the *ERCA*, and are thus eligible to have their cost claims considered by the Board.

When assessing costs, the Board refers to Part 5 of the *Energy Resources Conservation Board Rules of Practice (Rules of Practice)* and Appendix E: Scale of Costs in *ERCB Directive 031: Guidelines for Energy Proceeding Cost Claims (Directive 031)*.

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 CITIZENS FOR RESPONSIBLE DEVELOPMENT

The CFRD was represented by Ackroyd LLP (Ackroyd). On July 12, 2010, the CFRD filed a cost claim for

- legal fees in the amount of \$210 778.10,

- expert fees in the amount of \$426 619.80,
- attendance honoraria in the amount of \$7900.00;
- expenses in the amount of \$36 952.02; and
- GST in the amount of \$25 377.94.

Based on the above amounts, the CFRD's total cost claim was in the amount of \$707 927.86.

3.1 Views of the Applicant

Total considered the CFRD cost claim in the amount of \$707 622.73 to be unreasonable given the nature and scope of CFRD's intervention and submitted that it should be significantly reduced.

Total noted that it had already provided \$122 250.00 in advance intervener funding to the CFRD, and stated that it understood that the \$707 622.73 being sought by the CFRD was inclusive of the \$122 250.00 amount of advance intervener funding.

Total noted that while the CFRD cost claim appeared to have numerous mathematical errors, it considered the amounts in the Summary of Total Costs Claimed (Form E1) in its response.

Total pointed out that while Ms. Brown, Mr. Visser, and Ms. Berg were found to be persons who could be directly and adversely affected by the Board's decision on the application, as per the Board's January 29, 2010, letter, Patricia Callaghan and Wayne Groot and Luzmaria Groot (the Groots) were not found by the Board to have interests that could be directly and adversely affected by the Board's decision on the application, and therefore should not be entitled to local intervener funding for the purposes of this application.

Total submitted that the costs claimed by the CFRD were substantially greater than those permitted under *Directive 031* and by previous decisions of the Board. It noted that costs are within the discretion of the Board and should only be awarded in accordance with Section 57(1) of the *Rules of Practice*.

Total submitted that *Directive 031* provides the following guidance as to what amounts to "reasonable" costs:

... the Board reviews a cost claim to ensure that the costs claimed are reasonable and in line with the scope and nature of the proceeding and that the work performed by the intervener did not duplicate the work performed by the other interveners.

Total noted that the CFRD claim was six times greater than the claim of the other major intervener in this hearing, the Visschers/Henryk Farms, which Total has already paid in its entirety, and that the information and assistance provided by the CFRD as compared to the other major intervener was not demonstrably greater.

Total indicated that the fees claimed by Mr. J. Farquharson of FDI Acoustics Ltd. and Dr. Karen McDonald were reasonable and were directly and necessarily related to the proceeding. Total agreed to pay the full amounts of fees and disbursements claimed by Mr. Farquharson and Dr. McDonald of \$7529.55 and \$17 395.88 respectively. Total indicated that both Mr. Farquharson and Dr. McDonald provided credible evidence within their areas of expertise and, although not all

of their claimed disbursements and expenses were in line with *Directive 031*, it considered the total amounts claimed to be reflective of their participation in the proceeding.

Total submitted that the remainder of the fees claimed by the CFRD should either be reduced or denied altogether.

Ackroyd

Total noted that Ackroyd claimed professional fees of \$210 778.10 for its representation of the CFRD. It noted that six individual members of the firm incurred legal fees in relation to the application; namely, Bill McElhanney, Eva Chipiuk, Yuk-Sing Cheng, Richard Secord, Karin Buss, and Debbie Bishop. Total noted that the February 24, 2010, Ackroyd invoice in the amount of \$41 180.00 was not included in the Summary of Professional Fees in Form E2, but appeared to be included in the final amount claimed in Form E1.

Total submitted that the magnitude of professional costs and the number of individuals from Ackroyd incurring fees in relation to the application were not reasonable or directly and necessarily related to the presentation and preparation of the intervention, and maintained that the total professional fees claimed by Ackroyd should be reduced.

Total was of the view that the active participation and attendance at the hearing by both Mr. McElhanney and Ms. Chipiuk was reasonable given the nature and scope of the proceeding, and agreed to pay Mr. McElhanney's and Ms. Chipiuk's total hearing attendance costs of \$31 005.00 and their total fees of \$2385.00 for final argument.

Total noted that although both were responsible for approximately equal amounts of cross-examination, Mr. McElhanney claimed 37.6 more hours for hearing preparation than Ms. Chipiuk. Total also noted that Ms. Chipiuk's involvement in the proceeding began more than a month prior to Mr. McElhanney's. Total submitted that Mr. McElhanney should be allowed no more than 204.30 hours for hearing preparation, equal to that claimed by Ms. Chipiuk, and that his costs should be reduced to \$71 505.00.

Total suggested that a detailed review of the Ackroyd accounts does not suggest that contribution from four additional lawyers was reasonably necessary for effective or economic hearing preparation. Total submitted that the \$5358.15 incurred by the four additional lawyers should be denied in full.

Total submitted that the disbursements and expenses for Ackroyd should be reduced to \$1209.02 as a result of some alleged mathematical errors in the February 24, 2010, Ackroyd invoice. Total further noted the following issues relating to the July 21, 2010, invoice:

- The accommodation expenses in the amount of \$1539.09 for Ms. Chipiuk and Mr. McElhanney should be denied in full since both live in Edmonton. Total noted that its own witnesses who resided in Edmonton commuted to the hearing daily.
- The claim of \$976.55 for meals should be reduced by \$336.55, as charges for meals on non-hearing days and tips are not permitted under *Directive 031*.
- The \$496.85 claim for supplies should be denied, as no receipts were provided.

Total submitted that the fees, disbursements, and expenses should be reduced as follows:

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$210 778.10	\$143 259.00	\$67 519.10	\$22 892.87	\$20 465.84	\$2427.03

Dr. Stuart Batterman

Total noted that Dr. Batterman's claim for professional fees to prepare for and attend the hearing was based on a rate \$30.00 greater than that allowed under *Directive 031*. It stated that Dr. Batterman's invoice and the summary schedule attached to the CFRD Cost Claim showed that the rate he used was \$300.00 per hour and that applying the *Directive 031* allowed hourly rate would reduce his fees to \$26 460.00.

Total submitted that "Dr. Batterman did not understand Alberta's regulatory regime or basic air monitoring equipment, made numerous mistakes in his critique of the Total human health risk assessment, failed to acknowledge his mistakes when they were pointed out to him, did not review most of the relevant materials and publications on the subject of human health, and failed to carefully review the application materials." Total considered the evidence by Dr. Batterman, a purported expert in the area of human health, to be seriously deficient, not helpful, and in many instances alarmist and irresponsible.

Total cited *Energy Cost Order (ECO) 2004-04: Polaris Resources Ltd., Applications for a Well Licence, Special Gas Well Spacing, Compulsory Pooling, and Flaring Permit, Application Nos.: 1276489 and 1276521*, released January 27, 2004, in support of its position that where an expert is well known and has many years of experience in a given field, if his or her evidence did not assist the Board with the relevant issues or was self-evident, the Board may reduce the costs claimed.

