

Directive 031

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Guidelines for Energy Proceeding Cost Claims (Formerly Directive 31A: Guidelines for Energy Cost Claims)

The Energy Resources Conservation Board (ERCB/Board) has approved this directive on March 12, 2009.

<original signed by>

Dan McFadyen
Chairman

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1 Introduction

Directive 031 (formerly numbered as *Directive 031A*) updates the June 2001 edition. It was developed to assist local interveners who wish to apply to the Energy Resources Conservation Board (ERCB/Board) for an award of costs in relation to their participation in an ERCB hearing. The guide addresses such issues as

- who is eligible to claim costs?
- advance funding
- what costs may be claimed by a local intervener, lawyer, consultant, or expert?
- how and when to file a cost claim
- what happens if an applicant fails to pay costs?
- can a cost order be appealed?

A glossary of special terms is in Appendix A.

2 Who Is Eligible to Claim Costs?

2.1 Definition of Local Intervener

Only those persons determined to be “local interveners” by the ERCB will be eligible to recover the costs associated with participating in an ERCB proceeding. Section 28(1) of the *Energy Resources Conservation Act (ERCA)* defines the term “local intervener” 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.

Section 28(1) establishes two criteria for determining local intervener funding (see Appendix B). To be a local intervener, the intervener must demonstrate that

- the intervener has the necessary interest in land, and
- the land in question will or may be directly and adversely affected by the Board's decision on the proposed project.

The Board determines local intervener status on a case-by-case basis, considering a number of factors, including

- the nature of the proposed project,
- the size of the proposed project,
- the distance of the proposed project from the participant's land or lands, and
- what reasonable concerns are associated with the proposed project.

Generally, a person or group or association of persons whose business includes the trading in or transportation or recovery of any energy resource will not be considered to be a local intervener by the ERCB. However, the ERCB has the discretion to recognize such a party as a local intervener in special circumstances.

Note that even if municipalities are granted standing to participate in ERCB proceedings, they are not typically eligible for intervener costs. The cost eligibility provisions of the *ERCA* were not intended to apply to municipalities, regional health authorities, and similar bodies because they are statutorily created bodies whose mandates require them to participate in the ERCB process on behalf of their stakeholders. In certain cases, the ERCB may be persuaded to use its discretion to make an exception to this general rule and grant costs to municipalities or equivalent entities, especially if the Board concludes that their participation was valuable and beneficial to the proceedings.

2.2 Advance Determination of Local Intervener Status

If a potential intervener is unsure if he/she will qualify as a local intervener, he/she may apply to the Board for advance determination of local intervener status by completing an Application for Advance Determination of Local Intervener Status (see Appendix C).

Potential interveners should include the following details in their application:

- the nature and location of the proposed project,
- the nature of intervener's interest in the land in question,
- the location of the land in question,
- how the land or use of the land may be directly and adversely affected by the project, and
- any other information that may be helpful to the Board in making its decision.

Sometimes the ERCB is unable to determine local intervener status until it has the opportunity to consider the evidence presented at a hearing. In such situations, the ERCB will advise applicants in a timely fashion that an advance determination cannot be made at that time.

Applications for advance determination of local intervener status should be directed to
Energy Resources Conservation Board
Law Branch
640 - 5 Avenue SW
Calgary AB T2P 3G4
Phone: 403-297-8259
Fax: 403-297-7031
E-mail: energycost@ercb.ca

3 Advance Funding

Parties may apply for advance funding by completing an Application for Advance Funding (see Appendix D). In order to qualify for advance funding, an interested party must first establish local intervener status (see Section 2).

Applicants for advance funding are required to supply the ERCB with the following information:

- the name of the intervener,
- the mailing address of the intervener,
- the legal description of the land that the intervener claims an interest in,
- the name of the intervener's solicitor, if he or she is represented by counsel,
- the application number and name of the proceeding in question,
- a detailed budget that clearly outlines the expenses that the intervener reasonably expects to incur in the preparation and presentation of his or her intervention,
- if a lawyer, expert, or consultant is a necessary component of the intervention, a summary of the lawyer's, expert's, or consultant's expertise and a detailed description of the work they propose to do in support of their client's intervention, and
- reasons why the advance of funds is required.

