



Petrofund Corp.

Application for a Well Licence
Armisie Field (West Edmonton Area)

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2006-001: Petrofund Corp.

Application for a Well Licence

Armisie Filed (West Edmonton Area)

Application No. 1365474

Cost Application No. 1405004

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

Petrofund Corp.
Application for a Well Licence
Armisie Field

Energy Cost Order 2006-001
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1 INTRODUCTION

Pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, Petrofund Corp. (Petrofund) applied to the Alberta Energy and Utilities Board (Board/EUB) for a licence to drill an oil well from a surface location in Legal Subdivision (LSD) 7, Section 4, Township 52, Range 25, West of the 4th Meridian (7-4 well).

The EUB received submissions from several parties, including the Riverside Heights Group (RHG), the City of Edmonton, the West Edmonton Landowners Group (WELG), and Saraswati P. Singh.

The Board held a public hearing in Edmonton, Alberta, May 3 and 4, 2005, before Board Member T. M. McGee (Presiding Member) and Acting Board Members K. G. Sharp, P.Eng., and D. K. Boyler, P.Eng. A site visit was conducted on May 2 and May 3, 2005, prior to opening the hearing. The Board closed the hearing on May 4, 2005.

In conjunction with proceeding to establish a hearing date on this matter, the EUB encouraged the parties to engage in appropriate dispute resolution (ADR) in order to continue discussing issues of interest. The parties met several times between July and November 2004, but were not successful in reaching an agreement.

The Board received a number of cost claims totaling \$66,520.64. The claimants include Darrell and Barbara Gotaas, Singh Saraswati, Bob Sulyma, and the West Edmonton Landowners Group. Dr. Singh's claim was filed by his counsel, Mr. M. Engelking of Campbell & Company, and all other claims were filed by Mr. J. Bodnar, Lawyer.

Petrofund submitted comments regarding all of the claims. Mr. Bodnar filed a response to those comments and Mr. Engelking was afforded the opportunity to respond by October 18, 2005 however the Board did not receive a response from him. On November 9, 2005, Mr. Engelking provided the Board with a revised Statement of Account.

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

Dr. Singh stated that he is the owner of the lands that are immediately adjacent to the surface location of the 7-4 well. The Board finds that Dr. Singh meets the requirements of section 28 of the ERCA and is therefore eligible to apply for cost recovery.

The group of interveners that initially filed objections to the Petrofund application included residents of the River Heights subdivision who were within the Emergency Planning Zone (EPZ) for the 7-4 well, and residents on or in proximity to 17th Avenue. Mr. Bodnar originally represented the entire group. In its cost claim WELG stated that prior to the hearing the River Heights residents, except only Rudy and Janet Novak, opted to break away from WELG and ultimately withdrew their objection and submission. WELG maintained its objections through to the hearing wherein one of the substantive issues related to the 17th Avenue residents' available exit routes if Petrofund's ERP was activated. For the purposes of this Order, the Board finds that the WELG claimants meet the requirements of section 28 of the ERCA and are therefore eligible to apply for cost recovery.

4 VIEWS OF THE BOARD – Honoraria Claims

As reflected in past Cost Orders¹, it is the Board's view 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.

¹ Energy Cost Orders [2004-04](#), [2005-002](#), and [2005-006](#)

In addition, as noted in section 6.2.1 of Directive 31A, Energy Cost Claims (Directive 31A) the Board recognizes that the organization of a group of local interveners may require considerable time, effort, and expense on the part of the organizers who coordinate and represent the group. The Board is prepared to award costs for such contribution, however, in considering the amount of the award it will take into account the size of the group and the amount of effort required to organize it. In that regard the Board notes that Directive 31A provides that such awards may be approved for one to four organizers and are generally \$300.00 - \$500.00 with exceptional cases allowing for awards in the amount of \$500.00 to \$2,500.00.

5 VIEWS OF THE BOARD – Pre Notice of Hearing / ADR Costs

The Board issued the Notice of Hearing with respect to this matter on January 4, 2005. With respect to costs incurred prior to the Notice of Hearing being issued, the Board notes that Directive 31A provides the following with respect to the relationship between the Notice of Hearing and cost recovery.

The EUB's usual practice (there are exceptions) 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. The EUB finds that in many cases the prenotice interactions between interveners and applicants relate to compensation matters and not public interest issues. The EUB recognizes, however, that it is sometimes necessary for local interveners to incur costs prior to the notice and that such costs may be reasonable and directly and necessarily related to the intervention in question.

