File No. 1634
Board Order No. 1634-1

December 2, 2010

SURFACE RIGHTS BOARD

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

AND IN THE MATTER OF
The NE ¼ of District Lot 63, Peace River District

(The "Lands")

BETWEEN:

Bill Helm

(APPLICANT)

AND:

Progress Energy Ltd.
(in place of Suncor Energy Inc.)

(RESPONDENT)

BOARD ORDER

Heard:	October 20, 2010 at Fort St. John
Panel:	Cheryl Vickers
Appearances:	Bill Helm, Pat Helm, and Cinda Helm for the Applicant Aldo Vilani, John Lanaras, and Sacha Plotnikow for the Respondent

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INTRODUCTION

[1] The applicant owner of the Lands, Bill Helm, entered a lease agreement on December 23, 2003 with Suncor Energy Inc. (Suncor) for the use and occupation of 4.79 acres of the Lands for a wellsite and access road (the Lease). In December 2007, Suncor proposed an increase to the annual rent payable under the Lease. Mr. Helm did not accept the proposed increase. Mr. Helm made efforts to negotiate revised annual rent satisfactory to him without success, resulting in this application to the Board in November 2009 under section 12 (as it then was) of the *Petroleum and Natural Gas Act* (*PNGA*). Progress Energy Ltd. (Progress) took over the wellsite and obligations under the Lease in early 2010. The Board conducted a mediation between Mr. Helm and representatives of Progress in March 2010 but the parties were unable to agree on a revised rent.

[2] Mr. Helm seeks $6,000 in annual rent, or approximately $1,252/acre. His claim is essentially based on a comparison of what is being paid in annual compensation for other comparable leases in the area. Progress argues that the current annual rent of $3,450 is not justifiable.

[3] Mr. Helm seeks costs of the arbitration proceedings. Progress does not dispute Mr. Helm's entitlement to costs in the circumstances, but asked that I determine the amount payable.

PRELIMINARY ISSUE

[4] Amendments to the *PNGA* came into force on October 4, 2010. This application was filed in November 2009 and the arbitration held on October 20, 2010. The current provisions of the *PNGA* continue to allow a party to a surface lease to seek the assistance of the Board in the mediation and arbitration, if necessary, of renewed rental provisions every four years. The parties agree that any order of the Board varying the rental provisions under the Lease will be effective as of December 23, 2007.

[5] Section 154 of the *PNGA* lists the factors the Board may consider in determining the amount to be paid periodically or otherwise in an application

before it. Prior to the recent amendments to the *PNGA*, the list of factors the Board may consider was set out in section 21 of the then in force *PNGA*. The only factor, relevant to this case, in the current enumerated list that was not expressly enumerated in the previous list is found at section 154(i), specifically, "the terms of any surface lease or agreement submitted to the board or to which the board has access". Although now specifically enumerated as one of the factors the Board may consider, the British Columbia Supreme Court had determined that evidence of what compensation is paid to other owners in the area is relevant and should be considered by the Board as an "other factor", previously set out in section 21(g) of the earlier *PNGA*, where the evidence indicates an established pattern of compensation exists (*Scurry Rainbow Oil v. Lamoureux* [1985] B.C.J. No 1430 (BCSC)). For the purpose of this arbitration, therefore, nothing turns on whether section 21 of the old legislation (in force at the time the application was commenced) or the current section 154 of the *PNGA* (in force at the time the application was heard) applies to the determination of the amount payable on an annual basis under the Lease. The relevant factors that the Board may consider have not changed. I will refer to section 154 of the currently in force *PNGA* in my analysis going forward.

ISSUES

[6] The issues are to determine the amount of annual compensation payable by Progress to Mr. Helm under the Lease, effective December 23, 2007, for the continued use and occupation of 4.79 acres of the Lands, and to determine the amount payable to Mr. Helm for costs.

FACTS

[7] Pursuant to the Lease entered December 23, 2003, Progress leases 4.79 acres in the southeast corner of the Lands bordering on the eastern and southern boundaries. The leased area is used for a wellsite, now suspended, and an access road. First year compensation under the Lease was $10,400.00 inclusive of compensation for the compulsory aspect of the taking, value of the land and loss of profit, temporary and permanent damage, and nuisance and disturbance. The parties agreed to annual compensation of $3,450.00 subject to periodic review as provided by legislation.

[8] The Lands are part of a large cattle and horse ranch comprising, as of the date of arbitration, 19 quarter sections, and surrounded by 24 sections of range land. Mr. Helm has resided full time on the ranch and worked it since 1977. The ranch is organic utilizing no commercial fertilizers, pesticides or chemicals. It is not serviced by telephone or hydro.

