



Imperial Oil Resources Limited

Applications for Well Licences and Pipelines
Bantry Field

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2006-006: Imperial Oil Resources Limited
Applications for Well Licences and Pipelines (Bantry Field)
Cost Awards

Cost Application No. 1462328

Published by

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**Imperial Oil Resources Limited
Applications for Well Licences and Pipelines
Bantry Field**

**Energy Cost Order 2006-006
Application No.¹
Cost Application No. 1462328**

1 INTRODUCTION

Imperial Oil Resources Limited (Imperial) applied to the Alberta Energy and Utilities Board (Board/EUB) for authorization to drill 28 wells to produce natural gas from the Milk River, Medicine Hat, and Second White Speckled formations. Imperial also applied to construct and operate 28 pipeline segments to tie in the above-noted wells into existing infrastructure.

The EUB held a public hearing in Brooks, Alberta, on March 2, 2006, before Board Members J. R. Nichol, P.Eng. (Presiding Member) and T. M. McGee and Acting Board Member D. K. Boyler, P.Eng. Prior to the opening of the hearing, the Board conducted a tour of the general area where the wells and pipelines would be located.

On May 2, 2006 the Board issued Decision [2006-037](#).

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.

¹ 1392129, 1392133, 1392135, 1392138, 1392145, 1392147, 1392149, 1392156, 1392157, 1392160, 1392167, 1392175, 1392180, 1392183, 1392185, 1392189, 1392190, 1392192, 1392193, 1392195, 1410231, 1392206, 1392207, 1392208, 1392209, 1392210, 1392211, 1392214, and 1392426

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 – Standing

On February 8, 2006, the EUB received a collective submission from the Patricia Area Residents and Landowners Association (PAL), a group of area landowners (PAL Group). Additionally, Darrell Owen, Warren Fukuda, Guy Fukuda, Firmin Declercq, Norman Musgrove, Bruce Musgrove, Ross Owen, John Irwin, Warren Henry, Doug Gray, Todd Irwin, Julie Irwin, and Bruce Beasley also made individual submissions. All of the above individuals, with the exception of Warren Fukuda and Ross Owen, own land that the applied-for wells and pipelines would be located on.

Based on the foregoing the Board finds that Warren Fukuda and Ross Owen do not meet the requirements set out in s. 28(1) of the ERCA and are not eligible to apply for cost recovery. The Board finds that the remaining participants have met the requirements of s. 28(1) and are eligible to apply for cost recovery.

4 VIEWS OF IMPERIAL OIL RESOURCES LIMITED (IMPERIAL)

By way of letter dated June 8, 2008 Imperial submitted that the cost claims were not reasonable or directly and necessarily related to the proceeding. In addition, Imperial stated that the participants did not act responsibly in the proceeding nor did they contribute to a better understanding of the issues.

In support of these arguments Imperial discussed jurisdictional issues, in particular that the PAL Group's main purpose at the hearing was to resolve compensation claims for past damages and annual compensation rates. Imperial argued that issues which were characterized by PAL as operational concerns (fencing, gates being left open, off-lease traffic, interference with ranching operations, weed-control, re-seeding of right of way, rent reviews) are concerns which the *Surface Rights Act* is intended to address. Imperial noted that the Board, through Decision 2006-037, acknowledged that it did not have jurisdiction to deal with compensation issues.

Imperial is of the view that the evidence presented was repetitive and the participants were uncooperative with respect to identifying relevant issues. Imperial argues that the evidence that the PAL Association put forward was not any different than the evidence put forward by the individual interveners on their own and they did not respond to repeated requests by Board staff to identify their concerns.

Imperial takes issue with a number of hourly rates being claimed by individuals, in particular, Mr. Beasley, Mr. Declercq, and Mr. Henry. Imperial is of the view that these parties should not be paid the rate of an expert witness as the testimony was personal and these parties did not attend in the capacity of experts. Imperial also noted that Mr. Irwin's evidence does not reflect the high level of preparation he has claimed.

