Dalhousie Oil Company Limited

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

May 18, 2010

Energy Resources Conservation Board

ENERGY RESOURCES CONSERVATION BOARD
Decision 2010-019: Dalhousie Oil Company Limited, Section 40 Review of Abandonment Cost Order No. ACO 2008-1, Turner Valley Field

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Calgary Alberta

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TURNER VALLEY FIELD **Proceeding No. 1607608**

1 DECISION

Having carefully considered all of the evidence, the Energy Resources Conservation Board (ERCB/Board) finds that Dalhousie Oil Company Limited (Dalhousie) is properly named in Abandonment Cost Order No. ACO 2008-1 as the party responsible for payment of costs, penalty, and GST associated with abandonment of a well licensed to Dalhousie located at Legal Subdivision 4, Section 18, Township 20, Range 2, West of the 5th Meridian.

2 PROCEDURE

On May 16, 2008, Dalhousie requested a hearing to review ACO 2008-1, pursuant to Section 40 of the *Energy Resources Conservation Act*. ACO 2008-1 had been issued to Dalhousie on April 18, 2008, ordering the payment of costs for abandonment of the well.

The Corporate Compliance Group (CCG) of the ERCB (formerly the Alberta Energy and Utilities Board), which had issued the order under its delegated authorities, filed a response to the review request. Dalhousie requested a number of extensions to the deadline to file a reply to the CCG's response. Following receipt of the reply, the Board granted the review request and a notice of hearing was issued on April 6, 2009.

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. Signalta and Talisman were added as parties to the hearing, and submission deadlines were revised to allow them the opportunity to respond to this allegation. 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.

At the request of the parties, the hearing was conducted entirely in writing. The hearing closed on March 15, 2010. After receipt of the submissions, but prior to the issuance of this decision, Board Member J. D. Ebbels passed away. The remaining two panel members, T. L. Watson, P.Eng (Presiding Member), and B. McManus, Q.C., constitute a quorum and their deliberations on the submissions and arguments of CCG, CanEra, Dalhousie, and Signalta are set out in this decision report. Those who participated in the written proceeding are listed in Appendix 1.

Because of the CCG's role in the issuance of ACO 2008-1, its participation as a party to the proceeding was separate and apart from the Board's role as decision-maker. CCG was

represented by counsel specifically assigned to act on its behalf, and the Board was assigned its own separate legal counsel. For the purpose of this proceeding, CCG was treated by the Board as an independent party and all communication between CCG and the Board was via correspondence through legal counsel for CCG and legal counsel for the Board and was copied to the other parties to the proceeding. Neither the CCG nor its lawyer had any contact with the Board regarding this matter before, during, or after the proceeding.

3 ISSUES

The Board considers the issues in this proceeding to be

- liability for abandonment costs
- allegations of lack of procedural fairness
- addition of GST to costs

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

4 BACKGROUND

A licence for the well was issued to Southern Alberta Oil Company (SAOC) on October 6, 1911. The well was drilled to a total depth of 1127.8 metres below kelly bushing, resulting in completion in the 999997 Shallow Pool of the 909 Turner Valley Field. According to ERCB records, the well flowed crude oil from January 1, 1919, to January 1, 1922, when it was suspended. The well was zonal abandoned, and its production status has been crude oil abandoned since February 20, 1926. In 1926, Dalhousie assumed most of the assets of SAOC, including the well. ERCB records indicate surface abandonment of the well in July 26, 1958.[1]

The ERCB received a complaint on March 29, 2005, regarding possible leaking from the well and safety issues related to nearby livestock. The ERCB contacted Dalhousie on April 14, 2005, to advise it of the complaint and to confirm the well's ownership. On May 2, 2005, CCG sent a letter to Dalhousie asking it to ensure safe and proper abandonment of the well by May 10, 2005. On May 31, 2005, Dalhousie sent a letter to the complainant, enclosing a cheque for costs of fencing the well and stating that it would contact local contractors to get cost estimates to abandon the well.

