



# Terra Energy Corp.

Applications for an Oil Effluent Pipeline  
Grande Prairie

Cost Awards

December 11, 2012

**ENERGY RESOURCES CONSERVATION BOARD**

Energy Cost Order 2012-009: Terra Energy Corp., Applications for an oil effluent pipeline – Grande Prairie

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## **ENERGY RESOURCES CONSERVATION BOARD**

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**Calgary Alberta**

**TERRA ENERGY CORP.  
APPLICATIONS FOR AN OIL EFFLUENT  
PIPELINE - GRANDE PRAIRIE**

**Energy Cost Order 2012-009  
Application Nos. 1698084 and 1698094  
Cost Application No. 1735660**

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### **INTRODUCTION**

#### **Background**

- [1] Terra Energy Corp. (Terra) applied, under Part 4 of the *Pipeline Act*, for approval to construct and operate an oil effluent pipeline to tie in certain wells to a Terra facility. Terra submitted applications for two alternative routes: an east route and a west route
- [2] Two groups of interveners participated in the hearing. The East Route Intervenors (ERI) included Kelly Gitzel and Diana Gitzel, Joyce Boyce, Kay Garner, and Mabel Davies. These interveners own land along the east route. The ERI objected to the east route and had no objection to the west route
- [3] The West Route Intervenors (WRI) included Carl Linden and Maureen Linden, who own land along the proposed west route, and Barry Diederich, who owns the land on which one of the wells to be tied in is located. The WRI objected to the west route and had no objection to the east route.
- [4] The Board held a public hearing in Grande Prairie, Alberta, on July 10–12, 2012, before Board Members T. L. Watson, P.Eng. (Presiding Member), T. C. Engen, and J. D. Dilay, P.Eng. The panel issued Decision 2012 ABERCB 012 approving the west route.
- [5] The Board considers the cost process to have closed on October 12, 2012, the date of the final submission by the ERI.

### **VIEWS OF THE BOARD -- AUTHORITY TO AWARD COSTS**

- [6] 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.

- [7] It is the Board's view 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 application in question.
- [8] The Board notes Terra did not take issue with the interveners' status as local interveners. The Board notes that the hearing was triggered as it appeared that they had rights that may be directly and adversely impacted and the Board believes that the Lindens, Mr. Diederich, and the ERI members are local interveners for the purposes of cost awards.
- [9] When assessing costs, the Board refers to Part 5 of the *Rules of Practice* and Appendix E: Scale of Costs in ERCB Directive 031: *Guidelines for Energy Proceeding Cost Claims* (Directive 31). 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.

## **COST CLAIM OF THE LINDENS AND MR. DIEDERICH**

### **Cost Application by the Lindens and Mr. Diederich**

- [10] Darryl Carter & Company represented the Lindens and Mr. Diederich. On August 9, 2012, the Lindens filed a cost claim for legal fees in the amount of \$16 905.00 and GST in the amount of \$845.25 for a total amount of \$17 750.25. On the same date, Mr. Diederich filed a claim for legal fees in the amount of \$2065.00 and GST in the amount of \$103.25 for a total amount of \$2168.25. On August 16, 2012, Terra submitted comments on the cost claims of these interveners.
- [11] On August 20, 2012, the Lindens submitted a response to Terra's comments and provided a revised cost claim for legal fees in the amount of \$20 055.00 and GST in the amount of \$1002.75 for a total amount of \$21 057.75. On August 20, 2012, Mr. Diederich submitted a response to Terra's comments and provided a revised cost claim for legal fees in the amount of \$5005.00, GST of \$250.25 for a total amount of \$5255.25.

### **Submission of Terra**

- [12] Terra pointed out that the ERCB issued the Notice of Hearing on March 22, 2012. Terra noted that as per section 6.3 of *Directive 031*, the ERCB generally does not award costs incurred prior to issuance of a Notice of Hearing. The time spent by Mr. Linden's counsel prior to March 22, 2012, dated back years, including long before Terra even filed the present applications. The limitation to file a claim for Terra's earlier applications has long passed and such costs should not be included in these proceedings. Terra stated that costs prior to the Notice of Hearing were not directly and necessarily related to Mr. Linden's intervention and should not be awarded.

