

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**LEGAL OIL & GAS LTD., CHARLES W. FORSTER,
AND TARTAN ENERGY INC.
REVIEW OF ABANDONMENT ORDER NO. AD 98-10**

**Decision 2001-11
Board-Initiated Proceeding
No. 990234**

ERRATUM

A clerical error was made on page 8 of EUB Decision 2000-11, issued by the Alberta Energy and Utilities Board on February 13, 2001. The date specified for final abandonment of the wells in Abandonment Order AD 98-10 was May 4, 1998. That date was incorrectly stated to be May 28, 1998 on page 8 of EUB Decision 2001-11.

The first sentence of the third paragraph of page 8 read:

It is the Board's view that it acquired its right to abandon the wells and collect the associated abandonment costs when the parties named in the abandonment order failed to abandon the wells by May 28, 1998.

That sentence should now read:

It is the Board's view that it acquired its right to abandon the wells and collect the associated abandonment costs when the parties named in the abandonment order failed to abandon the wells by May 4, 1998.

<original signed by>

B.F. Bietz, Ph.D., P.Biol.
Presiding Board Member

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1 INTRODUCTION

On March 4, 1998, the Corporate Compliance Group (CCG) of the Alberta Energy and Utilities Board (EUB, Board) issued Abandonment Order No. AD 98-10 to Legal Oil & Gas Ltd. (Legal), Charles W. Forster, and United Compass Resources Ltd. (now known as Tartan Energy Inc. or Tartan). The abandonment order required the above parties to abandon two wells, specifically, the Imperial Legal 15-16V-57-25W4M well (15-16 well) and the Montney et al. Legal 10-21-57-25W4M well (10-21 well). The Board received requests from the above parties to review its decision to name them in the abandonment order, pursuant to Section 42 of the Energy Resources Conservation Act RSA. 1980 c. E-11 (ERCA). The Board granted the parties' requests for a review, and a public hearing of the matter was conducted at the EUB's offices in Calgary, Alberta, on December 12 and 13, 2000.

CCG is responsible for the administration and implementation of the EUB's compliance and enforcement functions. It is in this capacity that CCG monitors and participates in the EUB's abandonment activities. In this situation, it was CCG that had been dealing with the parties prior to the issuance of the abandonment order, and it was CCG that provided the EUB with the information that led to the issuance of the abandonment order.

In the normal course, the role of EUB staff and counsel at a hearing is to publicly provide assistance and advice to the Board in those areas that fall within their particular expertise. EUB staff and counsel will examine witnesses and Board counsel is often consulted at a hearing on matters of practice and procedure. As is customary, EUB staff and counsel participated in this proceeding in the role described above.

Because of CCG's role in the abandonment activities that were the subject of this proceeding, its participation at the hearing was significantly different from the normal course. CCG appeared at the hearing as a party that was separate and apart from the Board. In that regard, CCG was represented by a lawyer from the EUB's Law Branch who had been specifically assigned to act on its behalf. The CCG witness panel was constituted of CCG staff, and this panel was subject to cross-examination by the parties named in the abandonment order and to examination by the Board's counsel. CCG's counsel cross-examined the witnesses of the other parties and made final argument in support of its position. Following the close of the hearing, neither the CCG staff who participated nor the lawyer assigned to represent CCG had any contact with the Board with regard to the matters raised at the hearing.

1.1 Background

In the early 1990s Legal, under the direction of its president and 100 per cent shareholder, Mr. Forster, entered into discussions with Tartan concerning the purchase of Legal by Tartan. Prior to entering into a purchase agreement with Legal, Tartan engaged Farries Engineering (1977) Ltd. (Farries), an independent consultant, to undertake an evaluation of Legal's properties. Farries produced a reserve and economic evaluation report, including, under separate cover, a facility inspection report regarding Legal's surface equipment and leases. Tartan eventually determined that it lacked the necessary funds to purchase Legal as a corporation, and it was then proposed that Tartan purchase a portion of the assets owned by Legal.

On or about June 24, 1994, Tartan entered into an agreement (the June Agreement) to purchase certain assets from Legal. The assets, as listed in Schedule "A" to the June Agreement, did not include the 15-16 well. The June Agreement was amended by a second agreement, executed by the parties in August 1994 (the August Agreement; collectively, the June and August Agreements are referred to as the Agreement). The assets detailed in Schedule "A" to the Agreement (the Legal properties) listed nine wells, including the 15-16 and 10-21 wells and one battery.

