ALBERTA ENERGY AND UTILTIES BOARD
Calgary Alberta

SOUTH ALBERTA ENERGY CORP., GREG JUSTICE, 693040 ALBERTA LTD., AND MARC DAME **Decision 2000-51**
REVIEW OF ABANDONMENT COSTS **Board-Initiated Proceedings**
ORDER NO. ACO 98-1 **No. 980654 and 980655**

1 INTRODUCTION

1.1 Background

In 1991, RTEC One Resources Inc. (RTEC) proposed the transfer of a number of well licences to South Alberta Energy Corp. (SAEC). Prior to consenting to this transfer, the Alberta Energy and Utilities Board (EUB/Board) required that a private fund (the Trust) be established to provide for the future costs of abandonment and reclamation of wells acquired by SAEC. The Trust was established on October 4, 1991, with the well licence transfers from RTEC to SAEC completed in the fall of 1991. The provisions of the Trust provided that the funds were to be used for the abandonment and reclamation of SAEC wells and stipulated that should SAEC not abandon and reclaim the wells, the Trust monies were to be paid to the EUB for that specific purpose.

Between 1995 and 1997, SAEC, because of the expiry of related petroleum and natural gas leases, lost the right to produce certain of its wells. The lapsing of the leases also triggered the issuance of 15 well abandonment orders by the EUB to SAEC on June 16, 1995, followed by a further 5 abandonment orders on September 1, 1995. Well abandonment orders direct companies that hold the individual well licence to take the necessary steps to safely abandon the well within a specified period of time.

On or about October 31, 1995, Mr. Greg Justice purchased 100 per cent of the SAEC shares from their previous owner, thus becoming its sole shareholder and director. Mr. Justice then purported to transfer the ownership of the SAEC shares to another corporation, South Alberta Energy Group (SAEG), in which he was also the sole shareholder and director. Shortly thereafter, the EUB issued two more well abandonment orders to SAEC each dated November 16, 1995.

In February 1996, Mr. Justice, on behalf of SAEC and at the request of the EUB's Corporate Compliance Group (CCG), prepared a business plan designed to abandon the 22 wells subject to abandonment orders. Dealings between Mr. Justice and CCG continued throughout 1996, but by early 1997 the wells remained unabandoned. Additional wells and related facilities were ordered abandoned at this time. A summary of all the SAEC wells and related facilities and their related abandonment orders follows.

In total, 89 wells licensed to SAEC were ordered abandoned by the EUB, as named in Abandonment Orders No. AD 95-201 to AD 95-204, AD 95-206 to AD 95-216, AD 95-272 to AD 95-276, AD 95-328, AD 95-329, AD 96-47, AD 96-366, and AD 97-8. Three of the subject wells named in the abandonment orders were subsequently deleted by amendments after the EUB received an application by three parties for a transfer of the well licences for domestic gas use. In addition to the 89 wells, 9 pipeline licences, granted to SAEC, encompassing 101 lines,

were ordered abandoned as per Abandonment Order No. AD 97-15. All of the pipelines enumerated in the order were abandoned in place with the exception of 5.6 kilometres, which were transferred to a domestic gas user. Six batteries operated by SAEC were also ordered to be dismantled and removed as per EUB Abandonment Order No. AD 97-16.

As SAEC failed to comply with the abandonment orders within the allotted time, CCG solicited bids from various abandonment firms and completed the abandonments on its own initiative. Final abandonment operations were completed in June 1999, with reclamation of SAEC's well sites by Alberta Environment having just recently commenced.

On August 30, 1996, a corporate transaction (the Agreement) involving SAEG selling 100 per cent of its SAEC shares to 693040 Alberta Ltd. was executed by Mr. Justice on behalf of SAEG and Mr. Marc Dame on behalf of 693040 Alberta Ltd. The CCG was first informed of the Agreement by verbal representations made by Mr. Justice during meetings in the spring of 1997. Mr. Justice provided a copy of the Agreement to CCG on August 13, 1998.

On August 24, 1998, the CCG issued an invoice to SAEC, Mr. Justice, 693040 Alberta Ltd., and Mr. Dame for the monies expended by the EUB to abandon the wells and related facilities, calling for payment within 30 days. The abandonment costs were payable to the EUB on or before November 1, 1998. No payment was made by any of the parties. On October 5, 1998, the EUB issued Abandonment Costs Order No. 98-1 (ACO 98-1), naming Mr. Greg Justice, 693040 Alberta Ltd., and Mr. Marc Dame as persons in control of SAEC and declaring them to be joint and severally liable, along with SAEC, for the payment of the abandonment costs associated with the wells and related facilities.

Both the abandonment orders and the abandonment cost orders in question were issued pursuant to Sections 20.1, 20.2, 20.3, and 20.4 of the Oil and Gas Conservation Act (the OGC Act), which read as follows:

> 20.1 For the purposes of sections 20.2, 20.3 and 20.4 "licensee" and "working interest participant" include a person who has actual control of the corporation, including a person referred to in section 2(2) of the Business Corporations Act.
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> 20.2 (1) A licensee shall abandon a well in accordance with the regulations and shall do so when directed by the Board or the regulations.
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> (2) When directed by the Board or with the consent of the Board, the well shall be abandoned by the other working interest participants in the well.
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> 20.3 (1) Subject to subsection (2), the well abandonment costs shall be paid by the working interest participants in accordance with their proportionate share in the well.
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> (2) The well abandonment costs may be determined by the Board
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> (a) on application by a person who conducted the well abandonment, or
>
> (b) on the Board's own motion.

