



Intrepid Energy Corporation

Applications for Licences for Gas Wells,
Pipelines, and Facilities (Tindastoll Field)

Cost Awards

ALBERTA ENERGY AND UTILITIES BOARD

Energy Cost Order 2008-001: Intrepid Energy Corporation
Applications for Licences for Gas Wells, Pipelines, and Facilities
Cost Application No. 1475137

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Contents

- 1 INTRODUCTION..... 1**
- 2 VIEWS OF THE BOARD – AUTHORITY TO AWARD COSTS..... 1**
- 3 INTERVENER STANDING 2**
- 4 COST CLAIM (THE CHRISTIANS)..... 2**
 - 4.1 Views of Intrepid 2**
 - 4.2 Views of the Christians 4**
 - 4.3 Views of the Board 5**
- 5 COST CLAIM (THE TELFORDS) 6**
 - 5.1 Views of Intrepid 6**
 - 5.2 Views of the Telford Family 8**
 - 5.3 Views of the Board 8**
- 6 ORDER 9**

ALBERTA ENERGY AND UTILITIES BOARD

Calgary, Alberta

**Intrepid Energy Corporation
Applications for Licences for
Gas Wells, Pipelines, and Facilities**

**Energy Cost Order 2008-001
Application Nos.¹
Cost Application No. 1475137**

1 INTRODUCTION

Intrepid Energy Corporation (Intrepid) applied pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations* for licences to drill three natural gas wells. The purpose of the wells was to obtain natural gas production from the Horseshoe Canyon Formation of the Edmonton Group.

Intrepid applied in accordance with Section 7.001 of the *Oil and Gas Conservation Regulations* for approval to construct and operate three single-well gas batteries with compression at each of the proposed well sites. In addition, Intrepid applied in accordance with Part 4 of the *Pipeline Act* for approval to construct and operate four pipelines for the purpose of transporting natural gas from each of the wells to tie-in points on existing pipelines.

The Board held a public hearing in Red Deer, Alberta, from June 27 to June 29, 2007, before Board Member J. D. Dilay, P.Eng. (Presiding Member) and Acting Board Members D. K. Boyler, P.Eng., and W. G. Remmer, P.Eng. A site visit was conducted on June 26, 2007.

Following the close of the oral portion of the hearing, the parties submitted written final arguments on July 27, 2007, and replies to the final arguments on August 3, 2007. On October 30, 2007 the Board issued Decision [2007-080](#).

The Board received two cost claims relating this hearing, together with comments from Intrepid, and responses from the cost claimants. The Board considers the cost process to have closed on September 20, 2007.

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

¹ 1462172, 1486686, 1486688, 1491537, 1491541, 1493237, 1500670, 1507656, 1507707, and 1507722

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 INTERVENER STANDING

Section 2.3 of Decision 2007-080 provides the Board's decision regarding intervener standing. The Board granted standing to Suzanne and Jason Telford (the Telfords); and to Trevor Christian, Dale Christian, Glennis Christian, and Joel Christian (the Christians)². Therefore the Board finds that the Telfords and the Christians are eligible to claim cost recovery for their participation in this proceeding.

4 COST CLAIM (The Christians)

4.1 Views of Intrepid

On August 29, 2007 Intrepid submitted comments regarding the Christians' cost claim. Intrepid is of the view that the cost claim is unreasonable given the simplistic nature of the Applications and in light of the main issue being ground water. While Intrepid does not take issue with the interveners' honoraria and expense claims, Intrepid does take issue with Mr. Secord's participation and related legal costs and the report submitted by HCL.

Intrepid objects to Mr. Secord's time between October 25, 2006 and December 8, 2006; and between January and April 2007. Intrepid did not submit new information until April 13, 2007, and therefore the Board should not hold Intrepid responsible for these costs. In addition, Intrepid notes that the Board did not issue a revised Notice of Hearing until April 5, 2007. Intrepid argues that it is the Board's usual practice to acknowledge only those costs incurred after the EUB has issued a notice of hearing³.