In addition to his involvement with Legal, Mr. Forster also acted as a director of Tartan throughout the above negotiations and the eventual sale of the Legal properties. Mr. Forster continued to be a director of Tartan until 1996, when he was asked to resign.

Further to the Agreement, CCG received an application dated January 27, 1995, from Legal requesting the transfer of nine well licences to Tartan. Following receipt of the transfer application, the EUB's Field Surveillance Group (FSG) continued to deal with Tartan regarding operational and environmental concerns associated with the Legal properties. Tartan was advised by FSG that it could operate and produce the Legal properties if certain operational and environmental measures were undertaken.

On June 6, 1995, FSG suspended operations at the battery facility, as the well licence transfers had not been finalized and the operational and environmental concerns had not been addressed. FSG wrote to Tartan and stated that operations would remain suspended until such time as Tartan complied with the operational and environmental remedial requirements to FSG's satisfaction.

Dealings between Tartan and CCG continued throughout 1995 and into 1996 with respect to the well licence transfer applications. The EUB allowed production of the Legal properties to resume based on the understanding that the well licence transfers would be addressed by the parties in a timely fashion. On July 5, 1995, Legal was informed by CCG that it had stopped processing the well licence transfer application, as information necessary to complete the application had not been submitted by Tartan. As neither party resubmitted a well licence transfer application, CCG issued Closure Order No. C 701 on December 20, 1996, to the licensee Legal concerning the nine wells. A well licence transfer application was later filed by Tartan for seven of the wells following ongoing discussions between Tartan and CCG. The subject application did not include the 15-16 and 10-21 wells (the wells). The Board consented to

the well licence transfer application on July 22, 1997, and the seven wells were deleted from the closure order.

In August 1997 Legal filed an application pursuant to Section 18(5) of the Oil and Gas Conservation Act RSA 1980 c. O-5 (OGCA) requesting an EUB-directed transfer of the wells' licences to Tartan. Tartan objected to the application, stating that it had not agreed to the purchase of the 15-16 well and that it would not accept the environmental liabilities associated with it. Tartan further submitted that it was not responsible for the 10-21 well, since Legal did not own the mineral rights associated with it. The EUB denied Legal's application on the grounds that it was not in the public interest to transfer the wells into the name of a company that had not agreed to be the licensee or to accept the responsibilities and obligations of a licensee. Legal and Tartan were advised by CCG that the well abandonment order would deem both companies responsible for the well abandonments. Further, CCG informed both parties that they would have a "refer" status placed against their corporate names, and that the refer status would be considered when deciding on the disposition of further applications, should they fail to abandon the wells by the date specified in the order.

Given Tartan's refusal to accept the transfer of the wells' licences and the fact that Legal, in CCG's opinion, was no longer entitled to produce the wells, CCG ordered the wells abandoned. On March 4, 1998, Abandonment Order No. AD 98-10 was issued by CCG pursuant to Section 20.2 of the OGCA and Section 3.068 of the Oil and Gas Conservation Regulations (the OGCR). The abandonment order directed Legal Oil & Gas Ltd., Charles W. Forster, and United Compass Resources Ltd. to abandon the wells. The abandonment order specified that the wells be abandoned by May 4, 1998.

The abandonment provisions of the OGCA that were in force when the abandonment order was issued are 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.
- 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.
 - (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.
- 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.
 - (2) The well abandonment costs may be determined by the Board
 - (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 per cent 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.
- 92 (2) The costs of or incidental to the work of control, completion, suspension or abandonment of the well to the satisfaction of the Board are a debt payable by the licensee of the well to the Board.

The parties named in the abandonment order did not carry out the abandonments in the time prescribed. As a result, the EUB's Operations Group (Operations) hired Treeline Well Abandonment and Reclamation Ltd. (Treeline) to perform the abandonments. Treeline provided Operations with an estimate for the two abandonments and Operation's initial approval for expenditure (AFE) for the abandonments was \$63,772.00. The 15-16 well was abandoned without difficulty for \$31,086.83. Treeline experienced difficulty abandoning the 10-21 well because of the existence of an unreported plug in the wellbore. Due to the coil tubing unit on the well, which added \$12,026.89, the final abandonment costs for the 10-21 well amounted to \$46,487.30. Final abandonment operations of the two wells were completed by Operations in October 2000 for a final cost of \$77,574.13.

1.2 Interventions

By way of letters dated September 15, 1998, and November 4, 1998, United Compass Resources Ltd., now known as Tartan Energy Inc., and Legal Oil & Gas Ltd., and Charles W. Forster requested the Board to review its decision to name the above parties in the abandonment order, pursuant to Section 42 of the ERCA. The Board granted the requests for a review and on July 26, 1999, directed that a public hearing be held.

