ALBERTA
ENVIRONMENTAL APPEALS BOARD

Decision

Date of Decision – March 27, 2008

IN THE MATTER OF sections 91 and 96 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12;

-and-

IN THE MATTER OF appeals filed by M. G. Slemko and L. L. Slemko with respect to *Water Act* Licence Amendment No. 00153082-00-01 issued to Elkwater Water Co-operative Ltd. by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: Costs Decision: *Slemko* v. *Director, Southern Region, Regional Services, Alberta Environment*, re: *Elkwater Water Co-operative Ltd.* (27 March 2008), Appeal Nos. 06-086 & 06-087-CD (A.E.A.B.).

BEFORE:	Dr. Steve E. Hrudey, Chair, Mr. Ron V. Peiluck, Vice-Chair, and Mr. Alex G. MacWilliam, Board Member.
SUBMISSIONS BY:	
Appellants:	Mr. Marshall G. Slemko and Ms. Linda L. Slemko.
Director:	Mr. Dave McGee, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham, Alberta Justice.
Licence Holder:	Elkwater Water Co-operative Ltd., represented by Mr. Robert Pender, President.

EXECUTIVE SUMMARY

Alberta Environment issued Licence Amendment No. 00153082-00-01 to the Elkwater Water Co-operative Ltd. in relation to the diversion of water from Elkwater Lake. The Board received Notices of Appeal from Mr. Marshall G. Slemko and Ms. Linda L. Slemko.

A hearing was held October 18, 2007, where the Board heard arguments on two issues:

1. What is an appropriate cut off level to allow for the diversion of water from Elkwater Lake?
2. Is additional clarification regarding the term "water conservation measures" required, and if so, how should it be defined?

The Board provided its Report and Recommendations to the Minister on November 15, 2007. The Ministerial Order was issued November 22, 2007, confirming the Licence Amendment as issued.

Mr. Slemko and Ms. Slemko submitted a costs application for $3,000 each plus miscellaneous expenses totaling $246.98.

The Board did not find the circumstances warranted an award of costs. The costs application did not include sufficient documentation to support the application nor an explanation why costs should be awarded. Therefore, no costs were awarded.

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I. BACKGROUND

[1] On February 28, 2007, the Director, Southern Region, Regional Services, Alberta Environment (the "Director"), issued Licence Amendment No. 00153082-00-01 (the "Licence Amendment") under the *Water Act*, R.S.A. 2000, c. W-3, to the Elkwater Water Co-operative Ltd. (the "Licence Holder" or "Co-operative"), in relation to the diversion of water from Elkwater Lake near Cypress Hills, Alberta.

[2] On March 26 and 28, 2007, the Environmental Appeals Board (the "Board") received Notices of Appeal from Mr. Marshall G. Slemko and Ms. Linda L. Slemko (the "Appellants") appealing the Licence Amendment.

[3] On March 28, 2007, the Board wrote to the Appellants, the Licence Holder, and the Director (collectively the "Parties") acknowledging receipt of the Notices of Appeal and notifying the Licence Holder and the Director of the appeals. The Board also requested the Director provide the Board with a copy of the records (the "Record") relating to these appeals, and that the Parties provide available dates for a preliminary meeting, mediation meeting, or hearing.

[4] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

[5] On April 10, 2007, the Board received a telephone call from the Licence Holder providing available dates, advising it did not believe mediation would be successful, and requesting the Board proceed directly to a hearing.

[6] On April 20, 2007, the Board received a copy of the Record from the Director, and on May 2, 2007, the Board forwarded a copy to the Appellants and the Licence Holder. The Director also requested the Board determine the issues for the appeal before proceeding to a hearing or mediation.

[7] On April 24, 2007, the Board received a letter from the Appellants requesting further information and documents.[1]

[8] On May 2, 2007, in response to the Director's April 20, 2007 letter, and subsequent telephone conversation with the Licence Holder on April 26, 2007 regarding mediation, the Board wrote to the Parties advising it had decided to schedule a written submission process to determine the issues of the appeals prior to proceeding to a hearing. The Board gave the Parties an opportunity to provide any further preliminary motions by May 9, 2007. The Board also asked the Licence Holder and the Director if they were in a position to provide the additional information requested by the Appellants.

