

1 INTRODUCTION

1.1 Background

On April 3, 2000, the Alberta Energy and Utilities Board (EUB/Board) issued *Decision 2000-22*¹ regarding a request by Gulf Canada Resources Limited (Gulf) that the Board order the shut in of associated gas production from 183 wells in the Surmont area. Gulf's request was considered at an EUB hearing held from April to September 1999. The Board concluded that continued production of associated gas at Surmont presented a significant risk to future bitumen recovery. Therefore, the Board approved Gulf's request, in part, and ordered the shut in of gas production from 146 wells specified in *Decision 2000-22*, effective May 1, 2000.

On May 24, 2000, the Lieutenant Governor in Council issued *Order in Council (OC) 196/2000* (Appendix A) directing the EUB to prepare, pursuant to Section 91 of the *Oil and Gas Conservation Act* (OGCA), a scheme or schemes for the provision of compensation for persons having an interest in the petroleum and natural gas (P&NG) rights affected by the EUB's Order, dated April 3, 2000, issued in accordance with *Decision 2000-22*, ordering the shut in of gas production from 146 wells in the Surmont area (Appendix B).

1.2 Prehearing Meeting

The Board initially scheduled a prehearing meeting for July 18, 2000, but received requests from Gulf, the Surmont Producers Group, and the Department of Resource Development for a postponement to facilitate discussions between them regarding resolution of some or all of the issues likely to arise from *OC 196/2000*. The Board determined that it was appropriate to grant the requests. The Board subsequently received and granted two similar requests to further postpone the prehearing meeting.

A prehearing meeting was held on November 16, 2000, in Calgary, Alberta, before B. T. McManus, Q.C. and M. J. Bruni, Q.C. A list of the hearing participants is provided in Appendix C.

¹ *EUB Decision 2000-22: Gulf Canada Resources Limited, Request for the Shut-in of Associated Gas, Surmont Area, March 2000.*

2 ISSUES CONSIDERED AT THE PREHEARING MEETING

The following issues were considered at the prehearing meeting:

- the determination of hearing participants,
- the issues that need to be considered at the hearing,
- the hearing and decision process, and
- the schedule for filing of submissions and hearing commencement.

3 DETERMINATION OF HEARING PARTICIPANTS

Among the Board's tasks in carrying out the terms of *OC 196/2000* is the determination of those persons who will be entitled to receive compensation and those persons who will be obliged to provide it. It is evident that the parties who have a direct interest in the P&NG rights affected by the EUB's shut in order and who may have suffered a loss or injury as a result of the order have the requisite standing to participate in the hearing. It is less certain at this stage whether parties who have an indirect or more removed interest in the P&NG rights, or who are interested in the proceeding for precedential value or other reasons, have the necessary standing to participate.

The Board is mindful of the importance of conducting the hearing in an efficient and timely manner, focusing on the relevant parties and issues. It also recognizes that the question of standing must be given a broader interpretation than other legal issues may require if fairness is to govern. Furthermore, it is the Board's experience that the participation of parties who may not strictly qualify for standing in a Board proceeding often provides a valuable contribution to the Board's consideration of the matters before it.

Those persons who registered at the prehearing meeting will be entitled to participate in the compensation proceeding. Other parties may emerge upon publication of the formal notice of hearing at which time their status to participate will be decided on the same basis as outlined herein. The Board tritely observes that participation does not inevitably mean entitlement to compensation. The Board's recommendation for compensation will be determined on the basis of the evidence and arguments presented in the course of the hearing. The acceptance of the recommendation will ultimately be determined by the Lieutenant Governor in Council.

4 ISSUES THAT NEED TO BE CONSIDERED AT THE HEARING

Most of the prehearing meeting participants held a similar view of the basic issues that need to be considered at the hearing. The Board regards the specific terms of *OC 196/2000*, in addition to the statutory provisions set forth in Section 91 of the OGCA, as framing the issues. The matters enumerated below are in accord with most parties' views of the relevant issues and wide enough to subsume specific concerns expressed at the prehearing meeting. Some of these concerns included whether loss should be limited to sunk costs, the timing of payment, and whether any compensation is payable because of the conservation nature of the EUB's shut in order.

The Board believes that it must consider and determine the following matters:

- a) the type of interest in the P&NG rights affected by the EUB's shut in order which qualifies for compensation,
- b) the nature of the injury or loss suffered which qualifies for compensation,
- c) whether the injury or loss suffered resulted from the EUB's shut in order,
- d) the amount of compensation payable,
- e) the identification of those persons entitled to compensation who meet (a) and (b) and establish an affirmative outcome of (c),
- f) the identification of those persons who should pay compensation to those persons determined in (e), and
- g) the nature of the scheme or schemes for the provision of compensation to those persons determined in (e), including the matters set out in section 91(7), (8), (9), and (10) of the OGCA regarding schemes.