Total stated that Dr. Batterman's evidence made no contribution to the proceeding and the fees claimed were unreasonable when viewed in this context. Total submitted that the fees claimed by Dr. Batterman should be denied in full.

As an alternative, Total submitted that, at most, Dr. Batterman should be awarded fees in the amount of \$2940.00, representing a nominal amount of 10 per cent of the hours claimed at the approved rate under *Directive 031* of \$270.00 per hour.

Total took the position that Dr. Batterman's disbursements and expenses in the amount of \$2279.28 should also be denied, as he provided no useful evidence in the proceeding. Alternatively, Total took the position that if costs were awarded to Dr. Batterman, his disbursements and expenses claimed should be reduced, in accordance with *Directive 031*, as follows:

- Based on the exchange rate provided by Dr. Batterman, his actual airfare expenses were \$865.89, which is \$317.84 less than that claimed.

- At the rate of \$140.00 per day plus tax, the allowable cost for Dr. Batterman's four-night stay in Fort Saskatchewan and Edmonton during his attendance at the hearing is \$582.20. This is a reduction of \$32.07.
- All meal receipts provided by Dr. Batterman are on days that he did not attend the hearing; therefore, the \$108.44 claimed should be disallowed.

Total submitted that the fees, disbursements, and expenses of Dr. Batterman should be denied or, alternatively, reduced as follows:

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$29 400.00	\$0	\$29 400.00	\$2279.28	\$1820.93	\$458.35

Hydrogeological Consultants Ltd. (HCL)

Total noted that Roger Clissold acknowledged at the hearing that he is not a hydrologist and that his evidence on the subject of hydrology was given only to flag concerns for the Board and was not to be relied upon by the Board when determining whether conditions regarding water quantity should be imposed on Total. Mr. Clissold did not question Total's water quantity conclusions. Total stated that the value of Mr. Clissold's evidence in the area of hydrology was minimal, which should be reflected in the cost award.

Total noted that the HCL invoices showed 199.9 hours charged by other individuals from HCL, and that the evidence provided by HCL was either aligned with that of Total's or not based on recognized expertise. Total submitted that the quality of the HCL evidence does not suggest why these 199.9 hours were incurred. Total also noted that these individuals were not specifically referred to in the CFRD cost claim, nor were their years of experience given. Total submitted that in light of the quality of Mr. Clissold's evidence in the proceeding, these professional fees should be denied.

Total suggested that HCL's estimated budget contained in correspondence dated December 21, 2009, was \$21 630.00, approximately half of the amount ultimately claimed by HCL, and that this amount in fact represented reasonable professional fees in the circumstances.

Total noted that Mr. Clissold provided an invoice for one night's accommodation of \$460.00, which exceeded the allowable *Directive 031* amount of \$140.00 per night, and that this expense should be reduced by \$314.40 accordingly. Total also noted that the expenses for the aerial photos were \$17.72 higher than what was stated in the invoices.

Total submitted that the costs claimed by HCL should be reduced as follows:

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$43 612.80	\$21 630.00	\$21 982.80	\$2807.86	\$2475.74	\$332.12

V.M. Goodwin Research and Consulting Ltd.

Total submitted that Ms. Goodwin's claimed fees of \$158 760.00 were more than four times the \$38 500.00 set out in her initial budget and were unreasonable given her contribution to the proceeding. It also noted that there appear to have been several mathematical errors in Form E2 regarding Ms. Goodwin's professional fees.

Total submitted that Ms. Goodwin's claimed rate of \$210.00 per hour was excessive and that an hourly rate of \$150.00 was more appropriate given the nature and scope of Ms. Goodwin's expertise, as well as a previous cost award (*ECO 2009-006; Petro-Canada Oil Sands Inc., Application to Construct and Operate an Oil Sands Upgrader in Sturgeon County*) in which she was awarded costs based on that hourly rate. It also noted that, pursuant to *Directive 031*, the fees claimed must be warranted by the scope of work performed.

Ms. Goodwin claimed 682.50 hours for preparation, which Total submitted did not reflect her contribution to the proceeding. Ms. Goodwin claimed 63 hours for hearing attendance, which Total stated was more time than either of CFRD's counsel claimed for attendance at the hearing. It submitted that there was no reason for Ms. Goodwin to have attended seven days of the hearing, as she provided her review and critique of the application on two hearing days and did not assist CFRD counsel during cross-examination of the Total witness panel.

Total submitted that a review of the daily transcripts would have provided Ms. Goodwin with a familiarity with the evidence given by the Total witnesses. It submitted that the 682.50 hours should be reduced to 18 hours for hearing attendance, commensurate with what was claimed by Dr. McDonald, for a total of \$2 700.00 for hearing attendance using the \$150.00 hourly rate.

Total submitted that the 503.5 hours claimed by Ms. Goodwin for review and critique of the application should be reduced substantially. It stated that "[f]or the most part, Ms. Goodwin's assumptions were shown to be unreasonable and inconsistent with the requirements of Alberta Environment (AENV) and her conclusions were shown to be inaccurate, unsupported, and far outside her area of expertise... those errors in turn helped to invalidate Dr. Batterman's evidence." Total pointed out that the value of similar evidence provided by Ms. Goodwin has been previously discounted, as was the case in Alberta Energy and Utilities Board (now ERCB) *Decision 2007-058: North West Upgrading Inc, Application to Construct and Operate an Oil Sands Upgrader in Sturgeon County*, where "the Board did not find Ms. Goodwin's views relevant or useful in [the] proceeding."

Total noted that Ms. Goodwin claimed 249 hours for assisting other parties with their application review. As stated in *Directive 031*, "[a]n expert's assistance with a submission must be related to that person's expertise." Accordingly, Total submitted that no fees should be allowed for this portion of Ms. Goodwin's invoice.

Total submitted that Ms. Goodwin's views were not relevant, useful, or supported by reasonable evaluation. The number of hours she claimed and the resulting fees were not reflected in the work she undertook or the limited value of her participation in the proceeding.

Total submitted that Ms. Goodwin's fees for hearing preparation and attendance should be reduced to \$30 000.00, reflective of her initial time estimate at \$150.00 per hour, as previously allowed by

this Board. Total stated that it would agree to provide the amount of \$30 000.00, but questioned why Ms. Goodwin's fees were almost twice that claimed by Dr. McDonald.

Regarding Ms. Goodwin's claim of \$546.35 for disbursements and expenses, Total maintained that since there was no indication what the invoices for "Base Camp Subscription" related to, the \$137.14 claim for this item should be denied. Moreover, according to the receipt provided, the amount for parking was \$29.00, a reduction of \$16.71 from the amount claimed.

Total submitted that the fees and disbursements of Ms. Goodwin should be as follows:

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$158 760.00	\$30 000.00	\$128 760.00	\$546.35	\$392.50	\$153.85

Dr. Michael Edelstein

Total submitted that in light of Dr. Edelstein's limited and often counterproductive contribution to the proceeding, his fees should be denied or, alternatively, significantly reduced.