[13] Terra noted that the Lindens' legal counsel claimed for 48.3 hours, yet the back-up provided indicates 57.3 hours. Terra submitted that it did not know how to reconcile the 48.3 hours that they claimed.

[14] In the case of the Diederich claim, Terra pointed out that legal counsel claimed for 5.9 hours, yet the back-up provided indicates 14.3 hours. Terra did not know how to reconcile the 5.9 hours that he claimed.

### **Response of the Lindens and Mr. Diederich**

[15] On August 20, 2012, counsel for the Lindens and Mr. Diederich forwarded revised cost claims correcting the mistakes in the total number of hours, as pointed out by Terra.

[16] Mr. Carter stated that the work shown on the accounts commenced after an ADR session on September 7, 2006, that was sponsored by the ERCB. He stated that Terra reimbursed the Lindens and Mr. Diederich for their legal costs up to that date. The accounts in the cost claim were for work subsequent to that date and all related to the same Terra-proposed pipeline project.

### **Views of the Board**

#### ***Legal Fees and Expenses***

[17] Terra raised concerns with some of the costs that were incurred prior to the Notice of Hearing being issued. The Board notes that *Directive 031* states that the Board generally will not award costs which precede the Notice of Hearing, as there is no certainty that the matter will proceed to a hearing until the Notice is issued. In this case, the parties had been in discussions since 2006 and working towards a mutual agreement as to the appropriate route for the pipeline. As the proposed project would have crossed the WRI lands, and the WRI had unresolved concerns after ADR meetings between the parties, the Board finds that it was reasonable to assume that once the applications had been filed the matter would proceed to a hearing. The Board finds that, upon review of the entries in the invoice, costs incurred from September 7, 2011, the date that Terra filed the applications, are reasonable and necessarily related to the WRI intervention. Accordingly, the Board awards costs for legal fees and expenses for 51.4 hours for the Lindens' intervention and 5.7 hours for Mr. Diederich's intervention at a rate of \$350 per hour, in accordance with the Scale of Costs.

[18] The Board awards the following amounts for legal fees and expenses:

Intervener	Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
Lindens	\$20 055.00	\$17 990.00	\$2065.00	\$0	\$0	\$0
Diederich	\$5005.00	\$1995.00	\$3010.00	\$0	\$0	\$0

## **COST CLAIM OF THE EAST ROUTE INTERVENERS**

### **Cost Application by the ERI**

- [19] Klimek Buss Bishop Law Group represented the ERI. On August 10, 2012, the ERI filed a cost claim for legal fees in the amount of \$30 660.00, expert fees in the amount of \$7012.50, honoraria in the amount of \$6200.00, expenses in the amount of \$2998.42 and GST in the amount of \$2024.84, for a total amount of \$48 895.76. On August 16, 2012, Terra submitted comments on the cost claim of the ERI. The ERI responded to Terra's comments on September 7, 2012. On October 12, 2012, the ERI filed a revised cost claim removing the fees for Vulture Energy Ltd. and revising the amount of the cost claim to a total of \$47 452.01.
- [20] The ERI stated that they had shared legal counsel and experts in order to present their evidence to the ERCB. The ERI submitted that all of the landowners who participated were directly and adversely affected by Terra's applications as they all own land which could be "expropriated through forced takings" if the east route were approved. The ERI further submitted that they presented their evidence in a timely fashion at the hearing which concluded in three days as opposed to the scheduled four days. The ERI's counsel and experts provided assistance to the ERI, which they submitted was helpful to the ERCB in understanding the concerns of the ERI. They considered the costs reasonable under the circumstances.
- [21] The ERI submitted that Mr. Gettel's total invoiced costs of \$6630.78 were "more than reasonable". He attended the hearing for one day, thus reducing costs, and he provided evidence with respect to the direct impacts on the Gitzel and Boyce properties, which was a central issue in the hearing. Mr. Gettel also assisted ERI counsel with cross-examination of Terra's witnesses and in clarifying some of the evidence before the Board with respect to the status of the Boyce properties. He provided his evidence in a professional, efficient, and succinct manner.
- [22] The members of the ERI attended every portion of the hearing that was available to them. Some of them, the Gitzels in particular, took time off work to attend. Mrs. Davies, who is elderly, attended every day of the hearing because the issue was so important to her. The ERI submitted that the purpose of honoraria is to assist interveners to participate in proceedings such as these "where their land could be expropriated against their wishes" and that there is no other forum available to them.
- [23] The Gitzels assisted their neighbours and fellow ERI members to participate in the hearing process. Due to two deaths in the group during the year leading up to the hearing and the senior ages of the other members of ERI, the Gitzels took on most of the work preparing for the hearing and engaging with the ERCB, legal counsel, and experts. Before hiring legal counsel, they arranged for meetings with the ERCB and tried to engage Terra. They were instrumental in coalescing the group and arranging for the ERI to present evidence at the hearing. They hosted group meetings at their home and conference calls with the group and legal counsel in an effort to prepare for the hearing. They initiated contact and arranged a meeting with the County of Grande Prairie. This meeting was unilaterally cancelled by the County; however, the Gitzels tried to engage the County as they thought it would be helpful to the ERCB. Due to the timing of the hearing, much of this work was completed



