



# Berkley Resources Inc.

Application for a Well Licence  
Crossfield Field

Cost Awards

**ALBERTA ENERGY AND UTILITIES BOARD**  
Energy Cost Order 2008-008: Berkley Resources Inc.  
Application for a Well Licence (Crossfield Field)  
Application No. 1506785  
Cost Application No. 1553629

Published by

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# **ALBERTA ENERGY AND UTILITIES BOARD**

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Calgary, Alberta

**BERKLEY RESOURCES INC.  
APPLICATION FOR A WELL LICENCE  
CROSSFIELD FIELD**

**Energy Cost Order 2008-008  
Application No. 1506785  
Cost Application No. 1553629**

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## **1 INTRODUCTION**

Berkley Resources Inc. (Berkley) applied to the Energy Utilities Board (EUB or Board) pursuant to Section 2.020 of the *Oil and gas Conservation Regulations*, to drill a directional level-2 critical well. The purpose of the proposed well was to obtain gas from the Crossfield Formation. The proposed well was to be located about 4.8 kilometres (km) southwest of the Town of Crossfield and 8.8 km northwest of the City of Airdrie.

Forty-six parties submitted objections to Berkley's application and formed the Concerned Crossfield Residents group (CCR) and the Crossfield Concerned Citizens' (CCC). The parties raised concerns related to human and animal health and safety, design and implementation of the emergency response plan (ERP), public consultation, cumulative effects, level of H2S concentration, proliferation of wells, need for the well, H2S dispersion modelling, property values and property damage, air quality and air monitoring, sulphur dioxide emissions, land development, water quality, and insurance coverage. As the objecting parties demonstrated that they might directly and adversely be affected by the Board's decision on Berkley's application, the Board decided to hold a public hearing to consider the application.

The Board was scheduled to hold a public Pre-Hearing meeting in Airdrie, Alberta on Wednesday, December 5, 2007, before Board member J.D. Dilay (Presiding Member), P.Eng., and Acting Board Members F. Rahnama, Ph.D., and R.G. Evans, P.Eng. On November 29, 2007, the EUB received a request from Berkley to reschedule the Pre-Hearing meeting until early February 2008 to allow time for Berkley to assess and address the concerns of the Town of Crossfield. After carefully considering comments from all interested parties, the Board granted the request for rescheduling. The Board requested that Berkley provide an update with respect to the application to the Board by no later than February 1, 2008. Berkley was granted an extension from the Board to February 4, 2008.

On February 4, 2008, Berkley notified the EUB that it was withdrawing Application 1506785. Pursuant to Section 21(1) of the *Energy Resources Conservation Board Rules of Practice*, the Board accepted the withdrawal of the application.

On February 25, 2008, counsel for the CCR filed a cost claim totalling \$6,456.84. On March 17, 2008, counsel for Berkley submitted comments regarding the cost claim. As a result of Berkley's comments, on March 17, 2008, counsel for the CCR submitted a revised cost claim reducing their fees by \$200.00. The Board concludes that the final cost claim totals \$6,256.84.

On February 29, 2008, Clifford Hurt filed a cost claim totalling \$2,530.80. On March 17, 2008, Berkley submitted comments regarding the cost claim.

On March 3, 2008, counsel for the CCC filed a cost claim, totalling \$82,541.30. On March 17, 2008, Berkley submitted comments regarding the cost claim.

The Board considers the cost process to have closed on March 20, 2008.

## **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.

## **3 ACKROYD LLP and the CCR**

The following table summarizes the legal fees and expenses claimed by Ackroyd LLP.

