



Shell Canada Limited

Quest Carbon Capture and Storage
Radway Field

Cost Awards

September 7, 2012

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2012-007: Shell Canada Limited, Quest Carbon Capture and Storage, Radway Field

September 7, 2012

Published by

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**SHELL CANADA LIMITED
QUEST CARBON CAPTURE
AND STORAGE – RADWAY FIELD**

**Energy Cost Order 2012-007
Application Nos. 1689376, 1670112, 1671615
Cost Application No. 1723551**

INTRODUCTION

Background

- [1] Shell Canada Limited (Shell) applied to the Energy Resources Conservation Board (ERCB/Board) for three applications as part of its proposed Quest Carbon Capture and Storage project (the Quest project):
- Application No. 1689376, pursuant to Part 4 of the *Pipeline Act*, for a pipeline to transport dense-phase CO₂. The pipeline would run from the Shell Scotford Upgrader located at LSD 12-32-55-21W4M to a proposed injection well located at LSD 15-29-60-1W4M.
 - Application No. 1670112, pursuant to Section 39(1)(b) and (d) of the *Oil and Gas Conservation Act* and Unit 4.2 of *Directive 065: Resources Applications for Oil and Gas Reservoirs*, for an approval to dispose CO₂, a Class III fluid, into the Basal Cambrian Sands in the Radway Field.
 - Application No. 1671615, pursuant to Section 13 of the *Oil Sands Conservation Act*, to amend Approval No. 8522 to construct and operate facilities for the capture of CO₂.
- [2] Objections were filed by Corey and Bernadette Clifton, Tony Ouellette, Marian Kovac, Ann Kovac, Louis Douziech, and Ray and Jean Vaudan (the Vaudans).
- [3] The Board held a hearing in Redwater, Alberta, which commenced on March 6, 2012, and concluded on March 9, 2012. Mr. Douziech and the Vaudans did not participate at the hearing.
- [4] The Board issued *Decision 2012 ABERCB 008*, dated July 10, 2012.

Cost Claim

- [5] On March 27, 2012, Klimek Law, on behalf of Corey and Bernadette Clifton and Tony Ouellette, filed a cost claim in the amount of \$92 624.71. On April 1, 2012, Shell advised that it had no submissions regarding the cost claim.
- [6] The Board considers the cost process to have closed on April 1, 2012.

VIEWS OF THE BOARD—AUTHORITY TO AWARD COSTS

- [7] 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.

- [8] 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.
- [9] When assessing costs, the Board refers to Part 5 of the *Energy Resources Conservation Board Rules of Practice* and Appendix E: 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.

COST CLAIM OF COREY AND BERNADETTE CLIFTON AND TONY OUELLETTE

- [10] Corey and Bernadette Clifton, and Tony Ouellette were represented by Klimek Law. Klimek Law retained Ackroyd LLP to provide the legal services in connection with the hearing. On March 27, 2011, Corey and Bernadette Clifton and Tony Ouellette filed a cost claim for legal fees in the amount of \$60 289.00, consultant fees in the amount of \$22 432.00, honoraria in the amount of \$1350.00, disbursement and expenses in the amount of \$4153.96, and GST in the amount of \$4408.75, for a total claim of \$92 633.71.

Views of the Applicant

- [11] Shell advised that it had no submissions with respect to the cost claim.