In July and November of 2005, the ERCB requested status updates from Dalhousie regarding remedial abandonment work on the well. On February 7, 2006, CCG sent another letter to Dalhousie directing abandonment of the well by March 7, 2006, and advising that failure to

[1] As defined in ERCB *Directive 020: Well Abandonment Guide*, zonal abandonment is the abandonment of a single pool completion within a cased hole or the downhole abandonment of an open-hole interval in a cased hole. Surface abandonment is the cutting off of casing string(s) and the capping of a well.

properly abandon the well would result in the ERCB carrying out the abandonment at Dalhousie's expense.

Dalhousie failed to reabandon the well and the ERCB carried out abandonment operations, which ended in 2006. CCG sent Dalhousie an invoice on March 6, 2008, directing it to pay the abandonment costs incurred by the ERCB and advising that failure to pay by the stated date would result in the addition of a 25 per cent penalty. Upon Dalhousie's failure to pay, CCG issued ACO 2008-1, ordering Dalhousie to pay a total of $494 950.93 by May 19, 2008 ($380 731.49 in abandonment costs, plus GST, plus a 25 per cent penalty).

5 LIABILITY FOR ABANDONMENT COSTS

The Board considers Dalhousie's arguments regarding responsibility for *abandonment* to be largely irrelevant to the issue at hand, which is liability for payment of abandonment *costs* following abandonment by the ERCB. The issue of which party was responsible for abandonment of the well is moot, since the ERCB found it necessary to abandon the well when Dalhousie failed to do so when directed. The issue now is which party is liable for the costs.

5.1 Statutory Framework

Liability for abandonment costs is set out in Section 30 of the *Oil and Gas Conservation Act* (*OGCA*), which reads (emphasis added):

> **Suspension, abandonment and reclamation costs**
>
> **30(1)** Subject to subsection (2), the well or facility suspension costs, **abandonment costs** and reclamation costs **must be paid by the working interest participants in accordance with their proportionate share in the well** or facility.
>
> **(2)** The Board may determine the suspension costs, abandonment costs and reclamation costs
>
> (a) on the application of the person who conducted the suspension, abandonment or reclamation, in the case of a well or facility that was suspended, abandoned or reclaimed by a licensee, approval holder, working interest participant or agent, or
>
> (b) on the Board's own motion, in the case of a well or facility suspended or abandoned by the Board or by a person authorized by the Board,
>
> and the Board shall allocate those costs to each working interest participant in accordance with its proportionate share in the well or facility and shall prescribe a time for payment.
>
> **(3) A working interest participant that fails to pay its share of costs as determined under subsection (2) within the period of time prescribed by the Board must pay, unless the Board directs otherwise, a penalty equal to 25% of its share of the costs**.
>
> **(4)** Where a well or facility is suspended, abandoned or reclaimed by a licensee, approval holder, working interest participant or agent, the costs as determined under subsection (2), together with any penalty prescribed by the Board under subsection (3), constitute a debt payable to the licensee, approval holder, working interest participant or agent who carried out the suspension, abandonment or reclamation.
>
> **(5) Where a well or facility is suspended or abandoned by the Board** or by a person authorized by the Board, **the costs as determined under subsection (2), together with any penalty prescribed by the Board under subsection (3), constitute a debt payable to the Board**.

> **(6)** A certified copy of the order of the Board determining the costs and penalty under this section and the allocation of those costs to each working interest participant in the well or facility may be filed in the office of the clerk of the Court of Queen's Bench and, on being filed and on payment of any fees prescribed by law, the order may be entered as a judgment of the Court and may be enforced according to the ordinary procedure for enforcement of judgments of the Court.

The legislation is clear that costs incurred by the Board in carrying out abandonment of a well, together with a 25 per cent penalty for nonpayment of the costs within the time prescribed by the Board, is payable to the Board by the working interest participants (WIPs) in that well according to their proportionate shares.