(3) A working interest participant who fails to pay its share of well abandonment costs within the period of time prescribed by the Board must pay, unless the Board directs otherwise, a penalty equal to 25% of the party's share of the well abandonment costs.

(4) The well abandonment costs as determined under subsection (2) together with any penalty prescribed by the Board under subsection (3) are a debt payable by the working interest participant in accordance with its proportionate share in the well to the party who incurred the well abandonment costs.

(5) A certified copy of the order of the Board determining the costs and penalty under this section may be filed in the office of the clerk of the Court of Queen's Bench and, on filing and on payment of any fees prescribed by law, the order shall be entered as a judgment of the Court and may, in addition to any remedies provided by the Act, be enforced according to the ordinary procedure for enforcement of a judgment of the Court.

20.4 (1) Where a transaction has occurred that results in a person no longer being a working interest participant, that person is deemed to continue to be a working interest participant for the purposes of this Act if

(a) the transaction occurred after the well ceased producing in paying quantities, and

(b) there is no successor or the successor working interest participant fails to pay its proportionate share of the well abandonment costs.

(2) Subsection (1) does not apply if the successor working interest participant is the licensee of the well.

A revised invoice was sent to the parties on December 18, 1998, reflecting additional costs not accounted for in the original invoice and subtracting the $201,019.00 paid to the EUB from the Trust for the abandonment and reclamation of the SAEC wells and related facilities. The Trust funds were forwarded to the EUB by Hudson and Company, the chartered accountancy firm that acted as trustee for the Trust. In accordance with the trustee's direction, the EUB and Alberta Environment divided the proceeds pro-rata between the abandonment costs and the estimated reclamation costs. The split allocated some 43 per cent of the funds ($86,438.17) towards abandonment and some 57 per cent ($114,580.83) towards reclamation. The reclamation monies are being in held in trust by the EUB, pending the completion of the reclamation of the well sites.

1.2 Interventions

By way of letters dated October 29, 1998, and November 4, 1998, Mr. Justice, 693040 Alberta Ltd., and Mr. Dame requested the Board to review its decision regarding the naming of said parties in the EUB's Costs Order ACO 98-1 pursuant to Section 43 of the Energy Resources Conservation Act (the ERC Act). None of the parties, however, challenged the naming of SAEC in ACO 98-1. The Board was satisfied that the interveners were affected parties and on February 1, 1999, ordered that a hearing under Section 43 of the ERC Act be held.

1.3 Prehearing Meeting

A prehearing meeting was held on April 29, 1999, at Calgary, Alberta, before B. F. Bietz, Ph.D., P.Biol., Presiding Member, Tom McGee, Board Member, and M. J. Bruni, Acting Board Member. The Board directed that the issues to be considered at the hearing should include the proposed timing and order of written submissions, the potential timing of the hearing, the information relied upon by CCG when it issued ACO 98-1, and the appropriateness of the abandonment costs incurred by the EUB. The Board's decision on the matters raised at the prehearing meeting is contained in the EUB's memorandum of decision dated May 25, 1999.

Further, the Board stated in the memorandum of decision that, in the interest of fairness, it would require CCG to assume the role of applicant at the hearing as it was its activities and involvement in this matter that gave rise to the order in question. As such, SAEC, Mr. Justice, Mr. Dame, and 693040 Alberta Ltd. were all parties potentially affected by ACO 98-1 and thus deemed to be interveners for the purposes of the proceedings.

1.4 Hearing

The commencement of the hearing was adjourned on three occasions as a result of scheduling difficulties experienced by a number of parties. The Board convened the public hearing on June 9 and 10, 2000, in Calgary, Alberta, before a Board panel consisting of B. F. Bietz, Ph.D., P.Biol., Presiding Member, Tom McGee, Board Member, and M. J. Bruni, Q.C., Acting Board Member.

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
Alberta Energy and Utilities Board Enforcement Section of Corporate Compliance Group (CCG)	
D. F. Brezina	R. Paulson, C.E.T. V. Vogt D. Agnew
South Alberta Energy Corp. and Greg Justice	G. Justice
693040 Alberta Ltd. and Marc Dame M. Mudie	M. Dame
Alberta Energy and Utilities Board staff P. K. Ferensowicz D. A. Larder, Board Counsel J. P. Mousseau, Board Counsel	

2 ISSUES

The Board considers the issues with respect to the proceedings to be

- the liability of Mr. Greg Justice, 693040 Alberta Ltd., and Mr. Marc Dame for Costs Order ACO 98-1, and

- the fairness of the bid process and the reasonableness of the costs associated with the abandonments.

3 THE LIABILITY OF MR. GREG JUSTICE, 693040 ALBERTA LTD., AND MR. MARC DAME FOR COSTS ORDER ACO 98-1

3.1 Views of CCG

CCG submitted that the parties named in ACO 98-1 are the proper parties liable to pay the abandonment costs set out in the order. Further, CCG argued that each of Mr. Justice, 693040 Alberta Ltd., and Mr. Dame represents "a person who has actual control of the corporation," that is, the licensee SAEC, pursuant to Section 20.1 of the OGC Act. CCG argued that those persons who legally and/or de facto controlled SAEC in the time period preceding the issuance of ACO 98-1 fell within the ambit of Section 20.1 of the OGC Act and were imbued with liability for the costs incurred by the Board in abandoning the wells and related facilities. CCG further contended that the liability should be apportioned on a joint and several basis among those named in the order notwithstanding the effect of Section 20.3 (1) of the OGC Act, which contemplates allocation of liability on a several basis.