Total noted that the amount claimed by Dr. Edelstein was more than 2.5 times his initial budget of \$30 375.00. It submitted that his evidence was unsupported, inaccurate, alarmist, inconsistent with ERCB practices, and in many instances, far outside his area of expertise. Total stated that Dr. Edelstein's testimony could lead people to inappropriately abandon a proven protective response, such as sheltering in place, and place them at greater risk. Of significant concern to Total was the fact that without any factual basis, Dr. Edelstein called into question the integrity of the Board, suggesting that it would approve a project that would put public safety at risk.

Total noted that the Board in a previous cost decision (*ECO 2009-006*) has found that where a witness lacks objectivity and acts as an advocate instead of an expert, his credibility will be diminished and his evidence will be found to be of little value. Total suggested that Dr. Edelstein should not be found to be a credible witness, his evidence should be disregarded, and no costs should be awarded for his participation in the proceeding.

In the alternative, Total submitted that Dr. Edelstein should be awarded no more than \$3037.50, being 10 per cent of his budgeted fees.

Given Total's position that Dr. Edelstein provided no useful evidence in the proceeding, Total submitted that his disbursements and expenses in the amount of \$2957.66 should also be denied.

Total suggested that if costs are awarded to Dr. Edelstein, his disbursements and expenses claimed should be reduced as follows:

- Accommodation at the allowable rate for five nights should be \$728.00, a reduction of \$59.65.
- Meals at the rate of \$40.00 per day should be \$200.00, a reduction of \$23.18.
- Transport claim of \$333.59, which includes \$300.00 in transportation costs, should be reduced by half to \$166.30.

Total submitted that if they are awarded, the fees and disbursements of Dr. Edelstein should be provided as follows:

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$81 600.75	\$0	\$81 600.75	\$2 957.66	\$2708.53	\$249.13

Dr. Frank Kelly

Total submitted that since Dr. Kelly did not appear at the hearing, his evidence could not be tested and should be given no weight. Dr. Kelly's invoice contains claims for review of Total's application, the Fort Air Partnership (FAP), and his correspondence with clients and legal counsel. Total submitted that none of the work undertaken by Dr. Kelly would be useful to the Board's decision and that his cost claim in the amount of \$12 150.00 should be denied in full.

Total suggested that since it was unreasonable that any cost order be made for Dr. Kelly's fees, his claimed disbursements and expenses should also be denied.

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$12 150.00	\$0	\$12 150.00	\$500.00	\$0	\$500.00

Tracey Engineering & Risk Management Services

Total noted that Mr. Tracey ceased assisting the CFRD by February 1, 2010, did not provide any written evidence, and did not appear at the hearing; therefore, his costs of \$1038.75 should be denied in full.

Total submitted that Mr. Tracey's claimed fees, disbursements and expenses be denied.

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$1038.75	\$0	\$1038.75	\$75.00	\$0	\$75.00

R. Dixon Associates

Total noted that Mr. Dixon's claimed fees were approximately five times his initial budget of \$10 510.50 and nearly twice the amount claimed by Dr. Batterman, who gave evidence on the same subject.

Total submitted that Mr. Dixon called into question the use of human health risk assessments in general and his views ran contrary to those of provincial and federal regulatory bodies. According to *Directive 031*, a reasonable submission for costs does not include argument about government policy or legislative changes.

Total noted that since Mr. Dixon's evidence did not pertain to the Total application, it would be of little, if any, relevance or use to the Board and would not be helpful to the Board in reaching its

decision. In light of this, Total submitted that Mr. Dixon should receive no more than \$5255.25, being half of his initial estimated budget.

Total considered Mr. Dixon's disbursements and expenses reasonable in the circumstances.

Total submits that the fees of Mr. Dixon should be as follows:

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$51 300.00	\$5255.25	\$46 044.75	\$1862.55	\$0	\$1862.55

Benya Lighting Design

Total submitted that since noise and light are often regarded as comparable issues, Mr. Benya's claim for preparation should be limited to 36.5 hours, the same amount required by Mr. Farquharson.

Total noted that the Board has previously (*ECO 2009-006*) accepted Mr. Benya's hourly rate at \$250.00, and Total did not see a reason for the increase in his rate to \$270.00 in such a short time. Total considered \$9125.00 for preparation and hearing attendance and \$1000.00 for travel to be reasonable amounts.

Total noted that \$1272.00 of the amount claimed by Mr. Benya for disbursements and expenses was for "consulting charges," which is not an expense allowed in *Directive 031* and should be denied.

Total submitted that the fees and disbursements of Mr. Benya should be awarded as follows:

Professional fees claimed	Reasonable professional fees	Reduction	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
\$25 650.00	\$10 125.00	\$15 525.00	\$1 922.63	\$650.63	\$1 272.00

CFRD Members

Ms. Brown, Ms. Berg, Mr. Visser, Ms. Callaghan, Mr. Groot, and Ms. Groot have all claimed honoraria in accordance with *Directive 031*. Ms. Brown, Mr. Visser, and Ms. Berg were found to be persons who could be directly and adversely affected by the Board's decision on the application, as per the Board's January 29, 2010, letter. However, Ms. Callaghan and the Groots were not found by the Board to have interests that could be directly and adversely affected by the Board's decision on the application and, therefore, should not be entitled to local intervener funding for the purposes of this application.

Although Total recognized the importance of the participation of local landowners in ERCB processes, Total submitted that the honoraria claimed should not be awarded in full.

Total noted the differences in the amounts charged by Ms. Brown and Mr. Visscher, who was similarly involved in his intervention. It agreed to provide \$1600.00 to Ms. Brown for eight full days of hearing attendance and \$500.00 for forming the CFRD.

Total did not dispute that Ms. Brown helped with the preparation of the intervention, but noted that CFRD counsel were primarily responsible for its preparation and submitted that \$1250.00 would be a reasonable amount to award under those circumstances.

Total noted that Ms. Brown, Ms. Berg, Mr. Visser, Ms. Callaghan, Mr. Groot, and Ms. Groot had all claimed attendance honoraria in varying amounts. Pursuant to *Directive 031*,

[appearing] at an ERCB hearing in support of an intervention may include giving evidence, being cross-examined, assisting counsel and consultants, and presenting closing argument. Interveners who participate in a hearing in this manner can claim an honorarium of \$100.00 for each half day of attendance at a hearing.

Total agreed to pay Mr. Visser and Ms. Berg the full attendance honoraria claimed, \$300.00 and \$800.00 respectively. Total also agreed to provide Ms. Callaghan with \$100.00 for her attendance, which represented the time that the Board allowed her to attend to make a presentation. Total agreed to provide \$200.00 to Mr. Groot for making a presentation to the Board and filing a written statement, but considered the \$800.00 amount claimed by Ms. Groot unreasonable, given that she did not give written or oral evidence.

