



Polaris Resources Ltd.

**Applications for a Well Licence, Special Gas
Well Spacing, Compulsory Pooling, and
Flaring Permit
Livingstone Field**

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Decision 2004-04: Polaris Resources Ltd.
Applications for a Well Licence, Special Gas Well Spacing,
Compulsory Pooling, and Flaring Permit
Application Nos.: 1276489 and 1276521

Published by

Alberta Energy and Utilities Board
640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

Telephone: (403) 297-8311
Fax: (403) 297-7040

Web site: www.eub.gov.ab.ca

Contents

1. INTRODUCTION.....	1
1.1 Well Licence Application No.: 1276521	1
1.2 Special Gas Well Spacing and Compulsory Pooling Application No.: 1276489	1
2. VIEWS OF THE BOARD – AUTHORITY TO AWARD COSTS.....	1
3. VIEWS OF THE BOARD – COST CLAIMS.....	3
3.1 HUNTLEY, Judy	3
Judy Huntley	3
Jillian Lynn Lawson.....	4
3.2 MARTY, Sid and Myrna	5
The Martys	5
Dr. Lawrence Nkemdrim	5
Mitch Bronaugh	5
3.3 NATURE CONSERVANCY OF CANADA (NCC)	6
Beaumont Church LLP	6
Larry Simpson.....	7
3.4 OLDMAN RIVER COALITION	7
Members of the Oldman River Coalition (Coalition).....	7
Senes Consultants Limited (Senes).....	8
Gilbert Lausten Jung Associates Ltd. (GLJ).....	9
Equus Consulting Group (Equus).....	9
Robert W. Coppock, DVM, Toxicologist & Associates Ltd.	10
Rooney Prentice	10
3.5 TWEEDIE, James	11
James Tweedie	11
Cottonwood Consultants Ltd. (Cottonwood).....	12
Ackroyd, Piasta, Roth & Day	12
4. DECISION.....	13
APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED.....	15

ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**Polaris Resources Ltd.
Applications for a Well Licence, Special
Gas Well Spacing, Compulsory Pooling and
Flaring Permit
Livingstone Field**

**Energy Cost Decision 2004-04
Application Nos.: 1276489 and 1276521
File No.: 8000-1276489-01**

1. INTRODUCTION

1.1 Well Licence Application No.: 1276521

Polaris Resources Ltd. (Polaris) applied to the Alberta Energy and Utilities Board (EUB/Board) pursuant to Section 2.020 of the Oil and Gas Conservation Regulations (OGCR) for a licence to drill a vertical level-3 critical gas well from a surface location in Legal Subdivision (LSD) 11 of Section 32, Township 10, Range 2, West of the 5th Meridian (11-32 well).

1.2 Special Gas Well Spacing and Compulsory Pooling Application No.: 1276489

Polaris applied to the EUB pursuant to Section 4.040 of the OGCR for an order to establish a special drilling spacing unit (DSU) comprising Sections 32 and 33 of Township 10, Range 2, West of the 5th Meridian (Sections 32 and 33), with the target area being within the DSU and having sides 300 m from and parallel to the sides of the DSU, for the production of gas from all zones below the top of the Mississippian System.

Polaris also applied pursuant to Section 80 of the Oil and Gas Conservation Act (OGCA) for an order prescribing that all tracts within the special DSU comprising Sections 32 and 33 be operated as a unit for the production of gas from all zones below the top of the Mississippian System through the 11-32 well.

The EUB held a prehearing meeting in Maycroft, Alberta, on April 16, 2003, and issued a memorandum of decision as [Decision 2003-030](#) on April 30, 2003. The Board received input from Polaris and interested parties on a number of issues, including the scope and purpose of the hearing, relevant issues to be examined, timing and location of the hearing, procedures, participant roles, funding, and other matters.

The Board held a hearing in Maycroft, Alberta, commencing on September 9, 2003, before Presiding Board Member T. M. McGee and Acting Board Members M. J. Bruni, Q.C., and D. D. Waisman, C.E.T. On December 16, 2003 the Board issued Decision [2003-101](#).

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.

In Memorandum of Decision, [Decision 2003-030](#), issued following the pre-hearing meeting, the Board was of the view that "residents located within the 13.54 km calculated EPZ radius of the well and landowners within 1.5 km of the well have standing for the purposes of participating at the public hearing under Section 26 of the Energy Resources Conservation Act"¹.

Parties who are entitled to participate at the public hearing under section 26 of the ERCA, that is, have standing because they have an interest in land that may be directly and adversely affected by the decision of the Board, also qualify for "local intervener" status. In this proceeding, local interveners are those individuals that reside within 13.54 km or own land within 1.5 km of the proposed well applied for by Polaris.

