



Paramount Energy Operating Corp.

Complaint Respecting
ERCB Enforcement Action
ERCB Invoice No. 90012335

October 7, 2008

ENERGY RESOURCES CONSERVATION BOARD

Decision 2008-094: Paramount Energy Operating Corp., Complaint Respecting ERCB
Enforcement Action, ERCB Invoice No. 90012335

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

PARAMOUNT ENERGY OPERATING CORP. COMPLAINT RESPECTING ERCB ENFORCEMENT ACTION

Decision 2008-094
Proceeding No. 1583740

1 DECISION

Having carefully considered all of the evidence, the Energy Resources Conservation Board (ERCB/Board) allows in part the appeal of Paramount Energy Operating Corp. (Paramount) of the decision of the Energy Resources Conservation Board (ERCB/Board) Enforcement Advisor dated March 5, 2008, regarding ERCB Invoice No. 90012335, First Notice of Low Risk Noncompliance for Volumetric Reporting Deficiencies re: Facility ABB50078721, dated December 20, 2007.

2 BACKGROUND

Paramount is the trustee of Paramount Operating Trust and an administrator of Paramount Energy Trust. Paramount purchased Cavell Energy Corp. (Cavell) in 2004. All references in this decision to Cavell should be read as references to Paramount as Cavell's successor.

Prior to December 1, 2007, Paramount's offices were located at 500, 630 – 4 Avenue SW, Calgary, Alberta. Paramount moved its offices from that location on December 1, 2007, to 3200, 605 – 5 Avenue SW, Calgary, Alberta. Subsection 91(6) of the *Oil and Gas Conservation Act (OGCA)* requires licensees and agents to register any changes of address with the ERCB within 15 days of the change. Paramount did not make submissions or present evidence with regard to any efforts it made to register this change with the Petroleum Registry of Alberta (PRA) or the ERCB.

On December 19, 2007, Jan Laird, a production accountant for Paramount, was reviewing the Alberta Department of Energy's Outstanding Business Report in an attempt to clear outstanding items. She logged onto the PRA to change the operational status of a gas single-well battery facility, namely Facility ABBT0078721. Apparently a facility code for that facility had been created in the PRA in error by Cavell sometime in 2003 and was never used. According to the Paramount accountant's evidence, she was attempting to deactivate the code for the facility through the PRA. The Paramount accountant changed the operational status of the facility from "new" to "suspended" in the PRA. She then printed a copy of the "Change Facility Operational Status" registry screen for the facility, which showed that the change of operational status of the facility was "processed successfully" and that the facility's operational status was shown as "suspended."

Subsequently, it was discovered that the Paramount accountant had inadvertently changed the facility status from "new" to "suspended" and then to "active." Further, the "active" status automatically applied retroactively to the facility back to 2003, which automatically triggered

retroactive monthly penalties for failing to report volumetric data for the facility since September 2008, as the PRA now showed that the facility had been “active” since 2003 and that Paramount had not submitted any volumetric data for the facility during that period.

On December 20, 2007, the ERCB issued the invoice to Paramount because the operational status of the facility on the PRA was shown as “active” since September 2003 and no volumetric data had been reported for the facility during the period of September 2003 up to and including December 19, 2007. The invoice included penalties of \$500 per month for that reporting period and imposed penalties totalling \$27 030.00.

The invoice was sent to the address of the offices of Cavell, which was an out-of-date address for the company, as Paramount had since acquired Cavell. As a result, Paramount did not immediately receive the invoice at its current address.

The Paramount accountant advised that she first became aware of the invoice on January 17, 2008, at which time she telephoned the PRA and contacted the ERCB’s Help Desk to ask for the invoice to be reviewed. As the monthly summary warning report of noncompliance errors generated by the PRA was generated on December 18, 2007 (two days before the Paramount accountant changed the facility status), no notice of volumetric data nonfiling was generated and sent to Paramount until the following month and long after the invoice was issued.

On January 23, 2008, ERCB employee Miriam Romero, in Production and Well Data Services, denied Paramount’s request for a review of the invoice.

On February 12, 2008, Paramount appealed Ms. Romero’s decision to Dan Bartlett, ERCB Enforcement Advisor. On March 5, 2008, the Enforcement Advisor issued the decision in which he denied Paramount’s appeal.

By e-mail dated March 13, 2008, the Paramount accountant contacted the Enforcement Advisor and provided a chronology of events prepared by Paramount in connection with the appeal. By e-mail dated March 19, 2008, the Enforcement Advisor advised the Paramount accountant that she could appeal the decision to the Board under *Directive 019: ERCB Compliance Assurance—Enforcement* within 15 days of the date of the decision.