The fact that the well had been abandoned 50 years earlier does not affect current liability for the additional abandonment work that later became necessary. It is not unusual for a well to require further abandonment after abandonment work has been completed. Section 29 of the *OGCA* addresses that very situation. It reads:

> **29** Abandonment of a well or facility does not relieve the licensee, approval holder or working interest participant from responsibility for the control or further abandonment of the well or facility or from the responsibility for the costs of doing that work.

Section 29 prevents a licensee, approval holder or WIP, as the case may be, from avoiding liability for control or further abandonment work of a well or from liability for the costs of such work. The Board interprets Section 29 as prohibiting such parties from using previous abandonment of a well as a shield to protect them from liability for future abandonment work or abandonment costs. The Board finds that Section 29 prevents the WIP in this well from avoiding liability for payment of costs merely because the well had previously been abandoned to a satisfactory condition. Section 29 ensures that Section 30 applies to further abandonment work, in addition to the initial abandonment.

Regarding the issue of liability, Dalhousie argued that the current owners of TVU No. 7 are responsible for the abandonment costs by virtue of Order No. TVU 7 (the unit order). Dalhousie makes reference to clauses in the unit order that refer to abandonment of the well by the unit operator and costs of operations (not abandonment per se).

Even if the well were part of TVU No. 7, declared under the *Turner Valley Unit Operations Act* (*TVUOA*), the Board finds nothing in that act or the unit order that would override the clear effect of Section 30 of the *OGCA* regarding liability to the Board for abandonment costs where the Board does the work.

Section 17 of the *TVUOA* states:

> 17. The Board may, for any period or periods that it decides, exempt a unit operator or a unit operation from any or all of the provisions of the *Oil and Gas Conservation Ac*t.

This indicates to the Board that the provisions of the *OGCA* apply to unit operators and unit operations unless exemption is specifically granted. Even if the well were part of TVU No. 7, Dalhousie submitted no evidence of an express exemption from Section 30. The Board concludes that Section 30 governs the matter at issue.

5.2 Working Interest Participation in the Well

Section 30 of the *OGCA* provides that abandonment costs incurred by the Board are payable to the Board by the WIPs in the well, according to their proportionate shares. "Working interest participant" is defined in the *OGCA* as follows:

> 1(1) (fff) "working interest participant" means a person who owns a beneficial or legal undivided interest in a well or facility under agreements that pertain to the ownership of that well or facility;

Dalhousie does not dispute that it is the licensee of the well. Based upon the evidence before it, the Board finds that Dalhousie has 100 per cent ownership in the well, and as such is the well's sole WIP.

To support this finding, the Board relies on evidence submitted by CCG that Dalhousie

- acquired the assets of the SAOC, including the well, in 1926,
- verbally confirmed its ownership of the well in April 2005,
- paid costs of fencing the well in May 2005, and
- has never filed updated WIP information for the well with the ERCB.

In response, Dalhousie submitted that

- the well is part of TVU No. 7;
- Dalhousie sold its 3.33156 WIP interest in TVU No. 7 to Signalta in January 2006;
- the current owners of TVU No. 7 are responsible for the abandonment costs by virtue of the unit order; and
- if any costs are attributed to it as a former WIP, it is only responsible for 3.33156 per cent of these costs as that is the unit interest Dalhousie had in the well.

In the Board's view, Dalhousie's submissions do not refute the evidence provided by CCG regarding ownership of the well for the purpose of establishing working interest participation. Dalhousie has equated ownership in TVU No. 7 with ownership of the well. The Board finds that the facts do not support that conclusion.

5.3 Was the Well Ever Part of TVU No. 7?

Dalhousie submitted that the well qualifies as a TVU No. 7 well because it lies within the geographic boundaries of TVU No. 7. Dalhousie conceded that the well is not included in the schedules in the unit order, but argued that the schedules only include wells that assist in the calculation of unit income and an abandoned well would not assist in that calculation.