[9] The Gundy Creek Road runs through the ranch. Energy companies including Suncor and Progress use this road to access the Lease area and other facilities, creating dust and disturbance to the ranch lands and livestock.

[10] Prior to the Lease being entered into, the leased area was treed and used by livestock as a shelter. A fresh water spring (since re-directed) ran through the leased area.

[11] In December 2007, Suncor reviewed the Lease and offered to increase the annual rent to $4,175.00. Mr. Helm did not accept this offer.

[12] In September 2008, Suncor again offered to increase the rent to $4,175.00 and Mr. Helm again refused the offer.

[13] Mr. Helm tried to communicate with Suncor to express his concerns and to attempt to renegotiate the annual rent, speaking with many different people, but being unable to discuss the file with any single person in charge. He ended up feeling frustrated.

[14] Suncor continued to tender cheques for the offered amount of annual rent, which Mr. Helm did not cash. Mr. Helm wrote to Suncor and continued to make efforts to speak with someone by phone but did not receive a response. In November 2009, he filed this application to the Board for mediation and arbitration. In December 2009, Mr. Helm received another offer from Suncor, which he declined to accept.

[15] In early 2010, Progress took over the wellsite and Lease. Representatives of Progress attended the Board's mediation in March of 2010. The parties continued to disagree on the amount payable for annual rent.

[16] As of the date of arbitration, payments under the Lease are current without prejudice to Mr. Helm's claim for increased rent effective December 23, 2007.

EVIDENCE AND ANALYSIS

[17] Section 154(1) of the *PNGA* lists various factors the Board may consider in determining an amount to be paid periodically or otherwise. The enumerated items include:

(a) the compulsory aspect of the entry;
(b) the value of the applicable land;
(c) a person's loss of right or profit with respect to the land;
(d) temporary and permanent damage from the right of entry;
(e) compensation for severance;
(f) compensation for nuisance and disturbance from the right of entry;

(g) the effect, if any, of other rights of entry with respect to the land;
(h) money previously paid for entry, occupation or use;
(i) the terms of any surface lease or agreement submitted to the Board or to which the Board has access;
(j) previous orders of the Board;
(k) other factors the Board considers applicable;
(l) and other factors or criteria established by regulation.

[18] Not all of the above factors will be relevant in every case or in the determination of annual compensation as opposed to initial compensation for an entry. There are no factors or criteria established by regulation.

[19] Section 154(2) further provides that in determining an amount to be paid on a rent review application, the Board must consider any change in the value of money and of land since the date the surface lease was granted.

[20] Following consideration of the various factors, the Board must step back and consider whether the award in its totality gives proper compensation, as there may be cases where the sum of the parts exceeds, or where the sum of the parts falls short of proper compensation (*Scurry Rainbow, supra.*)

[21] Mr. Helm, his wife, Pat Helm, and their daughter, Cinda Helm, gave evidence including a brief prepared by Cinda Helm. Aldo Vilani, John Lanaras and Sacha Plotnikow gave evidence on behalf of Progress, including a brief prepared by Mr. Plotnikow. Although not all of the factors enumerated in section 154 are relevant in this case, in the interest of providing some guidance to landowners and companies for future applications, and so as to address, where provided, the evidence of the parties relating to the various factors, I will address each of them in turn.

Compulsory aspect of the entry

[22] A landowner cannot say "no" to surface entry on their land for oil and gas activity if surface entry is required. Compensation for the compulsory aspect of the entry is "intended to be a purely arbitrary amount to compensate the farmer for the loss of his right to decide for himself whether or not he wants to see oil and gas exploration carried out on his land" (*Dome Petroleum Ltd. v. Juell* [1982] B.C.J. No. 1510 (BCSC)). It is made as a one-time payment upon initial entry. An annual payment need not continue to compensate for the compulsory aspect of the entry, but only for ongoing actual losses.

Value of the land

[23] The land is not being purchased, but in the case of a wellsite, being leased. The landowner remains the fee simple owner and has the reversionary interest to

regain the unencumbered title. The value of the land is typically accounted for in the initial payment considering the owner's residual and reversionary interest in the land.

[24] The value of the land may be a relevant consideration in determining annual compensation in the sense that land that is more valuable may command a higher rent than land that is less valuable. Typically, however, the annual payment is to compensate for ongoing annual loss of profit, which will usually account for comparative differences in the value of the land in that land with higher profit potential may have more value than land with lower profit potential. An additional payment specifically to account for the value of the land may result in overcompensation.