[Decision 2003-030](#) provided that parties who wished to have their status confirmed as local interveners for costs purposes, as well as for an advance of costs, were to submit an application to that effect to the Board by June 6, 2003. The Board received a number of applications. Following its deliberations, the Board determined that the following individuals and group qualified for local intervener status in the upcoming hearing:

- Judy Huntley
- Sid and Myrna Marty
- James Tweedie
- Old Man River Coalition

The Board also received an application for advance determination of local intervener status from the Nature Conservancy of Canada (NCC). The Board determined, at that time, that it was unable to make an advance ruling as to whether the NCC is a "local intervener" in this proceeding. The Board also stated that it may review its preliminary decision following the evidence presented to the Board at the hearing.

The Board has now considered whether or not the NCC qualifies as a local intervener for this proceeding and concludes that the NCC meets the requirements for local intervener status in this proceeding. As a result, the NCC is eligible to claim costs incurred during the proceeding.

¹ Memorandum of Decision, Decision 2003-030, Page 5

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.

In assessing each individual cost claim, the Board considers the participant's contribution to the hearing process. Specifically, in cases where the Board is of the view that the participation of individuals did little to enhance the hearing process or indeed were a hindrance to the effective and efficient operation of the hearing, the Board will exercise its discretion by disallowing costs either in whole or in part of the amount claimed.

3. VIEWS OF THE BOARD – Cost Claims

In making its cost award determination the Board has reviewed each of the cost claims and other correspondence submitted by the interveners in relation to the claims. The Board has also reviewed the responses submitted by Polaris.

3.1 HUNTLEY, Judy

Judy Huntley

Ms. Huntley claimed preparation honoraria of \$600.00, attendance honoraria of \$900.00, mileage in the amount of \$147.00, and disbursements of \$14.00.

Section 6.1.1 of *Guide 31A* states the following:

...an intervener who personally prepares a substantial submission without expert help may, depending upon the complexity of the submission, receive an honorarium in the range of \$300 to \$500 and in exceptional cases, and when the necessary preparation time is substantial, honoraria in excess of \$500 to a maximum of \$2500 may be considered. There must, of course, clearly be a need for any such substantial intervention.

The Board notes that Ms. Huntley was assisted in the preparation of her intervention by Ms. Jillian Lynn Lawson. Upon review of the claim, the Board finds the preparation claim by Ms. Huntley to be excessive with the inclusion of Ms. Lawson's assistance. While the Board appreciates Ms. Huntley's concerns, the Board does not find that given the assistance of Ms. Lawson and the intervention presented, an honorarium of \$600.00 is warranted in this instance. The Board finds it reasonable to award Ms. Huntley a general award for preparation in the amount of \$100.00.

The Board acknowledges Ms. Huntley's claim for attendance honoraria in the amount of \$900.00.

Section 6.1.2 of *Guide 31A* states the following:

Except when an intervener is represented by someone else and takes no active part in a public hearing, an intervener may normally recover some of the costs of appearing at a hearing. Appearing in support of an intervention refers to coming to the front when so requested by the chairperson of the hearing and answering any questions about the intervention. Mere attendance is not participation. Participation may include giving evidence, being cross-examined, assisting counsel/consultants, and presenting closing argument. Such an intervention does not receive a witness fee, but could claim an honorarium of \$50 for each half day actually present at a hearing to listen to the evidence of others, question others, present an intervention, or confer with the intervener's own solicitor or expert.

The Board notes that the hearing into Polaris's applications lasted for 8 full days, while the pre-hearing meeting was 1 full day. The Board finds it appropriate to award Ms. Huntley \$900.00 as an honoraria for her attendance at the prehearing meeting and the hearing.

The Board has reviewed Ms. Huntley's disbursements, including her mileage, and finds that they have been reasonably incurred in accordance with Guide 31A and are therefore approved in full.

Based on the foregoing, the Board approves a total honoraria for Ms. Huntley in the amount of \$1,000.00 and disbursements in the amount of \$14.00, for a total award of \$1,014.00 as shown in Appendix "A" attached.

Jillian Lynn Lawson

Ms. Lawson claimed fees in the amount of \$800.00 for preparation and \$400.00 for attendance together with applicable GST. She also claimed \$147.00 for mileage.

With respect to Ms. Lawson's claim for attendance in the amount of \$400.00, the Board finds it appropriate to limit her claim for attendance to the time spent assisting Ms. Huntley with the giving of her oral evidence. Accordingly, the Board reduces Ms. Lawson's attendance claim by \$300.00.

With respect to the claim for preparation, consisting of 40 hours, the Board has considered the hours incurred compared to the value and contribution brought to the hearing. The Board is cognizant of Ms. Lawson's assistance with respect to the issues raised by Ms. Huntley, however the Board does not find that the professional fees being claimed are reflective of the value of the intervention brought before the Board. In that regard, the Board notes that Ms. Huntley's submission at the hearing was general in nature and did not provide the Board with complicated research, studies, or opinions which may have provided the Board with greater assistance with the issues before it. Accordingly, the Board will reduce Ms. Lawson's claim for preparation by \$300.00.

