



# Bearspaw Petroleum Ltd.

Application for Two Pipeline Licences  
Crossfield Field

Cost Awards

**ALBERTA ENERGY AND UTILITIES BOARD**

Energy Cost Order 2007-007: Bearspaw Petroleum Ltd.

Application for Two Pipeline Licences

Crossfield Field

Application No. 1453533

Cost Application No. 1500490

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# ALBERTA ENERGY AND UTILITIES BOARD

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## 1 INTRODUCTION

Bears paw Petroleum Ltd. (Bears paw) submitted Application No. 1453533, pursuant to Part 4 of the *Pipeline Act*, to the Alberta Energy and Utilities Board (EUB or Board) for approval to construct and operate two pipelines. The purpose of the first pipeline would be to transport sour natural gas and the second pipeline would transport sweet natural gas.

Giuseppe Vilona and Rosaria Vilona, Salvatore Vilona and Joanna Vilona, Brent Holmes and Maria (Angela) Holmes, and Ivan Sgaggi and Sylvia Sgaggi (the Vilona family) own land that the proposed pipelines would traverse. Their land also falls within the emergency planning zone (EPZ) for the proposed Level 1 pipeline.

Marlene (Sharon) Gehring and Ronald Gehring (the Gehrings) also own land that would be traversed by the proposed pipelines and that falls within the EPZ of the proposed Level 1 pipeline.

The Board held a public hearing in Calgary, Alberta, which commenced on January 9, 2007, and concluded on January 11, 2007, before Board Member J. R. Nichol, P.Eng. (Presiding Member) and Acting Board Members W. G. Remmer, P.Eng., and E. A. Shirley, P.Geol. The panel and staff conducted a tour of the area on January 4, 2007, to view the proposed pipeline route.

At the end of the oral portion of the hearing, Bears paw was required to complete an undertaking to provide the Board with a copy of its pipeline signage. As the undertaking was completed on January 24, 2007, the Board considers the hearing to have been closed on that date.

On February 1, 2007 the EUB received a cost claim from Richard Secord, counsel to the Vilona Family and the Gehrings. On February 5, 2007 the EUB notified Mr. Secord, and counsel to Bears paw, Mr. Gruber, of the following.

Further to the EUB's letter to the parties dated January 18, 2007, the EUB has provided the parties with additional time for negotiation and consultation. The EUB does not consider it appropriate to issue a Cost Order until such time as this matter has been resolved by the parties or by way of a EUB Decision Report.

The EUB does not expect any further costs for the proceeding that took place on January 9 to January 11, 2007, and therefore it will proceed with comments and responses regarding Mr. Secord's cost claim. The EUB asks that Bears paw submit comments by February 20, 2007, and Mr. Secord submit his response by March 6, 2007.

The Board received comments from Mr. Gruber, and a response to those comments from Mr. Secord.

## 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 PARTIES – Comments and Responses

On February 20, 2007 Bears paw submitted comments regarding the cost claim. With respect to the costs claimed for Dr. McMillan, Bears paw submits that Dr. McMillan’s written material was prepared as a general academic article, rather than with specific reference to the Vilona Family’s property. It also appeared to Bears paw during the questioning of Dr. McMillan, that his work was not directed at assessing the loss of value for specific land.

With respect to Brown & Associates, Bears paw submits that the fees were incurred as part of the Vilona Family’s efforts to develop the land, and therefore do not properly form part of an intervener cost claim. Lastly, Bears paw questions the need for second counsel, Todd Nahirnk of Ackroyd LLP.

Regarding expenses, Bears paw submits accommodation charges should be limited to the hearing portion only, being January 9, 2007 to January 11, 2007. Bears paw also questions the \$246.64 mileage expense incurred by Ackroyd LLP. As the Board's mileage rate is \$0.30/km Bears paw suggests that the expense should be \$182.40 based on a round trip of 608 km. Lastly, Bears paw requested clarification regarding the external printing expense of \$34.05 and the miscellaneous charges totaling \$154.00.

By way of letter dated April 2, 2007 Mr. Secord submitted a response to Bears paw's comments. With respect to Dr. McMillan, Mr. Secord acknowledges that the written material did consist of an academic article. However, the article originated in a study that was prepared for the Board. The Board requested an "independent" study and "state of the art" analysis of the impact of oil and gas on rural properties. The article stemmed directly from this research.

