

# **ALBERTA ENERGY AND UTILITIES BOARD**

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Calgary Alberta

## **PRE-HEARING MEETING**

### **APPLICATIONS TO REVIEW ABANDONMENT COSTS**

#### **ORDER ACO 99-1**

**JAMES D. JACUTA, RICHARD W. GRAYSTON,  
AND DALTON DUPASQUIER**

**Memorandum of Decision  
Proceedings No. 990062, 990063, and 990069**

## **1 INTRODUCTION**

Mr. James D. Jacuta, Mr. Richard W. Grayston, and Mr. Dalton Dupasquier are parties named in Abandonment Costs Order No. ACO 99-1 (ACO 99-1 or the Order) issued by the Alberta Energy and Utilities Board (the Board) on 15 January 1999. By way of letters dated 11 February 1999 and 13 February 1999, Mr. Jacuta, Mr. Grayston, and Mr. Dupasquier, (the Interveners) requested the Board to review its decision regarding ACO 99-1 pursuant to section 43 of the *Energy Resources Conservation Act*. The Board was satisfied that the Interveners were affected parties and ordered on 1 March 1999, that a hearing under section 43 of the *Energy Resources Conservation Act* be held.

In order to ensure that the hearing process is both effective and fair to all parties involved, the Board held a pre-hearing meeting to canvass the issues to be considered at the public hearing, the proposed order and timing of submissions for the hearing, potential timing of the hearing, and any other matters as necessary. The pre-hearing meeting was held in Calgary, Alberta, on 27 May 1999, before Board Members, B. F. Bietz, T. McGee, and Acting Board Member, M. J. Bruni. A list of those who registered at the pre-hearing Meeting is shown on the attached table.

## **2 PRELIMINARY MATTERS**

Mr. Larder, counsel for the Board, raised the question as to the identity of the applicant in this proceeding. Mr. Larder requested that the Board clarify which party it viewed as the applicant to this proceeding. The Board has done so below in Section 3.3 of this report.

## **3 ISSUES CONSIDERED AT THE PRE-HEARING MEETING**

### **3.1 Views of the Interveners**

#### **3.1.1 Views of Mr. James D. Jacuta**

Mr. Munro, counsel for Mr. Jacuta, stated that there were several issues that should be addressed at the hearing. One issue was around the matter of Mr. Jacuta having been named in ACO 99-1. Mr. Munro stated that this raised several questions, including first whether his client fell into the definitions outlined in section 20.1 of the *Oil and Gas Conservation Act* insofar as it incorporates

section 2(2) of the *Business Corporations Act*? Next, if his client did meet the definition, is it appropriate for the Board to exercise its discretion in issuing the Order? Finally, if his client met the definition and it is appropriate for the Board to exercise its discretion, should the costs be ordered jointly and severally?

The second and third issues Counsel for Mr. Jacuta raised were the quantum of the Order and the rejection by the EUB of the payment plan proposed by his client. The fourth issue was the matter of the penalty assessment and whether it was appropriate for the Board to order such a penalty.

Finally, Mr. Munro felt it was necessary for the Board to confirm whether it was inquiring into the validity of the Order or simply conducting a review process. Mr. Munro stated that he believed that section 43 of the *Energy Resources Conservation Act* is sufficient to allow a decision process from “the ground up”.

Mr. Munro concurred with the proposed order and procedure for filing of submissions whereby the Enforcement Section would file first and then an interrogatory process would follow. Mr. Munro stated that he did not have a position on who the applicant should be, but did not have any problem with the EUB Enforcement Section filling that role.

Mr. Munro indicated that his client did not have any specific date requirements as far as the hearing date was concerned and suggested that given the Board’s schedule, a hearing date sometime in the fall would be most appropriate.

### **3.1.2 Views of Mr. Grayston**

Mr. Thom, Counsel for Mr. Grayston, agreed with the issues as set out by Mr. Munro and only commented further on the joint and several liability issue. Mr. Thom believed that the Order might have more appropriately been issued as a several liability rather than joint. He asked the Board to also give consideration to the issue of proportionate sharing of the costs among the Directors and how the proportionate shares would be determined.

Mr. Thom agreed with the position of counsel for Mr. Jacuta that section 43 of the *Energy Resources Conservation Act* would allow for the process to begin from “square one” as far as the Directors are concerned. He sought direction from the Board as to whether the initial Order was binding on the Directors or if this proceeding would go forward as if there were not an Abandonment Costs Order in place.