The Board has reviewed the disbursements claimed by Ms. Lawson and with the exception of GST claimed on mileage, has found them to be reasonable and in line with the Scale of Costs and are therefore approved.

Based on the foregoing, the total amount of professional fees approved for Ms. Lawson is \$500.00, disbursements are approved in the amount of \$147.00, and applicable GST is adjusted in the amount of \$35.00 for a total award of \$682.00 as shown in Appendix “A” attached.

The Board notes that Ms. Huntley received advance funding in the amount of \$1,000.00 and accordingly that amount has been deducted from the final award under this Decision as shown in Appendix “A” attached.

3.2 MARTY, Sid and Myrna

Mr. and Mrs. Marty have claimed a total of \$26,529.00 for their intervention. Specifically, they claim \$20,925.00 for representation by Mr. Mitch Bronaugh and \$4,104.00 for the fees and attendance of Dr. Lawrence Nkemdrim at the hearing. Mr. Marty claims attendance honoraria of \$800.00, while Ms. Marty claims \$700.00 for her attendance.

The Martys

The Board acknowledges Mr. and Mrs. Marty’s claims for attendance at the prehearing meeting and hearing. The Board finds it appropriate to award Mr. and Mrs. Marty each for their claims for attendance. Accordingly, the Board approves an attendance honoraria for Mr. Marty in the amount of \$800.00 and an attendance honoraria for Mrs. Marty in the amount of \$700.00, as shown in Appendix “A” attached.

Dr. Lawrence Nkemdrim

Dr. Nkemdrim has claimed \$2,700.00 in fees for preparation for the hearing, \$360.00 for attendance at the hearing, and \$900.00 for travel to and from the hearing. Dr. Nkemdrim has also claimed mileage in the amount of \$144.00.

The Board notes that Dr. Nkemdrim claimed 5 hours of travel time at the full rate of \$180 per hour. The cost guidelines require that travel time be charged at half the hourly rate (5 hours x \$90 = \$450), accordingly the Board will reduce Dr. Nkemdrim’s fees by \$450.00.

The Board found Dr. Nkemdrim’s evidence on the impact of Chinook winds on the area to be informative, helpful, and easily understood by the Board. The Board does not find that Dr. Nkemdrim’s evidence was duplicative of other evidence presented and awards Dr. Nkemdrim the cost of his fees, less \$450.00 as noted above, for preparation and attendance at the hearing. The Board has also reviewed Dr. Nkemdrim’s mileage claim and approves it in full.

Based on the foregoing, the Board approves fees for Dr. Nkemdrim in the amount of \$3,510.00 and expenses in the amount of \$144.00 for a total award of \$3,654.00 as shown in Appendix “A” attached.

Mitch Bronaugh

Mr. Mitch Bronaugh claims preparation time of 119.5 hours, 87.5 hours for attendance and 13 hours for argument and reply, all at a rate of \$90/ hr.

The Board notes that Mr. Bronaugh represented Mr. and Mrs. Marty and their respective intervention at the hearing. In considering this request the Board notes that Mr. Bronaugh had no particular qualifications which were relevant to his role as an advocate or the issues before the

Board. While parties are free to be represented in a manner and by individuals of their choosing, the Board in assessing a claim for costs must have regard to the representative's qualifications and moreover to the contribution made to the clearer understanding of the issues. Given Mr. Bronaugh's lack of qualifications the Board finds that the hourly rate of \$90.00 is excessive. Parties who are represented by fellow lay persons cannot expect the applicant to absorb costs which would be more in keeping with the services of a professional. In this instance the Board finds that an hourly rate of \$50.00 would be more appropriate given Mr. Bronaugh's background and qualifications.

With respect to Mr. Bronaugh's participation at the Hearing, the Board is of the view that the value and contribution of this intervention did not overly assist the Board in obtaining a clearer understanding of the issues before it. In particular, the Board is of the view that hearing time was hindered by Mr. Bronaugh's repeated submissions on issues which were at the very least moot to the issues before the Board. As a result the Board finds that Mr. Bronaugh's costs are not in line with the scope and complexity of the intervention presented and finds it reasonable to reduce Mr. Bronaugh's claim for preparation and attendance by 50%. This reduction will apply to the hourly rate of \$50.00.

