



Dominion Exploration Canada Ltd.

Applications for Well Licences
Pembina Field

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2006-007: Dominion Exploration Canada Ltd.

Applications for Well Licences

Pembina Field

Application Nos. 1423057, 1423066, 1423070,

1423083, 1423087, 1423097, 1423109, and 1423124

Cost Application No. 1470755

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Calgary, Alberta

**Dominion Exploration Canada Ltd.
Applications for Well Licences
Pembina Field**

**Energy Cost Order 2006-007
Application Nos. 1423057, 1423066,
1423070, 1423083, 1423087,
Cost Application No. 1470755**

1 INTRODUCTION

Dominion Exploration Canada Ltd. (Dominion) applied to the Alberta Energy and Utilities Board (EUB/Board), pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, for licences to drill three vertical and five directional level-3 critical sour oil wells from five surface locations.

The EUB held a public hearing in Lodgepole, Alberta, on June 12 and 13, 2006, before Board Member J. R. Nichol, P.Eng. (Presiding Member) and Acting Board Members F. Rahnama, Ph.D., and C. A. Langlo, P.Geol. On September 5, 2006 the Board issued [Decision 2006-087](#).

The Board received one intervener cost claim from Gavin Fitch on behalf of his clients Keith Coetzee and Ken and Joan McKay. Counsel for Dominion, Bradley Gilmour, submitted comments concerning the cost claim on July 31, 2006 and Mr. Fitch provided a response on August 21, 2006.

2 VIEWS OF THE BOARD – Authority to Award Costs

In determining local intervener costs, the Board is guided by its enabling legislation. In particular, by section 28 of the *Energy Resources Conservation Act* (ERCA) which reads as follows:

- 28(1) In this section, “local intervener” means a person or a group or association of persons who, in the opinion of the Board,
- (a) has an interest in, or
 - (b) is in actual occupation of or is entitled to occupy

land that is or may be directly and adversely affected by a decision of the Board in or as a result of a proceeding before it, but, unless otherwise authorized by the Board, does not include a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource.

It is the Board’s position that a person claiming local intervener costs must establish the requisite interest in land and provide reasonable grounds for believing that such an interest may be directly and adversely affected by the Board’s decision on the project in question.

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

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

- Section 55(1) The Board may award costs in accordance with the Scale of Costs, to a participant if the Board is of the opinion that:
- (a) the costs are reasonable and directly and necessarily related to the proceeding and;
 - (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

3 VIEWS OF THE BOARD – Intervener Standing

With respect to those parties who were granted standing, [Decision 2006-089](#) provides the following.

By letters dated April 17, May 3, May 18, May 23, and May 26, 2006, the Board made a number of procedural rulings regarding the issues of standing and hearing adjournment requests by various interested parties listed above. As a result of these prehearing rulings, the Board granted standing to the McKays, Obsts, and Keith Coetzee (the interveners).

In light of the foregoing the Board finds that Keith Coetzee and Ken and Joan McKay (Interveners) have met the requirements of s. 28 of the ERCA and are therefore eligible to apply for cost recovery.

4 VIEWS OF THE BOARD – Comments and Responses

The Board received comments from Mr. Gilmour, on behalf of Dominion on July 31, 2006. Dominion submits that certain aspects of the cost claim should be either excluded or reduced.

With respect to Gecko Management Consultants (Gecko), Dominion argues that the costs should be excluded. Dominion supports this position by noting that Mr. Hemstock did not provide expert testimony at the hearing and further that the record of the proceeding does not indicate what services were provided by Gecko, why the services were necessary, or of what assistance the services were to the proceedings.

In addition, Dominion submits that Gecko's costs are in relation to the review of Dominion's drilling ERP whereas Mr. McKay's issues focused on emergency response related to production rather than drilling.

With respect to the legal costs being claimed, Dominion submits that the McKays and Mr. Coetzee received standing and therefore any costs incurred as a result of meetings and discussions with parties other than the McKays and Mr. Coetzee should be disallowed. Dominion makes particular note of various members the Pembina Institute of Appropriate Developments (PIAD) and the Pembina Agricultural Protection Association (PAPA).

Lastly, with respect to honorarium, Dominion submits that Mrs. McKay should not be eligible for an attendance honorarium as she was not a member of the intervener panel; she did not give evidence, was not cross-examined, did not assist counsel, and did not present closing argument.

The Board received a response from Mr. Fitch on August 21, 2006.