² Decision 2007-080, page 2

³ Directive 029: Energy and Utility Development Applications and the Hearing Process (Directive 029), page 18

With respect to the Christians' submission of June 11, 2007, Intrepid notes that the two volume submission is 1,315 pages; and did not provide any additional concerns or information from that of the original submission of October 3, 2006. Intrepid questions the value of including articles that deal with anthrax in Saskatchewan, Best Shed, Alberta Ingenuity Fund, Agri-Food Policy, chromosomal aberrations, toxicosis in sheep, South Saskatchewan River Basin, CBM development, TERE, Carbon isotopes, etc. Intrepid submits that these materials are examples of costs that may not be considered reasonable as identified in section 5.1 of Directive 031A, which provides the following.

- a study on a province-wide basis of an industry, such as the petrochemical industry, when the hearing is dealing with a particular plant;²
- a submission that a particular project should be denied because a policy or a law should be in place that would affect the project, when in fact no such policy exists;³
- a collection of a large volume of material, published or otherwise, with which the intervener is not familiar and which cannot be properly supported or clarified by witnesses at a hearing;

With respect to Mr. Secord's preparation efforts, Intrepid submits the following.

Mr. Secord also could have been better prepared, which would have saved considerable time during the hearing by not referencing various parts of the submissions, reading various parts of the submissions and asking questions that were already answered in Intrepid's submission. Intrepid's panel reading their submission in answer to questions from Mr. Secord did not add value to the hearing nor did asking the same questions when he had been given an answer by the panel. This was also pointed out by Intrepid's legal counsel at the hearing (e.g. Transcript pages 199 & 202) as well as the Chairman (Transcript page 271).

Regarding the argument phase of the proceeding, Intrepid raises concerns with the hours recorded by Mr. Secord, particularly 58.7 for argument. Intrepid references section 10.6 of Directive 029, which provides the following a page 17.

Argument is intended to summarize evidence, highlight the important aspects of the issues, state what the Board's decision should be regarding the application, and give supporting reasons.

Intrepid submits that Mr. Secord's closing remarks were essentially a repetition of the transcripts and restating the Christians' entire submission. Additionally, the final argument provided a multitude of transcript references and a regurgitation of what appears to be those portions of the hearing that best served his clients' interests. Intrepid is of the view that Mr. Secord did not conduct the intervention during this phase of the hearing in accordance with section 10.6 of Directive 029. Intrepid referenced a number of EUB cost orders in which Mr. Secord's fees were reduced and argued that his fees should likewise be reduced in this case.

With respect to the HCL report, Intrepid submits that the report is essentially a re-iteration of the report HCL did for Encal Energy, a copy of which Intrepid suggests that the Christians already had. Both reports have similar conclusions, in that gas wells can be drilled and completed through the aquifer without adverse impact.

It is Intrepid's view that the HCL reports did not add value to the proceeding. The Christians chose to disregard the findings of the report, and when Intrepid questioned HCL's Mr. Clissold about whether or not he shared his positions regarding the matter with his client, he stated "maybe we can agree to disagree"⁴.

4.2 Views of the Christians

On September 19, 2007 Mr. Secord responded to the comments filed by Intrepid. The Christian's noted that Intrepid's filed applications were in excess of 1000 pages and pointed out that they were essentially required to prepare for two hearings; the original hearing scheduled for October 24, 2006 and the eventual hearing convened in June 2007.

The Christian's asserted that the applications were not simplistic as Intrepid suggested. The Christian's emphasized that the applications contemplated the drilling of two wells in an unconfined aquifer and the placement of a pipeline within the same aquifer. The Christian's included the table of contents from their final argument to illustrate the numerous issues raised by the applications.

The Christian's disagreed with Intrepid's assertion that the materials included in their submission did not add value to the proceeding. The Christian's argued that all of the materials submitted were directly and necessarily related to their intervention

The Christian's defended their decision to hire HCL to prepare a report on the impact of proposed activities on the unconfined aquifer. The Christian's stated that the report prepared by HCL differed significantly than the earlier report prepared by HCL for EnCal Energy. The Christian's noted that HCL recommended a number of conditions that should be attached to any license issued to HCL that did not appear in the previous report.

Regarding Intrepid's concern about fees incurred by Ackroyd LLP in the period between the adjournment of the first hearing and the Notice of Hearing for the expanded hearing the Christian's pointed out that only 13.4 hours were billed during the period complained of. Further, the Christian's asserted that the fees incurred during this time period related directly to matters that were material and relevant to the proceeding.

The Christians defended the costs associated with the preparation of final written argument and acknowledged that the Board must ultimately decide whether it was of value to the proceeding.