during their family holiday. The Board set the hearing dates during the summer months despite a request by the ERI for a hearing date in the fall.

[24] The ERI submitted that all the costs are reasonable and were directly related to the proceedings.

### **Submission of Terra**

[25] Terra noted that the cost claim included legal costs of Ms. Klimek and Ms. Buss incurred prior to March 22, 2012, the date the ERCB issued the Notice of Hearing. As per section 6.3 of *Directive 031*, costs incurred prior to the issuance of a notice of hearing are generally not awarded. Terra submitted that these costs appear largely duplicative of Ms. Bishop's (ERI's counsel) later time and, in any event, do not appear to be directly and necessarily related to the ERI intervention or its preparation and should not be awarded.

[26] Terra expressed concern over the remaining ERI legal costs and believed that a reduction of the fees claimed was warranted using the criteria set out in *Directive 031* and section 57 of the Board's *Rules of Practice*. Terra provided the following comments:

- (a) ERI counsel claimed 7 hours for "Argument and Reply" in addition to 28.5 hours for attendance at the hearing (WRI counsel claimed 26.5 hours for hearing attendance). As there was no written argument or reply, the argument and reply time appears duplicative of the hearing attendance and preparation time.
- (b) ERI counsel preparation time claimed is significantly more than the WRI counsel.
- (c) In its written submissions, the ERI claimed that Terra had not been forthcoming with information and, further, that the ERI had not been provided with an ERP nor educated on what to do in the event there was a release. In the course of the hearing, it became evident that the ERI's counsel did not actually provide the ERI with all of the information Terra provided to them relating to the project. Terra's view was that the ERI legal counsel's decision not to provide full information to its clients unnecessarily lengthened the hearing as Terra was required, in effect, to provide more detailed evidence and to educate the ERI about things such as emergency response planning through its witnesses at the hearing. Terra believed that had ERI's counsel provided all information to the ERI when it was received, preparation time for ERI and Terra and their legal counsel, hearing time, and overall expense could have been reduced.

[27] Terra submitted that the "preparation honorarium" claimed by Mr. Gitzel is not warranted. The ERI claimed significant legal fees for preparation of the intervention and therefore it follows that counsel was primarily responsible for preparation. This is borne out by the very limited evidence given by Mr. Gitzel at the hearing.

[28] Terra did not believe that the "forming a group" honorarium claimed by Mr. Gitzel is warranted in the amount claimed. The ERI "group" was really formed long before Terra filed the present applications as is evidenced by emails in 2009 that were in evidence at the hearing. Terra believed that, in fact, very little effort or time was required to form the ERI in response to the present application. Terra suggested that if any forming-a-group

honorarium was appropriate, the typical award of \$300 to \$500 for “forming a Group” was sufficient.