**Table 1 Fees and Expenses Claimed by Ackroyd LLP**

<b>Counsel</b>	<b>Fees</b>	<b>Expenses</b>	<b>GST</b>	<b>Total</b>
Ackroyd LLP		\$445.06	\$22.23	\$467.29
Karin E. Buss	\$3,675.00			\$3,675.00
Karin E. Buss (Travel Time)	\$750.00			\$750.00
Todd A. Nahirnik	\$576.00			\$576.00
<b>Total</b>	<b>\$5,001.00</b>	<b>\$445.06</b>	<b>\$22.23</b>	<b>\$5,468.29</b>

### **3.1 VIEWS OF THE CCR**

In its final costs claim submitted to the Board on February 25, 2008, in addition to the abovementioned legal costs and fees, counsel for the CCR submitted further costs claims for three CCR members, namely Jo Tennant, Ken Tiel, and Kathy Wharton. Jo Tennant claimed \$240.98 in lost wages; Ken Tiel claimed \$497.00 in lost wages and \$21.00 in mileage. Kathy Wharton claimed \$79.50 for hall rental and \$300.00 for group organization.

By way of letter dated March 20, 2008, counsel for the CCR submitted a response to Berkley's comments. Counsel for the CCR agreed with Berkley's submission, detailed below, that fees for time spent in conjunction with the preparation of the interim and final cost claims should not have been included in their submission and accordingly, counsel for CCR submitted that a reduction of 0.8 hours to their Account would be appropriate. Therefore in total, CCR's counsel submitted that its cost claim should be reduced by \$200.00, for a total of \$5,268.29.

### **3.2 VIEWS OF BERKLEY**

On March 17, 2008, counsel for Berkley submitted comments regarding the cost claim filed by counsel for the CCR. Berkley submitted that counsel for the CCR had included fees for the preparation of the interim costs claim and the final cost claim in their submissions and that Directive 031A provides that the Board will not typically consider as reasonable costs relating to the preparation of the claim for an award of costs by local interveners. In light of that submission, Berkley's position is that a minor reduction to the CCR's costs claim is warranted. Other than that, Berkley submitted that the quantum of the CCR's costs claim was reasonable and Berkley took no issue with it.

Further in its March 17, 2008 submissions, Berkley noted that the CCR final costs claim included a claim for lost wages by two of its members, Jo Tennant and Ken Tiel, a mileage claim by one of its members, Ken Tiel, as well as a claim by one of its members, Kathy Wharton, for hall rental and group organization.

In an email dated January 21, 2008, Berkley questioned whether or not Mr. Tiel should be compensated for his time attending what turned out to be an EUB information session, and not a Pre-Hearing meeting, due to the cancellation.

Berkley further noted that members of intervenor groups are typically compensated for their efforts by the payment of honoraria, but that the Board has discretion with respect to these awards and that it was content to let the Board make a determination on these points.

### **3.3 VIEWS OF THE BOARD**

#### **3.3.1 COSTS CLAIMED BY ACKROYD LLP**

Upon review of Ackroyd LLP's costs claim, the Board notes its amount and the fact that Berkley takes no issue with it. The Board has reviewed the expenses incurred and finds them to be reasonable and appropriate for the intervention conducted, and in accordance with Directive 031A. Therefore, the Board approves the fees and expenses claimed by Ackroyd LLP in the amount of \$5,718.36.

#### **3.3.2 COSTS CLAIMED BY JO TENNANT AND KEN TIEL**

In relation to the local intervener costs being claimed by individual members, Jo Tennant and Ken Tiel, the Board refers to parts 6.1.2 and 6.2.3 of Directive 031A as follows:

##### **6.1.2 Costs of Appearing at a Public Hearing**

Except when an intervener is represented by someone else and takes no active part in a public hearing, an intervener may normally recover some of the costs of appearing at a hearing. Appearing in support of an intervention refers to coming to the front when so requested by the Chairperson of the hearing and answering any questions about the intervention. Mere attendance is not participation. Participation may include giving evidence, being cross-examined, assisting counsel/consultants, and presenting closing argument. Such an intervener does not receive a witness fee, but could claim an honorarium of \$50 for each half day actually present at a hearing to listen to the evidence of others, question others, present an intervention, or confer with the intervener's own solicitor or expert.

Expenses related to an intervener's appearance at a public hearing might include"

- necessary travel to and from the hearing by economic means of public transportation or at the current mileage rate, as described in the Scale of Costs for distances actually travelled;
- child care or babysitting costs;
- meal expenses for up to three meals per day at the current per diem rate; and
- lodging at normal motel or hotel rates at the current per diem rate when it is necessary to stay until the next day.