[25] In this case, neither party provided appraisal evidence of the value of the land. The Helm's evidence is that it is "good agricultural land". They provided some evidence of the "value of the land to government" indicating what the government was paid in May 2010 for exploration and drilling rights over 9,833 acres close to the Lands. The value of land to the government or to the company is not a relevant consideration for the Board. The Board must consider the value of the land in its current use to the owner (*Dau v. Murphy Oil Company Ltd.*, [1970] S.C.R. 861; applied in BC in *Dome v. Juell, supra*; *Scurry Rainbow; supra; Western Clay Industrial Products Ltd v. Mediation and Arbitration Board*, 2001 BCSC 1458).

[26] In this case, providing compensation for loss of ongoing profit from the land will incorporate consideration of the value of the land to the owner.

Loss of profit

[27] Continued loss of profit is a highly relevant consideration in determining annual rent and in any rent renegotiation. As the lease area is located in what were stands of Aspen and Black Spruce, the initial compensation included an amount for the loss of trees. This loss is not an ongoing loss and need not be compensated for on an annual basis. The annual payment included $1,400 for loss of pasture within the bush. Mr. Plotinkow's evidence was that the landowner would lose 19 bales of hay based on a better than average hay crop of 4 bales/acre multiplied by 4.79 acres. He calculated the loss at $1,045/year based on a price of $55/bale. Mr. Helm's evidence was that he could get 10 bales per acre off the leased area. Using $55/bale this loss would equate to $2,634.50. Mr. Helm's evidence was that he would not have been haying the area, but would have put in a dug out for water. The area was previously bush pasture with water and shade. His evidence was that shade is essential to cattle to keep away flies. He said the yearlings should gain 2.5 pounds per day and if they only gain two pounds per day as a result of the loss of shade, that amounts to a considerable amount of money. His evidence was his yearlings sold for anywhere from 90

cents to $1.17 per pound and that he has had as many as 130 yearlings down to 70 yearlings. His evidence was that even a quarter pound less gain per day on 100 head cost $750/month ($9,000 annually assuming loss continues for 12 months). A half pound less gain per day on 100 head would result, therefore, in loss of $1500.00/month ($18,000 annually assuming loss continues for 12 months). I have no evidence to substantiate whether or not Mr. Helm in fact experienced a loss, as a result of reduced weight gain to the cattle.

[28] Progress provided a Crop Cost Calculator from Alberta Agriculture indicating revenue per acre for alfalfa hay is $103.10 suggesting loss of profit for the leased area of about $500.

[29] The evidence is that loss of profit could be anywhere from $500 to $18,000 annually. However, I have no evidence to establish actual loss of profit, in particular actual loss of profit as a result of lost weight gain to cattle from the loss of the shaded area. If used to grow hay, loss of profit would be between $500 to just over $2,600. As the evidence is this is "good agricultural land", and in the absence of better evidence to establish actual loss of profit, I conclude that $2,000 is not an unreasonable estimate of probable loss of profit from the leased area.

Temporary and permanent damage

[30] The Helm's evidence was that the re-directed spring constantly silts off the culverts causing water to overflow the road and wash it away. They say Suncor did not perform consistent maintenance and that Progress has not attended the area to remediate culvert blockage. They say the year round water from the lease area has been diverted into a ditch that runs down the side of the road, silting off the culvert, and eroding the field and ditches adjacent to the culvert during periods of high water volume.

[31] Ms. Helm's brief also indicates that the Helms have lost livestock as a result of oil and gas traffic. It is not clear from the evidence that these losses are attributable to either Suncor or Progress' activity on this particular Lease.

[32] The current annual payment does not include an amount for damage. Mr. Plotnikow's evidence was that if there was flooding to Mr. Helm's field, weeds spread off lease, damage to fences and loss of livestock, Progress would assess damage on an incident by incident basis and make a one time per incident payment to rectify damages. In 2004, Suncor paid Mr. Helm $2,720 in damages as a result of run off from the lease area.