- [29] With respect to the intervener attendance honoraria and meals, Terra submitted that the \$100 honorarium and meals allowance should be available only for actual attendance at the hearing, and the ERI only provided evidence that Ms. Davies attended every half day of the hearing. Further, Terra stated that an honorarium or meal allowance should not be awarded to Ms. Oilund as she was not an intervener and was only involved in the hearing and sat as a witness for moral support of Mrs. Boyce.

### **Response of the ERI**

- [30] On September 7, 2012, the ERI provided a response to Terra’s comments. The ERI asserted that the cost claim submitted was reasonable and suggested that the Board had not seen such a reasonable cost claim on behalf of a group of interveners in a hearing related to sour gas in the last five years. Ms. Bishop stated that she has been involved in many hearings involving sour gas and this was the shortest and most streamlined process from start to finish. The ERI suggested that the part the ERI played in keeping the written and hearing submissions to key relevant issues should not be overlooked.
- [31] The ERI asserted that the work that the ERI completed before the issuance of the Notice of Hearing was necessary, and in fact, if some work had not been done before the Notice, the timelines set would have been impossible to meet. Regarding the scheduling of the hearing, Terra requested that the hearing be held in May and the ERI proposed the fall. After considering the input of the parties, the hearing was scheduled for July as a reasonable compromise between the interveners’ schedules and a timely decision on Terra’s application.
- [32] Ms. Bishop submitted that, contrary to Terra’s statement that costs prior to the Notice are generally not awarded, costs before a Notice are in fact often awarded, especially when coordination of the hearing scheduling is completed. Terra was corresponding with Klimek Buss Bishop Law Group and the ERCB before the ERCB issued the Notice of Hearing. Terra’s counsel suggests that Klimek Buss Bishop Law Group should not have spoken to clients or responded to Terra or the ERCB’s communications.
- [33] The ERI was confused over Terra’s comments about 7 hours being claimed for preparation of argument outside of hearing hours. Terra’s legal counsel provided comprehensive final argument and the suggestion appears to be that the ERI should not have done the same. The ERI said that it would be more unusual if no time were spent on preparing argument and reply.
- [34] The ERI submitted that contrary to the belief that *Directive 071: Emergency Preparedness and Response Requirements for the Petroleum Industry* (Directive 071) requires the company to provide voluminous written documents to the landowners, they would suggest that the purpose of the applicant’s obligation under *Directive 071* is to ensure that the landowners understand Terra’s plan in case of an emergency. For Terra to suggest that sending a copy of a corporate emergency response plan to a lawyer meets those requirements is indicative of its misunderstanding of the purpose of consultation and *Directive 071*. Most of the ERI, with the exception of the Gitzels, are elderly and not in the

oil and gas business. Providing a large volume of written material about an emergency response plan would not have been helpful and definitely not in accordance with *Directive 071*.

- [35] In regard to the claim for preparation and group honorarium for the Gitzels, the ERI reiterated how helpful the Gitzels were to the group as a whole. The Gitzels not only formed the group and organized the members, but also instructed legal counsel, had discussions with expert witnesses, and generally assisted the group in preparing and presenting its evidence. It was because of the Gitzels that legal fees were reduced, for had they not completed the tasks they did, legal counsel would have taken a more intensive role in group organization, which would have increased the legal costs substantially.
- [36] With respect to intervener attendance honoraria, the ERI stated that what they intended to say in their original submissions is that despite her age, Ms. Davies attended every single session of the hearing. For Terra to say that she should not be compensated by \$100 honorarium per half day in accordance with *Directive 031* is characteristic of its approach to landowner consultation generally. With respect to Ms. Oilund, the ERI said that she does have an interest in land as the only daughter of Mrs. Boyce; she has a beneficial interest in the land of her mother.
- [37] The ERI suggested that the quantum of the claim is reasonable, within the amounts set out in *Directive 031*, and represents a good group effort by the ERI, their legal counsel, and the expert evidence clarified the ERI's argument to the Board in an economical fashion.