Based on the wording of the unit order, the Board finds that a well cannot be considered a unit well unless it was drilled into the Rundle Group or was in reservoir communication with the Rundle. Lying within the geographic boundaries of the unit order is not enough.

The Board relies upon the following to support this conclusion:

- The unit order states that the order is "for the unit operation of the part of the Turner Valley Rundle Pool."

- Clause 1 of the unit order reads:

> 1. (1) All interests in the tracts within that part of the Turner Valley Pool . . . delineated by the wells drilled into the Rundle group in the Turner Valley Field before July 1, 1971, and including any part of the Rundle group that is, or may be found to be in reservoir communication with the part of the Pool so described are consolidated, merged and otherwise combined in a unit operation in accordance with *The Turner Valley Unit Operations Act*, and subject to the terms and conditions herein contained.

Based upon evidence submitted by CCG, the Board finds that the well did not penetrate the Rundle. The evidence showed that

- the well penetrated the 909 999997 Shallow Pool in the Turner Valley Field, produced crude oil, and never came into communication with the Rundle Group; and
- the well produced oil approximately 659.3 m above the shallowest gas/oil contact of the Rundle.

CCG stated that since oil cannot exist above gas in the same reservoir, the oil produced by the well cannot have come from the Rundle.

The Board accepts the submissions and evidence of CCG and finds that because the well produced crude oil above the Rundle gas/oil contact, it never penetrated the Rundle Group and was never in communication with the Rundle Group gas producing reservoir.

The Board concludes that the well was never part of TVU No. 7.

5.4 Did Dalhousie Sell the Well to Signalta in 2006?

The Board finds that there is no evidence before it to support Dalhousie's claim that ownership of the well was transferred from Dalhousie to Signalta in 2006.

Dalhousie stated that it is no longer a WIP in the well because the well was included in TVU No. 7 and it transferred its interests in the unit to Signalta in a purchase and sale agreement on January 1, 2006.

Signalta agreed that it purchased Dalhousie's interest in TVU No. 7, but stated that the well was not included in the unit and was therefore not part of the purchase.

The Board has found that the well was never included in TVU No.7. Nothing in the agreement identifies the well as being specifically included in the purchase by Signalta. In the absence of any other evidence substantiating the transfer of ownership, the Board concludes that Dalhousie remained the WIP in the well.

5.5 Conclusion Regarding Liability for Abandonment Costs

The Board finds that Section 30 of the *OGCA*, quoted above, governs liability for abandonment costs when a party responsible for abandonment fails to conduct the work and such costs are incurred by the Board. It provides that the WIPs in a well are liable for the costs, including the penalty for nonpayment, in accordance with their proportional share in the well. Section 29 prevents them from avoiding liability on the grounds that the well had previously been abandoned.

The Board finds that the evidence before it shows Dalhousie to be the sole WIP in the well. As such, given Section 30 of the *OGCA*, the Board finds that Dalhousie is responsible for the abandonment costs.

6 PROCEDURAL FAIRNESS

The Board finds the allegation of lack of procedural fairness with respect to directing abandonment of the well to be without merit and improperly raised in this review of ACO 2008-1.

Dalhousie argued that it was not accorded procedural fairness by the ERCB when the Board directed abandonment of the well between May 2005 and March 2006 on the grounds that the unit operator was responsible for abandonment, not Dalhousie. Dalhousie also argued that it was not sufficiently notified of the expenditures for the well abandonment.

CCG responded by detailing its procedure and explaining the costs incurred. CCG stated that Dalhousie was initially notified on May 2, 2005, and afforded full opportunity to abandon the well. CCG notified Dalhousie of the consequences of not abandoning the well. CCG argued that the process undertaken to abandon and recover costs from Dalhousie was in accordance with Sections 27 and 28 of the *OGCA*.

