

Directive 032: Common Gas Purchaser and Related Matters

November 1983

Effective June 17, 2013, the Energy Resources Conservation Board (ERCB) has been succeeded by the Alberta Energy Regulator (AER).

As part of this succession, the title pages of all existing ERCB directives now carry the new AER logo. However, no other changes have been made to the directives, and they continue to have references to the ERCB. As new editions of the directives are issued, these references will be changed.

Some phone numbers in the directives may no longer be valid. Contact AER Inquiries at 1-855-297-8311 or inquiries@aer.ca.



Common Gas Purchaser and Related Matters

Board Policy and Views

**ENERGY RESOURCES CONSERVATION BOARD
GUIDE SERIES**

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1 INTRODUCTION

Some time ago the Energy Resources Conservation Board undertook a complete review of the declaratory provisions of Part 10 and section 23¹ of the Oil and Gas Conservation Act² (the Act) with a view to speeding up the application process and solving related administrative problems. At the time the Board solicited the petroleum industry's views on problems and potential solutions.

This guide reports on the Board's review and discusses in detail a number of matters where problems have been experienced or perceived by the industry including several matters touched on in Informational Letter IL 83-11³. This guide and IL 83-11, supersede IL 79-13.

If you have any questions respecting the matters discussed in this guide, please contact the Assistant Manager of the Board's Gas Department at 297-8504, telex 03-821717.

The petroleum industry perceived many existing or potential problems including:

- the delay and expense caused by the present application-processing system,
- the tendency of the present system to create adversary positions among the parties involved,
- the possibility that gas produced at high rates under deliverability-type contracts might increase drainage during the application process,

1 Previously section 35 of The Oil and Gas Conservation Act.

2 Chapter 0-5, Revised Statutes of Alberta, 1980.

3 The guide and informational letter are available free of charge from the Board's Records Centre, Calgary.

- the inability of retroactivity to totally solve the problems associated with delay,
- the unwillingness of certain common purchasers, when so declared, to make the necessary apportioning allocations,
- the differences in interpretation and application of the legislation within the industry, which cause delays or difficulties in reaching agreement,
- problems that arise when the pool of application is one of several under a cross-dedication contract,
- the possibility that allocating proportions on the basis of wellbores could be inequitable and could contribute to economic waste by causing the drilling and/or producing of unnecessary wells,
- the need for further clarification when orders are made retroactive,
- the need for protecting common purchasers from incurring additional costs as a result of an order being issued,
- the need for clarification regarding discrimination, and
- the difficulties the Board may have in enforcing the provisions of such orders.

A number of possible solutions were also proposed by the submitters. All suggestions from industry have been seriously considered. The Board disagreed with several suggested changes and in other instances chose to make no change because it believed the suggested changes would create more adverse consequences or because problems perceived by the submitter have not been experienced over the past several years.

 2 APPORTIONING UNDER A COMMON-PURCHASER ORDER

The Board believes that the onus in this matter should remain with the industry and not with the Board. For this reason the Board decided not to seek any major changes to section 40 of the Act but rather, to summarize its views respecting the method of apportioning which have been stated in previous reports^{4,5,6,7}. This summary should assist the common purchaser in fulfilling his obligation to allocate proportions among the pool producers offering gas for sale. It should also assist industry in reaching voluntary arrangements for sharing contract volumes, thus avoiding the need for Board involvement.

The Board believes that apportioning should normally be based on reserves. However, in many previous cases geological control had not been sufficient to locate the pool's edge with any degree of precision and reservoir characteristics could not always be compared on the same basis between wells in a pool. This, together with administrative considerations, led the Board to adopt a formula-type approach.

The formula commonly used by the Board for calculating the proportions is:

$$\text{proportion attributed to validated area} = \frac{\text{pore volume of validated area}}{\text{sum of pore volumes of all validated areas}}$$

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- 4 Energy Resources Conservation Board, 1977. Rateable Take of Gas from the Big Bend McMurray B Pool. Decision 77-23 (Application 770423).
 - 5 Energy Resources Conservation Board, 1979. Application for Direction Concerning the Proportions of Gas to be Purchased in the Lacombe Viking A Pool. Decision 79-7 (Application 780464).
 - 6 Energy Resources Conservation Board, 1980. Application for an Order Directing the Proportions of Gas to be Purchased in the Whitecourt Pekisko E Pool. Decision 80-19 (Application 800375).
 - 7 Energy Resources Conservation Board, 1981. Proportioning of Gas and Designation of Delivery Point, Ranfurly Viking A Pool. Examiners' Report E 81-2 (Application 800735).