Dr. McMillan evidence consisted of a PowerPoint presentation. The presentation projected property value impacts caused by different oil and gas infrastructure within the Calgary region, and provided enough detail to illustrate the potential adverse economic impacts on the Vilona Family's land. Further, during examination –in-chief, Dr. McMillan specifically referred to the Vilona Family property, and provided his opinion on the potential value impacts for those portions of the property located within the potential Emergency Planning Zone.

Mr. Secord also submits that although Mr. Berrien, consultant to Bears paw, critiqued Dr. McMillan's methods, Mr. Berrien did not provide an alternative analysis. Therefore, Dr. McMillan's testimony and evidence represented the only direct evidence on economic impacts.

With respect to Brown & Associates, Mr. Secord submits that the fees and expenses exclusively relate to hearing preparation and attendance. Brown & Associates issued an invoice on January 11, 2007 which references preparation of submission for EUB and attendance at the EUB hearing. Mr. Secord also encloses a letter dated April 2, 2007 from Paul Mercer of Brown & Associates, confirming the same.

With respect to costs for second counsel, Mr. Secord submits that is justified as this proceeding required three full days to complete evidence and argument, the intervention presented two expert witnesses, Bears paw produced experts in planning and land consultation, and the Board requested the Municipal District of Rocky View to participate. Mr. Nahirnik was responsible for preparing Dr. McMillan's testimony, leading Dr. McMillan's through his examination-in-chief, and reviewing Bears paw's answers to undertakings on the last day of the hearing. Mr. Nahirnik's time ultimately reduced costs, as senior counsel would have had to perform this work. Mr. Secord references Energy Cost Order 2007-001 in which the Board approved costs for second counsel.

Regarding expenses, Mr. Secord notes that he has claimed for three nights of accommodation. Counsel should not be expected to travel from Edmonton to Calgary on the day of the hearing, and then attend a ten hour hearing day. Regarding mileage, Mr. Secord notes that in his Affidavit of Fees and Disbursements, he has explained that mileage is claimed at \$0.43/km and complies with the Government of Alberta Personnel Administrative Office rate. Mr. Secord also notes that the Board approved this rate in Energy Cost Order 2006-002.

The miscellaneous expenses totaling \$154.00 are explained as follows.

- Historical Land Title Searches           \$24.00
- Land Title Searches                       \$15.00
- Hotel Internet Services                   \$25.00
- File Retrieval Costs                      \$90.00
- \$154.00

#### 4 VIEWS OF THE BOARD – Assessment

The following table summarizes the Vilona Family cost claim.

	<b>Fees/Honoraria</b>	<b>Expenses</b>	<b>GST</b>	<b>Total</b>
Ackroyd LLP	\$31,744.50	\$2,487.71	\$2,051.81	\$36,284.02
Brown & Ass.	\$12,102.50	\$795.55	\$773.88	\$13,671.93
Dr. McMillan	\$4,895.00	\$502.47	\$29.80	\$5,427.27
8 Members	\$2,100.00	\$0.00	\$0.00	\$2,100.00
<b>Total</b>	<b>\$50,842.00</b>	<b>\$4,051.93</b>	<b>\$2,871.46</b>	<b>\$57,765.39</b>

##### 4.1 Ackroyd LLP

Senior counsel, Mr. Secord, and second counsel, Mr. Nahirnik, both claim legal fees for this proceeding. The Board notes that Bears paw takes exception to a cost award for second counsel attending this hearing. The Board does not generally award costs for the attendance of two counsels at a hearing. It is only in exceptional circumstances, such as where the intervention and issues are complex, and the group consists of a large number of members, will the Board find it necessary for two counsels to have been in attendance at a hearing.

The Board recognizes that this intervening group consisted of eight members, which the majority of, are one family, with one set of issues. While the Board does not consider the sheer numbers of the group to warrant the need for second counsel, the Board does find that Mr. Secord's argument, as summarized on page 3 above, does justify the need for second counsel, and agrees that it ultimately reduced the costs that senior counsel would have otherwise incurred.