In addition, the Board also recognizes its general practice towards those costs incurred as a result of participating in the Board's appropriate dispute resolution (ADR) process. While the Board appreciates and encourages parties to attempt to resolve concerns as much as possible themselves, it is of the view that compensation for such negotiations is to be dealt with in the context of the negotiations themselves and not through the Board's cost recovery process. The Board notes that a cost regime exists for those costs incurred for negotiations and facilitations. In that regard the Board notes the following statement from Informational Letter [2001-1](#).

For the Preliminary ADR Meeting, industry participants should be responsible for the costs, including the direct third-party costs of landowners and the public. Costs and payment for future ADR options should be discussed and agreed to at the Preliminary ADR Meeting.

Taking the foregoing into account, for this particular matter, the Board considers those costs incurred prior to the Notice of Hearing to be directly associated with the ADR process and not in preparation for a hearing before the EUB. As such the Board considers that any costs incurred prior to January 4, 2005 will not be eligible for recovery unless unique circumstances exist to justify them being awarded.

6 VIEWS OF THE BOARD – Cost Claim Assessments

6.1 SARASWAIT, Singh

Dr. Singh's claim totals \$12,133.34, which consists of legal fees incurred by Campbell & Company in the amount of \$10,950.00, expenses in the amount of \$109.20, and GST of \$774.14, for an overall legal account of \$11,833.35. Dr. Singh also claims a preparation honorarium in the amount of \$300.00.

By way of letter dated September 13, 2005, Board staff requested Mr. Engelking to provide a detailed statement of account and an explanation for the \$300.00 honorarium claim. The Board did receive the statement of account however no explanation was provided for the honorarium claim of \$300.00.

With respect to the honorarium the Board finds it reasonable to grant Dr. Singh an attendance honorarium of \$200.00, reflecting his attendance at the hearing for two days. The Board is not prepared to approve the remaining \$100.00 as the Board is satisfied following a review of the legal account that legal counsel was primarily responsible for the coordination of his intervention.

With respect to the legal fees incurred the Board recognizes that Mr. Engelking's services were initiated on March 21, 2002. By the Board's calculations, Mr. Engelking incurred a total of 11.9 hours prior to the Board issuing the Notice of Hearing. The Board has not included in its calculation the 2 hours accounted for reviewing the well application.

Given the Board's views regarding Notice of Hearing and ADR costs stated above, the 11.9 hours (\$2,975.00)² are found to be ineligible for recovery under this Order and are therefore denied.

Taking all of the foregoing into account, the Board approves legal fees in the amount of \$7,975.00, expenses in the amount of \$109.20, GST in the amount of \$565.89, and an honorarium in the amount of \$200.00, for a total award to Dr. Singh in the amount of \$8,850.09, as shown on [Appendix A](#) attached.

6.2 GOTAAS, Darrell and Barb

In addition to being members of WELG, Darrell Gotaas and Barbara Gotaas together filed a separate claim for a portion of the legal services provided by Mr. Bodnar. The Gotaases claim \$3,700.00 in legal fees and \$574.60 in disbursements. The legal fees reflect 17.3 hours of preparation. When asked to explain the separate claim by the Gotaases, Mr. Bodnar stated that he allocated 10% of his services in these proceedings to Darrell and Barbara Gotaas. As the cost claims do not indicate that there is a basis for distinguishing the costs incurred by the Gotaases for legal services from those claimed by the other members of WELG, the Board has decided to amalgamate the Gotaases cost claim with the Group's claim and to treat them as one claim by the Group.

² \$250.00 X 11.9 = \$2,975.00

6.3 SULYMA, Bob

In addition to being a member of the West Edmonton Landowners Group, Mr. Sulyma filed a separate claim for a portion of the legal services provided by Mr. Bodnar. Mr. Sulyma claims \$6,000.00 in legal fees and \$660.40 in disbursements. The legal fees reflect 29 hours of preparation. When asked to explain the separate claim by Mr. Sulyma, Mr. Bodnar stated that he allocated 15% of his services in these proceedings to Bob Sulyma. As the cost claims do not indicate that there is a basis for distinguishing the costs incurred by Mr. Sulyma for legal services from those claimed by the other members of WELG, the Board has decided to amalgamate Mr. Sulyma's cost claim with the Group's claim and to treat them as one claim by the Group.

6.4 West Edmonton Landowners Group

Given the foregoing, WELG or its members submitted cost claims totaling \$54,387.30. The claims consist of the following honoraria.

WELG	\$1,000.00
Darrell Gotaas	\$1,100.00
Barbara Gotaas	\$1,150.00
Bob Sulyma	\$600.00
Jane Traxler	\$200.00
Rudy & Janet Novak	\$700.00
Sub-Total	\$4,750.00

In addition, legal fees to WELG or its members are claimed by Mr. Julian Bodnar in the total amount of \$41,450.00, expenses in the amount of \$4,940.00, and GST in the amount of \$3,247.30, for an overall total of legal accounts of \$49,637.30.

