



Vero Energy Inc.

Application for a Well Licence
Wildcat Hills Field

Cost Awards

August 24, 2010

ENERGY RESOURCES CONSERVATION BOARD

Energy Cost Order 2010-006: Vero Energy Inc., Application for a Well Licence, Wildcat Hills Field

August 24, 2010

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**VERO ENERGY INC.
APPLICATION FOR A WELL LICENCE
WILDCAT HILLS FIELD**

**Energy Cost Order 2010-006
Application No. 1620434
Cost Application No. 1638453**

1 INTRODUCTION

1.1 Background

Vero Energy Inc. (Vero) applied, on behalf of itself and Tournament Exploration Ltd. (Tournament), to the Energy Resources Conservation Board (ERCB/Board), pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, for a licence to drill a single well at Legal Subdivision (LSD) 9, Section 20, Township 27, Range 5, West of the 5th Meridian, to a projected bottomhole location at LSD 4, Section 28, Township 27, Range 5, West of the 5th Meridian. The purpose of the proposed well was to obtain sweet gas from the Viking and Mannville Formations.

554595 Alberta Ltd. (554595) filed an objection to the proposed project on the basis that Vero was proposing to use an existing access road and construct an additional stretch of access road on 554595's land. 554595 was concerned that having three companies using the access road (itself, Vero, and Tournament) would result in greater adverse effects on its employees, agents, and cattle through an increase in dust, weeds, odour, equipment, noise, and traffic. These cumulative effects would require greater attention on its part to safety and security.

The Board, by Notice of Hearing dated October 30, 2009, scheduled a public hearing to be held on February 8, 2010. On December 7, 2009, Vero notified the ERCB that it was withdrawing Application No. 1620434. In *Decision 2010-007: Vero Energy Inc., Application for a Well Licence, Wildcat Hills Field*, dated February 8, 2010, the Board acknowledged the withdrawal of the application and, accordingly, cancelled the public hearing.

1.2 Cost Claim

On January 15, 2010, 554595 filed a cost claim in the amount of \$15 492.00. 554595 provided additional information to support its claim in correspondence dated February 9, February 28, March 8, April 13, and May 25, 2010.

Vero, on behalf of itself and Tournament, submitted comments on 554595's cost claim in letters dated March 3 and March 31, 2010.

The Board considers the cost process to have closed on May 26, 2010.

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 application in question.

When assessing costs, the Board refers to Part 5 of the *Energy Resources Conservation Board Rules of Practice* and Appendix E: Scale of Costs in *ERCB Directive 031: Guidelines for Energy Proceeding Cost Claims*.

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

57(1) The Board may award costs, in accordance with the scale of costs, to a participant if the Board is of the opinion that

- (a) the costs are reasonable and directly and necessarily related to the proceeding, and
- (b) the participant acted responsibly in the proceeding and contributed to a better understanding of the issues before the Board.

3 VIEWS OF THE PARTIES

554595 was represented by Maurice J. Sychuk Consulting Inc. On January 15, 2010, 554595 filed a cost claim for fees in the amount of \$14 040.00, honorarium in the amount of \$750.00 for attendance by Mr. Derrick Zell, the managing director of 554595, and GST in the amount of \$702.00, for a total claim of \$15 492.00.

3.1 Views of the Applicant

Vero had no dispute with the \$750.00 in costs claimed for Mr. Zell for time spent negotiating with Vero and its land agents up to April 22, 2009. Vero noted that it had provided compensation to Mr. Zell for his reasonable costs up to the time of Mr. Sychuk’s involvement.

Vero objected to the claim in relation to the costs of Maurice J. Sychuk Consulting Inc., stating that Mr. Sychuk had initiated a civil claim to the Provincial Court of Alberta against Vero, Tournament, and Total Petroleum Land Services for what appeared to be the same costs.

Vero submitted that Mr. Sychuk had introduced himself by way of letter, dated April 28, 2009, as “a personal friend of Derrick Zell” who would be assisting as 554595’s “Power of Attorney” in negotiations for access to the proposed well. Vero further indicated that at no time were Mr. Sychuk’s costs discussed with it or agreed upon. Vero believed that Mr. Sychuk was acting on Mr. Zell’s behalf as a power of attorney as a matter of convenience since Mr. Zell worked shifts in the Fort McMurray oilfield. This power of attorney arrangement was put forward as a means to facilitate negotiations between the parties, but Vero indicated that the negotiations quickly degenerated with Mr. Sychuk’s involvement.

Vero further noted that it is industry practice to compensate landowners for reasonable costs that may be incurred in retaining the services of an independent representative provided that it has been advised in advance, the negotiations are conducted in good faith, and an agreement is reached in a timely manner. Vero stated that with Mr. Sychuk acting on behalf of 554595 negotiations became extensively protracted and eventually failed.

Vero noted that the first mention of payment was Mr. Sychuk’s stipulation that as a “condition” to the execution of the agreement, Tournament accept and pay Mr. Sychuk’s costs since he was acting as a power of attorney on behalf of 554595. If there were such an agreement, as alleged by Mr. Sychuk, it would also include a condition that a surface lease agreement be concluded between Vero and 554595 before any payment would be made to Mr. Zell. Vero stated that no surface access agreement was concluded between Vero and 554595.