Views of the Board

Legal Fees and Expenses

- [12] In order to be eligible for costs, the Cliftons and Mr. Ouellette must be local interveners as defined under Section 28 of the ERCA. The Board notes that Shell did not provide any submissions, including on the issue of whether the Cliftons and Mr. Ouellette meet the test for status as local interveners.
- [13] The Cliftons are owners of the northeast quarter of Section 18-56-20W4M, which is within Shell's approved sequestration lease and the area of interest (AOI) considered in the hearing. Furthermore, Shell's pipeline would be located adjacent to the Cliftons' property. Mr. Ouellette is the owner of a portion of the northeast quarter of Section 19-59-20W4M. His land is within the AOI and is about 800 metres from the injection well to be located at 8-19-059-20W4. Based on all of the evidence at the hearing, the Board finds that the Cliftons and Mr. Ouellette are local interveners for the purposes of Section 28 of the ERCA, and therefore their cost claims are eligible for consideration by the Board.
- [14] The Board has considered the claim made by the Cliftons and Mr. Ouellette for costs. The Board notes that when the cost application was filed by Klimek Law, it did not include Form E5 Affidavit of Fees and Disbursements as outlined in *Directive 031*. The Board wrote to Klimek Law on August 28, 2012, and required that Form E5 be submitted or the cost application would be closed. Klimek Law filed the form on August 29, 2012.
- [15] With respect to the total legal costs claimed by Klimek Law, the Board notes that during the hearing, Mr. Richard Secord of Ackroyd LLP represented Mr. Ouellette, while Mr. Yuk-Sing Cheng of Ackroyd LLP represented the Cliftons. Both parties raised separate and distinct concerns with the proposed project. The Board is of the view that the participation of Mr. Ouellette and the Cliftons in the hearing contributed to a better understanding of the issues before the Board.
- [16] The Board finds the legal costs claimed by Klimek Law to be reasonable and directly and necessarily related to the hearing. The Board awards legal costs in the amount of \$60 289.00 plus GST. With respect to the legal disbursements and expenses claimed by Klimek Law, the Board disallows the \$22.00 in tips that was claimed on various meal receipts by Mr. Secord and Mr. Cheng. Appendix E of *Directive 031* expressly states that tips can not be claimed in a cost application. Accordingly, the Board awards legal disbursements and expenses in the amount of \$1798.72, plus GST.

Expert Fees and Expenses

- [17] In Form E1 of their cost claim, the Cliftons and Mr. Ouellette claimed an amount of \$22 432.00 in professional fees and \$1547.81 in professional expenses and disbursements for Mr. Roger Clissold of Hydrogeological Consultants Ltd. (HCL).
- [18] Upon reviewing the invoice provided by HCL for Mr. Clissold's professional fees, the Board notes that no hourly rate was provided for his services. In the absence of a stated hourly rate, the Board will divide the total amount of professional fees by the total hours claimed in the invoice to determine an hourly rate. It appears to the Board that Mr. Clissold

charged an hourly rate of \$ 258.67 for 85.8 hours. The hourly rate was determined by dividing the total cost claimed for professional fees (\$22, 194.00) by the total hours claimed (85.8 hours). It appears that travelling time was included in the total hours claimed. Mr. Clissold's account shows 7.20 hours of travelling time was incurred by him. The Board notes that in Form E1 of the cost application, Mr. Clissold's hourly rate is shown as \$270 per hour, which is the maximum consultant rate for his years of experience under the *Scale of Costs*.

- [19] No explanation is given as to how the \$270.00 rate was determined absent the invoice providing an hourly rate. The Board is uncertain why the maximum rate of \$270.00 was put into the claim form when HCL's invoice does not show an hourly rate and, after calculating the hourly rate, the amount is \$258.67 per hour. The Board notes that an Affidavit of Fees and Disbursements (Form E5) attesting to the veracity of the fees and disbursements claimed is required to be filed with each cost application. The Board expects that prior to swearing or affirming the affidavit, the affiant reviews the costs claimed and ensures the actual amounts incurred in a hearing are reflected in each submitted cost application.
- [20] With regard to the claimed professional fees, the Board finds that the evidence provided by Mr. Clissold was of assistance to the Board in its decision on the applications and appears to be reasonable and necessary to the intervention. Given the above, the Board awards HCL professional fees in full at Mr. Clissold's actual rate of \$258. 67 per hour and travel time at \$129. 34 per hour. The total amount awarded is \$21 262.71 plus GST.
- [21] With respect to professional expenses and disbursements, the Board notes that HCL has claimed an expense of \$1105.90 for "Admin & Telecommunication." No explanation was provided in the cost application as to what this expense is and when it was incurred. Section 5.2.2 of *Directive 031* states that "Actual costs for services such as typing may qualify for a cost award if properly documented with a copy of the expert's account and sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding."
- [22] The Board is mindful of Section 57(1) of the Rules of Practice, particularly that the Board may award costs in accordance with the scale of costs to a participant if the Board is of the opinion that the costs were reasonable and directly and necessarily related to the proceeding. The Board is unable to determine whether the expense for "Admin & Telecommunication" is reasonable and directly and necessarily related to these applications as insufficient detail about the expense was provided in HCL's invoice. Therefore, the Board does not award any costs for this expense.
- [23] The Board also notes that HCL claimed \$149.17 for accommodations in its invoice as an expense, but the receipt and Visa slip provided by HCL for accommodations on March 6, 2012, shows a total cost of \$123.76, plus the GST. No explanation is given in the cost application as to the discrepancy between the invoiced amount and the claimed amount. The Board awards costs for accommodations in the actual amount of \$123.76. Again the Board is troubled as to what appears to be carelessness in the filing of a cost application. The Board expects that counsel, when submitting a cost application on behalf of his/her clients, ensures that the costs claimed in that application are accurate and directly and necessarily related to the proceeding.