The Board acknowledges that other relevant issues may arise in the course of the hearing and is prepared to consider them at that time.

5 HEARING AND DECISION PROCESS

A number of parties at the prehearing meeting advanced positions regarding a multi-phase hearing. The P&NG Owner Group proposed a two-part hearing. In part one, the Board would make all the determinations necessary to prepare a compensation scheme. In part two, the Board would present its draft compensation scheme for the purpose of providing the parties with a further opportunity to respond to the potentially adverse impacts that the scheme may have on them. This process, it was argued, would reduce the risk that the Board's decision would be challenged in court on the basis that a fair opportunity to respond to such adverse impacts was denied to the parties.

Gulf submitted that a two-part hearing should be adopted but that part one should be restricted to a determination of the scope of standing and the nature of "loss" in the context of Section 91 of the OGCA and *OC 196/2000*. The standing issue would include both a determination of those parties who are entitled to compensation and those parties who are not entitled to compensation but are permitted to participate because of their general interest in the matter. Gulf stated that findings in part one would serve to make part two, the evidentiary portion of the hearing, more efficient. It believed that part one could be conducted in writing with follow-up oral argument. Part two would largely deal with the quantum of compensation.

Petro-Canada Oil and Gas (Petro-Canada) endorsed the two-part hearing proposed by Gulf but posed what it described was a threshold question to be decided in part one: "Is compensation appropriate in circumstances where a shut in order has been issued for conservation reasons?"

Petro-Canada thought that some limited evidence might be required in part one. Both Gulf and Petro-Canada described part one as the legal or interpretative stage of the hearing and part two as the evidentiary stage. Petro-Canada acknowledged that it did not have a concern with the suggestion that parties be given an opportunity to review and respond to the Board's proposed compensation scheme prior to the recommendation being made to the Lieutenant Governor in Council.

AltaGas Services Inc. submitted that if its standing were an issue for the Board, regardless of the phase in which the issue arose, it would be necessary to present evidence on the matter.

Upon consideration of the views expressed by the parties relating to the nature and desirability of a multi-phase hearing, the Board concludes that it will convene a one-part hearing commencing at the conclusion of a prehearing disclosure process. The hearing will deal with all relevant matters surrounding the determination of the issues expressed in this Memorandum of Decision, including the determination of the hearing participants should this becomes an issue.

The Board holds the view that the issues outlined by Gulf and Petro-Canada will likely require that the Board make certain findings of fact before it can interpret the wording of *OC 196/2000* or the relevant portions of Section 91 of the OGCA, making any initial phase of the hearing as much evidentiary as interpretative. This is the nature of most hearings that the Board conducts. The Board prefers to hear all the evidence and arguments from all the participants on the entirety of the issues before making findings on any given issue.

The Board will, however, consider circulation to the parties of the compensation scheme that it prepares as a result of the hearing. It will do this if it believes that a party or parties have not had fair opportunity during the hearing to speak to the impacts on them of any particular component of the scheme. In the event that the Board does decide to issue its proposed scheme to the parties for comment, it will determine at that time whether responses will be in written or oral form.

6 SCHEDULE FOR FILING OF SUBMISSIONS AND HEARING COMMENCEMENT

The Board notes that most of the prehearing meeting participants supported an interrogatory process and a 90-day period for filing of main submissions. Therefore, the Board will implement such a process for this hearing. Given its decision not to hold a multi-phase hearing, the Board intends to adhere to the following schedule:

Concurrent filing by all parties of main submission	February 20, 2001
Issuance of Information Requests	March 13, 2001
Issuance of Information Responses	March 27, 2001
Concurrent filing by all parties of final reply submission	April 10, 2001
Commencement of hearing	April 24, 2001

The Board will issue a notice of hearing regarding the above schedule in due course.

DATED at Calgary, Alberta, on November 27, 2000.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

B. T. McManus, Q.C.
Board Member

(Original signed by)

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

APPENDIX A – MEMORANDUM OF DECISION



Province of Alberta
Order in Council

O.C. 196 /2000

MAY 24 2000

ORDER IN COUNCIL

Approved and ordered:

Lieutenant Governor

The Lieutenant Governor in Council makes the direction in
attached Appendix.