Following the receipt of the above information, the Board will consider the intervener's request and provide its decision in a timely fashion. In some situations, determination as to local intervener status cannot be made until the Board has had the opportunity to consider an intervener's evidence at the hearing itself, and the request for advance funding will therefore be denied. However, an intervener may still be eligible for local intervener's costs even when his or her application for advance funding is denied.

All local intervener cost claims are reviewed and assessed by the Board following the proceeding. The Board emphasizes that an award of advance funding in no way represents final approval by the Board of the costs claimed. If the actual amount of costs awarded is less than the advance funding received, the Board can direct that the difference be reimbursed by the local intervener.

4 What Are the Board's General Criteria for Assessing Costs?

When determining a local intervener cost award, the Board will recognize all those expenses incurred by the local intervener that it considers reasonable and directly and necessarily related to the preparation and presentation of the intervention. When assessing a claim for

costs, the Board will have reference to Part 5 of the *Energy Resources Conservation Board Rules of Practice* and its *Scale of Costs*.

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

- (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.

4.1 What Are “Reasonable” Costs?

There are no firm guidelines to identify in each case what type and what amount of costs will be reasonable. These matters must be assessed in the context of the particular proceeding for which the claim is made. The applicant whose proposed development is the subject of a proceeding before the Board normally pays the costs awarded to an intervener. An applicant will be required to pay no more for the organization, preparation, and presentation of an intervention than is warranted by the nature, scope, and impact of the proposed development. While it is up to the intervener to decide the scope and complexity of his or her submission, the costs awarded will reflect what is judged by the Board to be reasonable and necessary in light of the particular circumstances.

It must be remembered that it is the Board’s responsibility to determine whether it was reasonable to incur a particular type of cost and whether the amounts claimed are reasonable.

When deciding if a local intervener claim is reasonable, the Board is guided by Section 57(2) of the *Rules of Practice*. In determining the amount of costs to be awarded to a local intervener, the Board may consider whether the local intervener did one or more of the following:

- asked questions on cross-examination that were unduly repetitive of questions previously asked by another participant and answered by that participant’s witness;
- made reasonable efforts to ensure that the participant’s evidence was not unduly repetitive of evidence presented by another participant;
- made reasonable efforts to cooperate with other participants to reduce the duplication of evidence and questions or to combine the participant’s submission with that of similarly interested participants;
- presented in oral evidence significant new evidence that was available to the participant at the time the participant filed documentary evidence but was not filed at that time;
- failed to comply with a direction of the Board, including a direction on the filing of evidence;
- submitted evidence and argument on issues that were not relevant to the proceeding;
- needed legal or technical assistance to take part in the proceeding; and
- engaged in conduct that unnecessarily lengthened the duration of the proceeding or resulted in unnecessary costs.

In general, the Board reviews a cost claim to ensure that the costs claimed are reasonable and in line with the scope and nature of the proceeding and that the work performed by the intervener did not duplicate the work performed by the other interveners.

A detailed discussion of what costs will be considered reasonable is in Section 5.

The Board may deny a claim for costs, in whole or in part, if

- the Board did not hold a hearing on the matter, or
- the Board is not satisfied that the intervention was conducted economically.

A reasonable submission for cost purposes would not include arguments about things not being considered or not related to the application; arguments about matters already decided (e.g., arguing the need for a project when the need has been previously established); or arguments about government policy or legislative changes, which should more properly be placed before the government or a Member of the Legislative Assembly.

The Board will not generally award costs for the completion of a cost application as such costs are not directly and necessarily related to the proceeding nor do they contribute to a better understanding of the issues before the Board.

4.2 The *Scale of Costs*

The *Scale of Costs* details what fees and disbursements are eligible for reimbursement in relation to a party's participation in a proceeding before the Board. The *Scale of Costs* represents what is a fair and reasonable tariff to provide a local intervener with adequate, competent, and professional assistance in making an effective submission before the Board. The *Scale of Costs* is in Appendix E.

If a party can advance persuasive argument that the level of the tariff is inadequate given the complexity of the case, the Board may make an exception to the *Scale of Costs* to address such unique circumstances.

