



## E4 Energy Inc.

Application for a Well Licence  
Richdale Field

Cost Awards

**ALBERTA ENERGY AND UTILITIES BOARD**

Energy Cost Order 2006-009: E4 Energy Inc.  
Application for a Well Licence (Richdale Field)  
Application No. 1455573  
Cost Application No. 1473038

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# ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**E4 Energy Inc.**  
**Application for a Well Licence**  
**Richdale Field**

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## 1 INTRODUCTION

E4 Energy Inc. (E4) applied to the Alberta Energy and Utilities Board (EUB/Board), pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, for a licence to drill a vertical gas well. Cattlemen's A.I. Ltd., owned by Mike Hart and Stella Hart, the owners of the land where the proposed well was to be located, filed an intervention in opposition to the granting of the subject well licence application.

E4 submitted a letter dated June 22, 2006, indicating that due to various reasons, including the recent lower than expected commodity prices, the project was only marginally feasible from an economic standpoint and therefore requested that the EUB withdraw the application. Pursuant to Section 20 of the *Alberta Energy and Utilities Board Rules of Practice* the Board accepted the withdrawal of the application. Accordingly, the application was withdrawn and the hearing was cancelled.

Decision Report [2006-072](#) was issued on July 18, 2006.

## 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.

The decision to award local intervener costs when no public hearing is held is within the discretion of the Board. As explained in Part 3 of *Directive 31A, Guidelines for Energy Cost Claims*, the Board considers each claim on its own merits. Some of the factors that it considers include:

- 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 are 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.

With respect to the costs of experts and consultants, Part 6 of *Directive 31A* is clear that an intervener may choose to be assisted by one or more experts when preparing and presenting a submission at a public hearing. Those experts may be registered professionals, may carry on a consulting business, and/or may be expert in a certain field due to practical experience and/or specialized training.

### **3 VIEWS OF THE BOARD – Standing**

Mr. and Mrs. Hart are the landowners of what was the proposed wellsite and had raised concerns regarding surface and ground water. The Board found that Mr. and Mrs. Hart had shown that they may be directly and adversely affected by the application and as such scheduled a public hearing in Hanna, Alberta, on July 18, 2006. Therefore, the Board finds that the Mr. and Mrs. Hart have met the criteria established in section 28 of the ERCA for the purposes of applying for cost recovery.

### **4 VIEWS OF THE PARTIES – Comments and Responses**

By way of letter dated August 10, 2006, E4 submitted comments regarding the cost claim filed by Mr. and Mrs. Hart. While E4 does not take issue with the costs incurred for legal representation, it does take issue with respect to the cost for water well testing done by San Dee Water Well Evaluations Ltd. E4 submits that the inclusion of this data would not have added to the validity of the objection or be required in preparing for the hearing. Further, that such a test would only be required after the EUB approved the well licence and prior to commencement of drilling operations. E4 notes that the testing was done three months prior to the scheduled hearing and while E4 did acknowledge that it would be prepared to retain a company to conduct the test prior and subsequent to drilling operations, it would do so based on the removal of the objection.

By way of letter dated August 17, 2006, Mr. and Mrs. Hart responded to the comments filed by E4. Mr. and Mrs. Hart submit that preparation for scheduled hearing needed to commence immediately upon notification from the EUB due to haying season. The sole reason for objecting to the application was water well volume and water well quality and as such the Hart family argues that it was necessary to have baseline data in order to prepare their hearing strategy.

## 5 VIEWS OF THE BOARD – Assessment

The cost claim submitted by the Hart family totals \$2,745.71. The claim represents legal fees in the amount of \$609.00, disbursements of \$5.58, and GST of \$36.87 for an overall legal account of \$651.45. San Dee Water Well Evaluations Ltd. charged fees of \$1,957.00 and related GST of \$137.01 for an overall cost of \$2,094.26.

With respect to the legal costs incurred the Board finds it reasonable for the Hart family to have retained counsel in preparation for the hearing. The Board does not dispute the 2.10 hours incurred for initial reviews and consultations by their counsel, Mr. Secord; however, the Board must recognize that the hourly of \$290.00 does exceed the Board's Scale of Costs. The Board has reviewed the statement of account and does not find that exceptional circumstances exist that would warrant a rate above the Scale of Costs. Therefore, while the Board does approve the hours incurred, it does so at the maximum allowable rate of \$250.00 per hour.

Therefore, the Board approves legal fees in the amount of \$525.00, expenses in the amount of \$5.58, and GST in the amount of \$31.83 for an overall award of \$562.41.

With respect to the costs incurred for water testing, the Board understands that the Hart family engaged an expert, San Dee Water Well Evaluations Ltd., to help them establish a baseline as part of their intervention for the hearing. While the Board does not fully understand how this evidence would have contributed to the hearing it is not prepared to deny these costs in full. Rather, without the benefit of a hearing, the Board is of the view that these costs must be apportioned between the Hart family and E4. In these circumstances, the Board finds it appropriate that the Hart family is responsible for one-half of these costs and that E4 is responsible for one-half of these costs. Therefore, the Board approves fees of \$978.50, plus GST in the amount of \$68.50 for an overall award of \$1,047.00.

## 6 ORDER

IT IS HEREBY ORDERED THAT:

- (1) E4 Energy Inc. shall pay intervener costs to Mr. and Mrs. Hart in the amount of \$1,609.41.
- (2) Payment shall be made as follows.

Cattlemen's A.I. Ltd.  
Box 1687  
Hanna, AB T0J 1P0

Dated in Calgary, Alberta on this 17<sup>th</sup> day of November, 2006.

**ALBERTA ENERGY AND UTILITIES BOARD**

*<Original Signed by B.T. McManus, Q.C.>*

B.T. McManus, Q.C.  
Board Member