ACTING CHAIR

APPENDIX

ALBERTA ENERGY AND UTILITIES BOARD

OIL AND GAS CONSERVATION ACT

WHEREAS the Alberta Energy and Utilities Board (the "EUB") issued Decision 2000-22 on March 30, 2000;

WHEREAS the EUB, by Order dated April 3, 2000 issued in accordance with Decision 2000-22 (the "Order"), ordered the shut in effective May 1, 2000 of 146 wells identified in the Order;

WHEREAS section 91 of the *Oil and Gas Conservation Act* (the "Act") enables the Lieutenant Governor in Council to direct the EUB to prepare a scheme or schemes for the provision of compensation for persons who are injured or suffer a loss by reason of any orders made pursuant the Act;

THEREFORE the Lieutenant Governor in Council hereby directs the EUB as follows:

1. The EUB shall prepare a scheme or schemes for the provision of compensation for persons, not including the Crown, having an interest in the petroleum and natural gas rights affected by the Order and who are injured or suffer a loss as a result of the Order, by those persons, not including the Crown, the EUB determines should pay such compensation.
2. If the EUB
 - (a) has not sent the scheme or schemes to the Lieutenant Governor in Council within 6 months after the date of this direction, and
 - (b) is of the opinion that the scheme or schemes will be sent to the Lieutenant Governor in Council more than 9 months after the date of this direction,

the EUB shall provide a report to the Lieutenant Governor in Council indicating their progress with respect to preparation of the scheme or schemes and an estimate of the date by which preparation of the scheme or schemes will be completed.

APPENDIX B – MEMORANDUM OF DECISION

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER OF THE *ALBERTA ENERGY AND UTILITIES BOARD ACT*. S.A. 1995. Chapter A-19; the *ENERGY RESOURCES CONSERVATION ACT*. R.S.A. 1980. Chapter E-11. as amended; the *OIL AND GAS CONSERVATION ACT*. R.S.A. 1980. Chapter 0-5; and the *OIL SANDS CONSERVATION ACT*. S.A. 1983.O-5.5

AND IN THE MATTER OF Proceeding No. 960952 respecting a request by Gulf Canada Resources Limited for an order of the Alberta Energy and Utilities Board (the Board) that Wabiskaw-McMurray gas production in the Surmont area be shut in and otherwise precluded until oil sands development is completed:

BEFORE:

J. D. Dilay
Board Member

W.J. Schnitzler
Acting Board Member

ORDER

WHEREAS the Board has issued Decision 2000-22 on the 30th day of March, 2000 with respect to Proceeding No. 960952:

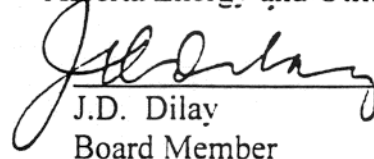
IT IS HEREBY ORDERED THAT:

1. The following licensees shall shut in the 146 wells more particularly described in Appendix 1. attached to the within Order. effective the 1st day of May, 2000:

Paramount Resources Ltd.
Rio Alto Exploration Ltd.
Quintana Minerals Canada. Corp.
Northstar Energy Corporation
Gulf Canada Resources Limited

Issued at the City of Calgary. in the Province of Alberta. this 3rd day of April, 2000.

Alberta Energy and Utilities Board


J.D. Dilay
Board Member

Appendix 1 - Wabiskaw-McMurray Gas Wells to be Shut In

	Licensee	Unique Well ID
1	Paramount	00/05-31-080-05W4/0
2	Rio Alto	00/11-19-080-06W4/0
3	Paramount	00/13-24-080-06W4/0
4	Paramount	00/13-24-080-06W4/2
5	Paramount	00/13-25-080-06W4/0
6	Rio Alto	00/15-26-080-06W4/0
7	Rio Alto	00/07-29-080-06W4/0
8	Rio Alto	00/11-30-080-06W4/0
9	Rio Alto	00/07-35-080-06W4/0
10	Paramount	00/07-36-080-06W4/0
11	Quintana	00/09-24-080-07W4/0
12	Quintana	00/02-36-080-07W4/0
13	Paramount	00/08-05-081-05W4/0
14	Paramount	00/12-08-081-05W4/0
15	Rio Alto	00/06-09-081-05W4/0
16	Paramount	00/11-17-081-05W4/0
17	Paramount	00/03-18-081-05W4/0
18	Paramount	00/11-19-081-05W4/0
19	Paramount	00/03-30-081-05W4/0
20	Paramount	00/08-01-081-06W4/0
21	Paramount	00/15-02-081-06W4/0
22	Paramount	00/11-03-081-06W4/0
23	Paramount	00/07-04-081-06W4/0
24	Paramount	00/07-05-081-06W4/0
25	Paramount	00/09-08-081-06W4/0
26	Paramount	00/11-12-081-06W4/0
27	Paramount	00/07-13-081-06W4/0
28	Paramount	00/07-14-081-06W4/0
29	Paramount	00/07-15-081-06W4/0
30	Paramount	00/06-17-081-06W4/0
31	Quintana	00/08-19-081-06W4/0
32	Paramount	00/14-20-081-06W4/0
33	Paramount	00/03-21-081-06W4/0