On March 31, 2008, counsel for Paramount confirmed Paramount’s intention to appeal the decision to the Board and requested that the Board extend the 15-day time limit for appeals referred to in Part 5 of *Directive 019*.

3 APPEAL TO THE BOARD

By e-mail dated April 2, 2008, ERCB General Counsel, Patricia M. Johnston, Q.C., advised Paramount’s counsel that ERCB staff were prepared to accept his appeal submissions notwithstanding that the 15-day deadline stated in Part 5 of *Directive 019* had passed and that his appeal submissions were to be submitted by April 7, 2008.

On April 7, 2008, Paramount submitted its appeal of the decision to the Board.

Michael J. Bruni, Q.C., Board Member, was assigned to make a decision on this appeal based on the written submissions of the parties.

4 SUBMISSIONS OF THE PARTIES

4.1 Views of Paramount

In its submissions in support of this appeal, Paramount attached a copy of the “Change Facility Operational Status” PRA screen for the facility, which appears to have been printed on December 19, 2007; a copy of two registry queries for the facility, which appear to have been printed on April 3, 2008; and a copy of Paramount’s internal monthly accounting calendar for December 2007.

On July 11, 2008, counsel for Paramount submitted that the ERCB staff recreations of the entries made by the Paramount accountant in the PRA were not conclusive and that user responsibility was not being denied by Paramount. Paramount submitted that unique circumstances led to the facility’s status being improperly recorded in the PRA and to that error going unnoticed for a month.

Paramount also submitted that the ERCB staff decisions denying its appeal of the invoice took too narrow a view of the situation and misconstrued the intent of the legislation and directives that empower the ERCB. Paramount also submitted that due in large part to a computer input error, a financial penalty was imposed on Paramount in this case without regard to circumstances or level of culpability. Paramount also submitted that the purpose of volumetric data filing requirements was not frustrated by this error and that the noncompliance did not compromise public safety, protection of the environment, conservation, hydrocarbon production records, royalty calculations, or the public interest and in fact had no impact whatsoever.

Paramount sought the following relief:

- 1) that the Board Member allow the appeal, set aside the decision, and rescind the invoice in its entirety; or
- 2) in the alternative, that the Board Member allow the appeal, set aside the decision, and revise the invoice to impose penalties for noncompliance with the volumetric data reporting requirements only for that period of time that the PRA actually showed noncompliance for nonfiling of data for an active facility, namely from December 19, 2007, to January 17, 2008.

4.2 Views of the Enforcement Advisor and ERCB Information, Dissemination, and Collection Group Staff

On April 21, 2008, and May 23, 2008, ERCB staff (Lois Petherick, Manager, Information Collection, and Dissemination Group, Information and Systems Services Branch) (ICD staff) provided written responses in response to Paramount’s submissions.

ICD staff submitted that when an operator makes changes in the two-day window before the volumetric data submission deadline, special care and diligence are required. ICD staff submitted

that Section 2.5 of the ERCB's *On-line Supplement to Directive 007: Volumetric and Infrastructure Requirements* provides that in order to avoid volumetric noncompliance fees, operators should remember to request an ERCB Noncompliance Error Report for any facility for which data were submitted in the two-day window. ICD staff also submitted that operators could request Warning Reports at any time during the month and the reports would then be sent by e-mail to the operator's inbox at the PRA.

ICD staff submitted that it was appropriate to deny Paramount's appeal because the facility's status showed as "active" on the ERCB Volumetric Reporting deadline of December 19, 2007, and the required data were not filed as required. ICD staff further submitted that a detailed investigation, including a review of the PRA Audit Log, showed that the Paramount accountant changed the status of the facility from "new" to "suspended" and then to "active" on December 19, 2007. ICD staff submitted that volumetric submissions were required for facilities that had an operational status of "active" and that if these were not submitted, the operator would be placed on a 1st ERCB Notice of Low Risk Noncompliance, which was the situation in this case.

ICD staff submitted that Paramount provided evidence that the facility's status was shown on the PRA as "suspended" but failed to produce evidence that Paramount changed the facility's status from "new" to "suspended" to "active." ICD staff advised that they investigated the steps taken by the Paramount accountant to change the facility status on December 19, 2007, and submitted the details of same to show that the Paramount accountant first set the facility's operational status as "suspended" and then subsequently changed that status to "active."

ICD staff submitted evidence of their investigations of the ERCB and PRA to determine if there were any system problems, "bugs," or other issues relating to the "Change Facility Operational Status" screen that could have been the cause of the error in the change of the status of the facility. ICD staff advised that their investigations revealed that no problems existed and all systems performed as expected. ICD staff also confirmed that the PRA showed that at 11:43:06 a.m. on December 19, 2007, the operational status of the facility was changed from "new" to "suspended" to "active" and that these changes were completed by the Paramount accountant.