[9] On May 3, 2007, the Board received a telephone call from the Appellants regarding the deadline to provide their preliminary motions to the Board. The Appellants also advised they would have liked the Board to proceed to mediation. As a result of the telephone conversation, the Board wrote to the Parties on May 7, 2007, extending the deadline for the Parties to provide further preliminary motions to the Board until the Appellants had an opportunity to review the Record and any additional information that may be provided to them. The Board also addressed the issue of mediation and advised:

> "…All participants are free to provide the Board with their requests for process and the Board will make the final decision on how it will proceed with an appeal. In this case, the Board decided not to conduct a mediation meeting because the Elkwater Water Co-operative indicated they do not wish to participate in mediation. Mediation is a voluntary process which is usually only successful and productive if all participants are willing to participate…."

[10] On June 8, 2007, the Licence Holder provided a copy of its by-laws, but noted it would not provide the membership list and it did not have the additional documents requested by the Appellants. On June 20, 2007, the Appellants clarified that the Director should have some of the information and the manager of Cypress Hills Interprovincial Park would be able to provide

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[1] The Appellants requested the following documents:

- Elkwater Water Co-operative Ltd. By-Laws;
- Number of allowable membership with list of members and shares held;
- Monthly water consumption of the Elkwater Co-operative during 1988 and March 2007;
- Summary of Water Oxygen Concentration in Elkwater Lake;
- Full size copy of Hydrographic Survey of Elkwater Lake showing the Elkwater Lake Co-operative outlet and the revised present main lake boat dock; and

additional information. Additional documents were provided by the Director and the Prairie Farm Rehabilitation Administration on July 6, 2007, and from the Manager of the Cypress Hills/Writing on Stone Provincial Park on July 19, 2007.

[11] As the Board did not receive any further preliminary motions from the Parties, the Board scheduled the written submission process to determine the issues for the Hearing. The Parties provided their initial written submissions on June 15 and 18, 2007. On June 22 and 25, 2007, the Board received response submissions from the Licence Holder and Director. The Appellants did not provide a response submission.

[12] The Board released its decision on the issues on August 7, 2007,[2] advising that the issues at the Hearing would be:

1. What is an appropriate cut off level to allow for the diversion of water from Elkwater Lake?
2. Is additional clarification regarding the term "water conservation measures" required, and if so, how should it be defined?

[13] The Board placed a Notice of Hearing in the local newspapers and requested those persons interested in intervening at the Hearing to submit their request to the Board by September 6, 2007. The Board received intervenor requests from Ms. Evelyn Schuler, the Elkwater Community Association, Dr. David J. Carter (collectively, the "Intervenors"), and Intervenor 1.[3] Included in the intervenor request from Intervenor 1 was a request for personal information to be kept confidential. The Board received response submissions on the intervenor requests from the Parties between September 10 and 14, 2007. On October 11, 2007, the Board notified the Parties and the Intervenors that the Intervenors could participate through written submissions only. The Board also denied the confidentiality request of Intervenor 1.[4]

- Full size copy of updated Hydrographic Survey marked in color to illustrate the depth rings of the entire lake.

[2] See: Preliminary Motions: *Slemko* v. *Director, Southern Region, Regional Services, Alberta Environment*, re: *Elkwater Water Co-operative Ltd.* (07 August 2007), Appeal Nos. 06-086 & 06-087-ID1 (A.E.A.B.).

[3] This intervenor made a request to have personal information kept confidential, which the Board did not grant. See: Intervenor Decision: *Slemko* v. *Director, Southern Region, Regional Services, Alberta Environment*, re: *Elkwater Water Co-operative Ltd.* (11 October 2007), Appeal Nos. 06-086 & 06-087-ID2 (A.E.A.B.). As the participation was limited to a written submission only, Intervenor 1 withdrew the request to be an intervenor. Therefore, Intervenor 1 did not provide a submission to the Board and is not included as an intervenor.

[4] See: Intervenor Decision: *Slemko* v. *Director, Southern Region, Regional Services, Alberta Environment*, re: *Elkwater Water Co-operative Ltd.* (11 October 2007), Appeal Nos. 06-086 & 06-087-ID2 (A.E.A.B.).

[14] On October 15, 2007, the Board received an e-mail from Intervenor 1, withdrawing his request to intervene. On this same date, the Board received Dr. Carter's submission and Ms. Schuler provided her submission on October 16, 2007. The Board did not receive a submission from the Elkwater Community Association.

[15] The Hearing was held in Medicine Hat, Alberta, on October 18, 2007. The Appellants reserved their rights to apply for costs prior to the end of the Hearing.

