



# **Dalhousie Oil Company Limited**

**Section 40 Review of Abandonment  
Cost Order No. 2008-1  
Turner Valley Field**

**Cost Awards**

**December 22, 2010**

**ENERGY RESOURCES CONSERVATION BOARD**

Energy Cost Order 2010-010: Dalhousie Oil Company Limited, Section 40 Review of  
Abandonment Cost Order No. 2008-1

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# ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**DALHOUSIE OIL COMPANY LIMITED**  
**SECTION 40 REVIEW OF ABANDONMENT**  
**COST ORDER NO. 2008-1**  
**TURNER VALLEY FIELD**

**Energy Cost Order 2010-010**  
**Application No. 1607608**  
**Cost Application No. 1651813**

## 1 INTRODUCTION

### 1.1 Background

Dalhousie Oil Company Limited (Dalhousie) requested a hearing to review Abandonment Cost Order (ACO) 2008-1, pursuant to Section 40 of the *Energy Resources Conservation Act (ERCA)*. The Energy Resources Conservation Board (ERCB/Board) issued ACO 2008-1 to Dalhousie on April 18, 2008, ordering payment of costs for the abandonment of the well.

After receipt of Dalhousie's submission for the hearing, the ERCB determined that Signalta Resources Limited (Signalta) and Talisman Energy Inc. (Talisman) should be given an opportunity to respond to Dalhousie's allegation that Signalta (as the alleged current owner of the well) and Talisman (as unit operator) are responsible for the abandonment costs. The ERCB was later advised that effective November 27, 2009, CanEra Resources Inc. (CanEra) replaced Talisman as the operator of Turner Valley Unit No. 7 (TVU No. 7) and would therefore replace Talisman as a party to the proceeding.

The Board issued its decision on the matter in *Decision 2010-019: Dalhousie Oil Company Limited, Section 40 Review of Abandonment Cost Order No. ACO 2008-1, Turner Valley Field*, dated May 18, 2010.

### 1.2 Cost Claims

CanEra was represented by Burnet, Duckworth & Palmer LLP. On June 3, 2010, CanEra filed a cost claim for legal fees in the amount of \$12 320.00, expenses in the amount of \$59.20, and GST in the amount of \$620.14, for a total claim of \$12 999.34.

Signalta was represented by Field LLP. On June 17, 2010, Signalta filed a cost claim for legal fees in the amount of \$14 875.00, expenses in the amount of \$70.00, and GST in the amount of \$743.45, for a total claim of \$15 688.75.

On June 28, 2010, Dalhousie submitted comments to the cost claims of CanEra and Signalta. CanEra submitted a response to Dalhousie's submission on July 5, 2010, and on July 12, 2010, Signalta submitted its response. Further particulars related to costs were received from CanEra on August 20 and September 1, 2010, and from Signalta on August 25, 2010. Dalhousie was given until September 24, 2010, to make further submissions in response but filed nothing further.

The Board considers the cost process to have closed on September 24, 2010.

## 2 AUTHORITY TO AWARD COSTS

### 2.1 Views of the Applicant

Dalhousie submitted that the Board is *functus officio* and that the close of hearing was March 15, 2010. It noted that the Board did not otherwise direct that cost submissions could be made beyond the deadlines mandated under the *Energy Resources Conservation Board Rules of Practice*. No cost submissions or requests for extension were made to the Board until June 4, 2010, which was 41 days after the April 14, 2010, deadline for cost claims under the *Rules of Practice*. Dalhousie submitted that CanEra and Signalta both made the conscious decision not to preserve their right to make any costs claims, and that on this ground alone the submissions should be dismissed.

Dalhousie noted that in order to receive local intervener costs CanEra and Signalta must establish that they meet the statutory eligibility for claiming costs. It stated that Section 28(1) of the *ERCA* sets out the conditions for eligibility to claim costs and states that local intervener 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.” Dalhousie noted that in the proceeding both CanEra and Signalta stated that they traded and recovered energy resources, which would therefore exclude them from claiming costs under Section 28(1) of the *ERCA*.