ICD staff also submitted the PRA's Audit Log for Paramount for December 19, 2007, which showed the steps taken by the Paramount accountant to change the facility operational status from "new" to "suspended" to "active." The Audit Log showed that on October 8, 2003, the facility was changed to "new" by another Paramount employee. The next entry in the Audit Log for the facility was on December 19, 2007, at 11:42:27 a.m., when the Paramount accountant was shown to have changed the operational status of the facility to "suspended." The Audit Log then showed that at 11:42:54 a.m. the same day, the Paramount accountant added another "suspended" status change with a start date of December 30, 2007. The Audit Log next showed that at 11:43:06 a.m., the Paramount accountant changed the facility's operational status from "suspended" to "active." The final operational status for the facility was submitted to the PRA as "active."

ICD staff also prepared and submitted a recreation of Paramount's submission steps. ICD staff submitted that the purpose of this exercise was to determine if a problem existed in the PRA's "Change Facility Operational Status" screen when a facility with a status of "new" was changed

to “suspended” and to determine if the series of operational status changes for the facility was caused by a PRA user error or a PRA system error. As the ERCB does not manipulate industry data, ICD staff used a sample facility and sample data in their recreation. The results showed that there was no “bug” on the PRA “Change Facility Operational Status” screen and that the PRA data changed only in accordance with user input.

ICD staff submitted that after their recreation of Paramount’s submission steps, they generated an OnRequest Report for the sample facility. This report can be requested at any time and any number of times by any PRA user. ICD staff submitted that Section 2.5 of the *On-line Supplement to Directive 007* stated that operators should remember to request an OnRequest Report for any facility for which data were submitted during the timeframe between the ERCB’s issuance of its Volumetric Noncompliance Report and the ERCB’s volumetric data reporting deadline in order to avoid noncompliance penalties. ICD staff submitted that the Paramount accountant changed the operational status of the facility on the date of the volumetric data reporting deadline and did not subsequently request an OnRequest Report. According to ICD staff, these actions (or inaction as the case may be) caused the Paramount accountant to miss an opportunity to be alerted to the error and the resulting noncompliance.

ICD staff argued that the Board Member should deny Paramount’s appeal in its entirety.

5 ISSUE

The Board Member considers the sole issue in this matter to be whether or not Paramount’s appeal should be allowed and the decision set aside.

In reaching his decision as contained in this report, the Board Member has considered all relevant materials constituting the record of this proceeding, including the evidence, argument, and submissions provided by Paramount and ERCB staff. Accordingly, references in this report to specific parts of the record are intended to assist the reader in understanding the Board Member’s reasoning relating to a particular matter and should not be taken as an indication that the Board Member did not consider all relevant portions of the record with respect to that matter.

6 REASONS FOR DECISION

In considering the parties’ submissions, the Board Member notes that Part 12 of the *Oil and Gas Conservation Regulations (OCGR)*, adopted under the *OGCA*, and Section 3.2.1 of *Directive 007* require each oil and gas licensee or operator in Alberta to file “an accurate report of all activities, products, volumes, and product movements...for each well that is active.” Section 3.2 of *Directive 007* states:

If during the preceding month an active well tested, produced, or received crude oil, condensate, crude bitumen, gas, water or other substance or had crude oil, gas, solvent, water, air, or other substance injected or disposed, or if an active well was shut in for the entire preceding month, the operator must report to the EUB through the PRA by the 18th day of the month, or if the 18th is not a business day, the next business day or as otherwise directed by the EUB. The specific dates for EUB Volumetric Data deadlines are published in the

Registry Reporting Calendar on the Bulletin Board available on the PRA Web site at <http://www.petroleumregistry.gov.ab.ca>.

The data filing deadlines are specified several months in advance and are available on the PRA Web site. In addition, each licensee has an e-mail account on the PRA to which notices and communications are sent.

The ERCB gathers the data required under Part 12 of the *OGCR* and *Directive 007* to maintain accurate historical records of the production and hydrocarbon and by-products from each well. Among other uses, the data are used for royalty calculation and verification. Given the use for which the information is collected under these requirements, currency and accuracy of the information is of the utmost importance.