4.2.1 Professional Fees

The *Scale of Costs* provides a sliding scale for professionals on the basis that a professional's fees increase as he or she gains expertise. The Board emphasizes that the maximum allowable hourly rates are not awarded as a matter of course. Rather, the Board assesses each claim on its individual merits and only approves the maximum fee when the local intervener has demonstrated that such a fee is warranted by the work performed.

4.2.2 Disbursements

The *Scale of Costs* details what disbursements are eligible for reimbursement. Again, the Board will direct reimbursement of only those disbursements that are, in the Board's opinion, reasonable and directly and necessarily related to the proceeding in question.

The *Scale of Costs* also states what disbursements require backup receipts or invoices in order to be considered for reimbursement.

5 What Costs May Be Claimed by Local Interveners, Lawyers, Consultants, and Experts?

5.1 Local Interveners

5.1.1 Honorarium for Forming a Group

The ERCB encourages local interveners with similar issues to consider intervening as a group rather than as individuals. The formation of a group often results in a more balanced and complete intervention and reduces duplication of the information presented at the hearing. Avoidance of duplication is also important because the Board may reduce the costs awarded to individual local interveners if it finds that they had similar concerns and shared a common purpose.

The ERCB recognizes that organizing a group of local interveners requires considerable time, effort, and expense. Depending upon the size of the group and the efforts required to organize it, organizers may receive honoraria in recognition of their efforts. While such awards are generally \$300.00 to \$500.00, in exceptional cases when the necessary preparation time is substantial, honoraria in excess of \$500.00 may be considered. The Board will also consider claims for reasonable expenses related to the organization of a group (see Section 5.1.4). GST cannot be claimed on honorariums.

5.1.2 Preparation Honorarium

A local intervener may personally prepare and present an intervention to the Board without outside help. This approach may be appropriate if the issues at a hearing are straightforward and the local intervener is comfortable in presenting his/her concerns directly to the Board.

A local intervener who personally prepares a submission without expert help may receive an honorarium in the range of \$300.00 to \$2500.00, depending upon the complexity of the submission.

When a submission is prepared on behalf of a group of interveners without expert help, up to four people may be entitled to preparation honoraria at the same rates described above.

The Board will not normally provide a preparation honorarium to a local intervener if a lawyer is primarily responsible for the preparation of an intervention. 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.

Reasonable expenses incurred by a local intervener and related to the preparation of a submission will be allowed (see Section 5.1.4).

5.1.3 Attendance Honorarium

Appearing at an ERCB hearing in support of an intervention may include giving evidence, being cross-examined, assisting counsel and consultants, and presenting closing argument. Interveners who participate in a hearing in this manner can claim an honorarium of \$100.00 for each half day of attendance at a hearing.¹

For large local intervener groups, the Board generally awards attendance honoraria to no more than six individuals but may consider additional attendance honoraria in exceptional circumstances.

¹ The noon break separates the two halves of the day of a public hearing.

Alternatively, the Board will also consider a claim for lost wages on a claim-by-claim basis.

Reasonable expenses incurred by a local intervener for attendance at a hearing will be allowed (see Section 5.1.4).

5.1.4 Local Intervener Expenses/Disbursements

The *Scale of Costs* provides for a number of different expenses that a local intervener may incur for preparation and attending a hearing. In addition to those expenses, the Board may also award costs for

- stationery,
- postage,
- long-distance telephone,
- photocopying, and
- meeting room rental.

Form E4: Summary of Disbursements Claimed (see Appendix F) provides a detailed list of common expenses. Parties claiming expenses not shown on Form E4 should record the expense under the miscellaneous row in the form and provide an explanation of the expense.

5.2 Lawyers, Consultants, and Experts

As discussed earlier, the Board follows its *Scale of Costs* for legal, consulting, and expert fees. The maximum allowable hourly rates are not awarded as a matter of course. Rather, the Board assesses each claim upon its individual merits and only approves the maximum fee when it has been demonstrated that such a fee is warranted by the work performed.

