

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

ENERMARK INC.

**APPLICATION FOR SWEET NATURAL GAS PIPELINES AND
A REVIEW PURSUANT TO SECTION 43 OF THE
ENERGY RESOURCES CONSERVATION ACT
OF WELL LICENCES NO. 250616, 250617, 250620,
250623, 250624, 250625, 250627, and 250628
BANTRY FIELD**

**Addendum to
Examiner Report 2001-6
Application No. 1086069**

DECISION

The Board has considered the findings and recommendations set out in *Examiner Report 2001-6* and confirms that well licences 250616, 250617, 250620, 250623, 250624, 250625, 250627, and 250628 remain in good standing and approves Application 1086069 for the associated pipelines.

DATED at Calgary, Alberta, on October 1, 2001.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

Neil McCrank, Chairman

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**Examiner Report 2001-6
Application No. 1086069**

1 RECOMMENDATION

Having carefully considered all of the evidence, the Examiners recommend that well licences 250616, 250617, 250620, 250623, 250624, 250625, 250627, and 250628 be confirmed and remain in good standing and recommend approval of the applied-for pipelines (Application 1086069).

2 APPLICATION AND HEARING

2.1 Section 43 Review of the Well Licences and Consideration of the Pipeline Application

On January 17, 2001, Enermark Inc. applied to the Alberta Energy and Utilities Board (EUB/Board) pursuant to Section 2.020 of the Oil and Gas Conservation Regulations for approval to drill eight sweet natural gas wells on Sections 15 and 16, Township 19, Range 12, West of the 4th Meridian (Sections 15 and 16). Enermark applied under *Guide 56: Energy Development Application Guide*, acknowledging that a surface lease agreement had not been obtained. The eight applications for well licences were subsequently approved following confirmation from the landowner that no issues within the EUB's jurisdiction remained outstanding.

On February 6, 2001, Enermark applied to the EUB, pursuant to Part 4 of the Pipeline Act, for a permit to construct and operate approximately 3.86 kilometres (km) of 60.3 and 88.9 millimetre (mm) outside diameter (OD) pipeline from the proposed wells to tie into the existing Enermark gathering system within Sections 15 and 16. Enermark applied under *Guide 56*, also acknowledging that a surface lease agreement had not been obtained.

2.2 Intervention

The Board received a letter on February 24, 2001, from 826167 Alberta Inc. (the Ranch) in which the Ranch objected to both the wells and the associated pipelines and indicated that it proposed to use Sections 15 and 16 for the future site of a feedlot for 10 000-plus head of cattle.

In correspondence dated June 25, 2001, the Ranch confirmed its objection to further wells and pipelines on Sections 15 and 16 and cited plans to construct a feedlot for 30 000 head of cattle. As well, the Ranch indicated that existing pipelines and wells would have to be removed.

2.3 Hearing

A public hearing to review the eight well licences under Section 43 of the Energy Resources Conservation Act (ERCA) and to consider the pipeline application under Section 29 of the ERCA was held on September 6, 2001, in Brooks, Alberta. The examiner panel consisted of W. Elsner, P.Geol. (Chair), M. Vandenbeld, C.E.T., and D. Boyler, P.Eng. A site visit of Sections 15 and 16 occurred on September 5, 2001. A map depicting Sections 15 and 16, along with existing and proposed wells and pipelines, is attached.

Those who appeared at the hearing are listed in the following table.

THOSE WHO APPEARED AT THE HEARING

Principals and Representatives

(Abbreviations Used in Report)

Witnesses

Enermark Inc. (Enermark)

B. Gilmour

R. Kaminski

R. Chapman

D. Chychrn

J. Herren

W. Gaskin,

of Standard Land Company Inc.

R. Funkhouser,

of Standard Land Company Inc.