An intervener may choose to be assisted by a lawyer or an expert consultant if a more efficient submission would result. Depending on who does most of the work of preparing the submission, the intervener may not qualify for an honorarium. For further information on hiring lawyers or experts to assist with an intervention, see Section 6.3.

##### **6.2.3 Costs for Group Members Appearing at a Public Hearing**

If a number of interveners form a group to present a submission without the assistance of a lawyer, one to four members of the group who are necessary to represent the group and present the submission may each receive an honorarium of \$50 for each half day they are actually present at the hearing. The group may present a panel of up to six, including the representatives necessary to appear in support of their submission, and each may receive \$50 for each half day of actual appearance.

If a number of interveners form a group to present a submission with the assistance of a lawyer, two representatives of the group may each receive an honorarium of \$50 for each

half day actually present at the hearing to work with the lawyer, even if the two representatives do not appear in support of the submission.

If the lawyer presents a panel of interveners as witnesses, the two representatives assisting the lawyer and up to six witnesses may each receive \$50 for each half day during which it is necessary for them to actually appear in support of their submission.

Upon review of the claims of Jo Tennant and Ken Tiel, the Board notes that where a group of interveners is represented by a lawyer for the purposes of a hearing, two individual group members may each receive an honorarium in the amount of \$50.00 for each half day actually present at the hearing. While neither a Pre-Hearing meeting nor an Information Session are considered a “hearing” for the purposes of Directive 031A, the Board notes that it has discretion with respect to honoraria awards.

The Board notes that Jo Tennant and Ken Tiel have claimed for lost wages based on an hourly wage. Jo Tennant claimed an hourly rate of \$29.21 and Mr. Tiel claimed an hourly rate of \$29.50 + 9.6% stat/vac. The Board finds that this portion of the claim is not in accordance with part 6.2.1 of Directive 031A as outlined above and must therefore be reduced to comply with the Board’s prescribed attendance honoraria.

Accordingly, the Board approves attendance honoraria of \$50.00 for Jo Tennant and \$50.00 for Ken Tiel. Honorarium awards are not subject to GST, and therefore no GST is approved in relation to these awards.

In addition to Mr. Tiel’s claim for lost wages, he also made a claim for mileage to and from the Pre-Hearing meeting location. His claim was for 70km at \$0.30/km, totalling \$21.00. Accordingly, Mr. Tiel’s mileage claim of \$21.00 is approved in full.

### **3.3.3 COSTS CLAIMED BY KATHY WHARTON**

In relation to the local intervener costs being claimed by individual member Kathy Wharton, the Board refers to part 6.2.1 of Directive 031A as follows:

#### **6.2.1 Costs for Group Organization**

The EUB recognizes that the organization of a group of local interveners may require considerable time, effort, and expense on the part of the organizers who coordinate and represent the group. Depending upon the size of the group and the efforts required to organize it, one to four organizers may receive honoraria in recognition of their efforts. While such awards are generally \$300 to \$500, in exceptional cases when the necessary preparation time is substantial, honoraria in excess of \$500 to a maximum of \$2500 may be considered.

The Board will also consider claims for reasonable expenses related to the organization of a group. Such expenses could include:

- rental of a meeting hall,
- photocopies,
- stationery,
- postage, and
- fax charges.



Upon review of Mrs. Wharton's claim, the Board finds that the amount claimed for the hall rental has been claimed by Ackroyd LLP along with its account for expenses, and has granted the hall rental amount in its approval of Ackroyd LLP's fees and expenses.

The Board has also reviewed Mrs. Wharton's claim for an honorarium for group organization, and finds this claim to be reasonable in light of Mrs. Wharton's efforts on behalf of the CCR. Accordingly, the Board approves a group organization honorarium for Kathy Wharton in the amount of \$300.00.

#### **4 CLIFFORD HURT**

On December 27, 2007, Mr. Hurt submitted his claim for costs to the Board in the amount of \$2,520.00, with photocopying expenses claimed in the amount of \$10.80. Mr. Hurt has 9 years experience in the emergency response planning field, and has claimed this amount based on his hourly rate of \$210.00. The Board circulated Mr. Hurt's cost claim to counsel for the CCR, the CCC, and Berkley, for their comments on January 14, 2008.