[16] The Board provided its Report and Recommendations to the Minister on November 15, 2007, and the Minister issued his Order containing his decision on November 22, 2007, confirming the Licence Amendment as issued.[5]

[17] The Board set a schedule to receive costs applications from the Parties. The Board received an application on January 2, 2008 dated December 19, 2007, and an e-mail dated December 21, 2007, from Mr. Marshall Slemko and Ms. Linda Slemko, respectively. Response submissions were received from the Co-operative on January 15, 2008, and the Director on January 18, 2008.

II. COSTS SUBMISSIONS

A. Appellants

[18] The Appellants filed costs applications for $6,246.98. They claimed miscellaneous costs of $246.98 for items including meals and stationary supplies. They claimed 60 hours each for lost billable hours for conducting research, reviewing documents, drafting, editing, preparing documents, travel time, and attending the Hearing. The Appellants claimed $50.00 per hour.

B. Elkwater Water Co-operative Ltd.

[19] The Licence Holder filed a response submission on January 15, 2008. It argued only input costs should be applied for by a party. The Licence Holder argued that allowing a person to be paid at a rate as requested by the Appellants would open the door to abuse of the

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[5] See: *Slemko* v. *Director, Southern Region, Regional Services, Alberta Environment,* re: *Elkwater Water Co-operative Ltd.* (15 November 2007), Appeal Nos. 06-086 & 06-087-R (A.E.A.B.).

system because it would allow any person to appeal any government decision with the expectation to be well paid for their time.

[20] The Licence Holder argued that, if the Appellants are paid for their time, then the Co-operative's representative should be afforded the same consideration. Its representative claimed he spent 132 hours on the Hearing and claimed $15.00 per hour for a total of $1,980.00. He also included $137.98 for meals and mileage of $0.40 per kilometer for 378 kilometers, for a total claim of $2,269.18.

C. Director

[21] On January 18, 2008, the Director stated he was taking no position on the costs applications, and noted the Board's past decisions held that the Director should not pay costs, except in the circumstances of bad faith. The Director requested the Board be cognizant of its past costs decisions.

III. LEGAL BASIS

A. Statutory Basis for Costs

[22] The legislative authority giving the Board jurisdiction to award costs is section 96 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA") which provides: "The Board may award costs of and incidental to any proceedings before it on a final or interim basis and may, in accordance with the regulations, direct by whom and to whom any costs are to be paid." This section gives the Board broad discretion in awarding costs. As stated by Mr. Justice Fraser of the Court of Queen's Bench in *Cabre*:

> "Under s. 88 [(now section 96)] of the Act, however, the Board has final jurisdiction to order costs 'of and incidental to any proceedings before it…'. The legislation gives the Board broad discretion in deciding whether and how to award costs."[6]

Further, Mr. Justice Fraser stated:

> "I note that the legislation does not limit the factors that may be considered by the Board in awarding costs. Section 88 [(now section 96)] of the Act states that the

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[6] *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2000), 33 Admin. L.R. (3d) 140 at paragraph 23 (Alta. Q.B.).

> Board '*may* award costs … and *may*, in accordance with the regulations, direct by whom and to whom any costs are to be paid….'" (Emphasis in the original.)[7]

[23] The sections of the *Environmental Appeal Board Regulation*,[8] (the "Regulation") concerning final costs provide:

> "18(1) Any party to a proceeding before the Board may make an application to the Board for an award of costs on an interim or final basis.
>
> (2) A party may make an application for all costs that are reasonable and that are directly and primarily related to
>
> (a) the matters contained in the notice of appeal, and
> (b) the preparation and presentation of the party's submission. …
>
> 20(1) Where an application for an award of final costs is made by a party, it shall be made at the conclusion of the hearing of the appeal at a time determined by the Board.
>
> (2) In deciding whether to grant an application for an award of final costs in whole or in part, the Board may consider the following:
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> (a) whether there was a meeting under section 11 or 13(a);
> (b) whether interim costs were awarded;
> (c) whether an oral hearing was held in the course of the appeal;
> (d) whether the application for costs was filed with the appropriate information;
> (e) whether the party applying for costs required financial resources to make an adequate submission;
> (f) whether the submission of the party made a substantial contribution to the appeal;
> (g) whether the costs were directly related to the matters contained in the notice of appeal and the preparation and presentation of the party's submission;
> (h) any further criteria the Board considers appropriate.
>
> (3) In an award of final costs the Board may order the costs to be paid in whole or in part by either or both of
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> (a) any other party to the appeal that the Board may direct;
> (b) the Board.
>
> (4) The Board may make an award of final costs subject to any terms and conditions it considers appropriate."