5.2.1 Costs for a Lawyer

It is important to clarify how each lawyer expects to be paid for his or her services. Some lawyers who appear before the Board accept the costs awarded to them by the Board as full payment for their services. Other lawyers require local interveners to pay them their full fees regardless of the fees awarded to them by the Board. For example, a lawyer represents a local intervener at a one-day hearing and claims \$12 000 in legal fees based on an hourly rate of \$300. The Board awards the lawyer \$11 200, based on its maximum hourly rate of \$280. The local intervener would then have to pay the outstanding \$800 to the lawyer out of his/her own pocket. The ERCB cannot decide disputes between a lawyer and a client over legal fees. Such disputes may be resolved through the Taxing Officer at the Court of Queen's Bench.

All claims for legal fees must be supported by a copy of the lawyer's account, which must include sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding. The Board considers a lawyer's hourly rate to include all overhead expenses, such as secretarial work.

5.2.2 Costs for Experts and Consultants

A local intervener may hire one or more experts or consultants to assist in the preparation and presentation of an intervention. 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. An expert's assistance with a submission must be related to that person's expertise.

It is important that local interveners finalize their fee arrangements with their experts and consultants before they agree to use their services. If the local intervener's lawyer considers that the assistance of an expert or consultant is necessary, the lawyer must consult with the local intervener before hiring such assistance and explain how the expert or consultant wants to be paid.

Actual costs for services such as typing may qualify for a cost award if properly documented with a copy of the expert's account and sufficient detail to demonstrate that all items billed were necessary and related to the application or proceeding.

5.2.3 Disbursements

The *Scale of Costs* details what disbursements are eligible for reimbursement. The Board will direct reimbursement of only those disbursements that are, in the Board's opinion, reasonable and directly and necessarily related to the proceeding in question. The *Scale of Costs* also states what disbursements require receipts in order to be considered for reimbursement.

5.3 Non-Expert Witnesses

A local intervener may find it necessary to present non-expert witnesses as part of his/her intervention. For example, a local intervener may ask a neighbour to appear as a witness to provide evidence on local wind conditions. Such a witness is entitled to claim a daily fee of \$200.00 for each day that he/she provides evidence at the hearing.

5.4 Appropriate Dispute Resolution

The Board does not award compensation for participation in the Board's Appropriate Dispute Resolution (ADR) program. Costs for ADR are to be dealt with in the context of the negotiations themselves and not through the Board's cost recovery process. A cost regime exists for costs incurred for negotiations and facilitations, which is described in *Informational Letter (IL) 2001-01: Appropriate Dispute Resolution (ADR) Program and Guidelines for Energy Industry Disputes*:

For the Preliminary ADR Meeting, industry participants should be responsible for the costs, including the direct third-party costs of landowners and the public. Costs and payment for future ADR options should be discussed and agreed to at the Preliminary ADR Meeting.

6 How and When to File a Cost Claim

6.1 Cost Forms and Backup Information

Every cost claim must include the following cost forms (see Appendix F) and backup information:

- Form E1: Summary of Total Costs Claimed
- Form E2: Summary of Professional Fees Claimed
- Form E3: Summary of Intervener Honoraria Claimed
- Form E4: Summary of Disbursements Claimed
- Statements of Account in support of professional fees
- Legible receipts for expenses—If an expense is not self-explanatory, an explanation should be provided. See Appendix E for a list of expense claims that must be accompanied by a receipt.

Forms E1 through E4 are in Appendix F and on the ERCB Web site www.ercb.ca at the following link: http://www.ercb.ca/portal/server.pt/gateway/PTARGS_0_0_323_253_0_43/http%3B/ercbContent/publishedcontent/publish/ercb_home/industry_zone/rules__regulations__requirements/ercb_forms/directive031a_forms.aspx

Appendix G provides samples of properly completed cost forms.

Local interveners must keep a record of all expenses, including receipts, related to the preparation and presentation of their intervention. A record of expenses must be maintained whether the intervener is acting on his/her own behalf or in a group and regardless of whether the intervener has a lawyer, experts, or consultants. The lawyer's or consultant/expert's account should include a detailed list of what services were performed, as well as the amount of time spent carrying out each activity.

Local interveners must demonstrate that the costs they have claimed are reasonable and directly and necessarily related to the issues raised at the hearing. Local interveners must submit enough information to allow the ERCB to consider each claim.