##### **4.1 VIEWS OF BERKLEY**

On January 22, 2008, counsel for Berkley responded to Mr. Hurt's cost claim by way of letter to the Board. Berkley stated that Mr. Hurt's claim was calculated on the basis of 12 hours of Mr. Hurt's time at an hourly rate of \$210.00, which appeared to Berkley to be Mr. Hurt's professional rate. Berkley submitted that Directive 031A clearly states that local interveners are to be awarded costs based on the payment of honoraria, not based upon charging for their time on an hourly rate basis. Berkley further submitted that Mr. Hurt was only entitled to claim an honorarium for preparing an intervention and that since the Pre-Hearing meeting had not yet even been held in this matter, and that no interveners had actually prepared an intervention, any honorarium awarded to Mr. Hurt should be modest. On March 17, 2008, counsel for Berkley reiterated its comments contained in its January 22, 2008 letter regarding the cost claim filed by Mr. Hurt and confirmed that Berkley had no further response to Mr. Hurt's claim.

##### **4.2 VIEWS OF CLIFFORD HURT**

Mr. Hurt submitted a response to Berkley's January 22, 2008 comments in a letter dated January 31, 2008. Among other things, Mr. Hurt responded that his objection was based upon the internal inconsistencies and external inadequacies of the Berkley ERP. He stated that his expertise was directly and necessarily related to his intervention and that for him to have hired a consultant with similar expertise to assist him in preparing his intervention would have constituted inefficient duplication. Accordingly, Mr. Hurt requests that his cost claim be upheld.

##### **4.3 VIEWS OF THE BOARD**

The Board recognizes that Mr. Hurt's costs claim is based on an hourly wage. The Board notes that Directive 031A does not provide compensation for interveners by way of an hourly wage, but rather, provides for various ranges of honoraria based on the specific circumstances of the application in question.

While the Board is not prepared to approve costs based on the hourly rates being claimed, it does recognize that Mr. Hurt prepared his own Pre-Hearing submission and used his own expertise to review the proposed ERP which was submitted by Berkley. The Board also notes that Mr. Hurt

reviewed other ERPs in place in the Town of Crossfield in order to compare them to Berkley's ERP. The Board also understands that Mr. Hurt made a presentation to the CCC regarding his findings on Berkley's proposed ERP.

Part 6.1.1 of Directive 031A explains that an intervener who personally prepares a substantial submission without expert help may, depending on the complexity of the submission, receive an honorarium in the range of \$300.00 to \$500.00 and in exceptional cases when preparation time is very substantial, honoraria in excess of \$500.00 to a maximum of \$2,500.00 may be considered.

The Board recognizes the efforts of Mr. Hurt in the preparation of his intervention; however, it is also aware of the context in which the preparation was done. In this case, the Notice of Hearing had not yet been issued and only a Pre-Hearing notice was sent out. Mr. Hurt had not submitted a full submission in the proceeding given that the Pre-Hearing meeting was postponed and Berkley later withdrew its application. Accordingly, in light of the above, the Board approves a preparation honorarium for Mr. Hurt in the amount of \$300.00. The Board also approves Mr. Hurt's photocopying expenses in the amount of \$10.80.

## 5 CONCERNED CROSSFIELD CITIZENS

Klimek Law submitted its interim costs claim on behalf of Klimek Law and the CCC in a letter to the Board dated December 21, 2007. The following table summarizes the legal fees and expenses claimed by Klimek Law and the CCC.

**Table 2 Fees and Expenses Claimed by Klimek Law**

Counsel	Fees	Expenses	GST	Total
Klimek Law		\$1,475.84	\$30.51	\$1,506.35
Jennifer Klimek	\$23,725.00		\$1,422.75	\$25,147.75
Debbie Bishop	\$8,806.00		\$518.00	\$9,324.00
Dr. Shuming Du	\$720.00		\$43.20	\$763.20
<b>Total</b>	<b>\$33,251.00</b>	<b>\$1,475.84</b>	<b>\$2,014.46</b>	<b>\$36,741.30</b>

The following table summarizes the honoraria and expenses claimed by 25 CCC members.