The pore volume of each validated area would be determined using the parameters of its associated well. Except for a recent case,⁸ the variation in reservoir parameters among wells in the pool under consideration was judged insufficiently important or known to be taken into account in setting proportions. Thus, the proportions in each case reduced to a ratio of the individual wellbore net pay to the sum of the wellbore net pays of all eligible wells in the pool, where an eligible well was defined as one capable of production and, in most cases, tied into a gathering system. In that recent case, the Board adjusted the formula for porosity differences. Where multiple production spacing units (PSUs) (involving two or more drilling spacing units (DSUs)) are involved, the area would become a factor and the wellbore thickness might be varied from that of the associated well if appropriate.

The Board believes that in most cases the common purchaser or the producers should not need to come to the Board under section 40(4) for direction respecting apportioning. If the producers cannot agree on apportioning, then the common purchaser must set the proportions and he can do so having regard for:

- the above discussion regarding the Board's views on the basis for apportioning,
- the statutory protection provided by section 40(5) of the Act, and
- the fact that section 9(1) of the Act overrides any contractual provisions to the extent necessary to give effect to the common-purchaser declaration. This section would be applicable in instances where conflicts may arise between a common purchaser's contractual obligations and his obligation as a common purchaser.

In considering applications under section 40(4), the Board stresses that it will be concerned not with minor differences in geological interpretation among the parties but, rather, with factors that have a significant effect on the correlative rights of one or more of the parties involved.

⁸ Energy Resources Conservation Board, 1982. Application for an Order Directing the Proportions of Gas to be Purchased in the Brazeau River Elkton-Shunda A Pool. Decision 82-26 (Application 810959).

3 DISCRIMINATION

Concern was expressed by two producers that the term "discrimination" needed clarification, particularly as it related to determining the proportions of gas that the common purchaser must take from each producer in the pool offering gas for sale, and also as it related to the "Board's belief" that it does not have the authority to decide whether discrimination has taken place.

In the Board's view, the declaration of a person as a common purchaser of gas from a pool, under section 40(1) of the Act, imposes upon that person the obligation specified by section 40(2) of the Act, that being to purchase gas offered for sale to him without discrimination in favour of one producer or owner as against another in the pool. To fulfill the duty as a common purchaser, the Board believes it is necessary for each common purchaser to determine the terms and conditions under which he will purchase gas without discrimination (in essence the proportions of gas he will accept from each producer or owner in the pool). In doing so, the common purchaser may have regard for the statutory protection afforded to him by section 40(5) of the Act. Where the common purchaser and producers in the pool are able to agree on an equitable apportionment of purchases from the pool, the common purchaser may rely upon that apportionment for purposes of effecting his obligation to purchase gas without discrimination. However, where the producers are unable to agree among themselves, or with the purchaser, as to the terms under which gas will be purchased from the pool, then to fulfill his obligation the common purchaser must decide on the apportionment. The Board concludes that it is the common purchaser who must finally decide because only the common purchaser has the obligation imposed upon him not to discriminate. If he is unable to decide, then to help effect the declaration, the parties may seek the assistance and direction of the Board as to the matters specified in section 40(4)(a) and (b), that is

- (a) the point at which the common purchaser shall take delivery of any gas offered for sale to him, or
- (b) the proportion of the common purchaser's acquisitions of gas from the pool that he shall purchase from each producer or owner offering gas for sale to him.

Where a common purchaser is faced with a direct conflict between his obligation in a purchase contract and his obligation as a common purchaser, the Board notes that section 9(1) of the Act overrides the contractual provisions to the extent necessary to give effect to the common-purchaser declaration.

Regarding the Board's authority in deciding discrimination, the Board does not believe that section 40(4) of the Act gives it the broad authority to determine what circumstances constitute discrimination. However, it is satisfied that it might of necessity have to make a limited determination as to what matters constitute discrimination; these limited matters are clearly spelled out in clauses (a) and (b) of section 40(4). The Board in fact has made such a limited determination in several applications it has considered. Its comments were summarized previously in IL 79-13 when the Board stated,

"The Board is satisfied ... that a common purchaser once so declared is charged with the immediate duty to accept gas in reasonable proportions offered for sale to him. A failure on the part of the common purchaser to make the necessary apportionment of gas he will purchase, and to accept such gas when offered for sale to him by a producer, would in the Board's view be discriminatory within the terms of the Act."

The Board notes that, if a common purchaser were to set the proportions and a producer believed those proportions to be unfair for some reason, that producer could still apply to the Board for apportioning under section 40(4) of the Act.