With respect to the appropriateness of naming Mr. Justice in ACO 98-1, CCG referred to the following indicia of actual control. CCG pointed out that in October 1995, Mr. Justice acquired 100 per cent of the shares of SAEC, which he then purported to transfer to SAEG. At that time and all material times thereafter, he was either the sole shareholder and/or director of both SAEG and SAEC. CCG submitted that in law directors are ultimately charged with the responsibility of managing a company's business and related affairs. CCG maintained that whether or not the Agreement was binding, Mr. Justice remained a director until at least March 31, 1997, and continued to act on behalf of SAEC thereafter. He held himself out as president of SAEC, signed letters in that capacity, and generally conducted himself with third parties, including the EUB and the County of 40 Mile, as the person controlling the affairs of SAEC.

CCG also referred to Mr. Justice's testimony at the hearing in which he said that he alone controlled SAEC from the time he acquired the company in 1995 until its demise in 1997. He stated that despite written submissions to the contrary, he never relinquished control to 693040 Alberta Ltd. and/or Mr. Dame because he accepted the repudiation of the Agreement in the early fall of 1996. In the alternative, CCG argued that if the Agreement was binding, Mr. Justice continued to exercise concurrent control over SAEC, as he remained its only director until May 1997 and continued making decisions on behalf of SAEC, such as the settlement agreement with the County of 40 Mile.

CCG testified that Mr. Justice was responsible for the abandonment costs related to the wells and related facilities that had been ordered abandoned prior to his acquisition of SAEC in 1995 because the existence of these outstanding abandonment orders was a matter of public record.

CCG asserted that the liabilities were part of that transaction and were passed to Mr. Justice by virtue of his 100 per cent share ownership of SAEC through its parent SAEG as well as the exercise of the day-to-day and long-term control of the business affairs of SAEC.

With respect to also naming 693040 Alberta Ltd. and Mr. Dame in ACO 98-1, CCG submitted that these parties were also liable to pay the abandonment costs because of the Agreement between SAEG and 693040 Alberta Ltd. in which the numbered company was to obtain 100 per cent ownership of SAEC through its purchase of the SAEC shares. CCG stated that the Agreement gave control and ownership of SAEC to 693040 Alberta Ltd., a company in which Mr. Dame was the sole director and shareholder. CCG argued that Mr. Dame and the numbered company were indivisible for the purposes of determining actual control of SAEC. CCG stated that if the Board accepted that the Agreement was valid and binding, then Section 20.1 of the OGC Act applied, making both 693040 Alberta Ltd. and Mr. Dame liable for the abandonment costs.

CCG identified a number of clauses in the Agreement that, in addition to the change in shareholding ownership, demonstrated that 693040 Alberta Ltd. and Mr. Dame were assuming and exercising effective and actual control of SAEC. These included the takeover of complete financial control of SAEC by October 1, 1996; the right to direct and control Mr. Justice, who was to remain as a director until May 1997; and the immediate assumption of administrative duties of SAEC by Gibraltar Management Ltd. (Gibraltar), another company wholly owned by Mr. Dame. In short, CCG asserted that the Agreement constituted ample evidence of the fact that 693040 Alberta Ltd. was the legal owner of SAEC and that Mr. Dame, in his capacity as sole shareholder and director of both that numbered company and Gibraltar, effectively and actually controlled SAEC.

In the alternative, CCG submitted that even if the Agreement was ineffective, Mr. Dame remained personally liable for the abandonment costs because he de facto directed and determined the operational, financial, administrative, and regulatory matters facing SAEC in the period after August 30, 1996. Mr. Dame, CCG suggested, continued to be intimately involved in SAEC's business affairs through companies that he wholly owned and controlled. This activity included approving expenditures and issuing cheques on behalf of SAEC, preparing a property tax arrears settlement with the County of 40 Mile and instructing Mr. Justice to implement the settlement, directing the work of the SAEC field operator, as well as paying him and directly dealing with third parties, such as the EUB and SAEC's gas plant operator. Further, CCG pointed out that Mr. Dame was still in possession of SAEC's well files and minute book more than a full year after the Agreement had ostensibly been repudiated.

CCG argued that the liability for the abandonment costs must be joint and several given the circumstances of the present case. It submitted that while Section 20.3 (1) of the OGC Act provided that abandonment costs be paid by working interest participants in accordance with their proportionate share in a well, the Board could also direct joint and several liability where there was only one working interest owner and a person who was exercising actual control over such an owner. This, it contended, was the logical effect of Section 20.1 of the OGC Act, where "licensee" and "working interest participant" were defined as including a person in actual control of either. CCG stated that the spirit and intent of the abandonment liability provisions of the OGC Act was to make licensees, working interest participants, and those persons in actual control of them liable for abandonment costs. It submitted that it was both reasonable and

appropriate to treat the company and the person controlling the company as one and the same for the purpose of bearing such costs.