### 2.2 Views of CanEra

CanEra argued that as Unit Operator in the tracts of land and surface leases adjacent to the subject well, it had an interest in land as required by Section 28(1) of the *ERCA*. In fact, in its submissions at the hearing, Dalhousie had argued that since the well was located within the area subject to TVU No. 7, CanEra, as unit operator, was responsible for abandonment costs of the well. CanEra argued that the Board recognized the interest of the unit operator during the hearing by providing CanEra with the opportunity to make submissions and in the Amended Notice of Hearing by stating the following:

If Dalhousie’s allegations that Signalta and CanEra are liable for these abandonment costs are found to be unsubstantiated, Dalhousie may be ordered to pay their hearing costs.

CanEra disagreed that the Board is *functus officio* and stated that that doctrine does not arise in this case. It submitted that under Section 6 of the *Rules of Practice* the Board may extend any time limit specified under the *Rules of Practice* and under any terms the Board considers appropriate. It also stated that Section 55(3) of the *Rules of Practice* states that a cost claim shall be filed within 30 days after the proceeding is closed “unless otherwise directed by the Board.” It further submitted that Section 30(3) of the *ERCA* allows the Board to extend the time specified to complete “any work, act, matter or thing that is by an order or direction of the Board required to be done, performed or completed within a specified time.”

CanEra’s June 4, 2010, letter submitted that CanEra’s entitlement to make a cost claim crystallized when the Board ruled in *Decision 2010-019* that Dalhousie’s “allegations that Signalta and CanEra are liable for these abandonment costs are found to be unsubstantiated...”. It was reasonable for CanEra to request an extension to file its cost claim within 30 days from May 18, 2010, when *Decision 2010-019* was issued and its entitlement to make a cost claim crystallized.

CanEra argued that Section 28 of the *ERCA* allows energy companies to recover costs in particular circumstances. In this case, the Board put Dalhousie on prior notice that it may be responsible for hearing costs of Signalta and CanEra if Dalhousie's allegations against them were found to be unsubstantiated.

### 2.3 Views of Signalta

Signalta concurred with the submissions of CanEra and stated that as an owner of TVU No. 7, it had an interest in land as required by Section 28(1). Signalta noted that the proceeding was initially between the ERCB Corporate Compliance Group and Dalhousie until Dalhousie submitted that Signalta was responsible for the abandonment costs. It submitted that it was necessary for Signalta to represent its interests in disputing its responsibility for these costs.

In *Decision 2010-019*, the Board accepted the evidence of Signalta that it did not acquire the well from Dalhousie in 2006. Dalhousie's claim that Signalta had acquired its interests in the well and was therefore not responsible for the abandonment costs are contrary to Dalhousie's position that Signalta lacks an interest in the well and cannot qualify as a local intervener.

Signalta submitted that these were special circumstances and that the Board should exercise its discretion regarding Signalta's entitlement to costs.

### 2.4 Views of the Board

The Board finds Dalhousie's argument that the Board is *functus officio* is inapplicable in these circumstances. It notes that the hearing that resulted in *Decision 2010-019* addressed abandonment costs, not the hearing costs of parties to the proceeding. Consideration of cost claims for hearing costs is a separate process prescribed by statute and regulation and follows the completion of a hearing. Generally, cost claims are due within 30 days of the close of a hearing. In this case however, the Board recognized that CanEra's and Signalta's costs would only be an issue if Dalhousie's allegations against them were found to be unsubstantiated, as noted in the Amended Notice of Hearing issued January 26, 2010. Mindful of this, the Board accepts the filing of cost claims by CanEra and Signalta after the usual 30 day deadline. Section 7 of the *Rules of Practice* permits variation of the *Rules of Practice* by the Board. Section 6 of the *Rules of Practice* specifically permits the extension of time. The Board sees no procedural or jurisdictional defect in considering these cost claims.

In considering cost claims, the Board is guided by its enabling legislation, in particular by Section 28 of the *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 matter in question.