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[7] *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2000), 33 Admin. L.R. (3d) 140 at paragraphs 31 and 32 (Alta. Q.B.).

[8] *Environmental Appeal Board Regulation*, A.R. 114/93.

[24] When applying these criteria to the specific facts of the appeals, the Board must remain cognizant of the purpose of the *Water Act* as found in section 2:

> "The purpose of this Act is to support and promote the conservation and management of water, including the wise allocation and use of water, while recognizing:
>
> (a) the need to manage and conserve water resources to sustain our environment and to ensure a healthy environment and high quality of life in the present and the future;
> (b) the need for Alberta's economic growth and prosperity;
> (c) the need for an integrated approach and comprehensive, flexible administration and management systems based on sound planning, regulatory actions and market forces;
> (d) the shared responsibility of all Alberta citizens for the conservation and wise use of water and their role in providing advice with respect to water management planning and decision-making;
> (e) the importance of working co-operatively with the governments of other jurisdictions with respect to transboundary water management;
> (f) the important role of comprehensive and responsive action in administering this Act."

[25] While all of these purposes are important, the Board finds that the guidance of section 2(d) of the *Water Act,* "…the shared responsibility of all Alberta citizens…" and "…their role in providing advice…," is particularly instructive in making its costs decision.

[26] However, the Board stated in other decisions that it has the discretion to decide which of the criteria listed in EPEA and the Regulation should apply in the particular claim for costs.[9] The Board also determines the relevant weight to be given to each criterion, depending on the specific circumstances of each appeal.[10] In *Cabre,* Mr. Justice Fraser noted that section "…20(2) of the Regulation sets out several factors that the Board 'may' consider in deciding whether to award costs…,"[11] reinforcing the wide discretion given to the Board to award costs.

[27] As stated in previous appeals, the Board evaluates each costs application against the criteria in EPEA and the Regulation and the following:

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[9] *Zon* (1998), 26 C.E.L.R. (N.S.) 309 (Alta. Env. App. Bd.), (*sub nom. Costs Decision re: Zon et al.)* (22 December 1997), Appeal Nos. 97-005 to 97-015 (A.E.A.B.)).

[10] *Paron* (2002), 44 C.E.L.R. (N.S.) 133 (Alta. Env. App. Bd.), (*sub nom. Costs Decision: Paron et al.*) (8 February 2002), Appeal Nos. 01-002, 01-003 and 01-005-CD (A.E.A.B.) (*"Paron*").

[11] *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2000), 33 Admin. L.R. (3d) 140 at

> "To arrive at a reasonable assessment of costs, the Board must first ask whether the Parties presented valuable evidence and contributory arguments, and presented suitable witnesses and skilled experts that:
>
> (a) substantially contributed to the hearing;
> (b) directly related to the matters contained in the Notice of Appeal; and
> (c) made a significant and noteworthy contribution to the goals of the Act.
>
> If a Party meets these criteria, the Board may award costs for reasonable and relevant expenses such as out-of-pocket expenses, expert reports and testimony or lost time from work. A costs award may also include amounts for retaining legal counsel or other advisors to prepare for and make presentations at the Board's hearing."[12]

[28] Under section 18(2) of the Regulation, costs awarded by the Board must be "directly and primarily related to ... (a) the matters contained in the notice of appeal, and (b) the preparation and presentation of the party's submission." These elements are not discretionary.[13]

B. Courts vs. Administrative Tribunals

[29] In applying these costs provisions, it is important to remember there is a distinct difference between costs associated with civil litigation and costs awarded in quasi-judicial forums such as board proceedings. As the public interest is part of all hearings before the Board, it must take the public interest into consideration when making its final decision or recommendation. The outcome is not simply making a determination of a dispute between parties. Therefore, the Board is not bound by the "loser-pays" principle used in civil litigation. The Board will determine whether an award of costs is appropriate considering the public interest generally and the overall purpose as defined in section 2 of the *Water Act*.

[30] The distinction between the costs awarded in judicial and quasi-judicial settings was stated in *Bell Canada* v. *C.R.T.C.*:

> "The principle issue in this appeal is whether the meaning to be ascribed to the word [costs] as it appears in the Act should be the meaning given it in ordinary judicial proceedings in which, in general terms, costs are awarded to indemnify or

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paragraphs 31 and 32 (Alta. Q.B.).