Total submitted that the honoraria for the above individuals should be as follows:

Name of individual	Honoraria claimed	Reasonable honoraria	Reduction
Anne Brown	\$4600.00	\$3350.00	\$1250.00
Karen Berg	\$800.00	\$800.00	\$0
Gordon Visser	\$300.00	\$300.00	\$0
Patricia Callaghan	\$100.00	\$100.00	\$0
Wayne Groot	\$1600.00	\$200.00	\$1400.00
Luzmaria Groot	\$800.00	\$0	\$800.00

Total submitted that the meal costs claimed by Mr. Groot should be reduced to \$40.00 (for his one-day reasonable hearing attendance) and that Ms. Groot's claim of \$101.00 in meal costs be denied. Total did not take issue with the expenses claimed by the other individuals.

Total submitted that the expenses of the CFRD should be as follows:

Name of individual	Disbursements and expenses claimed	Reasonable disbursements and expenses	Reduction
Anne Brown	\$121.20	\$121.20	\$0
Karen Berg	\$72.72	\$72.72	\$0
Wayne Groot	\$161.60	\$40.00	\$121.60
Luzmaria Groot	\$101.00	\$0	\$101.00

Total noted that given the limited participation and contribution of certain parties in and to the proceeding on behalf of the CFRD, an overwhelming amount of the costs claimed were unreasonable. Total submitted that the total allowable amount of professional fees and honoraria was \$238 126.25, and the total allowable amount of disbursements and expenses was \$26 726.60. Total submitted that this total amount plus GST represented a reasonable cost award in the

circumstances. Total agreed to provide payment to the CFRD of \$264 852.85 plus GST of approximately \$13 242.64 minus the \$122 250.00 already provided as advance intervener funding.

3.2 Views of the CFRD

The CFRD disagreed with Total's response, stating that "the overarching theme seems to be to silence affected landowners by denying the intervenor [sic] funds for experts, landowner honoraria, and legal counsel."

The CFRD requested that the Board consider whether or not the intervention assisted the Board in understanding the nature of the issues concerning the affected parties. The CFRD maintained that they presented useful, reasonable, and timely evidence to the Board regarding the effects of the application on the individual interveners, their families, and their community. The CFRD experts provided the foundation of the testimony for the interveners, including the intervention of Mr. Visscher, whose counsel adopted the evidence proffered by the CFRD, which resulted in the judicious use of resources on the part of all interveners.

Ackroyd

With respect to Total's suggestion that the Board reduce the professional fee claims of the counsel to the CFRD, the CFRD submitted that the Board had previously found the legal fees of Ackroyd to be reasonable in a similar proceeding. For example, in *ECO 2009-006*, page 4, the Board found

[the] costs claimed on behalf of Ackroyd LLP to be reasonable and commensurate with the NESICL/CFRD's participation. The Ackroyd firm was responsible for coordinating the intervention, engaging numerous experts, reviewing expert reports, preparing expert witnesses, cross-examining the PCOSI panel, and preparing final argument and reply. The Board considers that Mr. Secord and Ms. Chipiuk provided significant assistance to the Board and ably represented their clients.

The CFRD noted that Mr. McElhanney, as the senior lawyer on the file, was responsible for oversight and direction of all of the experts and further noted that Ms. Chipiuk's valuable assistance, which was billed at a lower rate, was thereby maximized in that she worked with senior counsel in terms of overseeing and directing experts. According to the CFRD, health, environment, and emergency response were the most significant issues addressed by its intervention, all of which required intensive coordination in order to ensure a credible and productive presentation. The CFRD disagreed that its legal counsel "each were responsible for approximately equal amounts of cross examination" and respectfully submitted that preparation for cross-examination and for direct examination require significant time. The CFRD noted that a comparison of its fees to Mr. Visscher's was impractical since the CFRD consisted of 29 families and four times the number of experts. The CFRD submitted that a reduction in Mr. McElhanney's time would send the message that coordination of experts is to be discouraged.

The CFRD noted that in regard to the claimed involvement of four other lawyers, Mr. Secord opened the file along with Ms. Bishop, but both needed to withdraw early on. The CFRD submitted that their involvement should still be recognized and respected. It also noted that Total had included one of Ms. Bishop's substantive letters in its response. Ms. Buss and Mr. Cheng brought very specific expertise without incurring unnecessary legal costs.

Ackroyd submitted that the accommodation expense was incurred to maintain ongoing contact not only with the CFRD members who reside in the Fort Saskatchewan area, but also with its experts. It was noted that evenings during a hearing involve meetings and further preparation, and that transporting volumes of materials or taking time to travel would have increased the costs.

The CFRD submitted that the expenses for meals were for meetings with clients and experts and pertained to the proceeding. Costs claimed for office supplies were for binders and tabs used in the CFRD presentation and a Telus Internet stick for the hearing. The CFRD noted that these were set out in its account.

Dr. Batterman

Contrary to Total's submission that Dr. Batterman made no useful contribution to the Board's understanding of relevant issues, the CFRD submitted that his testimony and evidence revealed a well-regarded expert in the field from one of the world's top universities reaching conclusions distinct from Total's.

The CFRD submitted that Dr. Batterman had more than 300 peer-reviewed papers; in comparison, Total's expert, Mr. Koppe, had none in the field of human health impact. Dr. Batterman assessed the risk of sulphur dioxide (SO₂) and baseline pollutants, with a focus on dispersion and air quality modelling, and also reviewed the latest community health surveillance data, including morbidity and mortality.

With respect to Total's statement that Dr. Batterman made numerous mistakes in his testimony, the CFRD submitted that this was in reference to an uninformed CFRD member informing Dr. Batterman, in good faith, of what the member believed was an air monitoring station. Dr. Batterman evaluated the station as such, despite his misgivings.

In response to Total's submission that Dr. Batterman provided "alarmist" evidence, the CFRD stated that Dr. Batterman's evidence and testimony were reasonable and responsible, unlike Total's selection of data that were most favourable to its application.

The CFRD responded that Dr. Batterman provided the Board with an honest, reasonable, and responsible analysis of the health effects of the Total application through an evaluation and review of the framework for impact and cumulative effects analysis, including a critique of Total's approach and suggestions to improve its guidance; baseline pollutant levels; uncertainties in the exposure and risk assessments, the ambient air quality monitoring network, and the background concentrations; uncertainties in dispersion modelling; the latest community health surveillance, including morbidity and mortality; risk estimates for PM_{2.5}; and the risks and the latest guidelines for SO₂.

The CFRD requested that the Board award the professional fee claim of \$26 460.00 to Dr. Batterman, at the rate of \$270.00 per hour.

The CFRD disagreed with Total's calculation for Dr. Batterman's airfare, stating that he had to change his ticket due to the hearing taking longer as a result of the complex evidence in question. The CFRD submitted that Dr. Batterman clearly documented this expense in his report and deserves the full claim for airfare.

With respect to Dr. Batterman's accommodation, the CFRD agreed to the revised figures suggested by Total; however, it argued that meals consumed during the course of travel to and from the hearing were necessary.

HCL

The CFRD argued that it was unreasonable for Total to suggest a reduction of nearly 55 per cent in Mr. Clissold's expenses just because he found that certain aspects of the application were adequate. The CFRD suggested that this is a hallmark of an objective expert and that it would be an unfortunate precedent if the Board were to disallow costs of review where the intervener's expert agrees with a portion of the application, as this allows for a more streamlined process and focus at the hearing phase.