In considering Paramount's appeal, the Board Member considered numerous criteria on which a decision of the Enforcement Advisor can be overturned. The Board Member considered the well-established tests that must be met to obtain leave to appeal to the Court of Appeal. An appellant may appeal an ERCB decision based on an error of law or an error of jurisdiction. Further, to succeed on an application for leave to appeal an ERCB decision to the Alberta Court of Appeal, an appellant must satisfy the court that there is a serious, arguable issue that has a reasonable prospect of success. In applying these tests, the Board Member must decide whether the ERCB erred in law or exceeded its jurisdiction when it assessed penalties against Paramount for noncompliance with the filing requirements for volumetric data.

In connection with his deliberations in this matter, the Board Member found the following:

- 1) The requirement to file monthly volumetric data for active wells and facilities is mandated under Part 12 of the *OGCR* and *Directive 007*.
- 2) The ERCB has the statutory jurisdiction to impose requirements to file monthly volumetric data.
- 3) The ERCB has the jurisdiction to assess penalties for noncompliance, as outlined in the Schedule of Fees in Part 17 of the *OGCR*.
- 4) Section 5.1 of *Directive 007* states that an operator that has missing data or data discrepancies that are not corrected prior to the filing deadline may receive an invoice for fees.

Based on the foregoing, the Board Member finds that the ERCB did not err in law or exceed its jurisdiction in assessing the noncompliance penalties against Paramount.

The Board Member finds that on December 19, 2007, the Paramount accountant changed the status of the facility from "new" to "active" in the PRA in error. As a result of this error, the PRA automatically retroactively assigned an "active" status to the facility going back to September 2003. This in turn triggered penalties for failing to file volumetric data for the facility for the reporting period. The "active" status of the facility in the PRA was inaccurate because the

facility was and has never been active for the purposes of the volumetric data filing requirements in *Directive 007* and the *OGCR*.

The Board Member finds that the following actions and inactions on the part of Paramount contributed to and exacerbated the errors made in attempting to change the status of the facility in the PRA:

- 1) failing to notify the PRA or the ERCB of its address change, as required under Subsection 91(6) of the *OGCA*, which would have resulted in the invoice being sent to the proper address in the first instance;
- 2) failing to request and obtain an OnRequest Report from the ERCB, which report would have alerted Paramount to the error in the facility status immediately after the error occurred; and
- 3) making changes to facility status in the PRA in the two days prior to a volumetric data filing deadline without requesting a Noncompliance Error Report, as recommended in Section 2.5 of the *On-line Supplement to Directive 007*.

The Board Member also considered additional criteria in determining whether to grant Paramount's appeal. In particular, in addition to considering whether ERCB staff erred in law or exceeded their jurisdiction in connection with this matter, the Board Member also considered whether

- the licensee was in technical compliance with ERCB requirements;
- ERCB staff or some other governmental body contributed to the noncompliance; and
- the noncompliance was not risk assessed or was assigned an improper risk assessment and/or improper risk level.

In considering these additional enforcement appeal criteria, the Board Member examined whether Paramount had technically complied with the data filing requirements, whether ERCB staff or another government body made any technical or legal errors that may have contributed to Paramount's inability to comply with the filing requirements, and whether ERCB staff erred in categorizing this infraction as Low Risk.

The Board Member finds that the Paramount accountant's error caused the status of the facility to show as "active" for the period of December 19, 2007, to and including January 17, 2008. By contrast, it was a function of the PRA system itself, as opposed to the actions of the Paramount accountant, that caused the PRA to retroactively apply an "active" status to the facility going back to September 2003. Because the facility was never active, Paramount was in technical compliance with ERCB requirements by not filing volumetric data for the period of September 2003 to and including December 19, 2007. However, Paramount was in violation of ERCB requirements by failing to file volumetric data for the period of December 19, 2007, to and including the date when the Paramount accountant discovered the invoice and took steps to rectify the inaccurate status of the facility, namely, January 17, 2008.

As a result of these findings, the Board Member finds that Paramount meets one of the additional appeal criteria outlined above because it was in technical compliance with ERCB requirements during the period of September 2003 to and including December 19, 2007.

For the reasons outlined above, the Board Member finds that given Paramount was in technical compliance for the period of September 2003 to December 19, 2007, penalties should not have been automatically imposed retroactively. However, the Board Member further finds that given the foregoing, the penalties payable by Paramount should reflect the actual period during which the facility status was submitted as “active” in the PRA, namely, from December 19, 2007, to January 17, 2008.

Based on the foregoing, the Board Member hereby allows Paramount’s appeal in part. The Board Member hereby varies the decision by reducing the invoice to the amount of \$500, being the amount of penalty owing for failing to file volumetric data for the period of December 19, 2007 (when the facility status was improperly changed to “active”) to and including January 17, 2008 (when steps were taken to correct the facility status).

Dated in Calgary, Alberta, on October 7, 2008.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

M. J. Bruni, Q.C.
Board Member