[12] Costs Decision re: *Cabre Exploration Ltd.* (26 January 2000), Appeal No. 98-251-C at paragraph 9 (A.E.A.B.).

[13] *New Dale Hutterian Brethren* (2001), 36 C.E.L.R. (N.S.) 33 at paragraph 25 (Alta. Env. App. Bd.), (*sub nom. Cost Decision re: Monner*) (17 October 2000), Appeal No. 99-166-CD (A.E.A.B.).

> compensate a party for the actual expenses to which he has been put by the litigation in which he has been involved and in which he has been adjudged to have been a successful party. In my opinion, this is not the interpretation of the word which must necessarily be given in proceedings before regulatory tribunals."[14]

[31] EPEA and the Regulation give the Board authority to award costs if it determines the situation warrants it, and the Board is not bound by the loser-pays principle. As stated in *Mizera*:

> "Section 88 [now section 96] of the Act and section 20 of the Regulation give the Board the ability to award costs in a variety of situations that may exceed the common law restrictions imposed by the courts. Since hearings before the Board do not produce judicial winners and losers, the Board is not bound by the general principle that the loser pays, as outlined in *Reese*. [*Reese* v. *Alberta (Ministry of Forestry, Lands and Wildlife)* (1992) Alta. L.R. (3d) 40, [1993] W.W.R. 450 (Alta.Q.B.).] The Board stresses that deciding who won is far less important than assessing and balancing the contributions of the Parties so the evidence and arguments presented to the Board are not skewed and are as complete as possible.

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[14] *Bell Canada* v. *C.R.T.C.*, [1984] 1 F.C. 79 (Fed. C.A.). See also: R.W. Macaulay, *Practice and Procedure Before Administrative Tribunals*, (Scarborough: Carswell, 2001) at page 8-1, where he attempts to

> "…express the fundamental differences between administrative agencies and courts. Nowhere, however, is the difference more fundamental than in relation to the public interest. To serve the public interest is the sole goal of nearly every agency in the country. The public interest, at best, is incidental in a court where a court finds for a winner and against a loser. In that sense, the court is an arbitrator, an adjudicator. Administrative agencies for the most part do not find winners or losers. Agencies, in finding what best serves the public interest, may rule against every party representing before it."

See also: *Cabre Exploration Ltd.* v. *Alberta (Environmental Appeal Board)* (2000), 33 Admin. L.R. (3d) 140 at paragraph 32 (Alta. Q.B.):

> "…administrative tribunals are clearly entitled to take a different approach from that of the courts in awarding costs. In *Re Green, supra* [*Re Green, Michaels & Associates Ltd. et al. and Public Utilities Board* (1979), 94 D.L.R. (3d) 641 (Alta. S.C.A.D.)], the Alberta Court of Appeal considered a costs decision of the Public Utilities Board. The P.U.B. was applying a statutory costs provision similar to section 88 [(now section 96)] of the Act in the present case. Clement J.A., for a unanimous Court, stated, at pp. 655-56:
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> > 'In the factum of the appellants a number of cases were noted dealing with the discretion exercisable by Courts in the matter of costs of litigation, as well as statements propounded in texts on the subject. I do not find them sufficiently appropriate to warrant discussion. Such costs are influenced by Rules of Court, which in some cases provide block tarrifs [*sic*], and in any event are directed to *lis inter partes*. We are here concerned with the costs of public hearings on a matter of public interest. There is no underlying similarity between the two procedures, or their purposes, to enable the principles underlying costs in litigation between parties to be necessarily applied to public hearings on public concerns. In the latter case the whole of the circumstances are to be taken into account, not merely the position of the litigant who has incurred expense in the vindication of a right.'"

> The Board prefers articulate, succinct presentations from expert and lay spokespersons to advance the public interest for both environmental protection and economic growth in reference to the decision appealed."[15]

[32] The Board has generally accepted the starting point that costs incurred in an appeal are the responsibility of the individual parties.[16] There is an obligation for each member of the public to accept some responsibility of bringing environmental issues to the forefront.

IV. DISCUSSION

A. Appellants

[33] As the Board has stated in previous decisions, the starting point of any costs decision is that the parties are responsible for the costs they incurred. Section 2 of the *Water Act* and EPEA state citizens of Alberta have a responsibility in protecting the environment, and participating in the approval and appeal processes is one way of fulfilling their obligations. The party making the costs application needs to show the Board there are sufficient reasons to support going beyond the starting point to award costs.