The Board has reviewed Mr. Nahirnik's hours for preparation (14.8) and attendance (26.10) and finds the amounts to be reasonable given the tasks he was responsible for. The Board approves Mr. Nahirnik's portion of the cost claim in full.

The Board has considered the accommodation, meals, mileage, and various miscellaneous expenses, and finds them to be reasonable.

For Ackroyd LLP, the Board approves the costs claimed in full.

## 4.2 Brown & Associates

The Board notes Bears paw's views that Brown & Associates incurred costs as part of the Vilona Family's efforts to develop the land, and that the costs do not properly form part of an intervener cost claim. The Board accepts Mr. Secord's explanation to this comment that the work performed relates exclusively to hearing preparation and attendance, as supported by the January 11, 2007 invoice, and Paul Mercer's letter of April 2, 2007.

The Board does however take issue with the amount of preparation time incurred by the senior consultant, Paul Mercer. Mr. Mercer incurred 39 hours of hearing preparation. In the Board's view the amount of preparation time is not commensurate with the value the Board received from this expert. The Board recognizes that while Brown & Associates is not claiming for work other than hearing preparation and attendance, Brown & Associates was preparing its submission based on work that Brown & Associates already completed. In the Board's view, this would greatly reduce the amount of preparation time required. The Board also notes that Brown & Associates lacked knowledge regarding the co-existence between residential areas and pipelines. The Board finds it appropriate to approve 20 hours of preparation time for the senior consultant, Mr. Mercer, being \$3,600.00. The Board approves the remaining fees for Mr. Mercer, and for Ms. Skrzypek, in full.

Brown & Associates claims \$665.00 for secretarial staff, which reflects an hourly wage of \$70.00. This amount exceeds the Scale of Costs, which provides for an hourly rate of \$45.00<sup>1</sup>. The Board does not find that there is any justification to award costs for support staff above the amount prescribed in the Scale of Costs, and therefore the Board reduces this portion of the claim by \$237.50.

The Board has considered the graphic reproduction and courier expenses, and finds them to be reasonable.

For Brown & Associates the Board approves fees of \$8,445.00, expenses of \$795.55, and related GST of \$554.43, for an overall award of \$9,794.98.

## 4.3 Dr. McMillan

With respect to Dr. McMillan, it is the Board's view that Dr. McMillan's evidence did not provide details that were specific to the Vilona Family's land. The evidence was general in nature, and essentially updated a previous article written by Dr. McMillan. It is the Board's view that Dr. McMillan provided little value to the process. For these reasons the Board approves 50% of Dr. McMillan's fees.

The Board has considered the airfare, accommodation, meals, and various miscellaneous expenses, and finds them to be reasonable.

For Dr. McMillan, the Board approves fees of \$2,447.50, expenses of \$502.47, and GST of \$29.80, for an overall award of \$2,979.77.

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<sup>1</sup> Directive 031 A, Appendix D (Consultants', Analysts', and Experts' Fees)

#### 4.4 Individual Members

The following members claim attendance honoraria totaling \$2,100.00.

Giuseppe Vilona  
Rosaria Vilona  
Salvatore Vilona  
Joanna Vilona  
Brent Holmes  
Maria Angela Holmes  
Sylvia Sgaggi  
Sharon Gehring

Section 6.2.3 of Directive 031A provides attendance honoraria where a number of interveners have formed a group to present a submission. Where legal counsel represents the group, two representatives of the group may each receive honorarium of \$50.00 for each half day they are present at the hearing to assist their counsel. In addition, up to six witnesses may receive honoraria of \$50 for each half day that is necessary to appear in support of their submission.

It is the Board's view that the members of this group were very engaged with the issues of this application. The Board found the appearances of the witnesses to be helpful in understanding the issues. It is the Board's view that the attendance honoraria claimed is reasonable and in accordance with section 6.2.3 of Directive 031A.

The Board approves the honoraria claimed in full.

#### 5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Bears paw Petroleum Ltd. shall pay intervener costs in the amount of \$51,158.77.
- (2) Payment shall be forwarded to Ackroyd LLP, attention: Richard Secord.

Dated in Calgary, Alberta on this 10<sup>th</sup> day of September, 2007

**ALBERTA ENERGY AND UTILITIES BOARD**

*<Original Signed by Thomas McGee>*

Thomas McGee  
Board Member