1.3 Hearing

The Board originally scheduled a hearing to commence on November 3, 1999. Counsel for Legal and Charles W. Forster requested that the hearing be adjourned. The Board granted the request for adjournment by way of letter dated October 27, 1999.

The Board convened the public hearing on December 12 and 13, 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 and abbreviations used in the report 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

V. Vogt

D. Agnew

Legal Oil & Gas Ltd. (Legal) and Charles W. Forster

B. Graham

C. Forster

Tartan Energy Inc. (Tartan)

J. F. M. Maxwell

L. P. Lees

Alberta Energy and Utilities Board staff

P. K. Ferensowicz

J. P. Mousseau, Board Counsel

Notice of the hearing was also provided to Steven and Vivian Visscher and Visscher Farms Ltd., the persons upon whose lands the 15-16 well was located. The Visschers did not participate in the hearing but filed a submission with the Board dated December 11, 2000.

Various parties at the proceeding gave certain undertakings. Upon receipt of all the undertakings, the Board provided the parties with an opportunity to make additional submissions with respect to any issues arising from the undertakings. Submissions were filed by all of the parties. The Board panel reviewed the undertakings and the associated submissions and was satisfied that a reopening of the hearing was not warranted.

2 ISSUES

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

- What legislation applies to the abandonment order and any subsequent abandonment cost order?
- Is Tartan a working interest participant (WIP) in the wells?
- Were Legal, Mr. Forster, and Tartan properly named in Abandonment Order AD 98-10?
- What parties should be named in the EUB's abandonment cost order?
- Were the abandonment costs incurred on behalf of CCG reasonable?

3 WHAT LEGISLATION APPLIES TO THE ABANDONMENT ORDER AND ANY SUBSEQUENT ABANDONMENT COST ORDER?

On June 30, 2000, Bill 13 was proclaimed in force. Bill 13 introduced significant revisions to the abandonment provisions of the OGCA. The abandonment order was issued prior to the enactment of these new provisions, and it is clear to the Board that its issuance is governed by the pre-Bill 13 legislation. As the associated abandonment cost order has yet to be issued, the question of what legislation should govern its issuance arose at the proceeding.

3.1 Views of the Corporate Compliance Group

It was CCG's position that because the abandonment order was issued prior to the proclamation of Bill 13, liability for the abandonments, i.e., those named in any subsequent invoice or associated abandonment cost order, should be determined by the pre-Bill 13 legislation. CCG submitted that the liability for the abandonments crystallized when the wells were ordered abandoned. CCG stated that the function of the abandonment cost order is only to quantify the liability established by an abandonment order. CCG argued that it would be logically inconsistent and confusing to apply the old legislation when issuing the abandonment order and to apply the new legislation when issuing the associated abandonment cost order.

CCG submitted that support for this position was found in Section 31(1) of the Interpretation Act R.S.A. 1980, c. I-7. That section provides that when an enactment is repealed, the repeal does not affect any liability acquired, accrued, accruing, or incurred under the enactment so repealed.

3.2 Views of Tartan

Tartan maintained that the liability for abandonment costs did not crystallize until such time as the quantum of abandonment costs and the persons responsible for those costs were determined. Tartan argued that because the Board had yet to decide what parties would be named in the abandonment cost order, the new legislation must apply to any subsequent abandonment cost orders it issued.

3.3 Views of Legal and Charles W. Forster

Legal and Mr. Forster argued that because the abandonment cost order had not yet been issued, it was not clear which legislation would govern its issuance. Legal and Mr. Forster stated that they did think the Board should clarify this issue, but they did not expressly indicate what legislation they believed to be more appropriate. A significant portion of Legal and Mr. Forster's arguments, however, relied on the provisions of the new legislation.

3.4 Views of the Board

The Board recognizes that the new abandonment provisions are significantly different from their predecessors. Under the old legislation, there was no express requirement that a licensee be a WIP in the well or facility to be abandoned. The new legislation expressly requires a licensee to be a working interest participant. Under the old legislation, liability for abandonment costs was contained in two separate provisions. The licensee's liability for abandonment costs was established in Section 92 of the OGCA, and the WIP's liability for such costs was established under Section 20.3 of the OGCA. While the new legislation continues to allocate liability for abandonment costs among WIPs, there is no provision that expressly allocates abandonment liability to the licensee.