$(207 / 2) \times \$50.00 = \$5,175.00$, representing preparation and attendance
 $13 \text{ hrs} \times \$50.00 = \650.00 , representing final argument and reply

In considering the claim for disbursements and in particular travel costs, the Board is not of the view that the Marty's decision to retain a lay representative from out of province should entitle them to recover any cost incurred by the travel of Mr. Bronaugh from BC. As such the Board finds it reasonable to reduce Mr. Bronaugh's travel expenses to a level commensurate with a representative traveling from Calgary. In that regard, the Board finds it reasonable to award mileage for 4 round trips from Calgary to Maycroft at 420 km/trip at \$0.30/km for a total award of \$504.00. Accordingly, the Board reduces Mr. Bronaugh's claim for mileage by \$246.00

Based on the foregoing, the Board approves fees for Mr. Bronaugh in the amount of \$5,825.00 and disbursements in the amount of \$879.00 for a total award of \$6,704.00 as shown in Appendix "A" attached.

3.3 NATURE CONSERVANCY OF CANADA (NCC)

Beaumont Church LLP

Keith Luft, of Beaumont Church LLP, submitted a cost claim on behalf of NCC on January 15, 2004. The Board notes that the close of record for this proceeding was September 22, 2003 and accordingly cost claims were due October 22, 2004. Mr. Luft's cost claim was filed more than two months following the deadline.

By letter dated January 19, 2004 Mr. Luft advised the Board that the late filing was a result of correspondence received from Mr. Douglas Larder, Associate General Counsel, dated July 10, 2003. Mr. Luft referred to Mr. Larder's advice that "without a finding of standing in the Conservancy's favor, the Conservancy is not eligible to claim the costs connected to its participation". The Board received and reviewed comments from counsel for Polaris regarding the late filing as well as Mr. Luft's response.

In this circumstance, it is the Board's view that although Mr. Luft was not given a formal extension to file a cost claim, it is reasonable to conclude that question would arise surrounding this issue of the filing deadline. While the Board will allow the late filing in this instance, it does caution parties that in the future such deadlines may not be waived and advises parties that a formal written request should be made to Board staff prior to the filing deadline.

Mr. Luft claims 28.6 hours for preparation and 6 hours for attendance at \$250/hr. Ms. Hilary Hahn claims 1 hour for preparation at \$150/hr. The total amount of amount legal fees being claimed is \$8,800.00 together with disbursements in the amount of \$415.78 and applicable GST.

Upon review of Mr. Luft's statement of account the Board notes that Mr. Luft incurred 3.2 hours and Ms. Hahn incurred 1 hour between October 28, 2002 and January 7, 2003. Part 7 of Guide 31A states the following:

The EUB's usual practice (there are exception) is to acknowledge only those costs incurred after the EUB has issued a notice of hearing. It is generally the EUB's position that until a notice of hearing has been issued, there is no certainty that a hearing will be held.

In this instance the Board does not find that it is reasonable for the Applicant to bear the costs associated with services provided prior to the notice of hearing. In that regard, the Board also notes that 0.9 hours were incurred by Mr. Luft on October 2, 2003 and December 16, 2003. The Board finds that these hours were incurred subsequent to the close of record and as such did not directly assist the Board with the issues before it.

The participation of NCC at the hearing was restricted to the reading of a statement. No evidence was called and no cross examination of witness' was conducted on their behalf. Indeed NCC was not present at the hearing after the first day. Taking all of the above into account, the Board is not prepared to allow the costs as claimed. As such, the Board finds it appropriate to reduce the legal fees claimed to \$1,500.00. GST has been adjusted accordingly.

The Board has reviewed the disbursements claimed and finds that they have been reasonably incurred in accordance with Guide 31A and are therefore approved in full.

Based on the foregoing the Board approves legal fees in the amount of \$1,500.00, disbursements in the amount of \$415.78, and applicable GST in the amount of \$134.10 for a total award of \$2,049.88 as shown in Appendix "A" attached.

Larry Simpson

Larry Simpson is a representative of the NCC. He claims an attendance honoraria in the amount of \$50.00 for his attendance at the prehearing meeting. The Board finds this claim to be reasonable and awards Mr. Simpson his attendance honoraria claimed.

3.4 OLDMAN RIVER COALITION

Members of the Oldman River Coalition (Coalition)

The members of the Coalition claim honoraria totaling \$9,500.00, disbursements totaling \$1,454.84, and GST totaling \$54.59.

The honoraria claimed by the members represent attendance at the prehearing meeting and the hearing. Guide 31A indicates that, in appropriate circumstances, attendance honoraria will be available to two members of a local intervener group for assisting their counsel at the hearing. Additionally, the guidelines allow for four members of a local intervener group to claim attendance honoraria when they are required to give evidence as a panel. The cost guidelines also indicate that “appearing in support of an intervention refers to coming to the front when so requested by the Chairperson of the hearing and answering any questions about the intervention. Mere attendance is not participation”.