3.2 Views of South Alberta Energy Corp. and Mr. Greg Justice

In his written submissions, Mr. Justice strongly asserted, both personally and on behalf of SAEC, that Mr. Dame or 693040 Alberta Ltd. assumed control of SAEC, either by virtue of the Agreement or by assuming control of its day-to-day operations following the execution of the Agreement. Mr. Justice submitted that he and Mr. Dame discussed in great detail the true state of the wells and related facilities prior to the Agreement and that Mr. Dame was in possession of all of SAEC's well files prior to his drafting of the Agreement. Mr. Justice argued that Mr. Dame's submissions to the Board of December 10, 1998, were both inaccurate and misleading and he provided a number of illustrations of these inaccuracies.

Mr. Justice stated in his written submissions that Mr. Dame clearly indicated to him plans to utilize the SAEC abandonment trust fund for abandoning wells licensed to another company under Mr. Dame's control. Mr. Justice argued that the actions of Mr. Dame and 693040 Alberta Ltd. clearly supported his position that Mr. Dame had assumed effective control of the company pursuant to the Agreement. Mr. Justice cited the following examples indicating Mr. Dame's control of SAEC following his execution of the Agreement:

- Mr. Dame or one of Mr. Dame's companies paid the wages of SAEC's sole employee,
- Mr. Dame or one of Mr. Dame's companies was providing instructions to SAEC's sole employee,
- Mr. Dame appeared on SAEC's behalf at a meeting held at the EUB,
- Mr. Dame or one of his companies was in receipt of revenues related to SAEC, and
- Mr. Dame authorized expenditures on behalf of SAEC.

Mr. Justice concluded his written submissions by asserting that any statement made by Mr. Dame with regard to his purchase or control of SAEC must be viewed with a "jaundiced eye." Mr. Justice further suggested that the inaccuracies within Mr. Dame's December 10, 1998, submission to the Board showed his contempt for both the Board itself and the truth in general.

In his testimony at the hearing, however, Mr. Justice steadfastly denied that Mr. Dame had ever, in any way, assumed control of SAEC. Mr. Justice testified that although SAEG received the $40,000.00 payment from Mr. Dame or 693040 Alberta Ltd. for the SAEC shares, as required by the Agreement, the transfer of ownership of the SAEC shares from SAEG to 693040 Alberta Ltd. never occurred. Mr. Justice stated that after he received a memo dated October 4, 1996, from Mr. Dame, it was his opinion that the Agreement was no longer valid. Mr. Justice indicated that it continued to be he, not Mr. Dame, who made all the decisions for SAEC after October 4, 1996, and that Mr. Dame and his various companies were merely assisting SAEC with its field operations. Finally, Mr. Justice testified that he never relinquished control of SAEC and that it would be appropriate to remove Mr. Dame and 693040 Alberta Ltd. from the abandonment cost order. Mr. Justice argued, however, that despite his admission of control, since it was the

previous owners of SAEC who truly derived profit from the use of the wells and related facilities, they should rightly pay the abandonment costs.

Under cross-examination and contrary to his earlier testimony, Mr. Justice stated that Gibraltar assumed management of SAEC in November 1996. Mr. Justice further stated that after signing the Agreement in early fall 1996, he relied on Mr. Dame or one of his companies to resolve virtually all the problems then facing SAEC.

In his final argument Mr. Justice continued to disclaim his written submissions and then repeated his assertion that SAEC was never transferred to Mr. Dame or 693040 Alberta Ltd. He further stated that he remained in control of SAEC until its ultimate demise. Finally, Mr. Justice again argued that the previous owners of SAEC should also be named in the abandonment cost order.

3.3 Views of 693040 Alberta Ltd. and Mr. Marc Dame

Mr. Dame, both personally and on behalf of 693040 Alberta Ltd., submitted that they should not have been named in ACO 98-1 as persons who were jointly and severally liable for payment of the abandonment costs because neither was a licensee, a working interest participant, or a person in actual control of SAEC. 693040 Alberta Ltd. and Mr. Dame maintained that the Agreement had been terminated by October 4, 1996, by mutual agreement between 693040 Alberta Ltd. and SAEC's parent, SAEG.

Mr. Dame advanced the view that the Agreement was a preliminary purchase document designed to tie up the potential seller for 60 days so that appropriate searches, confirmations, and due diligence could be conducted and that the numbered company had the right to collapse the transaction if certain conditions precedent were not fulfilled. Most notably, Mr. Dame observed that his investigations revealed that virtually all of the mineral leases had expired and that significant outstanding liabilities and debts with the County of 40 Mile, SAEC's gas processor, and other third parties existed. Further, Mr. Dame pointed out that SAEG had been unable to resolve the claims of certain royalty interest holders, as required by the Agreement. While Mr. Dame conceded that most of these impediments could probably have been worked out, the expiry of the mineral leases was very problematic. Without valid leases, there was no right to produce the wells, hence little reason to conclude the August 30, 1996, deal.

Upon cross-examination Mr. Dame acknowledged that he knew of the tax liability to the County of 40 Mile prior to the Agreement being executed, although he purportedly based the repudiation of the Agreement at least partly on the position that he was unaware of this particular liability.