Ultimately, the Christian's asserted that their counsel and experts were useful and that their participation provided value to the Board.

⁴ Transcripts, page 469

4.3 Views of the Board

The following table reflects the costs claimed by the Christians.

<i>Participant</i>	<i>Fees/Honoraria</i>	<i>Expenses</i>	<i>GST</i>	<i>Total</i>
Ackroyd LLP	\$44,175.00	\$10,581.86	\$3,114.86	\$57,871.72
HCL ⁵	\$9,460.00	\$945.14	\$624.34	\$11,029.98
Trevor Christian	\$300.00	\$77.40	\$4.64	\$382.04
Dale Christian	\$300.00	\$243.40	\$14.60	\$558.00
Glennis Christian	\$300.00	\$114.50	\$6.87	\$421.37
Joel Christian	\$300.00	\$77.40	\$4.64	\$382.40
Total	\$54,835.50	\$12,039.70	\$3,769.95	\$70,645.15

Ackroyd LLP

The Board finds that the legal fees claimed by Ackroyd LLP are reasonable given the nature and scope of the hearing. The Board disagrees with Intrepid's assertion that the issues raised by its applications were simple and straightforward. To the contrary some of the applied for facilities were proposed for an unconfined aquifer in area subject to frequent, and sometimes severe flooding. In Decision 2007-080, the Board found that Intrepid failed to appreciate the scope and extent of flooding that regularly occurs and appeared to have little appreciation for the surface environment in which the proposed well would be drilled⁶.

Mr. Secord ably represented his clients. His cross-examination of the Intrepid panel was effective and addressed issues relevant to the proceeding. Likewise, the direct evidence of the Christian's and their expert, Mr. Clissold was helpful to the Board. In the Board's view, the Christian's evidence regarding local flooding, ground conditions, and their interactions with Intrepid was of great assistance to the Board in making its decision.

However, the Board notes that the Christians have claimed a significant amount for photocopying documents (\$5,854.35) that were included with their submissions. While some of the information included was of assistance to the Board, the Board found a large portion of the documents filed by the Christians to be of extremely limited value, some examples include:

- Article relating to Anthrax
- Alberta Beef Management Document on Blackleg and other Clostridial Diseases
- Landowners and Residents You and the Oil and Gas Industry
- Natural Gas In Coal (CAPP document)
- Report of the Rosenberg International Forum on Water Policy
- Alberta Water Council 2007 Operational Plan
- Agriculture and Food Council Public Consultation Guide
- Alberta Water Conservation and Allocation Guideline 2006 for Oilfield Injection
- Strategic needs for Energy Related Water Use Technologies
- South Saskatchewan River Basin Draft Water Management Plan.

⁵ Hydrogeological Consultants Ltd.

⁶ Decision 2007-080, pages 22 and 23

These documents were generally of a regional or even provincial scope and did not relate specifically to the applications. Other documents, such as those related to Coalbed Methane (CBM), were simply not applicable to the proceeding as Intrepid had not applied to the Board to produce CBM. Further, while some of the documents provided may have had some relevance to the issues, their authors were not called as witnesses so their conclusions could not be tested. Also included were a number of draft documents which, given their nature, could not be relied upon by the Board. In total the Board found that 1021 pages of the documents filed were not directly and necessarily related to the proceeding. The Board recognizes that twelve copies of the material were filed. Therefore the Board disallows the Christians' claim for photocopying in the amount of \$1,225.20 and associated GST of \$61.26, for a total of \$1,286.46.

While the Board agrees that the final argument prepared by Mr. Secord was lengthy, the Board concludes that it was comprehensive and addressed relevant issues. The Board considers that the issues raised by this application were significant and does not agree that with Intrepid's characterization of the issues as simple.

Regarding the time claimed by Mr. Secord for activities undertaken during the hiatus between the originally scheduled hearing and the final hearing, the Board finds that the 13.4 hours claimed during this time was reasonable in the circumstances. The Board notes that the hiatus was premised upon Intrepid's request to adjourn the proceeding to include additional wells, pipelines and facilities. In the Board's view, the activities undertaken by Mr. Secord during this time, as described in the accounts filed with the Board and in the Christians' September 19, 2007 response, were directly and necessarily related to the proceeding.

Hydrogeological Consultants Ltd.