5 VIEWS OF THE PAL ASSOCIATION AND MR. IRWIN

On June 26 and June 27, 2006 the Board received responses to Imperial's comments from Mr. Irwin and the PAL Association, respectively.

In response to Imperial's comments, Mr. Irwin confirmed that he had not attended an EUB hearing before and given the demands in making a living in the agriculture industry, little time was left to prepare for the hearing. Mr. Irwin submitted that his hearing preparation was required during an extremely busy time of year and the hours that have been claimed are those that he recorded and the rate is that equal to what other companies have paid for his time in the past. Mr. Irwin discussed previous incidents that had occurred with Imperial including previous complaints made to the company. Mr. Irwin also discussed the issue of compensation.

The PAL Association responded by noting that the landowners have spent a lot of their personal time in meetings and exchanging correspondence and did ultimately provide valuable knowledge to the Board regarding the conduct of Imperial. PAL Association takes issue with Imperial repeatedly referring to the issues being only with regard to compensation. The intent of the hearing was to have all issues recognized and dealt with.

PAL stated that its role was to assist the landowners by providing a forum and means to communicate their issues. In that regard, it noted that PAL coordinated and chaired numerous meetings, provided support staff and advice. The effort to provide this coordination was time consuming and required a great deal of work and dedication. Bruce Beasley, President of the association, was responsible for this coordination with the assistance of Shauna Deschamps.

6 VIEWS OF THE BOARD – Fees and Honorariums

The Board recognizes that the claims for all fees are based on hourly wages at various rates. The Board must recognize that Directive 031A does not provide compensation for interveners by way of an hourly wage, but rather, provides for various ranges of honorariums based on the specific circumstances of the application in question.

While the Board is not prepared to approve costs based on the hourly rates being claimed it does recognize that each of the interveners endeavored to understand the EUB's processes, prepared and filed their own submission as well as a group submission, and appeared at the hearing and addressed questions from Imperial and the Board. In addition, the Board understands that the interveners spent many hours meeting with the PAL Association and one another in preparation for the hearing.

The Board found the concerns regarding compensation to be outside of its jurisdiction and were therefore of limited value to the Board's overall deliberations, however the Board recognizes that the interveners raised legitimate concerns regarding Imperial's past response to operational

matters and did articulate to the Board the important history between Imperial and the interveners which ultimately lead to the concerns raised at the hearing.

Site-specific concerns were raised by Mr. Owen, Mr. Henry, and Mr. Irwin. The Board appreciated the concerns raised by each of these interveners however it does note that there was a lack of detail with regard to each of their concerns. As noted at page 6 of Decision 2006-037, Mr. Owen did not provide details as to how the right-of-way would affect his farming operation; it was not clear to the Board why Mr. Henry preferred the well site to be moved approximately 200m south of the proposed locations; and it found that it did not have sufficient information regarding the nature and scope of Mr. Irwin's plans or the potential impact that the proposed locations would have on those plans.

Taking all of the foregoing into account, the Board finds a preparation honorarium in the amount of \$250.00 to be appropriate for the individual interveners. The Board finds a preparation honorarium of \$1,000.00 for Bruce Beasley for his lead role on the joint submission to be appropriate. The Board further awards to Bruce Beasley \$1,000.00 for his efforts in coordinating the intervener group. The Board recognizes Shawna Deschamps role as administrative support for this group and approves her claim in full.

With respect to compensation for attending a hearing, part 6.1.2 of Directive 031A provides for honorarium in the amount of \$100.00 per day. The Board recognizes that the one day hearing extended into the evening and therefore approves an attendance honorarium for each participant in the amount of \$150.00.

The interveners have claimed a total of \$157.70 for mileage expenses. The Board finds these expense claims to be reasonable and in accordance with Directive 031A and are therefore approved in full.

7 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Imperial Oil Resources Limited shall pay intervener costs in the amount of \$4,514.20 as outlined in Appendix A attached.

Dated in Calgary, Alberta on this 19th day of September, 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