The issue in this hearing was who was liable for costs of abandonment of the well. Although Signalta and CanEra argued that their interests were interests in land, the Board finds that it was their financial or economic interests that could have been affected by the Board's decision regarding abandonment costs and not their interests in land per se. A decision by the Board finding Signalta or CanEra liable for abandonment costs of this well would not have affected their interests in land. Accordingly, the Board is of the view that Section 28 is not broad enough to authorize the awarding of costs in this instance.

However, Section 20 of the *ERCA* reads:

The Board, with the approval of the Lieutenant Governor in Council, may take any action and may make any orders and directions that the Board considers necessary to effect the purposes of this Act and that are not otherwise specifically authorized by this Act.

Section 21 of the *ERCA* reads:

The Board may, and at the request of the Lieutenant Governor in Council shall, at the places, at the times and in a manner it considers advisable

- (a) make inquiries and investigations and prepare studies and reports on any matter within the purview of any Act administered by it relating to energy resources and energy, and
- (b) recommend to the Lieutenant Governor in Council any measures it considers necessary or advisable in the public interest related to the exploration for, production, development, conservation, control, transportation, transmission, use and marketing of energy resources and energy.

Fairness is one of the foundational purposes of the Act. One of the primary purposes of the Board is to hold hearings and give consideration to a variety of interests, including the public interest, when making decisions. Section 26 of the *ERCA* requires the Board to provide procedural fairness to persons whose rights may be directly and adversely affected by a decision of the Board.

After refusing to pay the Board's costs of abandonment of the well, Dalhousie asked the Board for a hearing to review the issuance of ACO No. 2008-1. Typically, a review of an abandonment costs order involves the ERCB and the party or parties named in the order. Only Dalhousie was named in ACO No. 2008-01. Once the Board granted the review proceeding, Dalhousie alleged that CanEra or Signalta were liable for the abandonment costs, as parties having an interest in the well. As CanEra or Signalta could be affected by the Board's decision if those allegations proved true, the Board was required to afford those companies an opportunity to know the allegations and file evidence and argument to the contrary. CanEra and Signalta were obliged to retain legal counsel to file evidence and address the legal arguments made by Dalhousie. In the end, Dalhousie's allegations were proven to be unfounded in fact or law.

The Board finds that justice and fairness require that Dalhousie be ordered to pay the hearing costs of CanEra and Signalta, finding it necessary to compensate these parties as they were improperly drawn into the proceeding by Dalhousie in its attempt to avoid its statutory responsibility to pay abandonment costs related to its well. The Board also finds it appropriate, in



a broader sense, to take action to deter other companies from unfairly impacting third parties by taking a similar approach in an attempt to avoid liability and delay enforcement of an order. In this matter, the Board finds that the actions of Dalhousie are an abuse of process and has sought an Order in Council authorizing it to award costs to CanEra and Signalta.

### 3 ASSESSMENT OF COSTS

#### 3.1 Views of the Applicant

Dalhousie stated that the majority of CanEra and Signalta's submissions made with respect to the issue of whether or not the well was unitized and subject to the TVU No. 7 duplicated those of the ERCB Corporate Compliance Group. Dalhousie further argued that any cost award should be minimal so as to reflect that most of CanEra and Signalta's submissions did not increase an understanding of the issues.

#### 3.2 Views of CanEra

The following table summarizes the legal fees and expenses claimed by Burnet, Duckworth & Palmer LLP.

**Table 1. Fees and expenses claimed by Burnet, Duckworth & Palmer LLP**

| Counsel                                    | Fees               | Expenses       | GST             | Total              |
|--|--------------------|----------------|-----------------|--------------------|
| Burnet, Duckworth & Palmer LLP (John Lowe) | \$12 320.00        | \$59.20        | \$620.14        | \$12 999.34        |
| <b>Total</b>                               | <b>\$12 320.00</b> | <b>\$59.20</b> | <b>\$620.14</b> | <b>\$12 999.34</b> |

CanEra submitted that its participation was responsible and necessary. CanEra provided a review of the unit operator's historic records, confirming that there was no evidence that the well ever penetrated or was in the Turner Valley Rundle Pool. CanEra provided its interpretation and analysis of the original TVU No. 7 as unit operator. CanEra argued that as Dalhousie sought to shift its responsibility for the abandonment costs to CanEra as the unit operator, it was necessary and reasonable for CanEra to participate.