**Table 3 Table of CCC Members' Requested Honoraria and Expenses**

Category	No. of Members	Total Amount of Claims
Preparation Honoraria	25	\$44,800.00
Attendance Honoraria	0	0
Forming a Group	2	\$1,000.00
Expenses	1	\$316.04
<b>Total</b>		<b>\$46,116.04</b>

### 5.1 VIEWS OF BERKLEY

On January 14, 2008, counsel for Berkley submitted comments with regard to the interim cost claim filed by counsel for the CCC. Counsel for Berkley stated that the interim costs claim of the CCC was exorbitant given the fact that the current stage of the proceeding was that it had not yet gone to a Pre-Hearing meeting. He went on to state that the CCC's interim costs claim was

clearly not made in accordance with the provisions of Directive 031A, as a majority of the costs claimed were not incurred for the preparation and presentation of an intervention at a public hearing of the Board.

Counsel for Berkley submitted that section 6.1.1 of Directive 031A applies where interveners hire professionals, such as lawyers and experts, to assist them in the preparation and presentation of their intervention, as it provides 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.

Counsel for Berkley also submitted that sections 6.1.2 and 6.2.2 of Directive 031A apply to the costs claims of individual CCC members, which sections provide, respectively, as follows:

An intervener may choose to be assisted by a lawyer or an expert consultant if a more efficient submission would result. Depending on who does most of the work preparing the submission, the intervener may not qualify for an honorarium.

An intervener group may choose to be assisted by a lawyer or an expert consultant if a more efficient submission would result. Depending on who does most of the work of preparing a submission, members of the intervener group may not qualify for an honorarium.

Counsel for Berkley submitted that the rationale behind these rules is obvious and sound, in that the purpose of hiring lawyers and professionals is to achieve greater efficiency and effectiveness in the presentation of the intervention. Counsel for Berkley also submitted that if a costs claim was submitted for the time spent by the professional preparing and presenting the intervention, it would amount to duplication to also reimburse the individual or group of interveners for their time spent preparing and presenting the same intervention.

Counsel for Berkley submitted that the amounts claimed by the individual members of the CCC, and by Ms. Porter-Hirsche in particular, are unreasonable and excessive. In response to the submission by counsel for the CCC that considerable time had to be spent becoming familiar with the regulatory process, counsel for Berkley submitted that while the regulatory process can be daunting for “first timers”, that in itself does not justify spending the equivalent of three months time becoming familiar with the process and claiming that time as a cost directly and necessarily related to the proceeding. Counsel for Berkley went on to provide examples of numerous time entries entered by Ms. Porter-Hirsche which they felt were not directly and necessarily related to the application.

Counsel for Berkley submitted that a Notice of Pre-Hearing meeting was issued by the Board on October 18, 2007, and that all reasonable costs incurred after that time would qualify for reimbursement. Counsel for Berkley further submitted that Berkley was even prepared to acknowledge that the likelihood that its application would proceed to a public hearing became evident as early as the summer of 2007, and that Berkley does not object to reasonable costs incurred since that time.

Counsel for Berkley submitted further that costs claimed for Klimek Law are excessive and that the Klimek Law interim costs claim includes substantial duplication and inefficiency:

For example, there appears to be significant duplication as between tasks undertaken by counsel and by the clients (Mrs. Porter-Hirsche in particular). Second, there appears to be considerable duplication of effort between tasks undertaken by Ms. Klimek and Ms. Bishop. Specifically, Berkley does not accept the need for both counsel to attend all meetings. Further, Berkley does not accept the need for legal counsel to attend several open houses and other public meetings which are part of Berkley's public consultation program. Finally, Berkley also does not accept the need for counsel to attend as many meetings (we count seven) as they did.

As is clear from the Klimek Law invoice, time is claimed back to July 2006. As best as we can understand the cost claim, it appears to Berkley that much of the initial time spent by Klimek Law was to provide its clients with general counsel and advice as opposed to assisting them in preparing and presenting an intervention.