	Licensee	Unique Well ID
34	Paramount	00/11-22-081-06W4/0
35	Paramount	00/07-23-081-06W4/0
36	Paramount	00/02-26-081-06W4/0
37	Paramount	00/12-27-081-06W4/0
38	Northstar	00/12-31-081-06W4/0
39	Paramount	00/03-32-081-06W4/0
40	Paramount	00/08-33-081-06W4/0
41	Paramount	00/11-34-081-06W4/0
42	Northstar	00/07-35-081-06W4/0
43	Paramount	00/09-36-081-06W4/0
44	Quintana	00/07-02-081-07W4/0
45	Quintana	00/12-13-081-07W4/0
46	Quintana	00/14-15-081-07W4/0
47	Quintana	00/10-16-081-07W4/0
48	Quintana	00/11-20-081-07W4/0
49	Northstar	00/12-21-081-07W4/0
50	Northstar	00/11-22-081-07W4/0
51	Quintana	00/10-23-081-07W4/0
52	Northstar	00/07-27-081-07W4/0
53	Northstar	00/06-29-081-07W4/0
54	Northstar	00/06-30-081-07W4/0
55	Northstar	00/06-30-081-07W4/2
56	Quintana	00/11-32-081-07W4/2
57	Northstar	00/08-34-081-07W4/0
58	Northstar	00/05-35-081-07W4/0
59	Rio Alto	00/08-15-082-05W4/0
60	Paramount	00/02-16-082-05W4/0
61	Paramount	00/10-16-082-05W4/0
62	Paramount	00/15-17-082-05W4/0
63	Paramount	00/02-19-082-05W4/0
64	Rio Alto	00/14-20-082-05W4/0
65	Rio Alto	00/06-21-082-05W4/0
66	Rio Alto	00/14-22-082-05W4/0

Appendix 1 - Wabiskaw-McMurray Gas Wells to be Shut In

	Licensee	Unique Well ID
67	Rio Alto	00/03-23-082-05W4/0
68	Rio Alto	00/07-24-082-05W4/0
69	Paramount	00/06-31-082-05W4/0
70	Paramount	00/03-05-082-06W4/0
71	Paramount	02/07-08-082-06W4/0
72	Paramount	00/05-12-082-06W4/0
73	Paramount	00/14-16-082-06W4/0
74	Northstar	00/10-19-082-06W4/0
75	Paramount	00/06-20-082-06W4/0
76	Paramount	00/04-22-082-06W4/0
77	Paramount	00/02-24-082-06W4/0
78	Paramount	00/15-26-082-06W4/0
79	Paramount	00/06-28-082-06W4/0
80	Paramount	00/06-34-082-06W4/0
81	Paramount	00/07-36-082-06W4/0
82	Northstar	00/11-01-082-07W4/0
83	Northstar	00/08-03-082-07W4/0
84	Northstar	00/05-05-082-07W4/0
85	Northstar	00/08-07-082-07W4/0
86	Northstar	00/07-08-082-07W4/0
87	Northstar	00/06-09-082-07W4/0
88	Northstar	00/07-10-082-07W4/0
89	Northstar	00/07-12-082-07W4/0
90	Northstar	00/09-13-082-07W4/0
91	Northstar	00/05-14-082-07W4/0
92	Northstar	00/06-17-082-07W4/0
93	Northstar	00/06-19-082-07W4/0
94	Northstar	00/07-20-082-07W4/0
95	Northstar	00/05-26-082-07W4/0
96	Northstar	00/06-29-082-07W4/0
97	Northstar	00/07-30-082-07W4/0
98	Northstar	00/06-32-082-07W4/0
99	Northstar	00/06-34-082-07W4/0
100	Northstar	00/11-36-082-07W4/0