#### 3.3 Views of Signalta

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

**Table 2. Fees and expenses claimed by Field LLP**

| Counsel          | Fees               | Expenses       | GST             | Total              |
|------------------|--------------------|----------------|-----------------|--------------------|
| Field LLP        |                    | \$70.00        |                 |                    |
| William Corbett  | \$12 775.00        |                | \$638.75        | \$13 413.75        |
| Michael Doerksen | \$672.00           |                | \$33.60         | \$705.60           |
| Ebru Oxcan       | \$1 428.00         |                | \$71.41         | \$1 499.40         |
| <b>Total</b>     | <b>\$14 875.00</b> | <b>\$70.00</b> | <b>\$743.75</b> | <b>\$15 688.75</b> |

Signalta submitted that once Dalhousie submitted that Signalta was responsible for the abandonment costs, it was necessary for Signalta to represent its interests and dispute its

responsibility for the costs. It further stated that its use of both a junior lawyer and an articling student demonstrate Signalta's attention to controlling its legal costs.

### 3.4 Views of the Board

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

Section 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.

The Board finds that CanEra and Signalta's participation in the hearing was necessary given Dalhousie's allegations and that their submissions were very useful and contributed to a better understanding of the issues before it. The Board also finds that the costs claimed by CanEra and Signalta are reasonable, given the nature of the issues, and directly and necessarily related to the proceeding. The Board also finds that the costs claimed meet the scale of costs in *ERCB Directive 031: Guidelines for Energy Proceeding Cost Claims*.

## 4 ORDER

WHEREAS the Energy Resources Conservation Board finds it appropriate to make an award of costs to CanEra Resources Inc. and Signalta Resources Limited for participation in the hearing of Abandonment Cost Order No. ACO 2008-1 issued to Dalhousie Oil Company Limited;

WHEREAS the Lieutenant Governor in Council, by Order in Council numbered O.C. 488-2010 dated December 22, 2010, hereto attached has authorized the granting of a cost award in this matter by the ERCB;

THEREFORE, the Energy Resources Conservation Board, pursuant to the Energy Resources Conservation Act, being chapter E-10 of the Revised Statutes of Alberta, 2000, hereby orders as follows:

- 1) Costs of CanEra are awarded in the amount of \$12,999.34. Payment shall be made by Dalhousie Oil Company Limited to Burnet, Duckworth & Palmer LLP at 1400, 350 7<sup>th</sup> Avenue SW, Calgary AB, T2P 3N9 Attention: Mr. J.E. Lowe.
- 2) Costs of Signalta are awarded in the amount of \$15,688.75. Payment shall be made by Dalhousie Oil Company Limited to Field LLP at 400, 604 1<sup>st</sup> Street SW, Calgary AB, T2P 1M7 Attention: Mr. W.T. Corbett.
- 3) The Order of the Lieutenant Governor in Council authorizing the granting of this order is attached hereto as Appendix B to this order.

Dated in Calgary, Alberta, on December 22, 2010.