The CFRD submitted that Mr. Clissold has an expertise in hydrogeology, via his work experience and Master of Science thesis on groundwater resources in Alberta, and suggested that Total's submission that hydrology is not a significant component of hydrogeology demonstrates that Total will make unwarranted claims simply to avoid rational discussion of the effects of the application on the water volume in the North Saskatchewan River.

The CFRD requested that the Board award the total amount of professional fees claimed by Mr. Clissold for his valuable contributions. It provided a listing of the hourly rates and years of experience of HCL's employees involved with the application.

The CFRD apologized for the improperly documented expenses of Mr. Clissold provided in its initial cost claim and agreed that \$2475.74 was the appropriate figure.

V.M. Goodwin Research and Consulting Ltd.

The CFRD argued that according to *Directive 031*, Ms. Goodwin's eight years of experience appearing before the Board entitles her to claim \$230.00 per hour, which is \$20.00 per hour higher than the rate Ms. Goodwin claimed. It noted that Total did not identify any specific areas where Ms. Goodwin commented on issues outside her area of expertise.

The CFRD submitted that lawyers, trained in legal issues, are unable to adequately advise their clients on such broad issues; therefore, Ms. Goodwin's expertise was required as a "strategic advisor." It submitted that without Ms. Goodwin's assistance, legal expenses would have increased, with counsel having to scrutinize highly technical information. It submitted that Ms. Goodwin provided irreplaceable assistance to both the CFRD and the Board.

The CFRD submitted that Ms. Goodwin was able to do the work of several experts, which resulted in a claim for more hours than Dr. McDonald, whose review covered a narrower scope. It submitted that Ms. Goodwin's hearing attendance was necessary to advise counsel of the frequent inconsistencies in the submissions of Total and its experts, and respectfully requested that Ms. Goodwin's professional fee claim be awarded in full for her contributions to the hearing process.

The CFRD advised that Ms. Goodwin's subscription to Base Camp in the amount of \$144.00 was to participate in the application hearing process and to allow for better communication among CFRD members, experts, and legal counsel. It also noted that Ms. Goodwin failed to include a parking receipt for \$8.00, which in its view validated the claim that was made for parking.

Dr. Edelstein

The CFRD submitted that although Total took the position that Dr. Edelstein's submissions were "unsupported, alarmist, inconsistent with Board practices and in many instances, far outside his expertise," it was not specific in making this claim. It stated that the transcript indicates that Dr. Edelstein provided constructive evidence to the Board, and submitted that he showed a fluency in issues that were relevant to the application. Although he was not an expert in minutiae related to specific Alberta regulations, his testimony was based on empirical, peer-reviewed evidence, and he supplemented these studies by interviews with local residents.

The CFRD noted that Dr. Edelstein questioned the efficacy of the "shelter-in-place" method because Total had failed to undertake a comprehensive survey of local homes to determine if sheltering in place would actually be effective. In its view, Total wasted precious time in asking him to compare the emergency plan of his New Jersey college chemistry lab, in which sheltering in place is a component, to a multibillion dollar oil sands bitumen upgrader in Alberta.

The CFRD submitted that Dr. Edelstein's testimony was directly related to the social and environmental effects of the application in terms of how emergency response planning will affect local communities and families, and as such the Board should give it consideration.

The CFRD agreed that the claims for his meals and accommodation should be reduced by \$23.18 and \$59.65 respectively. It argued that his US\$300.00 expense claim for airport transportation in New Jersey, USA, had been misinterpreted by Total, as a limo in this case is a means of transportation to the airport, which is generally more cost effective than a taxi. It respectfully requested that the Board award his full transportation expense claim.

Dr. Kelly

The CFRD argued that without Dr. Kelly's assistance, it would not have been able to give the Board a complete a review of the Fort Air Partnership, and that its submission filed May 11, 2010, indicated the quantity of materials he reviewed in order to provide that assessment. In its view, Ms. Brown's testimony, which was well researched and documented, provided the Board with further justification for awarding all of the costs of Dr. Kelly for his assistance with the recommendations set out in the CFRD submission.

R. Dixon Associates

The CRFD argued that the fact that Mr. Dixon did not dispute Total's approach in its human health risk assessment did not provide grounds for reducing his claim for professional fees by 90 per cent, as requested by Total.

The CFRD observed that in a similar upgrader application, namely *Decision 2009-002: Petro-Canada Oil Sands Inc., Application to Construct and Operate an Oil Sands Upgrader in Sturgeon County*, page 1, the Board remarked on policy matters, stating that "[i]n recommending that the Lieutenant Governor in Council grant approval, the Board notes that there is a need for the federal, provincial, regional, and municipal levels of government to assess and provide for, on an ongoing basis, appropriate levels of infrastructure and services driven by the project and other future projects, including medical and social services, policing, traffic control, and environmental protection." It submitted that the data measured in the Total application were not useful to the

Board and that Mr. Dixon's comments on policy were a call for a paradigm shift in assessing risks to human health.

The CFRD submitted that Mr. Dixon's views were required in view of the multiple activities occurring in the Alberta Industrial Heartland. Total did not dispute Mr. Dixon's evidence and qualifications at the hearing, and the CFRD submitted that this should not be done through the cost process.

Benya Lighting Design

The CFRD submitted that measuring the effects and impacts of lighting was more complex than measuring noise effects and Mr. Benya should be entitled to full compensation. It also noted that Mr. Benya's work was found useful by the Board in the past (*Decision 2009-002*) and that the panel had indicated an appreciation for his attendance. It clarified that while Mr. Benya submitted a claim for US\$1272.00 under expenses, these were related to his evaluation of the application and should have appeared under his professional fees. It requested the Board to award the full amount claimed by Mr. Benya for professional fees and expenses.

CFRD Members

The CFRD noted that the Board has previously recognized the importance of interveners' time and concerns, when it wrote in *ECO 2007-008*, page 8, that it

... understands that individual interveners have serious and understandable concerns about their safety and about the impact of this application on them. Accordingly, the Board considers it reasonable that individual interveners would want to be thorough and comprehensive so that they can feel confident that the Board understands their issues.

The CFRD submitted that the honoraria available to interveners is inadequate for the time that is expended and the information that they provide the Board, as well as the benefits that their views provide in assisting Total to better manage its operations if the application is approved.

Ms. Brown

The CFRD argued that the \$2500.00 allowable honorarium for hearing preparation was insufficient given the time that Ms. Brown expended in assisting counsel. It submitted that the maximum honoraria should be awarded to her for her dedicated efforts.

Ms. Brown, as well as Mr. Groot and Barbara Collier were helpful in familiarizing CFRD experts with local circumstances and experiences. Dr. Edelstein's report showed how Ms. Brown specifically undertook extensive research into the Fort Air Partnership. The CFRD submitted that Ms. Brown's evidence, as set out in Tab 5 of CFRD's May 11, 2010, submission, assisted Mr. Dilay particularly in his questioning of the Total panel.