The Board has reviewed this claim and finds it reasonable to award a total of 6 attendance honoraria in the amount of \$900.00 each to the Coalition for their members’ attendance at the pre-hearing meeting and hearing ($\$900 \times 6 = \$5,400$). The distribution of the honoraria amongst its members is left to the discretion of the Coalition.

The Board has reviewed the Coalition’s disbursements and GST claims and finds them both to be reasonable and in accordance with Guide 31A. As such, the Board awards these claims in full.

Based on the foregoing the Board awards the individual members of the Coalition an honoraria in the amount of \$5,400.00, disbursements of \$1,454.84, and GST of \$54.59, as shown in Appendix “A” attached.

Senes Consultants Limited (Senes)

Senes Consultants Ltd. claims \$15,090.00 in fees, \$965.56 in disbursements, and \$1,123.89 for GST.

Mr. Bohdan Hrebenyk claims fees for 80 hours of preparation and 15 hours of attendance at the hearing, both at a rate of \$132/hr. Mr. Bryan McEwen claims fees for 26.5 hours of preparation at a rate of \$90/hr, while Mr. Henry Guttman claims 2 hours at a rate of \$82.50/hr. Senes provided evidence with respect to air dispersion modeling at the hearing.

With respect to the issue raised by Polaris regarding the use of experts and consultants from outside Alberta, the Board is mindful that the number of experts and consultants that practice in a specific area may be limited. The Board is not necessarily concerned with where the expert or consultant resides, but rather with the costs incurred by that expert or consultant and whether those costs are reasonable and directly and necessarily related to the proceedings and were incurred in such a manner as to assist the Board with a better understanding of the issues before it.

The Board is of the view that the evidence provided by Senes was of some assistance to the Board in it arriving at its decision. However, the Board finds that claim for 108.5 hours of preparation by Senes is excessive given that the firm only peer reviewed Polaris’s air dispersion model. The Board is of the view that the amount of preparation would have been reasonable had Senes run its own model and provided the Board with its own conclusions. Furthermore, the Board is of the view that such an exercise would have been more helpful to the Board in examining the issue of air dispersion modeling and would have avoided “a war of the experts” as occurred in the hearing. As a result, the Board finds it reasonable to reduce the fees claimed by Senes by 30%. The Board feels that this reduction more accurately reflects the usefulness of the evidence presented. GST with respect to the fees has been adjusted accordingly.

The Board has reviewed the disbursements being claimed by Senes and finds that they have been reasonably incurred and are in accordance with Guide 31A. The Board therefore approves Senes disbursements in full.

Based on the foregoing the Board approves professional fees for Senes in the amount of \$10,563.00, disbursements in the amount of \$965.56, and applicable GST in the amount of \$807.00 for a total award of \$12,335.56 as shown in Appendix “A” attached.

Gilbert Lausten Jung Associates Ltd. (GLJ)

The firm of GLJ has claimed fees in the amount of \$8,060.00, disbursements of \$1,323.46, and GST in the amount of \$656.84. Mr. Jodi Anhorn claims for 24.10 hours of preparation and 12 hours of attendance at the hearing, both at a rate of \$155/hr. Mr. Roger Mahoney claims preparation of 10.10 hours at a rate of \$190/hr, while Mr. David Harris claims 2.5 hours at a rate of \$190/hr as preparation.

GLJ provided a geophysical/geological assessment of Polaris’s well application. This firm provided the Board with a 3 page report detailing its assessment. The Board finds that the information provided was relevant but feels that the claim for preparation is excessive given the scant information available to review. As such the Board finds it appropriate to reduce the time claimed for preparation by 50%. GST has been adjusted accordingly.

$(24.10 / 2) \times \$155.00 = \$1,867.75$, representing one half of Mr. Anhorn’s preparation time
 $(10.10 / 2) \times \$190.00 = \959.50 , representing one half of Mr. Mahoney’s preparation time

The Board has reviewed the disbursements being claimed and finds that they have been reasonably incurred in accordance with Guide 31A are therefore approved in full.

Based on the foregoing, the Board approves professional fees in the amount of \$5,232.75, disbursements in the amount of \$1,323.46, and applicable GST in the amount of \$458.93 for a total award of \$7,015.14 as shown in Appendix “A” attached.

Equus Consulting Group (Equus)

The Equus Consulting Group claims fees in the amount of \$8,640.00, disbursements in the amount of \$1,377.38 and GST of \$700.30.

Equus conducted a review of the public consultation practices of Polaris with respect to its proposed project. It provided the Board with a report summarizing the public consultation activities of Polaris and the adequacy of those activities. The Board found that the evidence presented By Equus was of assistance and value to the Board in the making of its decision. The Board finds the fees charged by Equus to be reasonable in that respect and awards them in full.

