



Quicksilver Resources Canada Inc.

Application for a Well Licence Amendment
Honeysuckle Field

November 21, 2008

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2008-014: Quicksilver Resources Canada Inc., Application for a Well Licence
Amendment, Honeysuckle Field

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Energy Resources Conservation Board
640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

Telephone: 403-297-8311
Fax: 403-297-7040
E-mail: Publications@ercb.ca
Web site: www.ercb.ca

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**QUICKSILVER RESOURCES CANADA INC.
APPLICATION FOR A WELL LICENCE
AMENDMENT
HONEYSUCKLE FIELD**

**Energy Cost Order 2008-014
Application No. 1554650
Cost Application No. 1584590**

1 INTRODUCTION

On December 4, 2006, the Alberta Energy and Utilities Board (EUB), replaced by the Energy Resources Conservation Board (ERCB/Board) on January 1, 2008, granted Well Licence No. 0367489 to Quicksilver Resources Canada Inc. (Quicksilver), in accordance with Section 2.020 of the *Oil and Gas Conservation Regulations (OGCR)*, for a single vertical gas well. The purpose of the well was to obtain coalbed methane production from the Edmonton Group and gas production from the Belly River Group. The well was drilled in December 2006.

On January 17, 2007, the EUB was notified by Quicksilver that the well drilled under Well Licence No. 0367489 had been drilled at the wrong location. On January 23, 2007, the EUB issued a Notice of Suspension on the well and directed Quicksilver to update the Board on the steps it was taking to bring the matter into compliance.

The EUB later advised Quicksilver to submit an application to amend the licence to address the issue of the well having been drilled in the wrong location and to provide notice of the application and an explanation of the situation to the affected landowner and surrounding landowners.

On January 11, 2008, the ERCB received Application No. 1554650 for the amendment of Well Licence No. 0367489. The application requested amendment of the surface coordinates and ground elevation of the well.

The landowner affected by the well, T. Krause, objected to the amendment of the well licence. Ms. Krause was represented by her daughter, D. Stone. Ms. Krause did not have an objection to the original licensed location for the well. She objected to its actual location on a number of grounds, including that

- 1) her agreement to the drilling of the well had been based on a different surface location;
- 2) Quicksilver had not provided her with any information with respect to where the drilling fluid was spread and where the access road was;
- 3) the well had been drilled within 48 metres of a water body;
- 4) the well had impacted her plans for an acreage subdivision on the north corner of her property;
- 5) Quicksilver had delayed advising her of the mistake;
- 6) the well as drilled was too close to her neighbour's land; and
- 7) the drilling of the well in the wrong location had upset her, caused her great stress, and caused significant discord among her and her children.

On June 10, 2008, Ms. Stone retained Jennifer Klimek of Klimek Law to represent her on behalf of her mother. The Board was scheduled to hold a public hearing in Wetaskawin, Alberta, on July 22, 2008, before Board Members M. J. Bruni, Q.C. (Presiding Member), G. E. Eynon, P.Geol., and J. D. E. Ebbels, LL.B.

On July 17, 2008, Quicksilver sent a letter to the ERCB requesting to withdraw its application to amend the licence and advising that it would be abandoning the well as soon as proper authorizations were received and conditions were met.

After meeting with the Board panel to discuss Quicksilver's letter, counsel for the ERCB sent a letter to the parties proposing a method by which the matter could be resolved procedurally and asking the parties' views on this. The letter set out that the Board could not accept Quicksilver's withdrawal of its application, as the licence must be amended to reflect the drilled location, both for the ERCB's records and for abandonment reasons. It stated that the ERCB understood that the parties had agreed that abandonment would occur in the fall after the crop on Ms. Krause's land had been removed and that neither party wished to proceed to hearing on this matter. The letter proposed that the licence could be amended to reflect the existing location but remain suspended and that an abandonment order could be issued to provide Quicksilver authorization to access the well for abandonment operations. The letter also noted that withdrawal of the intervener's objection would allow the Board to amend the application without a hearing.

Quicksilver sent another letter to the ERCB on July 18, 2008, advising that it still wished to withdraw its application to amend the licence, it did not intend to attend the hearing of this matter, and although it had agreed to abandon the well, no agreement had been reached as to the timing of the abandonment. It further advised that if necessary authorizations could not be obtained, the ERCB itself might have to abandon the well. Counsel for the intervener sent a letter to the ERCB on July 21, 2008, indicating that the intervener was prepared to withdraw her objection contingent on her understanding that a licence would be granted for the well, the well would immediately be suspended, and an abandonment order would be issued with respect to the well.

A Notice of Cancellation of Hearing was issued on July 21, 2008.

On August 27, 2008, counsel for Ms. Stone filed a cost claim totalling \$6089.92. On September 10, 2008, Quicksilver submitted comments regarding the cost claim. On September 15, 2008, counsel for Ms. Stone filed a response.

2 VIEWS OF THE BOARD—AUTHORITY TO AWARD COSTS

In determining local intervener costs, the Board is guided by its enabling legislation, particularly 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 refers to Part 5 of the *Energy Resources Conservation Board Rules of Practice* and to Appendix D: *Scale of Costs* in *ERCB Directive 031A: Guidelines for Energy Cost Claims*.

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 Views of Quicksilver

On September 10, 2008, counsel for Quicksilver submitted comments regarding the cost claim filed by counsel for Ms. Stone. Counsel for Quicksilver submitted that it did not object to the legal costs being claimed by Ms. Klimek and that the amount claimed was reasonable. Counsel for Quicksilver stated that it had previously agreed to pay legal costs in relation to this application.