## Views of the Board

### *Legal Fees and Expenses*

- [38] The Board notes that counsel for the ERI became involved on the file after Terra filed the application, initially by one counsel, before ultimately being handled by Ms. Bishop; based on the detailed invoice, it does not appear that there was duplication in costs by Ms. Klimek and Ms. Buss. The parties had been engaged in ADR and discussions since 2009 regarding the appropriate routing of the proposed pipeline. Given that the interveners own land that the proposed pipeline would have traversed and that they objected to the east route after ADR between the parties, once Terra filed the application in September 2011, there was certainty that the matter would proceed to a hearing. Accordingly, the costs claimed prior to the Notice of Hearing are awarded.
- [39] Regarding hearing time and preparation, the Board notes that although the WRI counsel had claimed for 26.5 hours for preparation and attendance during the hearing phase, the transcripts indicate that the hearing, including breaks, lasted only 23 hours. The ERI had more members than the WRI and the Board finds that more preparation time during the hearing phase by ERI's counsel was justified. The 33 hours claimed for preparation and attendance during the hearing phase is appropriate. The Board finds that the argument and reply submissions by the ERI counsel were helpful in clarifying the issues between the different parties, especially the WRI. The Board notes that the ERI raised safety concerns, yet they had not been provided the ERP by ERI counsel. The Board agrees that Terra was required to provide the ERP to the ERI; however, it is reasonable to assume that ERI counsel would have given the information to the ERI. This failure resulted in the ERI not

being able to raise specific questions and concerns regarding the ERP with Terra, which may have reduced some of the issues and time spent during the hearing. Accordingly, the Board finds that a reduction of costs for legal fees is warranted in the amount of five per cent.

[40] With regard to the claimed legal disbursements, the Board notes that most appear reasonable and necessary in light of the scope and nature of the proceeding. The claimed expenses relating to long-distance charges, accommodation, land title searches, photocopying, and meals will be awarded in accordance with *Directive 031*. The Board notes that ERI counsel claimed mileage for 2 trips, including return; however, as set out in *Directive 031*, the Board awards mileage for attendance at the hearing, and therefore will award for only 1 round trip. Claims for meals are restricted to the hearing phase of the proceeding, which was 3 days; however, the claim is for 4 days and requires a reduction.

[41] Accordingly, the Board awards the following amount for legal fees and disbursements.

Legal fees claimed	Legal fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$30 660.00	\$29 204.00	\$1456.00	\$1769.99	\$1265.39	\$504.60

### ***Expert Fees and Expenses***

[42] With regard to the expert fees and expenses claimed by Mr. Gettel, the Board finds that his evidence regarding subdivision and planning was helpful to the Board in its consideration of the applications. In particular, the Board found that he clarified the existing development setbacks that impact the ERI's lands and provided information as to the impact of setbacks on large versus small parcels of lands. Mr. Gettel claimed a rate of \$275 per hour; however, the maximum amount as set out in the Scale of Costs in *Directive 031* is \$270 per hour, so a small reduction is required. The Board notes that Mr. Gettel's air fare included a \$75 change fee that the Board understands is related to Mr. Gettel missing his first flight. The Board declines to award this amount because Mr. Gettel provided no explanation of the reasonableness of the charge. Further, Mr. Gettel claims costs for land title searches, but did not provide receipts. The Board notes that ERI counsel also claimed land titles search charges. The Board finds that it is reasonable to expect that ERI counsel could have provided copies of these titles for Mr. Gettel's review. These costs will not be awarded.