With respect to the disbursements claimed, the Board notes that a portion of Equus’ claim included accommodations, meals, and parking all of which were incurred outside of the hearing phase. While Guide 31A restricts these types of expenses to the hearing phase of a proceeding, the Board is mindful of the nature of the work provided by this company and accordingly the need to interview residents potentially affected by the Application. In that regard the Board will exercise it’s discretion and approve these costs in this particular instance. The Board has

reviewed the remaining disbursements and finds that they have been reasonably incurred in accordance with Guide 31A.

Based on the foregoing, the Board approves professional fees in the amount of \$8,640.00, disbursements of \$1,377.38, and GST of \$700.30 for a total award of \$10,717.68 as shown in Appendix "A" attached.

Robert W. Coppock, DVM, Toxicologist & Associates Ltd.

Robert W. Coppock claims fees in the amount of \$24,342.50, disbursements in the amount of \$1,316.09 and GST of \$1,796.11.

Dr. Robert Coppock claims 155.25 hours for preparation and 32 hours in attendance at the hearing, both at a rate of \$130/hr. Dr. Coppock provided evidence and a report with respect to the potential impact of the proposed Polaris well on local livestock.

The Board notes that Dr. Coppock is a well known expert in the area of the affects of sour gas on animals, and who has many years of experience in this area. The Board also notes that Dr. Coppock spent a significant amount of time in the preparation of his report, particularly in reviewing documents, scientific literature, and scientific articles. For the purposes of this hearing however, the Board does not feel that Dr Coppock's evidence assisted with the relevant issues before the Board. The evidence presented was self-evident, for example Dr. Coppock provided the advice that H₂S releases can be harmful or non-specific to the matters before the Board. As a result, the Board finds that Dr. Coppock's claim is very excessive given the value that it provided to the Board in the making of its decision. The Board finds it reasonable to reduce Dr. Coppock's claim by 75%. GST has been adjusted accordingly.

The Board has reviewed the disbursements claimed by Dr. Coppock and finds that they have been reasonably incurred in accordance with Guide 31A and are therefore approved in full.

Based on the foregoing the Board approves professional fees in the amount of \$6,085.63, disbursements in the amount of \$1,316.09, and GST in the amount of \$518.12 for a total award of \$7,919.84 as shown in Appendix "A" attached.

Rooney Prentice

The law firm of Rooney Prentice claims fees in the amount of \$96,001.00, disbursements in the amount of \$6,086.36, and GST of \$7,144.11.

Mr. Gavin Fitch has claimed 222 hours of preparation, 86 hours for attendance and 17 hours for argument and reply, all at a rate of \$220/hr. He has also claimed 29.80 hours as travel time at a rate of \$110/hr. Ms. Laura Marie Berg has claimed 56.80 hours of preparation, 78 hours for attendance and .80 hours for argument and reply, all at a rate of \$140/hr. She has also claimed 26.80 hours as travel time at a rate of \$70/hr. Ms. Jane Fedoretz has claimed 3.30 hours of preparation at a rate of \$110/hr.

The Board does not generally award costs for the attendance of two counsel at a hearing. It is only in exceptional circumstances, such as where issues and the intervention are complex, will the Board find it necessary for two counsels to have been in attendance at a hearing. The Board finds that the intervention of the Oldman River Coalition, particularly the complexity of the issues and the provision of evidence by a large number of individuals, necessitated the need for two counsels to represent the Coalition at the hearing.

The Board has reviewed the claim by Rooney Prentice and notes that Rooney Prentice has claimed a total of 280.1 hours for actual preparation. Although the Board is cognizant that the Coalition presented a significant number of individuals for examination in chief, the Board is of the view that the preparation time claimed is excessive. The Board also finds that there was some duplication of evidence between the Coalition and other interveners. As the person mainly responsible for an intervention, counsel is responsible to ensure that duplication of evidence provided by other interventions is avoided. As a result of the above, the Board finds it reasonable to reduce Rooney Prentice's legal fees by 20%. GST has been adjusted accordingly.

The Board has reviewed the disbursements claimed by this firm and finds them to be reasonable and are therefore approved in full.

Based on the foregoing the Board approves legal fees in the amount of \$76,800.80, disbursements in the amount of \$6,086.36, and GST in the amount of \$5,802.10 for a total award of \$88,689.26 as shown in Appendix "A".

The Board notes that the Oldman River Coalition received advance funding in the amount of \$45,000.00 and accordingly that amount has been deducted from the final award under this Decision as shown in Appendix "A" attached.

3.5 TWEEDIE, James

Mr. Tweedie has claimed a total of \$79,401.68 for his intervention. Specifically, he claims \$67,716.84 for legal fees incurred by the law firm of Ackroyd, Piasta, Roth & Day and \$10,284.84 for the fees incurred by Cottonwood Consultants Ltd.