6.2 Filing the Cost Claim

Local interveners must file their cost claims within 30 days of the close of the hearing. A hearing is considered closed once final argument has been presented. Cost claims not received within 30 days will not be considered unless extraordinary circumstances prevented timely filing.

Completed claims should be sent to the ERCB by one of the following ways:

- by fax to 403-297-7031
- by e-mail to energycost@ercb.ca
- by courier or mail to
Energy Resources Conservation Board
Law Branch
640 – 5 Avenue SW
Calgary AB T2P 3G4

Local interveners should also provide a copy of their completed cost claim to the applicant.

6.3 Costs Incurred Before a Notice of Hearing Is Issued

As there is no certainty that a hearing will be held until a notice of hearing is issued, the ERCB normally does not award costs incurred before notice is issued. However, the ERCB recognizes that local interveners may sometimes incur costs prior to the notice that are reasonable and directly and necessarily related to their intervention. Accordingly, the ERCB considers all claims for costs incurred prior to the notice of hearing on a case-by-case basis.

6.4 Costs Claims When No Hearing Is Held

The decision to award local interveners costs when no public hearing is held is within the discretion of the Board. The Board considers each claim on its own merits. Some of the factors that it considers are

- 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 were 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.

Claims for local intervener costs if no hearing is held should be filed with the ERCB as soon as possible. If such a claim is being made regarding an application that was withdrawn, the claim must be filed within 30 days of the date upon which the application was withdrawn. The ERCB will not consider claims received after the 30-day period unless extraordinary circumstances prevented timely filing.

6.5 How Long Does It Take for the ERCB to Issue a Cost Order?

Once the ERCB receives a cost claim, it will provide the applicant of the hearing with an opportunity to review and comment on the cost claim. If the applicant submits comments, the ERCB will then provide the cost claimant with an opportunity to respond to the comments. The Board will normally allow each party two weeks.

Once parties have had an opportunity to comment and respond, the Board will consider the cost process closed and will proceed with assessing the cost claim. Parties can expect to receive a final decision on the cost claim following the issuance of a final decision in the proceeding and within 90 days of the cost process closing.

7 May a Cost Order of the Board Be Appealed?

Local interveners or applicants who are dissatisfied with a cost order may request the ERCB to review their claim or they may appeal the cost decision to the Alberta Court of Appeal. A local intervener or applicant wishing to review or appeal a cost decision must do so within 30 days of the date upon which he/she received the cost order.

7.1 Cost Order Review Requests

An application for a review of a cost order must be in writing and contain the following:

- a clear and concise statement of facts relevant to the application;
- the grounds on which the application is made;
- a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction;
- a brief description of the remedy sought;
- the applicant's name, address in Alberta, telephone number, fax number and, if available, e-mail address;
- if the applicant has a representative, the representative's name, address in Alberta, telephone number, fax number and, if available, e-mail address.

An application for a review must be filed and served on the parties to the hearing for which the Board cost order was made. Further information regarding the filing of an application for review is in the *Rules of Practice*.

7.2 Appeal of a Cost Order to the Alberta Court of Appeal

Section 41 of the *Energy Resources Conservation Act* allows appeals of Board decisions to the Alberta Court of Appeal. In order to successfully appeal a cost order of the Board, the local intervener or applicant must demonstrate that the Board decision contains an error of jurisdiction or an error of law.

8 How May Local Intervener Cost Awards Be Enforced?

The vast majority of cost orders are paid by applicants within the 30 days allowed by the Board. However, if an applicant fails to pay a cost order to a local intervener within 30 days, both the ERCB and the local intervener may take steps to enforce the cost order. As the ERCB's governing legislation allows parties affected by a cost order 30 days to request its review or appeal, the ERCB recommends that no enforcement steps should occur until that time has expired.

8.1 ERCB Enforcement

Applicants that fail to pay a cost order within 30 days will be placed on a Global REFER status, an enforcement status that results in

- all of the applicant's applications being processed as nonroutine,
- all of the applicant's future applications and decisions being brought before the Board for approval, and
- possible additional terms or conditions on business associate codes, licences, or approvals.

See *Directive 019: ERCB Compliance Assurance—Enforcement* for further information.