Mr. Dame also asserted that no share transfer certificates were executed or delivered by the seller, no corporate resolutions were prepared or executed regarding bank accounts, and no consent to act as a director by Mr. Dame was ever executed in furtherance of the August 30, 1996, Agreement. Mr. Dame argued that the absence of such closing documentation was cogent proof that the Agreement had been terminated. Mr. Dame also explained that no legal action had been taken to recover the $40,000.00 paid to SAEG pursuant to the Agreement primarily because SAEG and Mr. Justice possessed no assets.

Mr. Dame confirmed that he was the sole shareholder and director of the several companies that participated either in the originally contemplated transaction or in the events that followed the October 1996 termination of the Agreement. He testified that there was value in the production

assets of SAEC if the leases could be reacquired, arrangements with SAEC's creditors put into place, and the abandonment orders issued by the EUB rescinded. Mr. Dame believed that his other companies had the resources to assist SAEC in resolving these issues and was prepared to make such efforts because he ultimately wished to acquire the wells and related infrastructure. He stated that such assistance did not amount to actual or effective control of SAEC by his companies or himself.

With regard to the interaction among Mr. Dame, his companies, and SAEC from early October 1996 to February 1997, Mr. Dame noted that Gibraltar, which was also under his direction and control, did pay some bills on behalf of SAEC. The monies were received directly or indirectly from SAEC. A payment or payments were also made to SAEC's contract field operator, although little, if any, fieldwork was under way since the wells were shut in. The payments were intended to ensure that the field hand, who was reliable and knowledgeable about SAEC's field operations, remained in the event that Mr. Dame was able to take over SAEC. Gibraltar did not retain any monies for this administrative service.

Mr. Dame testified that another company he controlled, Matrix Resources Ltd., had the financial means to regain the lapsed mineral leases, as well as fully assess the viability of the SAEC operation from geological, reservoir engineering, and operational engineering perspectives. It also had the funds to effect settlements with SAEC's creditors. Mr. Dame indicated that he did participate in discussions with SAEC's creditors and, in particular, prepared the specific settlement arrangement with the County of 40 Mile regarding the property tax arrears; he justified such involvement on the basis that Matrix Resources Ltd. would be funding the settlement and he was, naturally, highly interested in the specific terms of the arrangement. He denied that this type of activity constituted actual control of the business affairs of SAEC. Mr. Dame pointed out that no written agreements were ever entered into between his companies and SAEC and/or SAEG or between himself personally and SAEC and/or SAEG that transferred ownership or control of SAEC to him or his companies. Further, there were no contracts entered into by Mr. Dame or his companies with third-party creditors of SAEC.

Mr. Dame also stated that his contact with the EUB regarding the rescission of the abandonment orders consisted of one direct meeting with EUB staff, at which time he expressed his view that the SAEC field was still productive and that he would be interested in taking over SAEC if the leases could be reacquired and the abandonment orders could be lifted. Mr. Dame asserted that no arrangements were consummated among himself, his companies, and the Board regarding SAEC operations because he had no authority to act on behalf of SAEC in this regard.

Mr. Dame gave evidence that there were working interest participants associated with most of the subject wells in addition to SAEC. He argued that these parties should also be liable for their proportionate share of abandonment costs pursuant to Section 20.3 (1) of the OGC Act but were not identified in ACO 98-1. Mr. Dame submitted that it was only fair and equitable that those parties who had received the benefit of production were liable to pay their share of abandonment costs. Imputing liability on a joint and several basis, as ACO 98-1 purported to do, was inequitable in the present circumstances. Mr. Dame maintained that no gas revenues from the wells ever benefited him or his companies.

In argument, Mr. Dame made a number of submissions relating to the interpretation of Sections 20.1-20.4 of the OGC Act. He viewed these provisions as exempting directors from liability to pay abandonment costs on the basis that Section 20.1 contained the phrase

"… including a person referred to in section 2(2) of the *Business Corporations Act*." Mr. Dame submitted that the specific inclusion of a type of person who may qualify as a person in actual control of the relevant corporation, that is, a person who has control of the voting shares of a company, excluded other types of persons, e.g., a director of a company, from the purview of Section 20.1.

Further, Mr. Dame argued that as a consequence of the expiry of the mineral leases (prior to his involvement either through 693040 Alberta Ltd. or his other companies), Section 33 of the Mines and Minerals Act effected a reversion of the mineral ownership to the Crown. He maintained that if ownership resided with the Crown, there could be no working interest participants as that term was defined in Section 1(1)(y.1) of the OGC Act ("… person who owns or controls all or part of a beneficial or legal undivided interest in a well…") and referred to in Section 20.1. Mr. Dame submitted that the effect was that no person could actually control a working interest participant if no working interest participant existed.

3.4 Views of the Board

The Board finds that there are several legal issues surrounding the liability of Mr. Justice, 693040 Alberta Ltd., and Mr. Dame for the costs identified in ACO 98-1. It is the Board's position that it is not necessary to determine each issue, given the findings expressed in the following paragraphs. The Board does wish to comment on the testimony of Mr. Justice and Mr. Dame. Mr. Justice's testimony was at complete odds with his written submissions and oral representations to CCG regarding the ownership and control of SAEC. He explained the discrepancy by pleading confusion and ignorance over the nature of the Agreement and the subsequent assistance provided to SAEC by other Marc Dame-controlled companies. The Board does not find the explanation at all satisfactory and views Mr. Justice's testimony with some caution.

