



Harvest Operations Corp.

Application for a New Pipeline Licence
Provost Field

Cost Awards

August 5, 2010

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2010-005: Harvest Operations Corp., Application for a New Pipeline Licence,
Provost Field

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**HARVEST OPERATIONS CORP.
APPLICATION FOR A NEW PIPELINE LICENCE
PROVOST FIELD**

**Energy Cost Order 2010-005
Application No. 1616591
Cost Application No. 1643669**

1 INTRODUCTION

1.1 Background

Harvest Operations Corp. (Harvest) applied to the Energy Resources Conservation Board (ERCB/Board) on June 15, 2009, for approval to construct and operate a pipeline for the purpose of transporting oil effluent from Legal Subdivision (LSD) 1, Section 18, Township 39, Range 6, West of the 4th Meridian, to an existing oil battery at LSD 5-22-39-6W4M.

An objection to the application was filed by Ross Almberg. The ERCB issued a Notice of Hearing on January 12, 2010, which advised that a public hearing respecting the application was scheduled to be held in Wainwright, Alberta, on May 12, 2010.

On February 8, 2010, Harvest notified the Board that it was withdrawing the application, pursuant to Section 21 of the *Energy Resources Conservation Board Rules of Practice (Rules of Practice)*. The Board accepted the withdrawal of the application, and accordingly cancelled the public hearing.

The Board issued its decision on the application in *Decision 2010-011: Harvest Operations Corp., Application for a New Pipeline Licence, Provost Field*, dated February 17, 2010.

1.2 Cost Claim

On March 4, 2010, the Board received a cost claim from Mr. Almberg in the amount of \$13 162.59. On March 24, Harvest submitted a response to Mr. Almberg's cost claim. On March 31, Mr. Almberg submitted a final reply regarding his cost claim, and on April 14, 2010, Mr. Almberg resubmitted that same reply. The Board considers the cost process to have closed on April 14, 2010.

2 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*, 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.

The Board also refers to Part 5 of the *Rules of Practice* and *Directive 031: Guidelines for Energy Proceeding Cost Claims (Directive 031)*.

Subsection 57(1) of the *Rules of Practice* states:

57(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

Mr. AlMBERG was represented by Terry Roberts, Q.C., of Nickerson Roberts Holinski & Mercer. On March 4, 2010, Mr. AlMBERG filed a cost claim for legal fees in the amount of \$12 495.00, disbursements in the amount of \$40.80, and GST in the amount of \$626.79, for a total claim of \$13 162.59.

Of the 35.7 hours expended by Mr. Roberts, as listed in his statement of account, and \$12 495.00 in claimed legal fees, 31.6 of those hours and \$11 060.00 in fees were incurred prior to the issuance of the Notice of Hearing.

3.1 Views of the Applicant

Harvest opposed the majority of the costs claimed, indicating these costs were related to appropriate dispute resolution (ADR) and were incurred prior to the issuance of the Notice of Hearing in this matter.

Harvest referred to two sections in particular in *Directive 031* to support its position regarding Mr. AlMBERG's cost claim. Harvest cited Section 5.4, which states that the Board does not award compensation for participation in the Board's ADR program and that ADR costs are to be dealt with in the context of the negotiations themselves, not through the Board's cost recovery process. Harvest also referred to Section 6.3, which states that as there is no certainty that a hearing will be held until a Notice of Hearing is issued, the Board normally does not award costs incurred before Notice is issued.

Harvest stated that there were 1.1 hours in claimed costs that were incurred prior to the issuance of the Notice of Hearing that appeared to be connected with the setting of a date for the hearing. Harvest indicated that it had no objection to these costs, but that it opposed all other costs incurred prior to the issuance of the Notice of Hearing on the basis that they were related to negotiations and ADR.

3.2 Views of the Intervener

Mr. AlMBERG took the position that his claimed costs were reasonable and were directly related to his request to have his counsel prepare an agreement with Harvest that dealt with his concerns and still allowed Harvest to construct the pipeline on his lands.

4 VIEWS OF THE BOARD

Sections 5.4, 6.3, and 6.4 of *Directive 031* provide as follows:

5.4 Appropriate Dispute Resolution

The Board does not award compensation for participation in the Board's Appropriate Dispute Resolution (ADR) program. Costs for ADR are to be dealt with in the context of the negotiations themselves and not through the Board's cost recovery process. A cost regime exists for costs incurred for negotiations and facilitations, which is described in *Informational Letter (IL) 2001-01: Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry Disputes*:

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.

6.3 Costs Incurred Before a Notice of Hearing Is Issued

As there is no certainty that a hearing will be held until a Notice of Hearing is issued, the ERCB normally does not award costs incurred before notice is issued. However, the ERCB recognizes that local interveners may sometimes incur costs prior to the notice that are reasonable and directly and necessarily related to their intervention. Accordingly, the ERCB considers all claims for costs incurred prior to the notice of hearing on a case-by-case basis.

6.4 Costs Claims When No Hearing Is Held

The decision to award local interveners costs when no public hearing is held is within the discretion of the Board. The Board considers each claim on its own merits. Some of the factors that it considers are

- the nature of the disagreement or dispute between the applicant and the local intervener;
- the nature of the applicant's public consultation process;
- whether or not an application was filed for the proposed project;
- whether the costs incurred by the local intervener were reasonable, given the nature of the project proposed; and
- whether the costs incurred by the local intervener were directly and necessarily related to the issues in dispute.

Claims for local intervener costs if no hearing is held should be filed with the ERCB as soon as possible. If such a claim is being made regarding an application that was withdrawn, the claim must be filed within 30 days of the date upon which the application was withdrawn. The ERCB will not consider claims received after the 30-day period unless extraordinary circumstances prevented timely filing.

Having considered all of the foregoing, the Board finds that the costs incurred by Mr. Almberg following the issuance of the Notice of Hearing in this matter, as well as the cost entries of December 4, 7, and 9, 2009, listed by Harvest in its letter of March 24, 2010, were costs that were reasonable and were directly and necessarily related to the proceeding.

While it is not the Board's practice to award costs incurred prior to the issuance of the Notice of Hearing, in this instance, 1.1 hours of costs incurred prior to the Notice of Hearing and listed by Harvest in its correspondence of March 24, 2010, appear to be related to the scheduling of the hearing. Therefore, the Board has decided to exercise its discretion and allow these 1.1 hours

related to hearing scheduling as costs that were reasonable and directly and necessarily related to the proceeding.

5 ORDER

It is hereby ordered that Harvest pay intervener costs forthwith in the amount of \$1953.84 to Nickerson Roberts Holinski & Mercer at 100, 7712 – 104 Street, Edmonton, Alberta T6E 4C5.

Dated in Calgary, Alberta, on August 5, 2010.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

Gordon Miller
Presiding Board Member

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED



Microsoft Excel
Worksheet