

File No. 1620
Board Order # 1620-1

February 17, 2010

MEDIATION AND ARBITRATION BOARD

**IN THE MATTER OF THE PETROLEUM AND NATURAL GAS
ACT, R.S.B.C., C. 361 AS AMENDED**

**AND IN THE MATTER OF
SE ¼, Section 17, Township 80, Range 14, W6M, Peace River District
(The "Lands")**

BETWEEN:

John Miller and Mary Miller

(APPLICANTS)

AND:

Penn West Petroleum Ltd.

(RESPONDENT)

BOARD ORDER

Mary Miller, for the Applicants
 Keith Grainger, for the Respondent

[1] This is an application by the Applicant, Mary Miller, for costs of a mediation. Mr. and Mrs. Miller applied to the Board pursuant to section 12 of the *Petroleum and Natural Gas Act*, for review of the rent payable by the Respondent, Penn West Petroleum Ltd. (Penn West), pursuant to a Surface Lease with respect to its use and occupation of an area of the Miller's land for the operation of a wellsite. The Board mediated in an effort at resolving the application, but the parties were unable to agree on a revised rent. The Board refused further mediation and the application is proceeding to arbitration. Mrs. Miller seeks costs from Penn West for the mediation. Penn West is agreeable to paying Mrs. Miller's costs of the mediation, but the parties have been unable to resolve the amount payable.

[2] Mrs. Miller claims for time spent preparing for and attending the mediation, mileage costs associated with attending or preparing for the mediation, mileage and time for a consultant, and other incidental disbursements. She prepared a record of her activities itemizing her activities, and the various telephone calls and communications she had with other people to research and prepare for the mediation. I have reviewed Mrs. Miller's claim and the documentation in support, considered Penn West's position with respect to the claim and conclude that Penn West should pay Mrs. Miller \$3,322.93 as costs of the mediation. This amount is calculated as follows:

Travel – 176 kms @ \$0.50/km	\$88.00
Time spent in preparing for and attending mediation – 60 hrs @ \$50.00/hr	\$3,000.00
Disbursements:	
• BC Assessment	\$48.00
• Printer supplies	\$178.49
• Registered mail Form 2	\$8.44
Total	\$3,322.93

[3] The travel claim allows for four return trips to Dawson Creek, three for preparation and research and one to attend the mediation. The rate of \$0.50/km is equivalent to the rate paid by the BC Government for employee and contractor mileage. As for time, I appreciate that Mrs. Miller's time exceeded the 60 hours allowed for. Penn West offered compensation for 53 hours. Reviewing the itemization of time provided by Mrs. Miller I am satisfied that 60 hours is not unreasonable. What is reasonable will not necessarily be the same in every case. Where costs are payable, a company should anticipate compensating a landowner for a reasonable amount of time in preparation, but it will often be unrealistic for a landowner to expect that 100% of their time will be compensated for, particularly in an application for rent review where the presumption that a

landowner shall be entitled to their costs of mediation does not apply in the same way it does for an entry application.

[4] Mrs. Miller claimed time and mileage for Gwen Johansen who attended the mediation with her. Where costs are payable, companies should normally expect to reimburse landowners for reasonable costs of professional consultants. Mrs. Miller has not provided a copy of an invoice from Mrs. Johansen for her time and expenses, however, and it is not clear to me that Mrs. Johansen was acting in a professional paid capacity or in a volunteer capacity in offering assistance to Mrs. Miller.

ORDER

[5] The Board orders Penn West to pay Mary Miller \$3,322.93 for costs of the mediation.

For the Board,



Cheryl Vickers,
Chair and Mediator