Aspects of Mr. Dame's testimony are similarly troubling. He justified repudiation of the Agreement in part because of the discovery of significant tax arrears to the County of 40 Mile, which he testified were unknown to him at the time the Agreement was executed. The evidence that Mr. Dame provided at the hearing, however, showed that he knew the specific amount of the arrears prior to the Agreement being signed. Further, although an experienced businessman in all aspects of running an oil and gas company, he apparently made no connection between the outstanding abandonment orders existing at the time of the Agreement and the expiry of the leases associated with the abandoned wells.

Nonetheless, taking the evidence of both individuals into account, and especially the events and actions of both after October 1996, the Board holds that the Agreement of August 30, 1996, between 693040 Alberta Ltd. and SAEG was terminated by mutual agreement of the parties. Whether the Agreement was a legally binding arrangement without conditions precedent or a preliminary purchase agreement subject to due diligence by the buyer is immaterial in light of the termination on October 4, 1996. Imputing liability to the numbered company and Marc Dame on the sole basis of the existence of a valid and subsisting agreement to transfer ownership and control to 693040 Alberta Ltd. and in turn to Marc Dame, the company's sole shareholder and director, cannot be supported. The definition of persons who may be licensees or working interest participants in Section 20.1 of the OGC Act has not been met.

It is the Board's view, however, that Section 20.1 must be read broadly, as the plain words have a wide meaning. The section and its companion sections provide that any person exercising actual control of a licensee or working interest participant may be liable for abandonment costs. Certainly, the existence of a binding agreement evidencing the transfer of ownership and control may establish the fact of effective actual control required by Section 20.1, but it is not the only indicia of such control. Real, effective, and practical control over a company's business affairs will amount to control as contemplated in Section 20.1 and may exist in a wide variety of settings and arrangements. Control is ultimately the power to direct the business of a company and make decisions that will be complied with and acted upon by a company. Each case must be reviewed on its own facts and circumstances in order to determine the entity effectively exercising this authority.

In the present case, Mr. Dame and the companies of which he was the sole registered shareholder and director did engage in a number of activities on behalf of SAEC. They were instrumental in devising a settlement with the County of 40 Mile, provided administrative services for SAEC, paid a contract field operator, discussed settlement of outstanding issues with third parties such as SAEC's gas processor, and met with EUB staff in connection with the status of abandonment orders. The Board finds that while these activities may have benefited SAEC, they were primarily undertaken in an effort to preserve or enhance the opportunity for Mr. Dame and his companies to eventually acquire SAEC. Throughout Mr. Dame's involvement, Mr. Justice retained ownership of SAEC in one manner or another. He remained a director and actively participated in the affairs of SAEC. After Mr. Dame ceased his efforts in early 1997, Mr. Justice continued to act as he always had as SAEC's representative. The Board finds that while Mr. Justice may have placed significant reliance on Mr. Dame's advice and initiatives in several areas and was anxious to forge another sale of SAEC to him, the evidence falls short of establishing that Mr. Dame exercised the real authority over SAEC's business during this time.

It is the Board's view that Mr. Justice was the person in actual control of SAEC at the time of the issuance of ACO 98-1. The Board finds that Mr. Justice was the person who controlled the majority of voting shares of SAEC pursuant to Section 2(2) of the Business Corporation Act as referenced in Section 20.1 of the OGC Act. Further the Board finds that Mr. Justice exercised the power to direct the business of SAEC and made decisions that were complied with and acted upon by SAEC throughout the time period in question.

With regard to Mr. Justice's request that SAEC's previous owners share in the responsibility for the abandonment costs, the Board notes that SAEC has been the licensee of the wells and related facilities since it purchased them from RTEC in 1991. When Mr. Justice purchased SAEC in 1995 he became the licensee and a working interest participant for the purposes of Section 20.1 of the OGC Act. That section prevents the Board from naming previous working interest participants in abandonment cost orders if the current working interest participant is the licensee of the facilities in question. As Mr. Justice is a successor working interest holder and licensee of the facilities, the Board is precluded from naming the previous owners of SAEC in any abandonment cost order issued against SAEC.

4 THE FAIRNESS OF THE BID PROCESS AND THE APPROPRIATENESS OF COSTS ASSOCIATED WITH THE ABANDONMENT

4.1 Views of CCG

CCG submitted that the abandonment costs related to the wells and related facilities were reasonable given the scope and nature of the abandonment. CCG further submitted that the process it used to award the abandonment project was reasonable and in accordance with standard industry practice.

CCG argued that it provided Mr. Justice and SAEC with ample opportunity and notice that failure to carry out the abandonments as ordered would result in CCG taking over the abandonment activities. CCG testified that it had concerns about the wells and related facilities because it appeared that Mr. Justice and SAEC were not exercising the necessary care and custody over them.

CCG testified that when it became clear that Mr. Justice and SAEC had taken no steps to abandon the wells and related facilities, the Board's Operations Group (Operations) was notified that it should assume control of the abandonment process. CCG submitted that prior to soliciting bids for the abandonment of the wells and related facilities, it was contacted by a company called Well Undertakers with regard to the abandonment project. Well Undertakers informed Operations that it had been contacted by Mr. Justice about the abandonments and had submitted a bid on the project to SAEC. Well Undertakers requested that Operations consider its bid when determining who would be awarded the SAEC abandonment project.