Mr. Groot

The CFRD submitted that it was necessary for the Board to consider the viewpoints of affected parties, even if they did not meet the directly affected test. It argued that he provided valuable contributions to the Board, experts and counsel, and the Board should award him the claimed honoraria of \$1600.00. It also agreed that his expenses required a reduction to \$40.00.

Ms. Groot

The CFRD submitted that she should be awarded the \$800.00 claimed honoraria for her time and energy in giving her views and influencing the preparation of CFRD evidence and testimony.

It noted that the Board is renowned for its mandate to work in the public interest. It submitted that should the Board award costs as suggested by Total, other parties would be discouraged from intervening in future proceedings. It submitted that it had conducted a reasonable and responsible intervention, which hopefully assisted the Board in its deliberations.

3.3 Views of the Board

3.3.1 Professional Fees, Disbursements, and Expenses

Ackroyd

Having considered all of the foregoing, the Board finds the professional fees incurred by Ackroyd to be reasonable and necessary in light of the particular circumstances of this matter. The professional fees incurred were in line with the scope and nature of the proceeding and the submissions made by counsel for the CFRD were of some assistance to the Board in its decision on the application.

The Board does not agree with Total that the professional fees incurred by counsel from Ackroyd other than Mr. McElhanney and Ms. Chipiuk were not reasonable or directly related to the presentation or preparation of the intervention. As Total is no doubt aware, often in hearings of this scope and magnitude, the assistance of several counsel may be required at various stages in the preparation process. Total itself had at least three counsel involved in this matter during the various preparation and hearing stages, and this is not an uncommon occurrence in such proceedings before the Board.

Having said that, the Board has considered the amount claimed for legal fees of \$210 778.10 and has compared it to the invoices provided by Ackroyd in support of its cost claim. The invoices for legal fees total \$197 891.00, which is \$12 897.00 less than the amount claimed. As Ackroyd provided no information or submissions to explain the discrepancy and had been given an extended deadline in which to submit its cost claim, the Board finds that the amount of \$197 891.00 in legal fees is supported by the invoices of Ackroyd, and therefore awards that amount.

With regard to the disbursements and expenses claimed by Ackroyd, the Board finds that the accommodation expenses of \$1539.09 incurred by Mr. McElhanney and Ms. Chipiuk were reasonable under the circumstances.

With regard to the meal expenses of \$976.55 claimed by Ackroyd, *Directive 031*, page 18, provides that the maximum allowable claim for meals is \$40.00 per day. Claims for meals are restricted to the hearing phase of a proceeding and tips are not claimable. No receipts are necessary to claim meal expenses; however, such receipts will be considered when submitted for consideration. Accordingly, the Board finds that Ackroyd is entitled to eight days of meal expenses at \$40.00 per day for the eight hearing days that both Mr. McElhanney and Ms. Chipiuk attended. The Board, therefore, awards Ackroyd the sum of \$640.00 for meal expenses.

As such, the Board hereby makes an award of costs to Ackroyd for professional fees, disbursements, and expenses as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$210 778.10	\$197 891.00	\$12 897.00	\$22 892.87	\$22 556.32	\$336.55

Dr. Batterman

Having considered the submissions of the CFRD and Total, the Board finds that his evidence was of some assistance to the Board in its decision on the application in the areas of air emissions and modelling, as well as human health risk assessment. While the Board did not agree with all of Dr. Batterman's evidence and conclusions, his evidence was nonetheless helpful to the Board in its consideration of those aspects of the application, as shown in *Decision 2010-030*.

Total pointed out that Dr. Batterman's claimed fees of \$29 400.00 had been calculated using the figure of \$300.00 per hour instead of the allowable rate in *Directive 031* of \$270.00 per hour, and it submitted that when calculated using the \$270.00 hourly rate, Dr. Batterman's fees totalled \$26 460.00, which was the proper amount to be considered. The CFRD agreed with this calculation, and the Board finds the corrected amount of claimed fees to be reasonable under the circumstances.

With regard to Dr. Batterman's disbursements and expenses, *Directive 031*, page 18, provides that the maximum allowable claim for accommodation is \$140.00 per day. Accommodation claims are restricted to the hearing phase of a proceeding and must be accompanied by receipts. The Board agrees with Total that the proper cost for his four night stay in Edmonton plus tax is \$582.20, and not \$614.27.

As such, the Board hereby makes an award of costs to Ackroyd for Dr. Batterman's professional fees, disbursements, and expenses as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$26 460.00	\$26 460.00	\$0	\$2279.28	\$2247.21	\$32.07

HCL

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of Mr. Clissold was of some assistance to the Board in its decision on the application in the areas of instream flow needs and groundwater issues. The Board notes that Mr. Clissold is a geologist and not a hydrologist, and that his evidence in the area of hydrology was given primarily to flag issues that in his view were of concern and worthy of the Board's consideration. While the Board did not agree with all of Mr. Clissold's evidence and conclusions, his evidence was nonetheless helpful to the Board in its consideration of those aspects of the application, as shown in *Decision 2010-030*.

With regard to the disbursements and expenses claimed by HCL, *Directive 031*, page 18, provides that the maximum allowable claim for accommodation is \$140.00 per day. Mr. Clissold's claim of \$460.00 for one night's accommodation is reduced to \$140.00 plus tax of \$5.60, for a total of \$145.60. The Board also agrees with Total and denies the amount of \$17.72 for the claimed aerial photo expense, which appears to have been a calculation error.

As such, the Board hereby makes an award of costs to Ackroyd for HCL's professional fees, disbursements, and expenses as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$43 612.80	\$43 612.80	\$0	\$2807.86	\$2475.74	\$332.12

Benya Lighting Design

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of Mr. Benya was of some assistance to the Board in its decision on the application in the area of light pollution issues. Total committed at the hearing to incorporate as part of its final project design, Mr. Benya's suggested mitigation measures to reduce light impacts from its proposed project, and the Board advised Total in *Decision 2010-030* that it expected Total to pursue Mr. Benya's suggested mitigation measures and provide the Board with evidence that it had incorporated his measures in its final lighting design. Additionally, the Board noted with interest Mr. Benya's suggestions for a regional light monitoring program in the area.

With regard to Mr. Benya's claimed disbursements and expenses, these appear to be reasonable under the circumstances and in line with the provisions of *Directive 031*.

As such, the Board hereby makes an award of costs to Ackroyd for Mr. Benya's professional fees, disbursements, and expenses as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$25 650.00	\$25 650.00	\$0	\$1922.63	\$1922.63	\$0

FDI Acoustics Ltd.

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of FDI Acoustics Ltd. was of assistance to the Board in its decision on the application in the area of noise issues. The Board accepted the CFRD's recommendations that Total be required to resubmit a noise impact assessment after its detailed upgrader engineering design was completed and that Total redo its baseline sound monitoring surveys and include the simultaneous measurement of the A-weighted and C-weighted sound levels in 1/3 octave band values to evaluate low frequency noise.

With regard to the disbursements and expenses claimed by FDI Acoustics Ltd, these appear to be reasonable under the circumstances and in line with the provisions of *Directive 031*.