826167 Alberta Inc. (the Ranch)

F. Declercq

F. Declercq

Alberta Energy and Utilities Board staff

J. P. Mousseau, Board Counsel

L. Wilson-Temple

G. McClenaghan, P.Eng.

3 BACKGROUND

The Ranch, including the subject Sections 15 and 16, was purchased by 826167 Alberta Inc. in June 1999. Enermark purchased eight wells and seven pipelines in Sections 15 and 16 in December 1999. The purchased wells and pipelines are shown as existing on the attached map. Currently, these sections are considered to be native prairie pursuant to *Informational Letter (IL) 96-9: Revised Guidelines for Minimizing Disturbance on Native Prairie Areas*.

The previous applicable well spacing for Sections 15 and 16 was one well per pool per quarter section. Enermark applied to the EUB for a Holding consisting of Sections 15 and 16 under

Application 1059326 wherein wells could be drilled at a 200 metre (m) minimum distance with a 200 m buffer on the south and west boundaries of the Holding. The Holding application was approved (SU order 2973A) on June 15, 2000.

4 ISSUES

The examiners consider the issues respecting this application to be the

- need for the wells and pipelines,
- location and competing land use, and
- communication between Enermark and the Ranch.

5 NEED FOR THE WELLS AND PIPELINES

5.1 Views of the Applicant

Enermark stated that it was exploiting known pools and had several pre-existing wells in Sections 15 and 16. Enermark also stated that targeted Milk River, Medicine Hat, and Second White Specks formations are tight, low-pressure formations and that additional wells were required to adequately drain the gas reserves present in Sections 15 and 16.

Enermark submitted that the pipelines would be required to tie in the proposed wells to the existing pipeline system for transportation to the Esso Patricia gas processing facility. Enermark estimated that the proposed and existing wells and pipelines on Sections 15 and 16 would be in operation for approximately 15 to 20 years.

5.2 Views of the Intervener

The Ranch did not challenge Enermark's need for the additional wells and associated pipelines to produce the gas reserves.

5.3 Views of the Examiners

The examiners agree that there is a need for the additional wells and pipelines in order to adequately drain the Milk River, Medicine Hat, and Second White Specks gas reserves in Sections 15 and 16.

6 LOCATION AND COMPETING LAND USE

6.1 Views of the Applicant

Enermark stated that the surface locations of the wells were selected having regard for efficient drainage of the reserves, as the wells were to be drilled vertically. Enermark elaborated that the possibility of directionally drilling from pad sites was explored in conjunction with the Ranch but the vertical well scenario was, by mutual agreement, considered the preferred option. Enermark submitted that the applied-for pipeline routing was the most direct and hence would minimize the disturbance to the native prairie, in keeping with *IL 96-9*.

Enermark indicated that the Ranch was pleased with the most direct route, as it would result in the least disturbance to the land. Enermark submitted that it had drilled and continued to operate several wells on native prairie and had substantial expertise with native prairie issues.

With regard to possible future land uses, including pivot, wheel, and flooding types of irrigation or a feedlot, Enermark indicated that it believed its proposed activities could be compatible with these land uses. Enermark further elaborated on several practices it had used or was currently considering to ensure that the surface land uses were compatible with oil and gas activity.

Practices Enermark mentioned include

- using low-profile wellheads so as to not interfere with irrigation systems;
- penning well leases within the feedlot pens;
- routing pipeline rights-of-way within alleys between feedlots; and
- increasing depth of cover over the pipelines, if required.

Enermark indicated that while it was prepared to discuss using the above practices to minimize potential conflicts, it was not prepared to do so in the absence of notification of substantive plans for the proposed irrigation or feedlot operations. Enermark further indicated that increasing the pipeline depth of cover could be implemented with as little as two days' notice prior to construction.

6.2 Views of the Intervener

The Ranch agreed that the proposed vertical well locations were preferred over Enermark's alternative pad drilling proposal. The Ranch indicated that it rejected the pad proposal because it believed that the wellheads would be close enough to prevent farming equipment from safely working the area between the wellheads but separate enough to render a significant amount of land out of production. The Ranch indicated that it preferred that any wellheads be situated in the corners of irrigated fields, out of the way of the irrigation systems. However, the Ranch did not submit any specific alternative locations for the subject wells.