James Tweedie

Mr. Tweedie claims an attendance honoraria of \$900.00 and a preparation honoraria of \$500.00.

The Board finds Mr. Tweedie's preparation claim to be excessive. Section 6.1.1 of Guide 31A provides that when an intervener is represented by a lawyer and the lawyer is primarily responsible for the preparation of the intervention, the Board generally will not provide an honorarium to an intervener for his or her preparation efforts. However, in situations where both the lawyer and the intervener contribute substantially to the preparation of the intervention, the Board may consider an honorarium in recognition of the intervener's efforts.

The Board notes that Mr. Tweedie was represented by counsel at the hearing, who was primarily responsible for the preparation of Mr. Tweedie's intervention. However, the Board does recognize Mr. Tweedie's efforts in the preparation of his submissions and awards Mr. Tweedie a preparation honoraria of \$200.00.

The Board awards Mr. Tweedie a \$900.00 honorarium for his attendance at the prehearing meeting and the hearing.

Based on the foregoing, the Board approves total honoraria for Mr. Tweedie in the amount of \$1,100.00 as shown in Appendix "A" attached.

Cottonwood Consultants Ltd. (Cottonwood)

Mr. Cleve Wershler of Cottonwood claims for 79.2 hours of preparation and 7.2 hours of attendance at the hearing, at a rate of \$100/hr. Mr. Cliff Wallis of the same firm also claims 7.2 hours of preparation at a rate of \$100/hr.

In its work plan submitted to the Board prior to the hearing, Cottonwood proposed to assess the environmental effects of the proposed sour gas well on biodiversity, species at risk, critical wildlife zones and environmentally significant areas. The product of Cottonwood's work was a report that was submitted to the Board.

The Board is of the view that the evidence provided by Cottonwood was broad in its scope and did not focus on the impacts of the well on the specific area of where the well was to be located. Again the Board stresses that expert testimony, in order to be of value to the Board, must assist in the resolution of the issues before the Board at that particular hearing. In the case of Cottonwood the Board finds that much of its evidence proved unhelpful and indeed in part strayed into the arena of advocacy. As a result, the Board is of the view that the costs submitted by Cottonwood should be reduced by 50%. GST has been adjusted accordingly.

The Board has reviewed the disbursements being claimed and finds that they have been reasonably incurred in accordance with Guide 31A and are therefore approved in full.

Based on the foregoing, the Board approves professional fees for Cottonwood in the amount of \$4,680.00, disbursements in the amount of \$252.00, and GST in the amount of \$345.24 for a total award of \$5,277.24 as shown in Appendix "A" attached.

Ackroyd, Piasta, Roth & Day

Mr. Richard Secord claimed fees for 99.7 hours of preparation, 75 hours for attendance, and 21.3 hours for argument and reply, all at a rate of \$250/hr. Mr. Secord also claims 18 hours for travel time at a rate of \$125/hr. Mr. Jason Unger claims fees for 7 hours of preparation time at a rate of \$100 /hr and 12 hours of travel time at a rate of \$50/hr.

Upon further review of the account submitted by this firm, the Board notes that although Mr. Unger claimed 7 hours of preparation work, 4 hours were spent in attendance at the pre-hearing meeting and 12 hours were spent with respect to traveling to the pre-hearing meeting. The Board is of the view that it was not warranted for both counsel to be in attendance at the prehearing meeting given that the meeting was not of a complex nature. As a result, the Board reduces Mr. Unger's portion of the claim by \$1,000.00, representing 4 hours of attendance and 12 hours of associated travel time. GST has been adjusted accordingly.

4 hrs x \$100.00 = \$400.00, representing attendance
12 hrs x \$50.00 = \$600.00, representing travel time

As counsel for Mr. Tweedie and the main organizer of his intervention, Mr. Secord bears the responsibility of ensuring that an intervention is orderly and relevant. Firstly, the Board finds that the time spent by Mr. Secord during final argument was excessive given that he generally read his argument, which had been provided in writing to the Board. The Board is of the view that final arguments do not need to be lengthy and should focus on relevant issues and points. Final arguments should not be used to review all of the evidence presented during the hearing. The Board is also of the view that the evidence provided by Mr. Tweedie's panel was also duplicative of some of the evidence provided for by other interventions. As a result of the above, the Board finds it reasonable to reduce the claim of Ackroyd, Piasta, Roth & Day by 20% after Mr. Unger's reduction has been applied. GST has been adjusted accordingly.

The Board has reviewed the disbursements and finds that they have been reasonably incurred in accordance with Guide 31A and are therefore approved in full.

Based on the foregoing the Board approves legal fees in the amount of \$45,648.00, disbursements in the amount of \$5,226.77, and GST in the amount of \$3,561.23 for a total award of \$54,436.00 as shown in Appendix "A" attached.