4 RETROACTIVITY AND METHOD OF ADJUSTMENT

Section 45 of the Act empowers the Board to make a declaration under Part 10 retroactive to a date previous to the date of the declaration but not previous to the date on which the application was received by the Board. The purpose of section 45 is to minimize any prejudicial effect caused by the delay between the time an application is filed and the time of granting the application.

In considering the application, the Board would take into account the impact of the delay on the applicant and the prospective common purchaser. The Board believes that an applicant applying for retroactivity should have made the prudent and necessary preparations to market its gas. In most cases this would involve tying in the well.

When a declaration is issued retroactively, the obligation on the part of the common purchaser not to discriminate must cover the period between the effective date of the declaration and date of issuance of the declaration. Any pool production occurring during that period would have to be shared among all producers including the successful applicant in accordance with the apportioning determined by the common purchaser. In the Board's opinion, the common purchaser would be the best suited to devise a method of adjustment to balance the production during that period.

5 CROSS-DEDICATION

Concern has been expressed by purchasers on several occasions that a common purchaser having a cross-dedication (multi-pool) type of contract for a particular area, might be obliged to purchase additional quantities of gas as a result of a common-purchaser order being issued.

In the Board's opinion, sections 40(5) and 9(1) of the Act offer sufficient protection to allay the concerns of any common purchaser who has a cross-dedication (multi-pool) type of contract for a particular area. While section 40(5) does refer only to the pool subject to the common-purchaser declaration, the Board believes that the intent of this section is that a common purchaser should not have to purchase additional gas as a result of the Board's issuing a common-purchaser declaration. However, interpretation of the statute is a question of law and rests with the Courts.

6 AREALLY EXTENSIVE POOLS

It has been suggested that, in the case of pools of large areal extent, it may be appropriate to restrict the applicability of a common-purchaser declaration to a limited area that is or probably will be affected by drainage and that was involved in the evidence leading to the common-purchaser declaration. It has been argued that the common purchaser has no obligation to take gas from an unrelated distant area that may not be suffering drainage due to production in the limited area and may in fact be far beyond the purchaser's normal gas-purchase area. Restricting the applicability of a common-purchaser declaration to an area in a pool has been perceived by some as not being within the powers of the Board under the legislation.

The Board believes that no changes to the legislation are needed for the following reasons:

- The common purchaser may be able to demonstrate that, by taking no gas from a distant producer, he is not discriminating against that producer because the production causing the drainage is not adversely affecting that distant producer.
- There may be room under section 41 of the Act to successfully seek relief from the common-purchaser duties under these circumstances on the basis that the duties would be unreasonable.

7 · GAS PSU ADMINISTRATION

Concern was expressed by industry that the Board's method of allocating proportions on the basis of wellbore pay thickness, could be inequitable and could cause economic waste through the drilling and production of unnecessary wells.

In a previous report,⁴ the Board established a policy for setting allowables, which was later extended to apportioning. Briefly, the Board stated that in its view, an operator's right to his share of gas is only established by the drilling of a well, hence allowables (and apportioning) should reflect only those reserves underlying a PSU containing a well capable of production from the pool. The Board recognized that this policy could tend to cause the drilling and production of unnecessary wells, and it stated that it would consider the formation of PSUs, called multiple PSUs, made up of more than one DSU. In Decision 82-26,⁸ the Board set out several basic principles which it used to include additional undrilled sections within the Nordegg Gas Unit No. 1 in the apportioning formula. The Board has now made some additional minor changes to these principles and will in future use these amended principles when considering applications for multiple gas PSUs.

These principles are as follows:

1. A multiple gas PSU shall contain only whole laterally adjoining DSUs that are pooled or are of common ownership, and must contain a well capable of production.
2. (a) The area of a multiple PSU for a gas well shall not exceed four sections.

 (b) A multiple PSU for a gas well may not contain more than two sections in any direction.
3. A DSU shall not be included in the multiple PSU of a gas well unless it contains a well capable of production, or unless geological and other evidence from drilled wells adequately shows reservoir continuity such that, in the Board's opinion,
 - a well capable of production could be completed on target within the DSU, and
 - the gas within the DSU is practicably recoverable by the producing well of the multiple PSU.

4. Any increase in a well's production rate due to the formation of a multiple PSU must not, in the Board's opinion, seriously affect the drainage patterns and hence equity within the pool, reduce the ultimate recovery of gas by inducing watering-out of the well, or cause other serious adverse effects in the reservoir.

The Board would consider the formation of multiple PSUs in a gas pool in which a common-purchaser declaration is already in effect upon application under section 5.020 of the Oil and Gas Conservation Regulations which now includes the above principles. For current and future cases, if a PSU application were received before the Board advertised the common-purchaser application, the Board would be prepared to advertise and consider the two applications together.