



Defiant Resources Corporation

**Application for a Well Licence and a
Pipeline Licence (Grande Prairie Field)**

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2008-003: Defiant Resources Corporation

Application for a Well Licence and a Pipeline Licence Grande Prairie Field

Application No. 15047212

Cost Application No. 1518862

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ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**Defiant Resources Corporation
Application for a Well Licence
And a Pipeline Licence**

**Energy Cost Order 2008-003
Application No. 1504712
Cost Application No. 1518862**

1 INTRODUCTION

Defiant Resources Corporation (Defiant) applied to the Alberta Energy and Utilities Board (EUB or Board), in accordance with section 2.020 of the *Oil and Gas Conservation Regulations*, for a licence to drill a directional well. Defiant also applied to the EUB, in accordance with Part 4 of the *Pipeline Act*, for approval to construct and operate a pipeline for the purpose of transporting natural gas from the proposed well to an existing Suncor Energy Inc. compressor station.

The Board held a public hearing in Grande Prairie, Alberta, on June 11, 2007, before Board Member T.M. McGee (Presiding Member) and Acting Board Members K.G. Sharpe, P.Eng., and R.C. Clark. The Board panel and staff conducted a tour of the general area on June 11, 2007, to view the lands encompassed by and surrounding the proposed well site and pipeline route.

On August 28, 2007, the Board issued Decision [2007-065](#).

On June 28, 2007, the Board received a cost claim from counsel for Peter Miles and Kari Miles (the Miles family) totaling \$2,630.52. On July 25, 2007, the Board received comments from Defiant, and on August 14, 2007, the Board received a response from the Miles family. The Board considers the cost process to have closed on August 14, 2007.

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 intervenor 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

3.1 Defiant

On July 25, 2007, counsel for Defiant submitted comments regarding the cost claim filed by counsel for the Miles family. Defiant submits that the interveners' brief testimony and cross-examination were of little value and assistance to the Board and the Board should reduce the costs accordingly.

With respect to the time period covered by the legal account, Defiant submits the following comments.

The Miles' cost claim for legal fees includes 8.1 hours of time spent prior to the issuance of the hearing notice on April 25, 2007. Pursuant to section 7 of Directive 031A, Guideline for Energy Cost Claims, ordinarily only "*those costs incurred after the EUB has issued a notice of hearing*" are awarded by the EUB, as, "*until a notice of hearing has been issued, there is no certainty that a hearing will be held.*"

With respect to costs related to Appropriate Dispute Resolution (ADR), Defiant submits the following comments.

We note that the cost claim also includes 2.9 hours of time spent in the PADR process entered into by the parties. It is our understanding that the EUB does not award costs for ADR, but rather allows the parties to deal with those costs on their own.

While the Board appreciates and encourages parties to attempt to resolve concerns as much as possible themselves, it is the Board's 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. (see ECO 2007-002 at p.3)

3.2 The Miles Family

On August 14, 2007, Mr. Carter, counsel for the Miles Family, submitted a response to Defiant's comments. The Miles Family disagrees with Defiant's assertion that their contribution was of little value and assistance to the Board. It is the Board's place to comment on evidentiary weight.

In response to the time period covered by the legal account, the Miles Family submits the following.

In relation to the time period covered by Mr. Palmer's account, we would also point out that section 7 of Directive 031A also states that "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."

With respect to costs incurred prior to the Notice of Hearing, the Miles Family notes that direct communication from Defiant personnel in relation to the proposed well was received prior to the Notice of the Hearing. As this was the reason for the hearing, it is reasonable for the legal time spent on the early stage of the proceedings to be included as part of the costs claimed. Further, because Defiant contacted the Miles Family directly, it is reasonable to expect that the Miles Family would incur costs as a result of these communications.

With respect to ADR costs, counsel agrees with Defiant that ADR cost claims are not applicable to this process and have no issue with the Board disregarding the 2.9 hours claimed for costs in relation to the ADR process.

4 VIEWS OF THE BOARD

The cost claim submitted by the Miles Family includes legal fees of \$2,457.00, expenses of \$24.90, and GST of \$148.62, for an overall claim of \$2,630.52. The Board notes Mr. Carter's instructions to disregard 2.9 hours (\$261.00) as those fees relate to the ADR process. Therefore the Board has adjusted the legal fees to reflect a claim of \$2,196.00 and has reduced the GST by \$15.66.

The Board issued the Notice of Hearing with respect to this matter on April 25, 2007. 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.

The Board has considered Mr. Palmer's submission regarding these particular hours. In the Board's view there was no certainty that this matter would proceed to a hearing. In that regard, the Board notes the following from Board letter dated December 4, 2006.

The application is currently under review and the concerns outlined in your letter will be taken into consideration by the EUB in its review of the application. The EUB expects parties to discuss outstanding concerns whenever possible. By way of copy of this letter to Defiant Resources Corporation, we are requesting Defiant Resources Corporation address your concerns.

Taking the foregoing into account, the Board finds that 8.1 hours (\$729.00)¹ are found to be ineligible for recovery under this Order and are therefore denied. The Board has reviewed the disbursements and finds that they are reasonable and in accordance with Directive 031A. The Board approves the disbursements in full.

The Board finds the remaining hours and disbursements to be reasonable and in accordance with Directive 031A, and are therefore approved in full. In summary, the Board approves legal fees of \$1,467.00, disbursements of \$24.90, and GST of \$89.21, for a total award of \$1,581.11.

5 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Defiant Resources Corporation shall pay intervener costs in the amount of \$1,581.11.
- (2) Payment shall be made to the offices of Carter, Lock & Horrigan at #200, 9803-101 Avenue, Grande Prairie, AB T8V 0X6.

Dated in Calgary, Alberta on this 8th day of May, 2008.

ALBERTA ENERGY AND UTILITIES BOARD

<Original signed by Thomas McGee>

Thomas McGee
Board Member

¹ \$90.00 X 8.1 = \$729.00