The Board notes that Mr. Tweedie received advanced funding in the amount of \$14,000.00 and accordingly that amount has been deducted from the total award in this Decision as shown in Appendix "A" attached.

4. DECISION

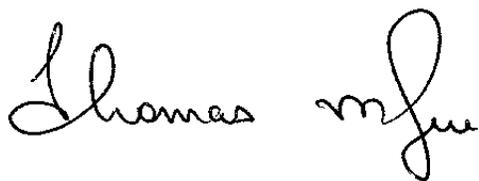
For the purposes of effecting the Board's decision, the Board has issued Energy Cost Order 2004-04, a copy of which is attached, ordering that the following costs be paid by Polaris Resources Ltd.:

- (1) Judy Huntley's costs are approved in the amount of \$1,696.00 as shown in column (e) of Appendix "A". The Board has deducted the advancing funding of \$1,000.00 for a total amount outstanding in the amount of \$696.00 as shown in column (g) of Appendix "A" attached.
- (2) Sid and Myrna Marty's costs are approved in the amount of \$11,858.00 as shown in column (e) of Appendix "A".
- (3) The Nature Conservancy of Canada's costs are approved in the amount of \$2,099.88 as shown in Appendix "A" attached.
- (4) The Oldman River Coalition's costs are approved in the amount of \$133,583.76 as shown in column (e) of Appendix "A". The Board has deducted the advancing funding of \$45,000.00 for a total amount outstanding in the amount of \$88,583.76 as shown in column (g) of Appendix "A" attached.

- (5) James Tweedie's costs are approved in the amount of \$60,813.24 as shown in column (e) of Appendix "A". The Board has deducted the advance funding of \$14,000.00 for a total amount outstanding in the amount of \$46,813.24 as shown in column (g) of Appendix "A" attached.

Dated in Calgary, Alberta on this 26th day of February, 2004.

ALBERTA ENERGY AND UTILITIES BOARD

A handwritten signature in cursive script that reads "Thomas McGee". The signature is written in black ink and is positioned to the left of the printed name.

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



"ECO 2004-04
Appendix A (Decision

[\(Return to Table of Contents\)](#)

IN THE MATTER OF
Application Nos. 1276489 and 1276521,
Being Applications for a Well Licence, Special Gas Well Spacing,
Compulsory Pooling, and Flaring Permit (Livingstone Field)
Made by Polaris Resources Ltd.

-and-

IN THE MATTER OF
Local Intervener Cost Applications Pursuant to
Section 29 of the *Energy Resources and Conservation Act*

ENERGY COST ORDER 2004-04

WHEREAS the Alberta Energy and Utilities Board (Board) considered an Application by Polaris Resources Ltd., being Application Nos. 1276489 and 1276521; and

WHEREAS the Board has considered the claim for costs of Judy Huntley, Sid and Myrna Marty, The Nature Conservancy of Canada, Oldman River Coalition, and James Tweedie, all being local interveners to the Application;

THEREFORE, the Alberta Energy and Utilities Board, pursuant to the provisions of the *Energy Resources Conservation Act* and regulation thereunder, hereby orders as follows:

1. The costs payable to the local interveners, as determined by the Board pursuant to paragraphs 2 through 5 inclusive herein, shall be paid by Polaris Resources Ltd.
2. The costs payable to Judy Huntley herein are fixed in the amount of \$1,696.00, less advance funding of \$1,000.00, for a total amount payable in the amount of \$696.00.
3. The costs payable to Sid and Myrna Marty herein are fixed in the amount of \$11,858.00.
4. The costs payable to the Nature Conservancy of Canada herein are fixed in the amount of \$2,099.88.
5. The costs payable to the Oldman River Coalition are fixed in the amount of \$133,583.76, less advance funding of \$45,000.00, for a total amount payable of \$88,583.76.
6. The costs payable to James Tweedie are fixed in the amount of \$60,813.24, less advance funding of \$14,000.00, for a total amount payable of \$46,813.24.

Made at the City of Calgary, in the Province of Alberta, this 26th day of February, 2004.

Alberta Energy and Utilities Board

Original Signed by Thomas McGee
Thomas McGee
Board Member

IN THE MATTER OF
Application Nos. 1276489 and 1276521,
Being Applications for a Well Licence,
Special Gas Well Spacing,
Compulsory Pooling, and Flaring Permit
(Livingstone Field)
Made by Polaris Resources Ltd.

-and-

IN THE MATTER OF
Local Intervener Cost Applications Pursuant
to Section 20 of the
Energy Resources and Conservation Act

ENERGY COST ORDER 2004-04

Alberta Energy and Utilities Board
640 – 5th Avenue S.W.
Calgary, Alberta
T2P 3G4

Telephone: (403) 297- 2482
Fax: (403) 297-7031