The Board finds that the time for Dalhousie to raise concerns regarding procedural fairness relating to the direction to reabandon the well has passed. If Dalhousie had such concerns, it could have raised them with the ERCB at the time the direction was issued and submitted evidence in support of its position. It did not. Instead, Dalhousie appears to have ignored the direction to reabandon the well, ignored the ERCB's subsequent notices that the ERCB would be conducting the abandonment, and ignored the ERCB's subsequent invoices setting out the amount of abandonment costs payable. Only when served with the abandonment cost order did Dalhousie engage with the ERCB and raise this issue.

The evidence before the Board indicates that Dalhousie had sufficient opportunity to either abandon the well or raise its concerns and ask for reconsideration of the direction to reabandon the well prior to abandonment by the Board. Dalhousie also had sufficient opportunity to pay for the abandonment costs prior to a penalty being added. The Board notes that CCG sent four notices directing Dalhousie to abandon the well and two subsequent notices ordering Dalhousie to pay for the abandonment costs incurred by the ERCB prior to issuance of the ACO 2008-1. The Board finds no evidence to suggest that CCG was procedurally unfair in any of its processes.

7 ADDING GST TO THE COSTS

Dalhousie argued that because the ERCB is a GST-exempt organization and did not pay GST, no party responsible for abandonment costs should be required to pay GST.

The Board takes judicial notice of the federal law regarding collection and remittance of GST by provincial bodies.[2] Although the ERCB is considered an Alberta government entity for the

[2] See Part IX of the *Excise Tax Act*, R.S. 1985, c. E-15.

purpose of exemption from payment of GST for goods and services it purchases, it is required by law to collect and remit GST on goods and services it provides to persons outside the ERCB.[3]

8 CLOSING

Having considered the evidence in this proceeding, the Board has determined that Dalhousie is properly named in ACO 2008-1 as liable for the total abandonment costs incurred by the ERCB related to the well, plus GST, plus a 25 per cent penalty.

Liability for abandonment costs attaches to the WIP of a well in accordance with its proportionate share by virtue of Section 30 of the *OGCA*. The Board finds that the well was never included as part of TVU No. 7 and Dalhousie's WIP interest in the well was not sold to Signalta. The Board finds no evidence that the abandonment costs incurred were unreasonable or that CCG was procedurally unfair to Dalhousie. The Board concludes that Dalhousie is required by statute to reimburse the Board for the abandonment of the well, plus a penalty of 25 per cent plus GST, as directed by ACO 2008-1. The Board notes that CCG's submission referred to a calculation error in the amount of $88.00 and indicated a need for amendment of ACO 2008-1 to correct that error. Although Dalhousie made no submission in that regard, the Board directs that ACO 2008-1 be amended to reflect an adjustment in costs of $88.00.

The Board reminds Dalhousie that as the licensee and 100 per cent WIP in the well, it has continuing regulatory obligations regarding the well. Dalhousie remains responsible for matters related to this well, even after abandonment, including but not limited to reclamation of the well site.

Dated in Calgary, Alberta, on May 18, 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

[3] Regarding the ERCB's exemption from payment, see *Goods and Services Tax-Free Alberta Government Entities* at www.finance.alberta.ca/publications/tax_rebates/gst_free/gst.html. See also the Canada Revenue Agency's *Guide RC4022 – General Information for GST-HST Registrants* and "Sales or Supplies by Provincial and Territorial Governments" on the Canada Revenue Agency's Web site at www.cra-arc.gc.ca/tx/bsnss/tpcs/gst-tps/thr/gvt/slssppbyprv-eng.html.

APPENDIX 1 HEARING PARTICIPANTS

Principals and Representatives
(Abbreviations used in report)

Dalhousie Oil Company Limited (Dalhousie)
- J. P. Sheridan
- M. Murdoch, Counsel

ERCB Corporate Compliance Group
- J. P Mousseau, Counsel
- E. Deegan

CanEra Resources Inc.
- J. Lowe, Counsel

Signalta Resources Limited
- W. T. Corbett, Counsel

Energy Resources Conservation Board staff
- D. Brezina, Board Counsel
- B. Hurst
- J. FitzGerald