The Board found the evidence prepared and presented by Mr. Clissold to be relevant and important to its overall decision on this matter. Mr. Clissold is a Hydrogeologist with significant expertise both generally and specific to the area of application. The Board considers that the fees claimed by HCL are commensurate with the work performed and approves the amount claimed in full.

Dale Christian, Trevor Christian, Glennis Christian and Joel Christian

The Board finds the honoraria and expenses claimed by the Christians to be reasonable, and approves the amounts claimed in full.

5 COST CLAIM (The Telfords)

5.1 Views of Intrepid

On September 12, 2007 Intrepid submitted comments regarding the Telfords' cost claim. Intrepid is of the view that the cost claim is unreasonable given the simplistic nature of the Applications and in light of the main issue being the location of the 13-18-36-01 W5M well.

With respect to Ms. Steblyk's legal costs, Intrepid reiterates the comments submitted regarding the Christian family cost claim. Intrepid objects to the time incurred between October 25, 2006 and December 8, 2006; and between January and April 2007. Intrepid did not submit new information until April 2007, and therefore the Board should not hold Intrepid responsible for these costs. In addition, Intrepid notes again that the Board did not issue a revised Notice of Hearing until April 5, 2007; and argues that it is the Board's usual practice to acknowledge only those costs incurred after the EUB has issued a notice of hearing.

Intrepid raises concerns with respect to Ms. Steblyk's submissions in page 3 of the cost claim. Ms. Steblyk submits that the Telfords' intervention minimized costs by cooperating with the Christian family in the early stages of the intervention. When the Board granted intervener status to the Christian family, the Christian family retained Mr. Secord and focused on issues related to the aquifer, while the Telfords' focused on issues related to their kennel business and engineering alternatives to the well and pipeline locations.

Intrepid reviewed the legal account of Ms. Steblyk and Mr. Secord, and is of the view that both counsels were providing legal services to the Christian family. Further, Intrepid notes that Ms. Steblyk incurred time for telephone attendances and correspondence with the Christian family, after the Christian family retained Mr. Secord.

With respect to the argument phase of the proceeding, Intrepid reiterates its earlier comments regarding the Christian cost claim. Closing remarks were essentially a repetition of the transcripts and restating the Telfords' entire submission. Additionally, the final argument provided a multitude of transcript references and a regurgitation of what appears to be those portions of the hearing that best served Ms. Steblyk's clients' interests. Intrepid submits that Ms. Steblyk did not conduct the intervention during this phase of the hearing in accordance with section 10.6 of Directive 029.

Intrepid observed that its lawyer billed 10 hours for the preparation of final argument in contrast to the 40 hours billed by Ms. Steblyk. Intrepid contended that this difference alone was sufficient to demonstrate the unreasonableness of this aspect of the Telford's claim.

Intrepid submits that amount of the cost claim is reflective of Ms. Steblyk's inexperience with EUB proceedings, or perhaps it is becoming common practice to inflate fees to counter potential reductions made by the Board. In either event, Intrepid submits that the Board must address inflated costs to ensure future costs are commensurate with the issues before the Board.

Intrepid questioned the value of the evidence provided by the Telfords' drilling expert, Deadeye Engineering. It noted that the expert's evidence regarding well placement and directional drilling did not materially differ from Intrepid's own evidence.

Intrepid also questions the usefulness of the Telfords' veterinary expert, Dr. Heide. Intrepid is of the view that this expert was not aware of the scope of the activity proposed for the Telford's property. Intrepid references page 645 of the transcripts.

In light of the foregoing, Intrepid suggests a 50% reduction to the legal and consulting costs. In addition, Intrepid suggests that the Board deny the proposed veterinary fees in their entirety.

5.2 Views of the Telford Family

On September 20, 2007 the Telford Family responded to Intrepid's comments.

With respect to legal costs incurred during a time when Intrepid was not submitting new information, the Telfords submit that the amounts are insignificant, and notes that the tasks involved during this time included communicating with Board counsel and/or Intrepid. Regarding the Notice of Hearing (Notice), the Telfords retained counsel after the Board issued the Notice and submit that the Board should not penalize their costs for continuing to retain counsel after the Board adjourned the hearing at Intrepid's request.