8.2 Registering the Judgement at the Court of Queen's Bench

Section 28(8) of the *Energy Resources Conservation Act* states:

(8) A certified copy of an award of costs made under this section may be filed in the office of the clerk of the Court of Queen's Bench and, on filing and on payment of any fees prescribed by law, the order shall be entered as a judgement of the Court of Queen's Bench and may be enforced according to the ordinary procedure for the enforcement of a judgement of the Court.

Once registered as a judgement, the order may then be enforced under the *Civil Enforcement Act*. A local intervener who has registered the judgement pursuant to the *Civil Enforcement Act* then has several options for collecting the costs ordered:

- seizure and sale of the applicant's property, including equipment
- seizure and sale of the applicant's land
- garnishing the applicant's bank accounts
- garnishing the applicant's accounts receivable (i.e., oil and gas revenues)

Alberta Justice publishes a booklet *Getting and Enforcing Your Judgement in Alberta*, which is available free of charge from the Court of Queen's Bench. It provides step-by-step instructions on how to enforce a judgement in Alberta.

Appendix A Glossary

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|------------------|--|
| Applicant | A company that has applied to the ERCB to construct and operate a well, pipeline, or oil-and-gas-related facility. |
| Cost Order | An order issued by the Board to an applicant requiring the applicant to pay hearing-related costs to a local intervener. |
| Intervention | The participation of a local intervener at an ERCB hearing. An intervention includes filing written evidence, providing oral evidence at the hearing, cross-examining other witnesses, and providing final arguments. |
| Local Intervener | A person or a group or association of persons who, in the opinion of the Board, has an interest in or 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. |

Appendix B Section 28 of the Energy Resources Conservation Act

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.

(2) On the claim of a local intervener or on the Board’s own motion, the Board may subject to terms and conditions it considers appropriate make an award of costs to a local intervener.

(3) Where the Board makes an award of costs under subsection (2), it may determine

- (a) the amount of costs that shall be paid to a local intervener, and
- (b) the persons liable to pay the award of costs.

(4) The local intervener or a person who is determined by the Board to be liable to pay the costs awarded may request that the Board conduct a review of the award of costs.

(5) Where the Board conducts a review of the award of costs, the Board may

- (a) vary the award of costs,
- (b) refuse to vary the award of costs, or
- (c) deny the award of costs.

(6) If in the Board’s opinion it is reasonable to do so, the Board may make an advance of costs to a local intervener and it may direct any terms and conditions for the payment or repayment of the advance by any party to the proceeding that the Board considers appropriate.

(7) The Board may make regulations respecting

- (a) the awarding of costs,
- (b) the making of advances of costs,
- (c) the liability of persons to pay costs, and
- (d) the review of costs awarded.

(8) A certified copy of an award of costs made under this section may be filed in the office of the clerk of the Court of Queen’s Bench and, on filing and on payment of any fees prescribed by law, the order shall be entered as a judgment of the Court and may be enforced according to the ordinary procedure for enforcement of a judgment of the Court.

Appendix C Advance Determination of Local Intervener Status

| | |
|---|---|
| Name of Hearing Applicant and Brief Description of Hearing | Application Number |
| Name of Intervener | Legal Description of Land That the Intervener Claims an Interest in |
| Nature and Location of the Proposed Project | |
| Nature of Intervener's Interest in the Land in Question | |
| How will the land or use of the land be directly and adversely affected by the project? | |