[33] I agree that in most cases, damage should be compensated as it occurs. If a landowner incurs damage as a result of an entry, and is unable to obtain redress for that damage from the company, the landowner may apply to the

Board to have the claim mediated and ultimately arbitrated. If damage is ongoing, however, it may be practical to include an amount for ongoing damage in an annual payment to enable a landowner to remediate on an ongoing basis, particularly if it is not practical for a company to perform continual remediation or if a company has been unwilling to perform continual remediation. In this way, the landowner is provided with funds to ensure continual remediation is accomplished. As the run off problem seems to be a continuous problem, and given Suncor and Progress' recent lack of attentiveness to either remediating the damage or compensating Mr. Helm so that he can remediate the damage, I find it is appropriate to consider factoring an amount for ongoing damage into the annual payment for the rental period commencing December 23, 2007 and ending December 23, 2011. In future, the parties can consider whether they wish to handle damage claims on an individual basis as they occur or whether an amount for damage should continue to be factored into the annual rent. Other than the evidence that Suncor paid Mr. Helm $2,720 for damage from run-off in 2004, I have no evidence as to what might be an appropriate amount on an annual basis. I find it likely, however, that damage will be at or close to this amount on at least one occasion during a four year rent review period, and find $700.00/year to be appropriate.

Compensation for severance

[34] There is no severance of Lands by this Lease and therefore no compensation payable for this factor. Typically if land is severed as a result of an entry such that a landowner not only loses the use of the occupied land but also effectively loses the use of other land, compensation for loss of use of severed land should be included in an initial payment, and where there is loss of use and loss of profit on an ongoing basis, incorporated in an annual payment.

Nuisance and disturbance

[35] Ongoing nuisance and disturbance may be compensated in an annual payment.

[36] Ms. Helm provided evidence of having to retrieve cattle that had relocated as a result of being "pushed" by someone working in the area. The Helms attribute this incident to Progress personnel although it is not clear it is as a result of Progress' activity with respect to this Lease.

[37] Ms. Helm's evidence speaks to the nuisance of oil and gas traffic on the road and the spreading of dust. She said the landowners called Suncor and Progress' offices frequently, often daily or weekly, as numerous vehicles drive through the ranch creating vast amounts of dust and harassing livestock. Her evidence was that before work was initiated on this Lease there was very little road traffic through the ranch. Nuisance from oil and gas traffic includes

disregard of speed limits, jake brakes that can be heard disturbing landowners and stampeding nervous cattle and horses, dust, trucks in the ditch, garbage on the roads, rigs and traffic moving at all hours, blocked roads, and roads damaged by ruts and pot holes.

[38] Ms. Helm expressed concerns about emergency preparedness and the lack of communication with the Helms during a pipeline break in the spring of 2009.

[39] The Helms also provided evidence about their attempts to deal with Suncor to renegotiate the annual payment and the time and frustration involved.

[40] Mr. Plotnikow's evidence is that, as the well is suspended, it gets checked once a year which means minimal traffic to the leased area. He suggests there is no nuisance to the farming operations and there is not increased nuisance as a result of this Lease since the Lease was originally signed. The original payment included $1,500.00, and the annual payment $1,000.00, for nuisance and disturbance.

[41] I am satisfied there is increased nuisance and disturbance to the Helms as a result of increased oil and gas activity generally in the area. I am not satisfied that all of this nuisance and disturbance can be laid at the feet of Suncor and now Progress with respect to this particular Lease. All companies operating in the area must be more attentive to landowners concerns with respect to speed, dust control, garbage and disturbance of livestock. Each must do their part to try and alleviate nuisance and disturbance to affected landowners. In considering compensation payable however, the *PNGA Act* specifically provides that the Board may consider nuisance and disturbance from the right of entry. As the wellsite on the leased area is only checked by Progress once a year, this right of entry only contributes to a small extent to the nuisance and disturbance caused by increased oil and gas traffic in the area.

[42] This right of entry does cause nuisance and disturbance to the landowners, however, in the form of time required by them to deal with issues arising under the Lease. The evidence is that, prior to this application being filed, Mr. Helm spent time trying to engage someone at Suncor to negotiate renewal terms. He has spent time in bringing the run off damage to the attention of Suncor and Progress and in trying to have it addressed. It is not an easy thing for Mr. Helm to communicate with the company as the ranch is not serviced by telephone.

[43] An amount should be factored into the annual rent that acknowledges there is nuisance and disturbance to the landowner from this Lease, in that it contributes to some extent to traffic and associated problems, and that it requires Mr. Helm to spend time dealing with issues that arise under the Lease that he would otherwise not have to spend if the Lease did not exist. On the basis that the current annual payment for nuisance and disturbance only accounts for 20

hours of Mr. Helm's time (applying an hourly rate of $50 applied by the Board in previous cases in compensating for nuisance and disturbance; see for example *Encana Corporation v. Merrick*, Board Order 1599, July 23, 2008), I find compensation for this factor should be increased to $1,500.00.