Regarding Intrepid's legal costs compared to intervener legal costs, the Telford Family submits that this issue is irrelevant. Neither the Telford Family nor the Board were made aware of Intrepid's retainer for legal services. The Telford Family notes that the majority of material leading up to the hearing came directly from Intrepid rather than Intrepid's legal counsel. The Telford Family further submits that it is not reasonable to compare Intrepid's position as a petroleum producer making regular applications to the Board, to the position of landowners who are not regularly involved in EUB proceedings.

With respect to the expert costs for Mr. Garden of Deadeye Engineering, and the issue of directional drilling, the Telford Family disagrees with Intrepid that Mr. Garden drew the same conclusions as Intrepid. Mr. Garden may have acknowledged additional risks and costs associated with directional or slant drilling, however; his evidence supported that this approach was reasonable for the project. In addition, Mr. Garden provided suggestions for other scenarios. The Telford Family submits that Intrepid only investigated one scenario, and given Intrepid's lack of substantive evidence for alternatives and the associated risks and costs, the Board would have been without evidence on this issue if it were not for Mr. Gardner's involvement.

With respect to the veterinary costs, and Intrepid's concern regarding the scope of the proposed project, the Telford Family submits that Dr. Heide did not accurately reflect the scope of the project in light of the questioning by Intrepid's counsel. The Telford Family is of the view that the scope of the project was more accurately described when Ms. Steblyk cross-examined Intrepid's witness, Mr. Goruk.

5.3 Views of the Board

The following table reflects the costs claimed by the Telfords.

<i>Participant</i>	<i>Fees/Honoraria</i>	<i>Expenses</i>	<i>GST</i>	<i>Total</i>
Davis LLP	\$48,180.00	\$4,025.31	\$2,960.98	\$55,166.29
Deadeye Eng.	\$16,617.50	\$625.86	\$1,034.07	\$18,277.43
Dr. Brian Heide	\$1,100.00	\$0.00	\$0.00	\$1,100.00
Total	\$65,897.50	\$4,651.17	\$3,995.05	\$74,543.72

Davis LLP

The Board has reviewed the legal fees claimed by Davis LLP and finds them to be reasonable and directly and necessarily related to the proceeding. The Board finds that Ms. Steblyk's representation of the Telford's concerns was appropriate in the circumstances. The Board notes that her cross-examination of the Intrepid panel was focused and effective and that her client's direct evidence was well organized and cogent. Similarly, the Board found the Telford's final argument and reply to be thoughtful, well organized and on point. While the Board acknowledges that the final argument filed was substantial, it considers that the issues raised in this proceeding warranted its scope and the associated fees.

Intrepid expressed concern regarding fees claimed by Davis LLP for interaction between Ms. Steblyk and Mrs. Christian and time spent by Davis LLP on aquifer issues. The Board notes that there was very little overlap between the evidence presented by the Christians and that presented by the Telfords. The Board understands that this was largely a function of the cooperation between the two counsel retained and the Telfords and Christians themselves. The Board also understands that Mrs. Christian was assisting the Telford's with their application prior to the filing of the additional Intrepid applications which triggered the Christians standing to participate in the proceeding.

The Board approves the legal costs claimed by Davis LLP in full.

Deadeye Engineering

The Board finds that the fees claimed on behalf of this expert are reasonable given the level of expertise demonstrated and the nature of the evidence provided. Deadeye Engineering provided valuable evidence with respect to one of the most important issues considered at the hearing, alternative well locations and alternative drilling technology. The Board found the evidence provided by Deadeye to be helpful in that it provided information on this issue beyond that found in Intrepid's evidence. The Board approves the costs claimed by Deadeye Engineering in full.

Dr. Heide

The Board found the evidence provided by Doctor Heide to be useful and relevant. The Board found Dr. Heide to be of assistance in that he gave an expert opinion on the potential effect of the proposed project on the dogs kenneled at the Telfords' property. The Board considers that the fees claimed by Dr. Heide are reasonable and approves the amounts claimed in full.

6 ORDER

IT IS HEREBY ORDERED THAT:

- (1) Intrepid Energy Corporation shall pay intervener costs in the amount of \$69,358.69 to Ackroyd LLP, attention: Richard Secord.

- (2) Intrepid Energy Corporation shall pay intervener costs in the amount of \$74,543.72 to Davis LLP, attention: Deanna Steblyk.

Dated in Calgary, Alberta on this 8th day of March, 2008.

ALBERTA ENERGY AND UTILITIES BOARD

Original Signed by Thomas McGee

Thomas McGee
EUB Board Member