With regard to Gecko, Mr. Fitch argues that public safety and emergency response are primary issues at sour gas hearings and it is reasonable to retain an expert in emergency response planning to review the site-specific emergency response plan (ERP). Mr. Fitch submits that while Gecko did not provide a report in this proceeding, largely due to the limited time available for preparing for the hearing, Mr. Hemstock did provide a memo detailing comments and observations with respect to Dominion's ERP. The memo created by Mr. Hemstock, which provided discussion on issues such as the lack of clarity regarding ignition criteria, overlapping EPZs, modifying EPZ boundaries, and air quality monitoring, greatly assisted Mr. Fitch in preparing cross-examination. Mr. Fitch submits that Mr. Hemstock is a credible expert who is well known to the EUB and it was reasonable to retain an expert of his caliber and reputation.

With regard to the legal costs, Mr. Fitch submits that the time incurred for discussions with members of PIAD and PAPA were of assistance in understanding the issues in the Pembina area with respect to Nisku sour gas development and therefore such time was directly and necessarily related to the proceeding. Mr. Coetzee in particular was concerned that Dominion should satisfy the concerns of PAPA and as such Mr. Fitch argues that it was important to understand PAPA's issues.

Lastly, with respect to Dominion's position regarding attendance honorarium for Mrs. McKay, Mr. Fitch submits that this position seems less than generous.

5 VIEWS OF THE BOARD – Assessment

The Interveners' cost claim is comprised of legal fees in the amount of \$23,887.50, expenses in the amount of \$480.64, and related GST in the amount of \$1,705.77, for an overall legal account of \$26,073.91. Gecko's fees total \$1,812.50 together with GST of \$126.88, for an overall consulting account of \$1,939.38.

With respect to the participation of Gecko the Board recognized a similar level of participation from Dr. Crickmore in Energy Cost Order 2004-15¹.

¹ Blackrock Ventures Inc. - Application for a Steam-Assisted Gravity Drainage Project for the Recovery of Bitumen (Application No. 1241564)

The Board recognizes the time and effort of reviewing the EIA by a qualified expert, however, the review of the EIA and the preparation of an outline of proposed oral evidence is of little benefit to the Board if the expert does not attend the hearing and present the evidence. The work of Dr. Crickmore, may have assisted the overall intervention in a general way allowing some questioning and argument on environmental issues by others in the intervention group. The Board finds that this particular contribution falls somewhat short of the being directly and necessarily related to the proceeding, or contributing to the Board's better understanding of the issues.

Energy Cost Order 2004-15 awarded Dr. Crickmore 8 hours of professional services.

The Board finds that Mr. Hemstock's level of participation and contribution to value is similar to that of Dr. Crickmore and therefore the Board finds it appropriate to allow fees equal to 8 hours of work. The Board therefore awards professional fees for Mr. Hemstock in the amount of \$1,300.00, calculated as follows.

5 hours x \$175.00 = \$875.00
 3 hours x \$150.00 = \$450.00
 \$875 + \$450 = \$1,300.00

GST for Mr. Hemstock is adjusted to \$91.00.

With respect to the legal costs incurred, the Board recognizes that Mr. Fitch incurred 66.8 hours for preparation, 21 hours for attendance, and 15.5 hours for travel. The Board recognizes that the travel time has been claimed within the *Scale of Costs*. The Board does not take issue with the time incurred for attendance or travel.

With respect to the legal costs incurred as a result of consultations with members of PIAD and PAPA, it is the Board's view that since these parties were denied intervener status their involvement in the proceeding does not meet the criteria established in section 28 of the ERCA. The Board does not find that these members were required to establish the Interveners' concerns. The Board has reviewed the entries identified in Mr. Gilmour's comments and finds that they represent those parties who have been denied intervener status. In that regard the Board disallows 11.7 hours out of 66.8 preparation hours, being \$2,925.00.

Taking all of the foregoing into account, the Board approves legal fees in the amount of \$20,962.50², expenses in the amount of \$480.64, and associated GST in the amount of \$1,501.02.

With respect to the attendance honorariums being claimed, the Board finds that each of the Interveners played an active role in their intervention. The Board recognizes that the Interveners prepared their own objections and submissions and therefore the Board finds it reasonable to approve attendance honoraria for Mr. Coetzee and Mr. McKay, each in the amount of \$200.00. The Board also finds it appropriate to approve Mrs. McKay's honorarium claim in the amount of \$200.00; however the Board recognizes this as a preparation honorarium.

² \$23,887.50 - \$2,925.00 = \$20,962.50

6 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Dominion Exploration Ltd. shall pay intervener costs in the amount of \$24,935.16 as shown in Appendix A attached.
- (2) Payment under this order is to be made to the following.

McLennan Ross LLP
1600, 300-5th Avenue S.W.
Calgary, AB T2P 3C4

Attention: Gavin S. Fitch

Dated in Calgary, Alberta on this 30th day of October, 2006.

ALBERTA ENERGY AND UTILITIES BOARD

<Original Signed by Thomas McGee>

Thomas McGee
Board Member