The effect, if any, of other rights of entry with respect to the land

[44] I have no evidence of other rights of entry on the land and it is not a relevant factor in this case. This factor was not previously identified in the former section 21 of the *PNGA*, and the Board has not yet had an opportunity to consider it in an application of the new section 154. Discussion of this factor will have to await the appropriate case.

Money previously paid for entry, occupation and use

[45] This is not a relevant factor in this case other than to consider whether the rent originally negotiated continued to be adequate as of December 2007 or whether it should be revised. This factor will usually be relevant where the Board is fixing compensation after having made an order for partial payment in order to deduct amounts already paid under an award for partial payment off an award for final payment.

Other surface leases

[46] The Helms provided examples of 30 leases in the area with annual payments ranging from $550.08 to $1,399.18 per acre. They indicated the location and size of the comparable leases, and (in most cases) the year negotiated. They indicated ways in which other leased areas were comparable to the Lands in quality, vegetation, proximity to a residence and other factors, and provided additional information to distinguish some of the leases. The most relevant leases from the Helm's perspective are those on a neighbour's property ranging from $1,146.50 to $1,399.18 per acre and a lease with another company on a different ¼ section of the Helm ranch for $1,151.76 per acre for 3.69 acres of similar or lesser quality agricultural land negotiated in 2004.

[47] Mr. Vilani argued that every lease must be considered on its own merits and that no two leases will be identical.

[48] The evidence before me provides examples of a number of leases negotiated in 2006 and 2007 in the range of $900/acre to as much as almost $1,400/acre with the majority being in the $900/acre range. The leases indicate an average overall rate of approximately $969.00/acre. The Helm's evidence is that many of the $900/acre leases include additional agreements for the company to maintain a roadway and driveway to the benefit of the landowner effectively adding value to the lease over an above the annual rent paid.

Excluding the leases identified as having additional value other than monetary compensation, the average is $1,269.00. Mr. Helm's request for annual rent of $6,000, equaling $1,252.61/acre, is within the range of other leases referred to in the evidence before me.

Previous orders of the Board

[49] Neither party referred to previous orders of the Board. The only recent decision of the Board on a rent review application is *Miller v. Penn West*, Board Order #1620-2, May 31, 2010. In that case, following consideration of the evidence, arguments and factors in the former section 21 of the *PNGA* the Board found annual compensation of $4,980.00 for a leased area of 6.90 acres and severed acres of .288 acres, located in the Rolla area, to be appropriate. This amount equals $692.82/acre. This amount essentially increased the amount being paid under the lease to account for the change in the value of land since the date the surface lease was signed and to add an amount for loss of profit from the severed area not previously compensated for in the annual payment.

Other factors

[50] In their evidence and submissions, the Helms treated other leases as an "other factor" as it would have been under the previous section 21 of the old *PNGA*. As indicated above "other leases" are now expressly included in the factors the Board may consider.

[51] There are no additional "other factors" that either party brought to my attention for consideration in this case. In *Miller v Penn West, supra*, the Board found that the existing compensation is an important factor to consider. In that case, the company presented evidence concluding the annual rent should be approximately half of what was being paid. The Board found this conclusion was not reasonable as it did not consider the current compensation.

Increase in the value of money

[52] Cinda Helm's evidence includes an inflation calculator from the Bank of Canada website. This calculator indicates that $3,450.00 in 2004 would cost $3,841.75 in 2010, an increase of 11.35%. As the Lease was originally negotiated in 2003 and any revised rent is effective as of 2007, I have taken the liberty of having the website do the calculation for that period. The Bank of Canada inflation calculator indicates that $3,450.00 in 2003 would cost $3,744.47 in 2007, an increase of 8.54%. At a minimum, therefore, as the change in the value of money is a factor the Board must consider, the annual rent should be increased to $3,744.47, say $3,745.00 rounded.

Stepping back to determine a global sum

[53] My analysis of the evidence relevant to the various factors set out in the *PNGA* results in the following "sum of parts":

Factor	Annual amount
Loss of profit	$2,000.00
Damage	$700.00
Nuisance and disturbance	$1,500.00
Sum of parts	**$4,200.00**

[54] An award of $4,200.00 equates to approximately $877.00/acre, an amount below the preponderance of leases before me for the lease of similar land in the area. The legislation specifically allows the Board to consider other leases, implying there should be some sense of fairness or equity between landowners in compensation paid. Although I do not have detailed evidence of the specific circumstances of each individual lease before me, the pattern of dealings generally suggests that, overall, the annual rent should be higher than $877.00/acre, and indeed, higher than $900/acre in the absence of additional value added by non-monetary compensation.