[43] Accordingly, the Board awards the following amounts for experts fees and expenses:

Professional fees claimed	Professional fees awarded	Reduction	Disbursements and expenses claimed	Disbursements and expenses awarded	Reduction
\$5637.50	\$5535.00	\$102.50	\$677.53	\$512.53	\$165.00

### ***Local Intervener Honoraria and Expenses***

- [44] Regarding the costs claimed by Mr. Gitzel for forming the ERI group, the Board finds that the formation of the group led to efficiencies in the hearing and finds that an award of \$500, in accordance with the highest amount set out in *Directive 031*, is appropriate. Mr. Gitzel also claimed a preparation honorarium. The Board notes that a detailed account of the work by Mr. Gitzel was not filed and that the detailed invoice from ERI counsel has substantial time spent on preparation of the intervention. As set out in *Directive 031*, the Board may award a preparation honorarium for a local intervener who personally prepares and presents an intervention; although, if both the lawyer and the local intervener prepare an intervention, the Board may consider an honorarium in recognition of the local intervener's efforts. Based on the information, the Board finds that ERI's counsel was primarily responsible for the preparation of the intervention. Accordingly, a preparation honorarium for Mr. Gitzel is not appropriate in these circumstances.
- [45] Regarding the attendance honoraria, the Board notes that the members of the ERI, including Ms. Holler and Ms. Rycroft representing Mrs. Garner who did not attend, claimed costs in accordance with *Directive 031*, and the Board will award these costs. Regarding the attendance honorarium for Ms. Oilund, the Board notes that she was there in support of her mother, Mrs. Boyce, who spoke to the potential impacts on her land. Ms. Oilund did not provide evidence during the hearing. Given the active participation of Mrs. Boyce, Ms. Oilund's attendance was not necessary or directly related to ERI's intervention, and the Board declines to award this amount.
- [46] The ERI claimed expenses for mileage and meals that are in accordance with *Directive 031* and those costs will be awarded. However, as discussed above, the attendance by Ms. Oilund was not necessary to the intervention, and so her claimed meals will not be awarded.
- [47] Accordingly, the Board hereby makes an award of costs to Klimek Buss Bishop Law Group for intervener honoraria and expenses as follows:

Intervener	Honoraria claimed	Honoraria awarded	Reduction	Expenses claimed	Expenses awarded	Reduction
Kelly Gitzel	\$3 1000.00	\$1100.00	\$2000.00	\$75.00	\$75.00	\$0
Diana Gitzel	\$600.00	\$600.00	\$0	\$75.00	\$75.00	\$0
Joyce Boyce	\$600.00	\$600.00	\$0	\$165.90	\$165.90	\$0
Mable Davies	\$600.00	\$600.00	\$0	\$75.00	\$75.00	\$0
Colleen Holler	\$600.00	\$600.00	\$0	\$75.00	\$75.00	\$0
Debbie Rycroft	\$100.00	\$100.00	\$0	\$75.00	\$10.00	\$0
Cindy Oilund	\$600.00	\$0	\$600.00	\$75.00	\$0.00	\$75.00

## **ORDER**

[48] It is hereby ordered that Terra pay local intervener costs to the Lindens in the amount of \$17 990.00 and GST in the amount of \$889.50 for a total amount of \$18 889.50; and to Mr. Diederich in the amount of \$1995.00 and GST in the amount of \$99.75 for a total amount of \$2094.75. This amount shall be paid to Darryl Carter & Company as the submitter of the claim at the following address:

Darryl Carter & Company  
Barristers & Solicitors  
#103, 10134 - 97 Avenue  
Grande Prairie AB T8V 7X6

[49] It is hereby ordered that Terra pay local intervener costs to the ERI in the amount of \$40 950.32 and GST in the amount of \$1829.71 for a total amount of \$42 780.03. This amount shall be paid to Klimek Buss Bishop Law Group as the submitter of the claim at the following address:

Klimek Buss Bishop Law Group  
240, 4808 – 87 Street  
Edmonton AB T6E 5W3

Dated in Calgary, Alberta, on December 11, 2012.

## **ENERGY RESOURCES CONSERVATION BOARD**

*<original signed by>*

T. L. Watson, P.Eng.  
Presiding Board Member

*<original signed by>*

T. C. Engen  
Board Member

*<original signed by>*

J. D. Dilay, P.Eng.  
Board Member

## **APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED**

This appendix is not available on the ERCB website. To order a copy of this appendix, contact ERCB Information Services toll-free at 1-855-297-8311.