Vero agreed to pay Mr. Zell’s claim of \$750.00 and, in fairness to the landowner, to pay an additional \$1500.00 to cover additional expenses.

3.2 Views of the Intervener

554595 stated that Vero had not provided any just reasons why the cost claim should not be paid. 554595 pointed out that legislative provisions and industry practice would dictate that the applicant pay the costs incurred by a landowner in negotiations with the company.

554595 stated that Vero’s position that it should have been advised of the costs prior to the negotiations would be a convenient way to avoid the industry practice of compensating landowner’s reasonable costs by simply never raising the matter of costs.

554595 took the position that agreement was reached on all outstanding issues on November 25, 2009; therefore, the cost claim should be paid in full even though Vero withdrew the application and a hearing did not take place.

Mr. Sychuk said that he acted on behalf of 554595 in negotiations with Vero from April 28 to May 4, 2009. On September 25, 2009, the negotiations were mainly with Randy McDonald of Total Petroleum Land Services, who acted on behalf of Tournament. Mr. Sychuk maintained that his Statement of Account to Tournament was \$10 111.50 on September 24, 2009, and that on October 21 and November 4, 2009, Total confirmed that fees in the amount of \$10 111.50 were to be paid to him. He stated that the November 14, 2009, offer proposed total compensation of \$13 986.00 and that on November 25, 2009, when the agreement was reached, he left the amount of the compensation to Randy MacDonald. Mr. Sychuk stated that after negotiations, he and Randy MacDonald agreed on a fee of \$12 000.00.

554595 submitted that the action in the Provincial Court of Alberta between Maurice J. Sychuk Consulting Inc. and Vero Energy Inc., Tournament Exploration Inc., and Total Petroleum Exploration Ltd. was a breach-of-contract action brought by Mr. Sychuk against the Defendants regarding the November 25, 2009 agreement. 554595 noted that the Plaintiff in the court action is Maurice J. Sychuk Consulting Inc., whereas 554595 was making the cost claim to the Board.

4 VIEWS OF THE BOARD

Under Section 28 of the *ERCA* and Section 57 of the *Rules of Practice*, the Board has discretion to award costs that are reasonable and directly and necessarily related to the proceeding and where the participant acted responsibly and contributed to a better understanding of the issues before the Board. The Board notes that this intervention concerned the use of an existing access road and the construction of an approximately 267 m addition to that road. The Board further notes that this matter did not proceed to a hearing as Vero withdrew the application.

In its cost claim, 554595 claimed for costs incurred prior to September 24, 2009. The Board notes that the parties reached an agreement relating to these costs and that this matter is currently before the Provincial Court of Alberta. The Board encourages parties to reach such agreements and sees no reason to interfere with the intention of the parties in this case that the costs for this period should be addressed through their agreement. Furthermore, the costs were incurred prior to the Notice of Hearing being issued. Accordingly, the Board is of the view that any costs claimed by 554595 for the period prior to September 24, 2009, should be sought through that agreement. As such, the Board will not award those costs. Further, from the submissions it is evident that the parties also reached an agreement as to the \$750.00 claimed for Mr. Zell's time. Accordingly, the Board will not award in this order any costs claimed by Mr. Zell.

Although there are discrepancies in 554595's submissions regarding the exact number of hours billed by 554595's representative Mr. Sychuk, it appears from the detailed submission dated May 25, 2010, that the number of hours he claimed after September 23, 2009, was 35.75 hours. The Board notes that the Notice of Hearing was issued on October 30, 2009. The Board finds that the costs claimed for work done after September 23, 2009, and prior to October 30, 2009, related to participation in negotiations between the parties. Further, the Board finds that the majority of costs incurred after October 30, 2009, also relate to costs incurred in the negotiating process. The Board will not be awarding these costs as they were associated with the numerous and protracted negotiations that had been ongoing since April 2009, were not necessary and directly related to the proceeding, and did not help the Board understand the issues before it. The Board is of the view that the costs claimed that are reasonably related to the preparation of 554595's intervention are 14.50 hours at a rate of \$120/hour that pertain to Mr. Sychuk's time entries for the following dates: October 30, 2009, and November 14 to December 11, 2009. Accordingly, the Board will award costs for 14.5 hours of work by Mr. Sychuk, which results in an award of \$1740.00, plus \$87.00 for GST.

5 ORDER

It is hereby ordered that Vero Energy Inc. pay costs totalling \$1827.00 to 554595 Alberta Ltd, c/o Bert Zell, PO Box 481, Cochrane AB T4C 1A7.

Dated in Calgary, Alberta, on August 24, 2010.

ENERGY RESOURCES CONSERVATION BOARD

< *original signed by* >

M. J. Bruni, Q.C.
Presiding Board Member

< *original signed by* >

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

< *original signed by* >

J. G. Gilmour, LL.B.
Acting Board Member

APPENDIX A SUMMARY OF COSTS CLAIMED AND AWARDED



Microsoft Excel
Worksheet