**ENERGY RESOURCES CONSERVATION BOARD**

*<original signed by>*

T. L. Watson, P.Eng  
Presiding Member

*<original signed by>*

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

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

|                                  | Total Fees/Honoraria Claimed | Total Expenses Claimed | Total GST Claimed | Total Amount Claimed | Total Fees/Honoraria Awarded | Total Expenses Awarded | Total GST Awarded | Total Amount Awarded |
|----------------------------------|------------------------------|------------------------|-------------------|----------------------|------------------------------|------------------------|-------------------|----------------------|
| John Lowe                        | \$12,320.00                  | \$59.20                | \$620.14          | \$12,999.34          | \$12,320.00                  | \$59.20                | \$620.14          | \$12,999.34          |
| CanEra Resources Inc. Total      | \$12,320.00                  | \$59.20                | \$620.14          | \$12,999.34          | \$12,320.00                  | \$59.20                | \$620.14          | \$12,999.34          |
| William T. Corbett               | \$12,775.00                  | \$0.00                 | \$638.75          | \$13,413.75          | \$12,775.00                  | \$0.00                 | \$638.75          | \$13,413.75          |
| Michael Doerksen                 | \$672.00                     | \$0.00                 | \$33.60           | \$705.60             | \$672.00                     | \$0.00                 | \$33.60           | \$705.60             |
| Ebru Ozcan                       | \$1,428.00                   | \$0.00                 | \$71.40           | \$1,499.40           | \$1,428.00                   | \$0.00                 | \$71.40           | \$1,499.40           |
| Field LLP                        | \$0.00                       | \$70.00                | \$0.00            | \$70.00              | \$0.00                       | \$70.00                | \$0.00            | \$70.00              |
| Signalta Resources Limited Total | \$14,875.00                  | \$70.00                | \$743.75          | \$15,688.75          | \$14,875.00                  | \$70.00                | \$743.75          | \$15,688.75          |
|                                  | \$27,195.00                  | \$129.20               | \$1,363.89        | \$28,688.09          | \$27,195.00                  | \$129.20               | \$1,363.89        | \$28,688.09          |

## APPENDIX B ORDER IN COUNCIL



Province of Alberta  
Order in Council

O.C: 488/2010

DEC 16 2010

# ORDER IN COUNCIL

Approved and ordered:

Administrator

The Lieutenant Governor in Council authorizes the Energy Resources Conservation Board to order the payment of hearing costs by Dalhousie Oil Company Limited to CanEra Resources Inc. and Signalta Resources Limited in the form attached.

ACTING CHAIR

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For Information only

Recommended by: Minister of Energy

Authority: Energy Resources Conservation Act  
(section 20)

**\* Draft Form of Order**

**THE PROVINCE OF ALBERTA**

**ENERGY RESOURCES CONSERVATION ACT**

**ENERGY RESOURCES CONSERVATION BOARD**

IN THE MATTER of applications by CanEra Resources Inc. and Signalta Resources Limited for their costs of participating in the hearing of Abandonment Cost Order ACO 2008-1 issued to Dalhousie Oil Company Limited

**ORDER**

WHEREAS the Energy Resources Conservation Board finds it appropriate to make an award of costs to CanEra Resources Inc. and Signalta Resources Limited for participation in the hearing of Abandonment Cost Order ACO 2008-1 issued to Dalhousie Oil Company Limited;

WHEREAS the Lieutenant Governor in Council, by Order in Council numbered O.C. XXX dated XXX, hereto attached has authorized the granting of a cost award in this matter by the ERCB;

THEREFORE, the Energy Resources Conservation Board, pursuant to the Energy Resources Conservation Act, being chapter E-10 of the Revised Statutes of Alberta, 2000, hereby orders as follows:

- 1) Costs of CanEra are awarded in the amount of \$12,999.34. Payment shall be made by Dalhousie Oil Company Limited to Burnet, Duckworth & Palmer LLP at 1400, 350 7<sup>th</sup> Avenue SW, Calgary AB, T2P 3N9 Attention: Mr. J.E. Lowe.
- 2) Costs of Signalta are awarded in the amount of \$15,688.75. Payment shall be made by Dalhousie Oil Company Limited to Field LLP at 400, 604 1<sup>st</sup> Street SW, Calgary AB, T2P 1M7 Attention: Mr. W.T. Corbett.
- 3) The Order of the Lieutenant Governor in Council authorizing the granting of this order is attached hereto as Appendix A to this order.

MADE at the City of Calgary, in the Province of Alberta, on XXX date.

**ENERGY RESOURCES CONSERVATION BOARD**

**\* This is only a draft form of Order. The Order, when issued, may have minor variations from that set out here.**