As such, the Board hereby makes an award of costs to Ackroyd for FDI Acoustics Ltd.'s professional fees, disbursements, and expenses as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$6840.00	\$6840.00	\$0	\$475.56	\$475.56	\$0

Dr. McDonald

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of Dr. McDonald was of assistance to the Board in its decision on the application in the area of air emissions, modelling, monitoring, and the FAP. Among other things, the Board noted with interest her comments about the Alberta Industrial Heartland enjoying some of the cleanest air quality and most effective industrial measures in the country, as well as her suggestion that a regional source receptor analysis be performed prior to increasing emissions through the approval of another project. The Board also acknowledged her suggestions for increasing the level of scientific input through academic involvement and consequently recommended in *Decision 2010-030* that AENV explore this possibility to strengthen public confidence in the FAP.

With regard to the disbursements and expenses claimed by Dr. McDonald, these appear to be reasonable under the circumstances and in line with the provisions of *Directive 031*.

As such, the Board hereby makes an award of costs to Ackroyd for Dr. McDonald's professional fees, disbursements, and expenses as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$16 267.50	\$16 267.50	\$0	\$160.59	\$160.59	\$0

Dr. Kelly

Having considered the submissions of the CFRD and Total, the Board finds that Dr. Kelly's work was of some assistance to the Board in its decision on the application. His expertise is in the area of physiology. While he gave no evidence in report form or in oral testimony at the hearing, he appears to have reviewed, among other things, Total's application, as well as its Human Health Hazards and Risk Assessment (HHHRA), and assisted the CFRD with the preparation of certain recommendations, which the CFRD included in its submissions as potential grounds of relief. The fact that he did not appear at the hearing, however, means that his evidence could not be tested, and so was given lesser weight than had it been tested.

The Board finds that Dr. Kelly's work was reasonable and not only of assistance to the CFRD in its preparations for the hearing, but also of assistance to the Board in that his recommendations served to highlight what concerns the CFRD had that could be mitigated and how that might be achieved. Because he did not prepare any written evidence or give any oral evidence at the hearing that could be tested, the Board awards the amount of \$6075.00 in professional fees, being half of the amount claimed.

With regard to Dr. Kelly's claimed disbursements and expenses of \$500.00, no receipts whatsoever were provided in support of this amount; therefore, the Board declines to make an award for his disbursements and expenses.

As such, the Board hereby makes an award of costs to Ackroyd for Dr. Kelly's professional fees as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$12 150.00	\$6075.00	\$6075.00	\$500.00	\$0	\$500.00

V.M. Goodwin Research and Consulting Ltd.

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of Ms. Goodwin was not helpful to the Board in its consideration of and decision on the application. Ms. Goodwin is an industrial hygienist. She demonstrated only a limited familiarity in air emissions and air dispersion modelling. This limited familiarity falls short of the expected standard for technical experts that the Board finds helpful in the course of its hearings. Ms. Goodwin did not have a clear understanding of the AENV model guidelines and how they are practically applied in the context of specific projects, such as the Total upgrader application. The Board found Ms. Goodwin's knowledge of Total's emissions inventory compilation methods and mitigative strategies for fugitive emissions to be uninformed and unreasonable.

The Board expects experts at its hearings to have, among other things, a firm understanding of the issues, materials, and applicable regulations, at the very least, before they make definitive and alarmist statements at such proceedings. Where experts who do not have these basic and essential understandings and qualifications are put before the Board at hearings, the result is the tendering of evidence that is not of optimal value and assistance to the Board in reaching its decision on a particular application. As such, and out of an abundance of discretion, the Board awards a nominal amount of \$20 000.00 in costs for Ms. Goodwin's professional fees.

With regard to Ms. Goodwin's claimed disbursements and expenses, the Board declines to award costs for the Base Camp subscription in the amount of \$144.00. The CFRD argued that this expense was necessary for her to be able "to participate in the application hearing process and to allow for better communication amongst CFRD members, experts, and legal counsel." The Board does not agree that these reasons are enough to substantiate this expense claim and finds that not only could Ms. Goodwin have participated in the hearing process without this subscription, just as the majority of participants in Board hearings do, but that she could have maintained contact with CFRD members, experts, and counsel by other reasonable methods, such as phone or e-mail. The Board also declines to award Ms. Goodwin's claimed parking fees of \$48.00, as these fees appeared to have all been incurred on non-hearing days. *Directive 031*, page 18, provides that parking expense claims are restricted to the hearing phase of a proceeding.

As such, the Board hereby makes an award of costs to Ackroyd for V.M. Goodwin Research and Consulting Ltd.'s disbursements and expenses as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$158 760.00	\$20 000.00	\$138 760.00	\$546.35	\$361.21	\$185.14

Dr. Edelstein

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of Dr. Edelstein was not helpful to the Board in its consideration of and decision on the application. The Board notes that Dr. Edelstein's experience is in social psychology and concludes that he is not an expert in emergency planning and response. The Board considered Dr. Edelstein's

submission and testimony and, as indicated in *Decision 2010-030*, gave them little weight in its decision. The Board finds that Dr. Edelstein's alarmist comments regarding the effectiveness of sheltering in place could potentially jeopardize public safety, particularly in circumstances where sheltering in place is safer than evacuation. The Board also questioned the basis of Dr. Edelstein's statements that homes in the Alberta Industrial Heartland were inadequate for sheltering, given that he lacked the technical knowledge required to adequately assess building structures in relation to their suitability for sheltering. It also appeared that Dr. Edelstein was confused or unaware of the fundamental differences between a corporate emergency response plan (ERP) and a site-specific ERP, and consequently, his evidence in this area was unfounded and inaccurate. The Board, therefore, declines to make any award of costs for Dr. Edelstein's professional fees.

With regard to Dr. Edelstein's claimed disbursements and expenses, the Board agrees with the reductions suggested by Total. *Directive 031*, page 18, provides that the maximum allowable claim for accommodation is \$140.00 per day. Accordingly, the Board awards the amount of \$728.00 in accommodation expenses, which constitutes the allowable rate plus tax for his five nights of accommodation. *Directive 031* also provides that the maximum allowable expense for meals is \$40.00 per day, and accordingly, the Board awards five days of Dr. Edelstein's meal expenses in the amount of \$200.00. With regard to the transport claim, it is typical practice for the Board to award counsel and experts half of their non-airfare travel expenses claimed. Accordingly, of the \$333.59 claimed by Dr. Edelstein for travel expenses, the Board awards half of that amount, namely \$166.30.

As such, the Board hereby makes an award of costs to Ackroyd for Dr. Edelstein's disbursements and expenses as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$81 600.75	\$0	\$81 600.75	\$2957.66	\$2708.53	\$249.13

R. Dixon Associates

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of Mr. Dixon was of little help to the Board in its consideration of and decision on the application. Not only did some of his evidence duplicate that provided by Dr. Batterman, much of it focused on advocating for policy change generally in the area of human health risk assessment.