Appendix D Application for Advance Funding

| Name of Hearing Applicant and Brief Description of Hearing | Application Number | | | | | | | | | | | | |
|---|---|--------|---|----------|-------|----------|-------|----------|-------|----------|-------|----------|-------|
| Name of Intervener | Legal Description of Land That the Intervener Claims an Interest in | | | | | | | | | | | | |
| Why is advance funding required? | | | | | | | | | | | | | |
| <p>Personal Expenses That the Intervener Expects to Incur for Preparing and Attending Hearing</p> <table border="1"> <thead> <tr> <th data-bbox="181 814 386 844">Amount</th> <th data-bbox="474 814 1156 844">Description of Expense (e.g., airfare, hotel, photocopying)</th> </tr> </thead> <tbody> <tr> <td data-bbox="181 844 386 873">\$ _____</td> <td data-bbox="474 844 1432 873">_____</td> </tr> <tr> <td data-bbox="181 873 386 903">\$ _____</td> <td data-bbox="474 873 1432 903">_____</td> </tr> <tr> <td data-bbox="181 903 386 932">\$ _____</td> <td data-bbox="474 903 1432 932">_____</td> </tr> <tr> <td data-bbox="181 932 386 961">\$ _____</td> <td data-bbox="474 932 1432 961">_____</td> </tr> <tr> <td data-bbox="181 961 386 991">\$ _____</td> <td data-bbox="474 961 1432 991">_____</td> </tr> </tbody> </table> | | Amount | Description of Expense (e.g., airfare, hotel, photocopying) | \$ _____ | _____ | \$ _____ | _____ | \$ _____ | _____ | \$ _____ | _____ | \$ _____ | _____ |
| Amount | Description of Expense (e.g., airfare, hotel, photocopying) | | | | | | | | | | | | |
| \$ _____ | _____ | | | | | | | | | | | | |
| \$ _____ | _____ | | | | | | | | | | | | |
| \$ _____ | _____ | | | | | | | | | | | | |
| \$ _____ | _____ | | | | | | | | | | | | |
| \$ _____ | _____ | | | | | | | | | | | | |
| Name of Lawyer _____ Anticipated Fees \$ _____ Anticipated Expenses \$ _____ | Name of Consultant/Expert _____ Anticipated Fees \$ _____ Anticipated Expenses \$ _____ | | | | | | | | | | | | |
| Description of Proposed Legal Work and Anticipated Expenses | | | | | | | | | | | | | |
| Description of Proposed Consultant/Expert Work and Anticipated Expenses | | | | | | | | | | | | | |

Appendix E Scale of Costs

The *Scale of Costs* represents a fair and reasonable tariff to provide any interested party with adequate, competent, and professional assistance in making an effective submission before the Board. In a case where a party can advance persuasive argument that the scale of consumer or applicant contribution is inadequate given the complexity of the case, the Board may award an amount greater than stated in the *Scale of Costs* to address such unique circumstances.

1 Professional Fees

The *Scale of Costs* provides a sliding scale for professional fees on the basis that as the professional's experience increases, so will his or her value and wage. The Board emphasizes that the maximum allowable hourly rates will not be awarded as a matter of course. Rather, the Board will assess each claim upon its individual merits and will only approve the maximum fee when it has been demonstrated that such a charge is warranted by the work performed. The Board allows professionals only half of their hourly rate for travel time.

Legal Fees

| | |
|-------------------------------|---------------|
| Articling students | \$140.00/hour |
| 1-4 years at the bar | \$240.00/hour |
| 5-7 years at the bar | \$280.00/hour |
| 8-12 years at the bar | \$320.00/hour |
| More than 12 years at the bar | \$350.00/hour |

Legal fees are deemed to include and cover all overhead charges implicit in the normal operation of a law firm. The Board will not consider fees for secretarial work. In certain situations, it may also be appropriate for a paralegal to work on the application or intervention. The Board will consider such claims only if it can be demonstrated that the work performed required the expertise of a paralegal and could not have been performed by a legal assistant.

Consultants', Analysts', and Experts' Fees

| | |
|--------------------------------|---------------|
| Secretarial/support staff | \$45.00/hour |
| 1-4 years' experience | \$120.00/hour |
| 5-7 years' experience | \$160.00/hour |
| 8-12 years' experience | \$230.00/hour |
| More than 12 years' experience | \$270.00/hour |

The Board recognizes that the above professionals may not include the costs of secretarial work in their fees and thus may recognize a claim for secretarial or clerical services. However, the Board will not recognize claims for overhead based upon percentages of the fees or disbursements claimed.

2 Disbursements

Office Disbursements

The Board will consider claims for the following office disbursements incurred throughout the participant's involvement in the proceeding:

- courier charges

- long-distance telephone calls
- photocopies (\$0.10/page)
- fax (\$1.00/page)
- computer charges
- postage
- transcripts (must be accompanied by a receipt)

The Board does not require claimants to submit receipts for the above disbursements (other than transcripts) with their initial cost claims. However, claimants should retain receipts for such disbursements, as the Board will require their submission if the claim is selected for audit. Office disbursements other than those listed above may be listed as miscellaneous, with a short explanation of the expenses claimed attached.