Julian Bodnar, P.Ag., LLB.

Mr. Bodnar's legal fees of \$41,450.00 represent a total of 126.3 hours of preparation, 16 hours for attendance, 1 hour for argument and reply, and 45 hours for travel time. In the Board's view the portion of the claim relating to preparation time exceeds what would reasonably be required for these interveners and their counsel to adequately understand and address the development proposed in the application and the concerns presented by WELG in the hearing. The issues addressed by the WELG members were neither complex nor numerous when compared with the case of an intervener upon whose lands a single well was proposed to be drilled. In Energy Cost Order [2005-005](#), the Board stated that a cost award that included legal fees in the amount of \$26,326.25 reflected the higher end of legal fees that would reasonably be incurred in relation to an intervention by the owners of lands upon which a multiwell battery was proposed, and three wells were proposed to be drilled from two separate pad locations. In this case a single well was proposed for a surface location that was not owned or occupied by any WELG member. The Board therefore finds it appropriate to reduce the legal fees awarded to the amount of \$26,000.00.

The Board has considered the disbursements that were claimed and finds that those have been incurred in accordance with Directive 31A, and they are therefore approved in full. In particular, the Board finds that the expenses that are claimed in relation to Mr. Bodnar traveling from Saskatchewan are not unreasonable.

Honoraria

With respect to the honoraria claims made on behalf of WELG itself (as opposed to the claims of its individual members), it is the Board's view that the participation of WELG is a product of the participation of its members, and without the individual members the group itself would not exist. As such, it is the Board's view that where individual WELG members have applied for and are being considered for an honorarium, it is not appropriate to also consider an additional honorarium for WELG itself.

WELG and 5 of its members claimed preparation honoraria in the total amount of \$2,200.00. Having regard for the legal account provided by their common counsel, the Board finds that WELG's legal counsel undertook the primary role of preparing and coordinating the intervention. Therefore, the Board does not find it reasonable to award all of the preparation honoraria claimed by WELG and its members. As the cost claim and the parties' participation at the hearing indicate that Dr. Gotaas and Mr. Sulyma were individuals that had central roles in the WELG intervention, the Board awards a preparation honorarium in the amount of \$500.00 to each of Dr. Gotaas and Mr. Sulyma. The other claims for preparation honoraria are denied.

WELG and 5 of its members claimed honoraria for forming a group in the total amount of \$2,000.00. At the time of the hearing WELG was comprised of ten individual members from six identified households, and therefore one-half of the group's members and the group itself have each claimed an honorarium for forming a group. Having regard for the considerations set out in section 6.2.1 of Directive 31A and the findings in the preceding paragraph, the Board finds it reasonable to award Dr. Gotaas an honorarium for forming a group in the amount of \$500.00. The other claims for an honorarium for forming a group are denied.

Darrell Gotaas, Bob Sulyma and Barbara Gotaas each appeared as witnesses for WELG, and claimed attendance honoraria as follows:

Darrell Gotaas	\$100.00
Bob Sulyma	\$100.00
Barbara Gotaas	\$150.00

The Board awards each of those individuals the attendance honorarium that he or she claimed.

Jane Traxler, and Rudy and Janet Novak (together) each claimed an attendance honorarium in the amount of \$100.00. While those WELG members may have attended all or portions of the hearing as observers, they did not participate in the hearing as witnesses or other than as observers, and therefore the Board does not award them an attendance honorarium.

Taking all of the foregoing into account, the Board approves legal fees in the amount of \$26,000.00, disbursements in the amount of \$4,940.00, GST in the amount of \$2,165.80, honoraria in the total amount of \$1,850.00, for a total award to WELG and its members in the amount of \$34,955.80, as shown on [Appendix A](#) attached.

7 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Petrofund Corp. shall pay intervener costs in the amount of \$43,805.89 as shown in [Appendix A](#) attached.
- (2) Payments under this Order shall be made to the following:

Campbell & Company
Barristers & Solicitors
100 Greystone VII
4208 – 97th Street
Edmonton, AB T6E 5Z9
Attention: Murray L. Engelking

Julian W. Bodnar, P.Ag. LL.B.
Advocate * Lawyer * Mediator
607 Lenore Drive
Saskatoon, Sask. S7K 5G7

Dated in Calgary, Alberta on this 19th day of April, 2006.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
Board Member

APPENDIX A – SUMMARY OF COSTS CLAIMED AND AWARDED



Appendix A