In regard to the current land use, the Ranch explained that the ranch that includes Sections 15 and 16 is part of a larger operation currently in transition from selling hay into raising and finishing cattle. The larger operation includes three ranches in the Brooks area, as well as ranches in Montana, Saskatchewan, and British Columbia. The Ranch explained that the subject ranch, including Sections 15 and 16, would support the strategic change by providing space for a feedlot and by growing crops under irrigation. The Ranch indicated that the entire ranch is in the process of being prepared for irrigation and cultivation.

The Ranch submitted that any wells drilled on Sections 15 and 16 would have to be carefully placed so as not to interfere with the proposed agricultural plans for the subject lands. It stated that any pipelines within the proposed feedlot would have to be buried to a minimum depth of 3.0 m.

The Ranch acknowledged that the plan for its feedlot was not expressed until February 2001, after negotiations had been under way with Enermark for some time. The Ranch stated that other than an application for irrigation for Sections 15 and 16, it had taken no formal steps to realize its feedlot operation. The Ranch agreed, however, that irrigation and/or feedlot operations could be compatible with the proposed Enermark activities if the landowner and the energy company were willing to work together.

6.3 Views of the Examiners

The examiners note that the current land use on Sections 15 and 16 is as pasture for cattle and that neither Enermark nor the Ranch suggested that the proposed development would be incompatible with this current land use. The examiners acknowledge that the construction methods proposed for this project by Enermark are in keeping with *IL 96-9* and will ensure minimal disturbance of the native prairie. The examiners agree that Enermark's proposed approach is appropriate given the project and is consistent with Enermark's claim that the Ranch submitted no specific design constraints in relation to future land use.

The examiners note that both Enermark and the Ranch discussed the appropriate pad configuration for the proposed wells. The examiners further note that Enermark had proposed several alternative practices that would minimize the conflicts between the extraction of the natural gas and the proposed irrigation and/or feedlot operations if substantial plans were available for the proposed ranch activities.

The examiners also note that both parties agreed that the extraction of natural gas reserves could be compatible with either irrigation or feedlot operations. Further, the examiners note that the Ranch's feedlot plans are currently conceptual and that none of the necessary regulatory approvals for a feedlot in place. Given the above, the examiners recommend approval of the applied-for pipelines and reconfirm the well locations as originally approved.

7 COMMUNICATION BETWEEN ENERMARK AND THE RANCH

7.1 Views of the Applicant

Enermark submitted that it commenced discussions with the Ranch on the proposed well sites in April 2000. It was Enermark's view that the primary issue of concern to the Ranch was compensation. It maintained that a schedule of fees proposed by the Ranch to Enermark was significantly in excess of its offer and this issue was central to the dispute that ensued. Enermark noted that it was only after many months of discussion that the Ranch raised the issue of feedlot development for Sections 15 and 16. Enermark claimed that because the Ranch failed to communicate specific plans to it regarding the proposed feedlot, meaningful discussion of alternatives to Enermark's plans was prevented.

Enermark acknowledged that there was a five-month delay of payments on existing surface leases to the Ranch. Enermark submitted that it never intentionally delayed making any rental payments and explained that the delay was caused when paperwork regarding the transfer of the subject lands to the Ranch was not processed correctly.

Enermark acknowledged the Ranch's concern regarding its lack of notification prior to having a survey crew re-establish the well centres prior to the September 5, 2001, field visit. Enermark apologized to the Ranch for the oversight but explained that it was not normal practice to contact the landowners to re-establish survey stakes after initial permission to survey had been obtained.