Counsel for Quicksilver did object to the honorarium claim of \$3150.00 made by Ms. Stone for several reasons.

First, counsel for Quicksilver noted that the monetary amount claimed by Ms. Stone was based on 63 hours spent doing preparation activities at a rate of \$50.00 per hour as opposed to a straight preparation honorarium as set out in *Directive 031A*. Counsel for Quicksilver cited *Energy Cost Order 2008-005: Highpine Oil & Gas Ltd.*, wherein the Board stated the following:

The Board is not prepared to vary from its established practice of awarding honoraria as opposed to hourly rate and lost wage claims. While the Board is not prepared to award hourly rates or lost wage claims, it does want to recognize the efforts of the RRCC for endeavouring to understand the EUB process, prepare submissions, make presentations and attend the hearing.

Counsel for Quicksilver submitted that since Ms. Stone retained Ms. Klimek, who was primarily responsible for the preparation of the submission filed for the scheduled hearing, Ms. Stone should not be entitled to claim an honorarium for the same activities.

Counsel for Quicksilver also submitted that before and after Quicksilver filed its well licence amendment application, it had attempted to resolve the concerns of Ms. Stone and Ms. Krause through negotiations. Counsel for Quicksilver noted that Ms. Stone had claimed costs in relation

to these negotiations and was of the view that they should be disallowed. Counsel for Quicksilver agreed that Ms. Stone should receive some payment in recognition of her time and effort in endeavouring to understand the ERCB process, but that this payment should be made on the basis of the Board awarding an honorarium as opposed to an hourly rate or lost wage claim.

Counsel for Quicksilver also raised an issue in relation to some of the activities undertaken by Ms. Stone at the well site, which, in its view, were unsafe without having a Quicksilver representative present and without a safety orientation. Ms. Stone took it upon herself to take measurements at the well site, and, in Quicksilver's view, the ERCB cannot condone such activities by awarding costs for it.

In summary, counsel for Quicksilver submitted that the cost claim submitted by Ms. Stone should be disallowed or significantly reduced.

3.2 Views of Ms. Stone

On September 15, 2008, counsel for Ms. Stone submitted a response to the comments of Quicksilver.

Ms. Stone's counsel contended that Ms. Stone was required to expend the time recorded in the cost claim due to Quicksilver's error. Since Ms. Stone had already negotiated one contract and was then required to negotiate yet another, she should not be penalized because Quicksilver chose not to go through with the hearing.

Counsel for Ms. Stone submitted that the Board should allow all the costs being claimed by Ms. Stone.

4 VIEWS OF THE BOARD

The cost claim submitted by Ms. Stone includes legal fees of \$2740.50, expenses of \$67.58, a preparation honorarium of \$3150.00, and GST of \$131.84, for an overall claim of \$6089.92.

In relation to Ms. Stone's submission for a preparation honorarium in the amount of \$3150.00, the Board notes Section 6.1.1 of *Directive 031A*, which reads as follows:

If an individual intervener hires a lawyer to assist with the intervention and the lawyer is primarily responsible for the preparation of the intervention, the Board generally will not provide an honorarium to the individual for his or her preparation efforts. In situations where both the lawyer and the individual contribute substantially to the preparation efforts of the intervention, the Board may consider an honorarium in recognition of the individual's efforts.

The Board notes that Ms. Stone did not retain Ms. Klimek until June 10, 2008, and that this matter had been ongoing for a considerable period of time prior to that date. As well, the Board recognizes the considerable efforts of Ms. Stone in endeavouring to understand the ERCB process and directly assist counsel with the preparation of her submission. However, the Board agrees with Quicksilver and is not prepared to vary from its established practice of awarding an honorarium as opposed to an hourly rate claim.

The Board further notes that Quicksilver raised the issue of disallowing the costs claimed by Ms. Stone for taking measurements on the well site, which, in its view, was unsafe for her to do in the absence of a Quicksilver representative. With respect to this issue, it appears to the Board that Ms. Stone was performing what she thought to be a useful task in the circumstances, and that she had long since lost trust in Quicksilver due to its reluctant approach in addressing its incorrectly drilled well. The Board is also of the view that Ms. Stone was obtaining those measurements on her mother's land that she had every right to assume had been left in a safe condition. The Board considered the assertions by Quicksilver with respect to this element of Ms. Stone's claim to be somewhat surprising under the circumstances.

Based on the above, the Board is of the view that the total costs claimed by Ms. Stone are not unduly excessive, but notes the limitations on the Board's discretion set at in *Directive 031A*. Therefore, the Board awards Ms. Stone a preparation honorarium of \$2500.00, all legal fees, expenses, and applicable GST.

5 ORDER

It is hereby ordered that

- 1) The Board approves intervener costs in the amount of \$5439.92.
- 2) Payment shall be made to Klimek Law, Barristers & Solicitors, 240, 4808 – 87 Street, Edmonton, AB T6E 5W3.

Dated in Calgary, Alberta, on November 21, 2008.

ENERGY RESOURCES CONSERVATION BOARD

Original Signed by M. J. Bruni, Q.C.

M. J. Bruni, Q.C.
Presiding Member

Original Signed by G. Eynon, P. Geol

G. Eynon, P.Geol
Board Member

Original Signed by J. D. Ebbels, LL.B.

J. D. Ebbels, LL.B.
Board Member