[55] I am mindful that the Board must not exceed its jurisdiction by ordering an amount to be paid that exceeds the actual, or probable, loss sustained (*Western Clay Industrial Products, supra*). I am also mindful, however, that calculating damages for intangible loss, such as for nuisance and disturbance, is not a precise exercise but involves the exercise of judgment and discretion to determine what is appropriate and just in the circumstances of any particular case. Payment for intangible loss should recognize that there is negative impact to landowners from oil and gas activity, and perhaps discourage irresponsible behavior on the part of companies that cause negative impact to landowners, but should not purport to enrich or remunerate landowners beyond the probable loss sustained. Additionally, even in compensating for more tangible loss such as loss of profit, the evidence will often be imperfect and require estimations and assumptions, which may be incapable of proof, but which do not detract from the fact of loss. All in all, determining annual rent involves consideration of the evidence and all of the circumstances, coupled with the exercise of judgment.

[56] In the circumstances of this case, considering the tangible and intangible loss to Mr. Helm from the Lease, the increase in the value of money since the Lease was originally signed, and the rents paid under other leases, I find the annual rent should be increased to $4,750.00 effective December 23, 2007.

Costs

[57] Section 170 of the *PNGA* provides that the Board may order a party to pay all or part of the actual costs incurred by another party in connection with the application. Mr. Helm seeks payment of his actual costs in connection with this application. Progress does not dispute Mr. Helm's entitlement to costs in the circumstances, but asks that I determine the amount payable.

[58] Section 168 of the *PNGA* defines "actual costs" as including:

(a) actual reasonable legal fees and disbursements;
(b) actual reasonable fees and disbursements of a professional agent or expert witness;
(c) other actual reasonable expenses incurred by a party in connection with a board proceeding;
(d) an amount on account of the reasonable time spent by a party in preparing for and attending a board proceeding.

[59] Mr. Helm produced two invoices for payment, one on account of his own time and disbursements, and one on account of the time and disbursements incurred by Cinda Helm as his agent.

[60] Mr. Helm's invoice includes consultations with Suncor land representatives and travel to Suncor offices in Fort St. John in 2009. It is not clear that these consultations are in connection with the Board's proceedings. Time spent dealing with Suncor or Progress generally, not in connection with a Board proceeding, is compensated as nuisance and disturbance in the annual rent.

[61] Mr. Helm's invoice includes his time (approximately 50 hours billed at $50/hour) for attendance at the mediation, meetings with Ms. Helm in preparation for the arbitration, phone calls with other landowners to discuss his submission and prepare exhibits, travel involved in the preparation and delivery of exhibits, consultation with the Farmers' Advocate Office and attendance at the arbitration. Additionally the invoice charges for kilometers travelled at $1.15/km. These costs amount to $4,118.40.

[62] Ms. Helm's invoice in the amount of $2,234.87 includes time (approximately 28 hours) to prepare the evidentiary report and submissions to the Board and for travel, kilometers travelled at $1.15/km, and disbursements for copying, stationary products and other sundry incidental expenses for which receipts are provided. Ms. Helm has also billed her time at $50/hour.

[63] The accounts from both Mr. Helm and Ms. Helm are reasonable in terms of the amount of time claimed to prepare for the Board's proceedings. I note Ms. Helm's account does not include time to attend the arbitration. The mileage rate claimed is in excess of that normally ordered by the Board, however, Ms. Helm's

evidence is that is the standard rate charged by her company to oil and gas companies in her professional life, and that it is low in the industry. Given that I find Ms. Helm's account is likely on the light side in terms of the time charged to prepare for and attend the arbitration, I am not about to quibble with the mileage claimed, and find that Mr. Helm is entitled to costs in the amount of $6,300.00 on account of both his and Ms. Helm's time and expenses.

ORDER

[64] The Surface Rights Board orders that the rental provisions under the Lease are amended to provide that effective December 23, 2007, the annual rent payable to Mr. Helm is $4,750.00. Progress Energy Ltd. shall forthwith pay to Bill Helm any difference in annual rent paid since December 23, 2007 and the revised annual rent effective December 23, 2007.

[65] The Surface Rights Board orders that Progress Energy shall pay Bill Helm $6,300.00 for costs.

DATED: December 2, 2010

FOR THE BOARD

Cheryl Vickers, Chair