Mr. Dixon agreed that Total's HHHRA was conducted in compliance with conventional wisdom, said he had no issues with how Total had defined individual exposures, and said the methods used were the best currently available. However, he argued that the conventional risk assessment approach prescribed by Health Canada and the United States Environmental Protection Agency was deficient. He advocated for a hazard-based approach instead of the risk-based approach adopted by Total, which would require total containment of any toxic chemicals emitted.

A large portion of his evidence was devoted to advocating for policy change generally in the area of human health risk assessment, and his views ran contrary to those of recognized provincial and federal regulatory bodies. *Directive 031*, page 6, provides that reasonable submissions do not include arguments about government policy or legislative changes, which are more properly brought before the government at the appropriate provincial or federal level. The Board agrees

with the submissions of Total in this regard, and therefore makes a nominal award of costs for Mr. Dixon's professional fees in the amount of \$5255.25, which comprises half of the initial budget he provided to the CFRD.

With regard to Mr. Dixon's claimed disbursements and expenses, the Board is of the view that these amounts are reasonable in the circumstances and in line with the provisions of *Directive 031*. The Board, therefore, awards in this regard the full amount claimed, namely \$1862.55.

As such, the Board hereby makes an award of costs to Ackroyd for Mr. Dixon's professional fees as follows:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$51 300.00	\$5255.25	\$46 044.75	\$1862.55	\$1862.55	\$0

Tracey Engineering & Risk Management Services

Having considered the submissions of the CFRD and Total, the Board declines to award any professional fees, disbursements, or expenses claimed for Tracey Engineering & Risk Management Services. Mr. Tracey ceased assisting the CFRD by February 1, 2010, did not provide any written evidence, and did not appear at the hearing of the application.

As such, the Board hereby declines to make an award of costs to Ackroyd for Tracey Engineering & Risk Management Services.

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$1038.75	\$0	\$1038.75	\$75.00	\$0	\$75.00

3.3.2 Intervener Honoraria and Expenses

Ms. Brown

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of Ms. Brown was helpful to the Board in its decision on the application. The Board recognizes the efforts she expended with the CFRD in preparing for and attending the hearing.

With regard to her claim for a preparation honorarium of \$2500.00, *Directive 031*, Section 5.1.2, provides that the Board will not normally provide a preparation honorarium to a local intervener if a lawyer is primarily responsible for the preparation of an intervention. However, if both the lawyer and the local intervener prepare an intervention, the Board may consider an honorarium in recognition of the local intervener's efforts. In this case, despite the fact that the CFRD was represented by counsel, the Board recognizes the considerable time and efforts Ms. Brown expended in preparing for and attending this hearing. Therefore, and on that basis, the Board finds the amount of \$2500.00 claimed by Ms. Brown for a preparation honorarium is reasonable under the circumstances.

Ms. Brown's claims for an honorarium for forming a group and for an attendance honorarium are provided for in Sections 5.1.1 and 5.1.2 respectively of *Directive 031*. The Board finds the claim

for an attendance honorarium to be reasonable and supported. However, the Board declines to make Ms. Brown any award for an honorarium for forming a group, as the CFRD was a group that had already been formed and had previously attended other hearings in the area.

The Board also finds Ms. Brown's expense claim to be reasonable under the circumstances.

As such, the Board hereby makes an award of costs to Ackroyd for Ms. Brown's honoraria and expenses as follows:

Honoraria claimed	Honoraria awarded	Reduction	Expenses claimed	Expenses awarded	Reduction
\$4600.00	\$4100.00	\$500.00	\$121.20	\$121.20	\$0

Ms. Berg

Having considered the submissions of the CFRD and Total, the Board finds that the evidence of Ms. Berg was helpful to the Board in its decision on the application. The Board finds her claim for attendance honoraria and her claim for expenses to be reasonable under the circumstances.

As such, the Board hereby makes an award of costs to Ackroyd for Ms. Berg's honoraria and expenses as follows:

Honoraria claimed	Honoraria awarded	Reduction	Expenses claimed	Expenses awarded	Reduction
\$800.00	\$800.00	\$0	\$72.72	\$72.72	\$0

Mr. Visser

As Mr. Visser was found to be a local intervener by the Board, he was entitled to submit a claim for costs following the conclusion of the hearing. The Board finds his claim for attendance honoraria to be reasonable under the circumstances.

As such, the Board hereby makes an award of costs to Ackroyd for Mr. Visser's honoraria as follows:

Honoraria claimed	Honoraria awarded	Reduction
\$300.00	\$300.00	\$0

Ms. Callaghan

While Ms. Callaghan was not found to be a local intervener by the Board, she participated in the hearing with the CFRD and attended the hearing to give a presentation. The Board finds her claim for an attendance honorarium and expenses to be reasonable given her half-day participation at the hearing.

As such, the Board hereby makes an award of costs to Ackroyd for Ms. Callaghan's honoraria and expenses as follows:

Honoraria claimed	Honoraria awarded	Reduction	Expenses claimed	Expenses awarded	Reduction
\$100.00	\$100.00	\$0	\$15.15	\$15.15	\$0

Mr. Groot

While Mr. Groot was not found to be a local intervener by the Board, he participated in the hearing with the CFRD and attended the hearing to give a presentation. Accordingly, the Board declines to award his claimed amount of \$1600.00. However, the Board awards Mr. Groot \$100.00 in attendance honorarium for his half-day attendance for the purposes of his presentation.

For the same reasons, the Board declines to award Mr. Groot his claimed amount of \$161.60 in expenses. It awards the amount of \$40.00 in expenses in accordance with the daily maximum set out in *Directive 031*, referred to earlier.

As such, the Board hereby makes an award of costs to Ackroyd for Mr. Groot's honoraria and expenses as follows:

Honoraria claimed	Honoraria awarded	Reduction	Expenses claimed	Expenses awarded	Reduction
\$1600.00	\$100.00	\$1500.00	\$161.60	\$40.00	\$121.60

Ms. Groot

Ms. Groot was not found to be a local intervener by the Board and she did not actively participate in the hearing or give evidence or a presentation. The Board, therefore, makes no award for her claim for attendance honoraria and her claim for expenses.

Honoraria claimed	Honoraria awarded	Reduction	Expenses claimed	Expenses awarded	Reduction
\$800.00	\$0	\$800.00	\$101.00	\$0	\$101.00

4 ORDER

It is hereby ordered that:

- 1) The Board approves intervener costs in the amount of \$406 304.66. Payment for interim funding was previously provided to Ackroyd LLP by Total E & P Canada Ltd. in the amount of \$122 250.00. The payment of advance interim funding in the amount of \$122 250.00 is subtracted from the awarded amount of \$406 304.66, for a final total amount awarded of \$284 054.66.
- 2) Therefore, the Board approves intervener costs in the final total amount of **\$284 054.66**. Payment shall be made by Total E & P Canada Ltd. forthwith to the CFRD, c/o Ackroyd LLP at 10665 Jasper Avenue, Edmonton, Alberta T5J 3S9.

Dated in Calgary, Alberta, on December 15, 2010.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

J. D. Dilay, P.Eng.
Presiding Board Member

<original signed by>

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

<original signed by>

D. McFadyen
Board Member

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A