Counsel for Berkley also commented on the account for Dr. Shuming Du, claimed by the CCC in its interim costs claim. Counsel for Berkley stated that the \$763.20 claimed by the CCC for Dr. Du's account is not supported by any invoice, but only by a three-line document which indicated that Dr. Du had spent six hours reviewing application materials.

By way of letter dated March 17, 2008, counsel for Berkley reiterated submissions made in their response to the interim cost claim and emphasized that they do not believe that counsel for the CCC should be entitled to receive costs associated with participating in public consultation nor should the local interveners be paid for their time but that they should be eligible for honoraria in accordance with Directive 031A.

## **5.2 VIEWS OF THE CCC**

### **5.2.1 KLIMEK LAW COSTS**

In its interim costs claim dated December 21, 2007, counsel for the CCC, namely Jennifer Klimek, submitted that both she and her associate Debbie Bishop met individually with most of the CCC members to understand their individual circumstances and concerns, in order to prepare for the eventual hearing of this matter. Counsel for the CCC also submitted that two counsel were necessary to effectively and economically prepare for the hearing. Counsel for the CCC stated that much of the work regarding this application was delegated to Ms. Bishop by Ms. Klimek due to Ms. Klimek having other commitments and a higher hourly rate than Ms. Bishop.

Counsel for the CCC responded to comments made by counsel for Berkley in its January 14, 2008 letter in a letter dated January 25, 2008. Counsel for the CCC stated that the CCC had been engaged in consultation with Berkley and others for over fifteen months, and that Berkley's public consultation process had been very time consuming for the CCC. Counsel for the CCC submitted that it was reasonable for the CCC to form a group and hire counsel in order to understand the application and get advice on the regulatory process. With regard to the costs claimed by Klimek Law in the interim costs claim dated December 21, 2007, counsel for the CCC stated that all seven meetings that counsel attended were essential, in their view, and that on occasion, both counsel attended the same meetings.

On March 3, 2008, counsel for the CCC submitted their final cost claim along with responses to the comments of Berkley. Counsel for the CCC submitted that because the hearing of this

application did not proceed, this was not to mean that the CCC should be penalized for preparing for a hearing which they had been informed was imminent.

In its March 3, 2008 letter, counsel for the CCC submitted that, with respect to the additional hours that were spent by both counsel for the CCC on their costs claim, portions of it are related to its preparation of its costs claim and portions of it were spent in response to Berkley's correspondence in this matter. Counsel for the CCC stated that this time should be allowed by the Board as an exceptional circumstance.

### **5.2.2 INDIVIDUAL CCC MEMBERS' COSTS**

Regarding the costs claimed by the individual CCC members, counsel for the CCC in its interim costs claim dated December 21, 2007, stated that Ms. Porter-Hirsche spent time organizing the CCC, as well as meeting with other regulatory bodies such as the Municipal Council of the Town of Crossfield and Calgary Health Region. Counsel for the CCC also stated that Ms. Porter-Hirsche spent a great deal of time researching Berkley generally, as well as the issue of sour gas itself.

With regard to the costs claimed by individual CCC members, counsel for the CCC submitted its January 25, 2008 letter that some of the activities carried out by Ms. Porter-Hirsche, namely writing letters to and having meetings with politicians, spending time dealing with Prime West Energy, writing letters to newspaper editors, and dealing with surface rights issues, were all activities which were directly and necessarily related to the application.

Accordingly, it is the position of Klimek Law and of the CCC, that all of their submitted expenses have been legitimately incurred by or on behalf of the CCC.

### **5.3 VIEWS OF THE BOARD**

On October 18, 2007, the Board issued a Notice of Pre-Hearing meeting in this matter. The Pre-Hearing meeting was scheduled for December 5, 2007, in Airdrie. The Pre-Hearing meeting was cancelled by the Board, at Berkley's request, on December 3, 2008, by way of letter to all interested parties. Following this, on February 4, 2008, Berkley withdrew its application in this matter. A Notice of Hearing was never issued.

As per part 7 of Directive 031A, the Board acknowledges that its usual practice is to acknowledge only those costs incurred after a Notice of Hearing has been issued. It is generally the Board's position that until a Notice of Hearing has been issued, there is no certainty that a hearing will be held. This matter is illustrative of that point.