[34] The Appellants were concerned with water withdrawal from Elkwater Lake, an issue they have been dealing with for a number of years. In an area where water licences can no longer be issued, the Board recognizes the effort and interest the Appellants, and in this case the Licence Holder, have in protecting the water resources in the area. However, the Board does not consider the explanations provided in the costs application sufficient to support an award of costs in these appeals.

[35] Included in the expenses claimed by the Appellants were costs associated with stationary supplies, including envelopes, paper, and ink cartridges. Costs such as these cannot be traced to being used for the preparation and presentation of their submissions for the Hearing. It is feasible only parts of the costs claimed were actually used for Board related purposes. Because of the ambiguity and uncertainty, the Board cannot consider these costs. Also, these costs, and those associated with postal fees, are costs the Board expects those involved in an

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[15] *Mizera* (2000), 32 C.E.L.R. (N.S.) 33 at paragraph 9 (Alta. Env. App. Bd.), (*sub nom. Cost Decision re: Mizeras, Glombick, Fenske, et al.*) (29 November 1999), Appeal Nos. 98-231, 232 and 233-C (A.E.A.B.) ("*Mizera*"). See: Costs Decision re: *Cabre Exploration Ltd.* (26 January 2000), Appeal No. 98-251-C at paragraph 9 (A.E.A.B.).

[16] *Paron* (2002), 44 C.E.L.R. (N.S.) 133 (Alta. Env. App. Bd.), (*sub nom. Costs Decision: Paron et al.*) (8

appeal to be responsible for. The Appellants also included costs for meals. Costs associated with meals are not generally awarded to parties, except in certain circumstances. The Appellants did not provide any reason as to why these costs should be considered. Therefore, the Board will not award costs associated with any of the miscellaneous costs claimed.

[36] The Appellants asked for costs in the amount of $6,000.00 for the time spent preparing for and attending at the Hearing. They each claimed 60 hours at $50.00 per hour. No documentation was provided to support a claim for $50 per hour or under what basis this value was determined. The Appellants referred to their own business and time taken away from that business to prepare for the Hearing. Part of filing an appeal requires time to read the documentation and prepare written and oral submissions for the Hearing. This is the minimum expected from the Board. Based on their arguments and oral evidence presented at the Hearing, the Board is aware of the effort the Appellants put in to read the Record thoroughly. However, there was no solid basis on which to award a costs claim for the hours claimed and at the rate of $50.00 per hour. At a minimum, documentation is required to show lost income as a result of appearing before the Board. As stated in the Board's previous decision, *Maga et al.*:

> "Even if the Board were to consider making an award of costs for lost wages, clear documentation would be required, as the Board would not normally award costs for lost wages in an amount greater than what an applicant would have actually earned. It is not the intent of awarding costs to put the applicant in a better position financially than he normally would have been (though this may or may not be true in Mr. Hayes' case). Further, the Board is of the view that taking 'time off work' to attend the Hearing is a routine and necessary part of being an appellant and is not the type of contribution to an appeal that would normally attract an award of costs."[17]

[37] The same analysis applies to the Appellants' request for $6,000.00 for appearing before the Board. Without documentation to review, the Board is not willing to consider the costs, and the Appellants did not provide any explanation as to the need for the costs claimed.

[38] Therefore, the Board will not award costs to the Appellants.

February 2002), Appeal Nos. 01-002, 01-003 and 01-005-CD (A.E.A.B.).

[17] Costs Decision: *Maga et al.* (27 June 2003), Appeal Nos. 02-023, 024, 026, 029, 037, 047, and 074-CD (A.E.A.B.) at paragraph 106.

B. Licence Holder

[39] The Licence Holder submitted its costs application on January 15, 2008, as part of its response submission to the Appellants' costs application. It appears the costs application was filed in response to the Appellants' claim, and the Licence Holder only wanted the Board to consider its costs if the Board awarded costs to the Appellants. As the Board is not awarding costs to the Appellants in this case, it will not consider the Licence Holder's request.

V. DECISION

[40] For the forgoing reasons and pursuant to section 96 of the *Environmental Protection and Enhancement Act*, no costs will be awarded.

Dated on March 27, 2008, at Edmonton, Alberta.

"*original signed by*"

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Dr. Steve E. Hrudey, FRSC, PEng.
Chair

"*original signed by*"

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Mr. Ron V. Peiluck
Vice-Chair

"*original signed by*"

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Mr. Alex G. MacWilliam
Board Member