	Licensee	Unique Well ID
101	Northstar	00/15-01-082-08W4/0
102	Northstar	00/07-02-082-08W4/0
103	Northstar	00/08-12-082-08W4/0
104	Northstar	00/07-25-082-08W4/0
105	Northstar	00/16-36-082-08W4/0
106	Paramount	00/11-04-083-05W4/0
107	Paramount	00/10-05-083-05W4/0
108	Paramount	02/10-06-083-05W4/0
109	Paramount	00/12-08-083-05W4/0
110	Paramount	00/08-02-083-06W4/0
111	Northstar	00/12-04-083-06W4/0
112	Northstar	00/12-07-083-06W4/0
113	Paramount	00/01-10-083-06W4/0
114	Paramount	00/02-11-083-06W4/0
115	Paramount	00/11-12-083-06W4/0
116	Paramount	00/12-13-083-06W4/0
117	Paramount	02/01-14-083-06W4/0
118	Northstar	00/15-19-083-06W4/0
119	Paramount	00/08-27-083-06W4/0
120	Northstar	02/02-30-083-06W4/0
121	Northstar	00/07-32-083-06W4/2
122	Paramount	00/06-33-083-06W4/0
123	Paramount	00/16-34-083-06W4/0
124	Paramount	00/15-36-083-06W4/0
125	Northstar	00/08-02-083-07W4/0
126	Northstar	00/07-03-083-07W4/0
127	Northstar	00/08-06-083-07W4/0
128	Northstar	00/09-09-083-07W4/0
129	Northstar	AA/09-13-083-07W4/0
130	Northstar	02/07-16-083-07W4/0
131	Northstar	02/07-19-083-07W4/0
132	Northstar	00/05-20-083-07W4/0
133	Northstar	00/07-21-083-07W4/0
134	Gulf	00/07-24-083-07W4/0

Appendix 1 - Wabiskaw-McMurray Gas Wells to be Shut In

	Licensee	Unique Well ID
135	Gulf	00/08-26-083-07W4/0
136	Northstar	00/06-29-083-07W4/0
137	Northstar	00/07-31-083-07W4/0
138	Northstar	00/02-33-083-07W4/0
139	Northstar	02/10-36-083-07W4/0
140	Northstar	00/06-01-083-08W4/0
141	Rio Alto	00/05-07-084-05W4/0
142	Rio Alto	00/02-01-084-06W4/0
143	Rio Alto	00/10-01-084-06W4/0
144	Paramount	00/15-02-084-06W4/0
145	Paramount	00/06-06-084-06W4/0
146	Paramount	00/06-01-084-07W4/0

THE ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER OF THE *ALBERTA ENERGY AND UTILITIES BOARD ACT*, S.A. 1995. Chapter A-19; the *ENERGY RESOURCES CONSERVATION ACT*, R.S.A. 1980. Chapter E-11. as amended: the *OIL AND GAS CONSERVATION ACT*, R.S.A. 1980. Chapter O-5; and the *OIL SANDS CONSERVATION ACT*, S.A. 1983.O-5.5

AND IN THE MATTER OF Proceeding No. 960952 respecting a request by Gulf Canada Resources Limited for an order of the Alberta Energy and Utilities Board (the Board) that Wabiskaw-McMurray gas production in the Surmont area be shut in and otherwise precluded until oil sands development is completed.

ORDER

APPENDIX C – MEMORANDUM OF DECISION

THOSE WHO APPEARED AT THE PREHEARING MEETING

Principals (Abbreviations Used in Report)	Representatives
Alberta Department of Resource Development	T. Hurlburt M. Kaga
Alberta Energy Company Limited	S. Haysom
AltaGas Services Inc.	C. K. Yates
Anderson Exploration Ltd.	S. Boyd, P.Eng.
Gulf Canada Resources Limited (Gulf)	F. R. Foran, Q.C. R. W. Block
Imperial Oil Resources Limited	B. Harschnitz, P.Eng. M. Pinsent
Japan Canada Oil Sands Limited	B. Lounds, P.Eng. M. Ichikawa
PanCanadian Petroleum Limited	W. T. Corbett, Q.C. on behalf of P. Kahler
Paramount Resources Ltd.	A. S. Hollingworth, Q.C.
Petro-Canada Oil and Gas (Petro-Canada)	W. T. Corbett, Q.C. S. R. Miller J. Fong, P.Eng.
Petroleum and Natural Gas Owner Group (P&NG Owner Group)	A. L. McLarty, Q.C.
Touche, Thomson & Yeoman Investment Consultants Ltd.	A. Thomson
Alberta Energy and Utilities Board staff	D. A. Larder K. F. Schuldhaus, P.Eng.