However, as a Notice of Pre-Hearing meeting was issued in this matter, and as interested parties had prepared submissions to that effect, and expended time in doing so, the Board has considered whether or not to allow any or all of the costs submitted by the abovementioned parties in relation to this matter. As the costs claims of the other parties to this matter have been dealt with above, the Board's findings and decisions on the costs claims submitted by Klimek Law and the CCC now follow below.

#### **5.3.1 KLIMEK LAW**

The Board notes that the account submitted by Klimek Law reflects a number of charges which were incurred prior to the filing of the application by Berkley and prior to the Notice of Pre-

Hearing meeting being issued by the Board. As mentioned above, to allow these charges would constitute a departure from the Board's normal practice, which the Board has discretion to do.

The Board notes that many of the charges which were incurred by Klimek Law prior to the filing of the application by Berkley and prior to the Notice of Pre-Hearing meeting being issued by the Board appear to be related to consultation and negotiation with Berkley undertaken by counsel for the CCC as well as by some of its individual members. While the Board appreciates and encourages parties to attempt to resolve concerns amongst themselves whenever possible, the Board is of the 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.

As mentioned earlier at page 8 of this Decision, counsel for Berkley submitted that all reasonable costs incurred after the Notice of Pre-Hearing meeting was issued by the Board on October 18, 2007, would qualify for reimbursement. Counsel for Berkley further submitted that Berkley was even prepared to acknowledge that the likelihood that its application would proceed to a public hearing became evident as early as the summer of 2007, and that Berkley does not object to reasonable costs incurred since that time.

The Board agrees with Berkley's submission that reasonable costs incurred since the summer of 2007 are eligible for reimbursement. The Board is prepared to consider all reasonable costs incurred from July 1, 2007 up until the withdrawal of Berkley's application on February 4, 2008.

Taking the foregoing into account, for this particular matter, the Board considers those costs incurred prior to July 1, 2007 to be directly associated with the consultation and negotiation process and does not consider any of the fees incurred during that time as having been incurred in preparation for either a Pre-Hearing or a Hearing before the Board. As such, the Board considers that any fees and expenses incurred prior to July 1, 2007, will not be eligible for recovery.

Given the above, the Board has considered the fees submitted by Ms. Klimek and Ms. Bishop, and is prepared to award Ms. Klimek the amount of \$8,325.00 in fees plus GST in the amount of \$416.25, and Ms. Bishop the amount of \$2,023.00 in fees plus GST in the amount of \$101.15. The Board also allows the total amount of \$1,475.84 to Klimek Law for expenses incurred, as well as the amount of \$30.51 in GST.

The Board has also had an opportunity to consider the statement of account of Dr. Shuming Du submitted by Klimek Law with their interim costs claim on December 21, 2007. Dr. Du's statement of account states that he commenced his work on or about June 10, 2007, and as such, Klimek Law's claim for his fees is denied.

### **5.3.2 INDIVIDUAL MEMBERS OF THE CCC**

The individual CCC members have claimed preparation honoraria which totals \$45,800.00.

One of the CCC members, Ms. Porter-Hirsche, has claimed a total of \$28,116.04 for her intervention. Specifically, she claims \$27,300.00 for her time (84 days @ \$325.00/day), \$500.00 for forming the CCC group, and expenses in the amount of \$316.04 for printer paper, printer ink, a newspaper ad, hall rental and long distance charges.

Twenty-six other individual members of the CCC have each claimed honoraria as follows:

<b>Name</b>	<b>Preparation</b>	<b>Forming A Group</b>	<b>Total Honoraria Claimed</b>
Pat Webber	\$900.00	\$500.00	\$1,400.00
Gerry Webber (deceased)	\$600.00	\$0.00	\$600.00
Tom Erdman	\$1,100.00	\$0.00	\$1,100.00
Betty Hersberger	\$1,100.00	\$0.00	\$1,100.00
Brenda Silbernagel	\$660.00	\$0.00	\$660.00
Rick Silbernagel	\$660.00	\$0.00	\$660.00
Ann Rust	\$600.00	\$0.00	\$600.00
Jim Brooks	\$600.00	\$0.00	\$600.00
Darlene Brooks	\$600.00	\$0.00	\$600.00
Karl Noll	\$600.00	\$0.00	\$600.00
Gabrielle Noll	\$600.00	\$0.00	\$600.00
Norm Blades	\$660.00	\$0.00	\$660.00
Naomi Blades	\$660.00	\$0.00	\$660.00
Robert Dickie	\$660.00	\$0.00	\$660.00
Lynne Dickie	\$660.00	\$0.00	\$660.00
Carla Henderson	\$660.00	\$0.00	\$660.00
Darren Henderson	\$660.00	\$0.00	\$660.00
Rod Harbridge	\$600.00	\$0.00	\$600.00
Betty Goyka	\$600.00	\$0.00	\$600.00
Dale Martin	\$600.00	\$0.00	\$600.00
Ann Bouck	\$600.00	\$0.00	\$600.00
Adair Forsythe	\$600.00	\$0.00	\$600.00
Christine Chapman	\$660.00	\$0.00	\$660.00
Alfred Gosse	\$660.00	\$0.00	\$660.00
Marylou Cummings	\$600.00	\$0.00	\$600.00
Dave Cummings	\$600.00	\$0.00	\$600.00
<b>Total</b>	<b>\$17,500.00</b>	<b>\$500.00</b>	<b>\$18,000.00</b>

The Board has considered all honoraria claims from individual CCC members as listed above.

The Board notes the submissions from counsel for Berkley relative to sections 6.1.1, 6.1.2, and 6.2.2 of Directive 031A and finds them to be applicable to the costs awards claimed by the individual members of the CCC. Where a group of interveners hires a lawyer to assist them with the preparation and presentation of their intervention, depending on who does most of the work, members of the intervener group may not qualify for an honorarium. In some instances the Board has awarded preparation honorarium to intervener groups even when they have hired lawyers to assist them. However, in most of those cases, the matter has gone to a hearing. Given that this matter never proceeded past the pre-hearing stage, the Board is of the view that awarding honorarium to interveners would not be appropriate.

With regard to the costs claim submitted by Ms. Porter-Hirsche, the Board is of the view that her costs claim is excessive and contains many expense items which were incurred prior to July 1,

2007. Having said that, the Board does wish to recognize the efforts of Ms. Porter-Hirsche on this application, as she has expended time and effort in organizing and representing the CCC's members and their interests on this application.

As such, and as per section 6.2.1 of Directive 031A, the Board awards Ms. Porter-Hirsche a group organization honorarium of \$500.00. Regarding the expenses claimed by Ms. Porter-Hirsche in the amount of \$316.04, the Board notes that these expenses were incurred prior to July 1, 2007 as well, and as such, is not prepared to allow these expenses.

With regard to the costs claims advanced by the other twenty-six CCC members, the Board finds section 6.2.2 of Directive 031A to be applicable in that where an intervener group chooses to hire a lawyer to prepare and present its submission, the members of the intervener group may not qualify for an honorarium. Accordingly, the Board is not prepared to grant any of the twenty-six members of the CCC preparation honoraria on this application.

## **6 ORDER**

IT IS HEREBY ORDERED THAT:

- (1) The Board approves intervener costs for the CCC in the amount of \$12,871.75. Payment shall be made to Klimek Law at #240, 4808 – 87 Street, Edmonton, AB T6E 5W3.
- (2) The Board approves intervener costs for the CCR in the amount of \$6,139.36. Payment shall be made to Ackroyd LLP at 1500, 10665 Jasper Avenue, Edmonton, AB T5J 3S9.
- (3) The Board approves intervener costs for Clifford Hurt in the amount of \$310.80. Payment shall be made to Clifford Hurt at Box 190, 910 Murdoch Street, Crossfield, AB T0M 0S0.

Dated in Calgary, Alberta on this 31st day of July, 2008.

### **ALBERTA ENERGY AND UTILITIES BOARD**

*“Original Signed by Thomas McGee”*

Thomas McGee  
EUB Board Member



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



Appendix A