CCG stated that Operations eventually informed Well Undertakers of its intention to solicit bids only from its existing bid list and that Well Undertakers would not be included on that list. CCG argued that given Well Undertakers' lack of a proven track record in the industry, its exclusion from the bid list was reasonable and appropriate. CCG tendered as evidence a letter addressed to Well Undertakers dated July 3, 1997, written by Mr. G. C. Dunn, of Operations, which listed a set of established criteria that a company must meet prior to being considered for inclusion on the Operations' bid list. The criteria listed in that letter are as follows:

- well-documented operational history of successful turnkey and/or full services abandonment to the oil and gas industry—client references are required;

- well-documented safety record regarding provincial occupational and health safety compliance;

- well-documented procedures for record keeping, established and proven measures for quality control, submission of daily reports/invoicing, and excellent landowner/occupant relations regarding surface access and related surface rights matters;

- well-documented procedures for EUB regulatory compliance regarding abandonment operations for accurate and timely documentation and submission of data on the required forms.

CCG further testified that although the July 3 letter clearly invited Well Undertakers to demonstrate its ability to meet the above criteria, Well Undertakers did not contact Operations again.

CCG testified that Operations solicited bids both for the initial creation of an information well file for the wells and related facilities and for the actual abandonments. CCG reported that four companies were invited to bid on the file creation project and that the contract was eventually awarded to Abandonrite Enviro Services Corp. (Abandonrite). CCG stated that the Abandonrite information was then analyzed and on October 27, 1999, CCG requested bids from five companies for the abandonment project. The project was eventually awarded to Treeline Well Abandonment and Reclamation Ltd. (Treeline), which submitted the lowest complete bid to Operations.

CCG testified that the Treeline bid did not provide a fixed price for the abandonment of wells experiencing vent flow problems, but rather a fixed price for perforating the casing and performing a specific process called a "Braiden Head Squeeze." CCG stated that both Operations and Treeline understood that this procedure might not provide a successful abandonment and that any additional costs incurred to abandon such wells would be charged to CCG on the basis of cost plus 10 per cent. CCG further testified that it was understood that this was not a turnkey bid and that a number of contingency factors, such as waste disposal and cold weather costs, were built into the initial budget for the abandonment.

When calculating the initial budget for the abandonment, CCG stated that it considered the above contingencies as well as the possibility that a portion of the wells and related facilities could not be abandoned by the services contemplated in the bid. CCG reported that Treeline experienced problems abandoning a number of wells with vent flow problems using the Braiden Head Squeeze method and was forced to use other processes. It was then necessary, CCG testified, to seek additional funding for the project to cover these unanticipated costs. CCG submitted that the final cost for the abandonment of the wells and related facilities exclusive of GST was $1,433,362.05.

CCG maintained that it monitored the well abandonment costs daily throughout the process. CCG stated that the abandonment costs were available for the scrutiny of both the group leader of Operations and the manager of the Orphan Well Fund, who worked in conjunction with Operations.

In final argument, CCG pointed out that the SAEC abandonments were the largest such project ever carried out by the EUB. CCG maintained that it was reasonable to only allow companies with a proven track record in abandonment work to submit bids on the project. It argued that because the wells and related facilities had not been properly monitored or maintained, the costs of the project were necessarily higher. CCG further argued that the final costs incurred were reasonable given the conditions encountered, including vent flows, slant holes, groundwater protection requirements, and open zones downhole. CCG concluded that the actual abandonment costs were within the range of costs previously incurred by the EUB for other abandonment projects.

4.2 Views of South Alberta Energy Corp. and Mr. Greg Justice

In his written submissions, Mr. Justice, both personally and on behalf of SAEC, alleged that CCG made two significant errors when awarding the abandonment project. First, Mr. Justice suggested that CCG erred when it did not allow Well Undertakers to abandon the wells and related facilities pursuant to the tender it had submitted to him and later to CCG. Second, Mr. Justice stated that CCG erred in not allowing a broader range of companies on the bid list.

During his testimony at the hearing, Mr. Justice maintained that CCG had instructed him to actively seek out bid prices for the abandonment project. He stated that he had received three tenders and had awarded the project to the lowest bidder, Well Undertakers. Mr. Justice expressed some concern that Well Undertakers was not awarded the project and indicated that he felt the final abandonment costs were very high when compared to the bid produced by Well Undertakers. Mr. Justice admitted, however, that he was by no means an expert in the field of well abandonment. Under cross-examination, Mr. Justice further admitted that he had not checked the background or track record of Well Undertakers and that he knew little about the company's capacity to undertake an abandonment project of the size and scale anticipated.

4.3 Views of 693040 Alberta Ltd. and Mr. Marc Dame

In his written submissions, Mr. Dame made no comment with regard to the awarding of the abandonment project or the quantum of the abandonment costs. During his testimony at the hearing, however, Mr. Dame stated that, based on his experience, the abandonment costs were extremely high. Mr. Dame suggested that CCG and Operations failed to properly monitor and scrutinize the abandonment costs as they were incurred. Mr. Dame further suggested that the arrangement between CCG and Treeline in which additional abandonment services were provided at a cost plus 10 per cent basis was contrary to industry standard and resulted in the abandonment costs mounting exponentially.

In his final argument, Mr. Dame suggested that the costs payable to Treeline should have been limited to those agreed upon within its bid. Mr. Dame urged the Board to consider some form of regulation and additional scrutiny over abandonment costs to ensure that future costs would be reasonable and in accordance with the industry standard.