Mr. Thom indicated that his client did not have any specific need to have the hearing proceed at a particular time and agreed that the fall was a reasonable expectation for the date of the hearing.

### **3.1.3 Views of Mr. Dupasquier**

Counsel for Mr. Dupasquier, Mr. Fitch, agreed with the comments of both Mr. Munro and Mr. Thom regarding the scope of the hearing issues. He submitted that the hearing should be undertaken as a new process as if there were no Abandonment Costs Order in place.

Mr. Fitch agreed that the EUB's Enforcement Section should be the applicant in the proceeding. Mr. Fitch believed that the Enforcement Section should lead the necessary evidence with respect to justifying the issuance of the Order, the quantum of the costs and the imposition of a penalty to the amount of the original abandonment costs. He and the other Counsel would then lead evidence on the structure of the corporation, the role of the Directors and any other such relevant matters.

Mr. Fitch indicated that there was no particular urgency on the part of his client with respect to the hearing date. He also indicated that the Fall seemed best for the timing of the hearing.

### **3.2 Views of the Enforcement Section**

Ms. Brezina, on behalf of the Enforcement Section, stated that while she was in agreement with the proposed order of appearance and filing of submissions, she did not see the Enforcement Section as being the applicant in this case. Rather, Ms. Brezina viewed this proceeding as a review of the decisions and Orders made by the Board. Ms. Brezina's position is that the Enforcement Section would present the facts and information necessary for the Board to make a decision on a review basis, and does not see the Enforcement Section defending the decisions made or the Order.

Ms. Brezina indicated that in the interim prior to the hearing, the Order would not be suspended, but that the Enforcement Section would not proceed with transforming the Order into a judgement.

The Enforcement Section stated that it would like the hearing to proceed as quickly as possible to deal with the matter of the payment of the costs and pursuing the judgement if necessary. Ms. Brezina indicated that the Enforcement Section would be prepared to file its submission within three weeks.

### **3.3 Views of the Board**

The Board notes that there appeared to be general agreement between the parties on the issues to be considered at the public hearing. These would include the information that the EUB relied on in reaching its decision regarding ACO 99-1, which named individual Directors, and the appropriateness of the costs associated with the abandonment of the subject wells and facilities. The Board notes that this does not in any way preclude other relevant issues from being raised at the hearing.

With respect to the standing of the Order, the Board is of the view that this proceeding will be dealt with in the first instance.

The Board notes the concerns of the Enforcement Section in being deemed the "applicant" in this case and accepts those concerns as reasonable. However, in order for the process to be both fair and efficient, the Board does believe that it is appropriate for the Enforcement Section to provide the evidence behind its decision first, followed by the positions of the various interested parties to that initial decision.

Based on the views expressed at the pre-hearing meeting, the Board will require submissions from the parties on the following dates:

- EUB Corporate Compliance Group, Enforcement Section 18 June 1999
- Requests for Information by the Interveners 9 July 1999
- Response from the Enforcement Section 30 July 1999
- Final submission of the Interveners 27 August 1999
- Requests for Information by the Enforcement Section 10 September 1999
- Response from the Interveners 24 September 1999
- Hearing date 5 October 1999

A Notice of Hearing will be issued to all of the affected parties in due course.

DATED at Calgary, Alberta, on 9 June 1999.

**ALBERTA ENERGY AND UTILITIES BOARD**

*(Original signed by)*

B. F. Bietz  
Board Member

*(Original signed by)*

T. McGee  
Board Member

*(Original signed by)*

M. J. Bruni  
Acting Board Member

## **THOSE WHO APPEARED AT THE HEARING**

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<b>Participants</b>	<b>Representatives</b>
James D. Jacuta	Mr. Shawn Munro Mr. James Jacuta
Richard W. Grayston	Mr. Jeffrey Thom Mr. Richard Grayston
Dalton Dupasquier	Mr. Gavin Fitch
Alberta Energy and Utilities Board Corporate Compliance Group, Enforcement Section	Ms. Danielle Brezina, Counsel Mr. Ron Paulson Mr. Marty Douglas Mr. Dave Agnew
Alberta Energy and Utilities Board staff	Mr. Doug Larder, Board Counsel Mr. Paul Ferensowicz Ms. Judy Dawson

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