7.2 Views of the Intervener

The Ranch believed that the issue of communication with Enermark was central to the current dispute. It submitted that the issue of compensation was not as important as Enermark maintained. The Ranch emphasized that the compensation schedule it prepared was "all-inclusive" and, due to poor communication, Enermark had failed to understand the value of the all-inclusive nature of the package over and above a simple surface lease rental. The Ranch submitted that its attempt to have another energy company contact Enermark on its behalf was rebuffed by Enermark.

While the Ranch conceded that Enermark's delay in lease payments was likely not deliberate, it characterized the difficulties it had in contacting Enermark as very frustrating. The Ranch indicated that Enermark's lack of notification prior to re-establishing the well centres was a prime example of Enermark's lack of communication with affected parties.

7.3 Views of the Examiners

With regard to the issue of late lease payments, it is the examiners' view that this was likely an oversight arising from the transfer of ownership of the subject lands and the existing Enermark wells within a six-month period. The examiners believe that these delays and difficulties resulted in the parties' new relationship moving in the wrong direction.

The examiners are concerned that the very poor communication that apparently exists between Enermark and the Ranch has resulted in little meaningful dialogue on the real issues at hand. The examiners believe that the impasse reached on the issue of compensation, albeit a significant consideration in surface lease negotiations, resulted in a lack of progress or focus on other important matters of interest to both parties.

It is evident that the relationship between Enermark and the Ranch is characterized by mutual distrust and frustration. To a significant degree, this state of affairs arises from the poor communication between the two and the reluctance of both parties to recognize and accept the legitimate rights and interests held by the other. Both Enermark and the Ranch must make a greater effort to actually meet and talk about the many issues important to each in connection with the project.

Enermark, like all companies, must be able to plan and schedule its operations in an efficient and timely way. The Ranch has an obligation to be available for these discussions and provide substantial plans of future activities to Enermark to enable it to coordinate the exercising of its mineral rights with future surface land-use activities.

The examiners firmly believe that any ongoing consultation between the parties will only be effective if the process is accompanied by goodwill and common courtesy. For example, the examiners note that Enermark neglected to notify the Ranch prior to restaking the well centres and that the Ranch delayed the hearing proceedings by arriving more than 30 minutes late. The examiners expect that the future relationship between these parties will require the development of a greater degree of mutual respect.

Dated at Calgary, Alberta, on September 26, 2001.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

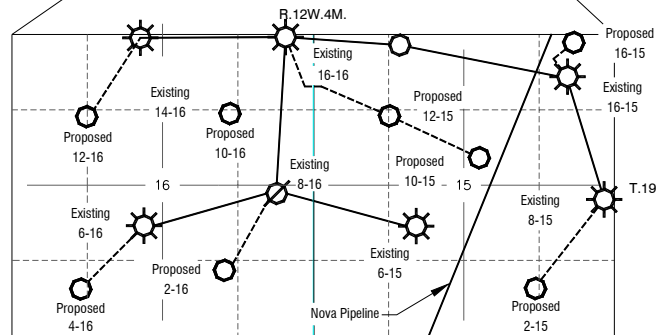
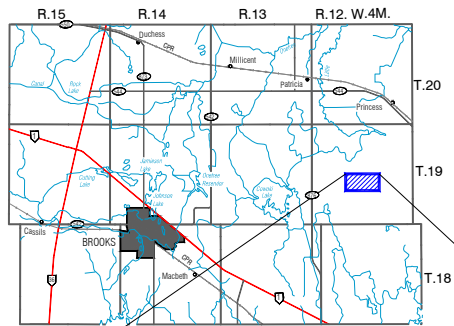
W. Elsner, P.Geol.

(Original signed by)

M. Vandenbeld, C.E.T.

(Original signed by)

D. Boyler, P.Eng.



Legend

- Existing pipelines
- - - Proposed pipelines
- Project area

Project Area

Application No. 1086069

Well Licences No. 250616, 250617, 250620,
250623, 250624, 250625, 250327, and 250628

Enermark Inc.

Examiners Report 2001-06