- [24] HCL claimed 574 kilometres at a rate of \$0.51 for Mr. Clissold's mileage. *Directive 031* provides that mileage is to be claimed at a rate of \$0.505. Therefore, the Board reduces the expense claimed for HCL's mileage to \$289.87 (574 × \$0.505).
- [25] Given the above, the Board is prepared to make an award of costs in the amount of \$413.63 plus GST for the professional expenses and disbursements incurred by HCL.

Intervener Honoraria and Expenses

- [26] *Directive 031* allows for hearing attendance honoraria in the amount of \$100.00 per each half day. For attendance honoraria, the Cliftons have claimed a total of \$900.00 and Mr. Ouellette has claimed \$450.00. The Board finds these claims to be reasonable and awards the claimed honoraria in full. The Board notes that GST was claimed in Form E1 of the cost application for each attendance honoraria. As per *Directive 031*, no GST can be claimed on honoraria. Therefore the GST will not be awarded.
- [27] The Cliftons have claimed expenses for disbursements in the amount of \$382.20 plus GST. Of those expenses the Cliftons claimed \$222.20 in mileage. Appendix E of *Directive 031* provides that the Board will consider claims for mileage that are incurred during the hearing phase of the proceeding. In reviewing the Cliftons claim, the Board notes that the Cliftons claimed mileage of 86 km on October 11, 2011. No explanation is provided regarding this claim. Since the mileage claim was incurred outside of the time of the hearing and no explanation was included about this expense, the Board reduces the Cliftons' total claim for mileage by \$43.43 plus GST (86 km × \$0.505). The Board awards \$189.88 plus GST for the payment of the Clifton's mileage. The Board awards the Clifton's other disbursements in the amount of \$160.00 plus GST as they appear reasonable and necessary to their intervention.
- [28] Mr. Ouellette has claimed expenses for disbursements in the amount of \$403.23 plus GST. The Board notes that a total of \$29.00 was claimed for parking on four occasions: February 17, February 29, March 1, and March 20, 2012. Appendix E of *Directive 031* states that parking charges are restricted to the hearing phase of the proceeding. The parking receipts were submitted in the cost application. However Mr. Ouellette provided no explanation as to why the parking charges were incurred before or after the hearing. The Board is of the view that since the parking expenses were incurred outside of the time of the hearing and no explanation was included with these expenses, the Board declines to award costs for parking. The Board awards the remainder of Mr. Ouellette's expenses for disbursement in the amount of \$374.23 plus GST as they appear reasonable and necessary to his intervention.

ORDER

[29] It is hereby ordered that Shell pay local intervener costs to the Cliftons and Mr. Ouellette in the amount of \$85 838.17 and GST in the amount of \$4200.75 for a total of \$90 039.02. This amount must be paid to Klimek Law as the submitter of the claim at

Klimek Law
240, 4808 – 87 Street
Edmonton AB T6E 5W3

Dated in Calgary, Alberta, on September 7, 2012.

ENERGY RESOURCES CONSERVATION BOARD

(Original signed by)

G. Eynon, P.Geo
Presiding Member

(Original signed by)

R. C. McManus, M.E.Des
Board Member

(Original signed by)

R. J. Willard, P.Eng.
Acting Board Member

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED

This appendix is not available on the ERCB website. To order a copy of this appendix, contact ERCB Information Services toll-free at 1-855-297-8311.