4.4 Views of the Board

The term "well abandonment costs" is defined in Section 1(1)(y.1) of the OGC Act as

> the reasonable direct costs related to the abandonment of a well including the costs of restoring the well site to the condition it was in before the abandonment operation was undertaken but does not include the cost of surface reclamation.

The Board's governing legislation is silent as to the manner in which it awards contracts for the abandonment of wells and related facilities. As stated above, the Board notes that Operations has developed a practice for awarding such contracts by the creation of a bid list. The Board is satisfied, based upon the testimony of both Mr. Agnew and Mr. Dame, that it was reasonable and in accordance with standard industry practice to use a short bid list of established, well-qualified companies to award the abandonment project. The Board is also satisfied that the criteria developed and applied by Operations to determine the bid list are reasonable. As such, the Board

finds that CCG used a fair and reasonable process when it awarded the well creation file contract to Abandonrite and the abandonment contract to Treeline.

The Board is further of the view that CCG's decision to exclude Well Undertakers from the bid list based upon the criteria established by Operations was reasonable. The Board finds that, given the scope and nature of the abandonment project, it was necessary to allow only those companies with a proven track record in well abandonment to submit a bid. In this regard, the Board notes Mr. Justice's admission that he knew little about such abandonments and had little knowledge about Well Undertakers' capacity to complete the project for the costs proposed.

The Board is satisfied that the abandonment contract was awarded to the lowest complete bid and that the costs incurred for the abandonment of the wells and related facilities were in accordance with the agreement reached between CCG and Treeline. The Board also acknowledges that this project was the largest of its kind ever conducted by CCG. Further, the Board accepts that the SAEC wells had apparently not been properly maintained or monitored for some time and that it is reasonable to assume that this resulted in a more difficult and expensive abandonment process than originally anticipated.

The Board is not convinced by Mr. Dame's evidence in this regard. The Board is cognizant of the difficulties inherent in the abandonment of wells and related facilities and is of the opinion that the agreement between CCG and Treeline was drafted in recognition of such difficulties. Given the speculative nature of well abandonment, the Board would be surprised if a reputable abandonment firm would be prepared to provide a set fee for abandoning wells with vent flow problems.

The Board is concerned, however, that the public at large may have no notice of the criteria used by Operations to determine its bid list for such projects. It is the Board's position, therefore, that such notice is necessary to promote the fair and reasonable consideration of bids and directs that such notice be prepared and issued forthwith.

The Board has further concerns with regard to the level of scrutiny applied to the abandonment costs during the course of the abandonment itself. The Board expects that whenever the EUB carries out abandonment operations on behalf of a reluctant operator, the magnitude of the costs will be questioned. Additional questioning will likely come from the Orphan Well Fund Advisory Committee (FAC) should costs incurred by the EUB eventually be reimbursed by the fund. Therefore, the Board believes that all parties, including Operations staff, would best be served if a second level of cost scrutiny, preferably independent of the EUB, were established to review and audit future abandonment costs. The most apparent source for such scrutiny may be the FAC itself, but the Board will leave that decision to Operations and the FAC. While the Board is not convinced that the costs of the SAEC abandonment were excessive, it is of the opinion that a more rigorous scrutinization process must be used in the future.

Finally the Board is concerned that none of the well abandonment orders specifies the consequences of noncompliance. In contrast, Order AD 97-15, which deals with the SAEC pipelines, clearly states that the Board may undertake to abandon the pipelines in question if the abandonment is not complete by the date set out within that order. While the Board is cognizant of Section 3.068(2) of the Oil and Gas Conservation Regulations, which requires wells to be abandoned in accordance with *Guide 20*: *Well Abandonment*, it is the Board's position that all future abandonment orders must clearly indicate the consequences of noncompliance.

Notwithstanding the above, however, the Board is satisfied that, through his various meetings with CCG, Mr. Justice, and consequently SAEC, were fully aware of the consequences of SAEC's noncompliance.

In summary, the Board recognizes that while the abandonment costs associated with the wells and related facilities are significant, it is not convinced that the costs incurred were unreasonable. As noted above, it is the Board's opinion that the process used by CCG to award the project was fair and reasonable. Further, the Board finds that, given the scope and nature of the abandonment project, the costs incurred are within the range of previous abandonment projects conducted by the Board and so do not represent an unexpected burden to the parties on whose behalf the abandonments were conducted.

5 DECISION

Having carefully considered all of the evidence, the Board finds that Mr. Greg Justice was the person in actual control of SAEC at the time of the issuance of ACO 98-1. It is the Board's position that Mr. Justice was the person who controlled the majority of voting shares of SAEC pursuant to Section 2(2) of the Business Corporation Act as referenced in Section 20.1 of the OGC Act. Further the Board finds that Mr. Justice exercised the power to direct the business of SAEC and made decisions that were complied with and acted upon by SAEC throughout the time period in question. Finally, the Board directs that both 693040 Alberta Ltd. and Mr. Mark Dame be struck from Abandonment Costs Order ACO 98-1.

Dated at Calgary, Alberta, on July 17, 2000.

ALBERTA ENERGY AND UTILITIES BOARD

(Original signed by)

B. F. Bietz
Presiding Board Member

(Original signed by)

T. McGee
Board Member

(Original signed by)

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