Personal Disbursements

The Board will consider claims for the following personal disbursements that are incurred during the hearing phase of the proceeding.

Meals: The maximum allowable claim for meals is \$40.00 per day (\$10.00 for breakfast, \$15.00 for lunch and dinner). Claims for meals are restricted to the hearing phase of a proceeding. Tips are not claimable. No receipt is necessary for meal expenses.

Accommodation: The maximum allowable claim for accommodation is \$140.00 per day. Receipts must accompany all claims for accommodation. Claims for accommodation are restricted to the hearing phase of a proceeding.

Travel: The Board's mileage rate for automobile travel is the same as the current Business Kilometre Rate found in the *Public Service Subsistence, Travel and Moving Expenses Regulation*. At the time of publication of this directive, the Business Kilometre Rate is \$0.505 per kilometre (km). This portion of a claim is restricted to intercity travel distances of 50 km or more. The *Public Service Subsistence, Travel and Moving Expenses Regulation* is on the Alberta Corporate Human Resources Web site at <http://www.chr.alberta.ca/Practitioners/Doclist5.cfm?cl=2>

The Board will recognize claims for airfare at economy rates or less. Claims for airfare must be accompanied by a receipt supporting the claim. Claims for airfare are restricted to the hearing phase of the proceeding.

Taxi: Such claims are restricted to the hearing phase of the proceeding. They need not be accompanied by a receipt. Claimants should, however, retain such receipts in the event that the Board directs an audit of the claim. Tips are not claimable.

Parking: Such charges are restricted to the hearing phase of the proceeding. They need not be accompanied by a receipt. Claimants should, however, retain such receipts in the event that the Board directs an audit of the claim. Tips are not claimable.

Appendix F Cost Forms

AFFIDAVIT OF FEES AND DISBURSEMENTS CLAIMED IN THE MATTER OF A CLAIM FOR COSTS MADE BY _____ FOR PARTICIPATION IN A PROCEEDING BEFORE THE ENERGY RESOURCES CONSERVATION BOARD WITH RESPECT TO APPLICATION(S) NO. _____

I, _____, of the (city/town) of _____ and the Province of _____,
MAKE OATH (OR AFFIRM) AND SAY THAT

- 1) I am the _____ of the cost claimant _____ (the Claimant) and as such have personal knowledge of the matters hereinafter deposed to, except where stated to be based on information and belief, and where so stated, I do verily believe to be true.
- 2) The Claimant was an intervener in a proceeding (the Proceeding) before the Board with respect to the above application(s).
- 3) The Claimant incurred fees and disbursements (exclusive of GST) in the amount of \$ _____ as a result of its participation in the Proceeding. Additionally, the Claimant incurred GST on the above fees and disbursements in the amount of \$ _____.
- 4) I have personally reviewed the accounts of the Claimant's (lawyer[s], consultant[s], witness[s]), including the supporting documentation as required by the *Scale of Costs*, and confirm that these accounts represent work performed at the specific request of the Claimant.
- 5) I have personally reviewed all receipts, invoices, and accounts for transcripts, airfare, and accommodation and confirm that they represent disbursements incurred at the specific request of the Claimant.
- 6) I confirm that the fees and disbursements claimed on behalf of the Claimant's lawyer(s), expert(s), and consultant(s) are reasonable and in accordance with the ERCB's *Scale of Costs*.
- 7) (if necessary) The fees claimed on behalf of _____ are in excess of the ERCB's *Scale of Costs*. However, I believe that the Claimant should be entitled to recover such costs because _____

- 8) To the best of my knowledge and belief, the fees and disbursements claimed by the Claimant represent fees and disbursements incurred necessarily and reasonably for the purpose of the Proceeding.

SWORN (OR AFFIRMED) before me at the (City/Town, etc.) of _____ in the Province of _____ on (date) _____.

Commissioner of Oaths

Signature of Affiant

Appendix G Sample Completed Cost Forms