If the Board were to conclude that the subsequent invoice and the abandonment costs order should be issued under the new legislation, neither Charles Forster nor Legal could be named in that order. As such, it is necessary for the Board to determine which legislation shall govern the issuance of the abandonment cost order.

Section 31(1)(c) of the Interpretation Act provides guidance on the effect of repeal on a right or obligation established by a repealed provision. It states as follows:

- 31(1) When an enactment is repealed in whole or in part, the repeal does not
 - (c) affect any right privilege obligation or liability acquired, accrued, accruing or incurred under the enactment so repealed.

In *Scott v. College of Physicians and Surgeons* (1993) 95 D.L.R. (4th) 706, at 714, the Saskatchewan Court of Appeal was required to provide an interpretation of Section 23(1) of the Interpretation Act (Sask.), which is identical to Section 31(1)(c) of the Alberta Interpretation Act. The Board finds the following passage from this decision to be of assistance in understanding the effect of that provision:

Broadly speaking, the purpose of these saving provisions lies in fairness. They reflect the desire of the legislature not to be taken on repeal to have interfered, unfairly, with what had been wrought under the law, as it existed before repeal. And so they are aimed at preserving what has been done on the strength of a repealed enactment and at saving, among other things, such rights and obligations as prior to repeal had been acquired or had accrued or were accruing thereunder. The aim, of course is thus to preserve and save, without at the same time rendering repeal inoperative.

It is the Board's view that it acquired its right to abandon the wells and collect the associated abandonment costs when the parties named in the abandonment order failed to abandon the wells by May 28, 1998. CCG, on behalf of the EUB, then took positive steps to exercise its rights, including hiring Treeline and commencing abandonment work on the wells. The Board notes that these activities commenced in 1999, prior to the enactment of Bill 13. After CCG began its abandonment work, there was no question that the EUB would incur costs that it was entitled, by statute, to collect from the parties liable for such costs. It is the Board's position, therefore, that its right to collect abandonment costs had accrued or was accruing prior to the enactment of Bill 13.

Arising in conjunction with the EUB's right to collect abandonment costs is the liability of responsible parties to pay such costs. It is the Board's position that an abandonment order requires those named therein to abandon the cited well or facility or to accept fiscal responsibility for abandonment costs incurred by a third party on their behalf. An abandonment cost order is only issued if those named in the abandonment order fail to abandon the cited well or facility within the required time and the EUB carries out the abandonment on their behalf. In that regard, the abandonment cost order does not create the liability for the abandonment costs; it only quantifies the liability established by the abandonment order. In short, it is the Board's position that the liability for abandonment costs arises upon the issuance of the abandonment order.

In summary, it is the Board's position that both the EUB's right to collect abandonment costs and the parties' liability for abandonment costs accrued or were accruing prior to Bill 13 being proclaimed in force. The Board finds, therefore, that both the abandonment order and the subsequent abandonment cost order should be governed by the legislation in force when the above rights and liabilities accrued or began accruing, that which was in force prior to the enactment of Bill 13. In the Board's view, this approach is consistent with Section 31(1)(c) of the Interpretation Act and provides interested parties with sufficient guidance to ascertain what legislation will apply in any similar situations that may arise in the future.

4 IS TARTAN A WORKING INTEREST PARTICIPANT IN THE WELLS?

4.1 Views of the Corporate Compliance Group

CCG maintained that the Board has the necessary jurisdiction to hear and determine the question of whether or not Tartan is a WIP in the wells. CCG relied on Section 86 of the OGCA, which states:

86 Except where otherwise provided, the Board has exclusive jurisdiction to examine, inquire into, hear and determine all matters and questions arising under this Act.

CCG argued that Section 86 clearly gives the EUB the jurisdiction to interpret agreements and make determinations as to their force and effect in order to apply the abandonment and cost liability provisions of the OGCA. As a result, CCG submitted, it is not necessary for the Board to stay its decision on the issues arising in the proceeding until such time as a court has made a determination in this regard. CCG testified that such a stay would be contrary to the public interest, as it could contribute to delays in abandoning wells that present a risk to the public. Further, CCG stated such a stay could make enforcement of costs against responsible parties more difficult and would provide responsible parties with an unreasonable mechanism for delaying payment of abandonment costs.

CCG argued that there was sufficient evidence before the Board for it to reasonably conclude that the Legal properties, including the wells, had been transferred from Legal to Tartan. CCG relied on the terms of the Agreement and the subsequent conduct of the parties in support of this position.

CCG further argued that Tartan would not be entitled to rescind the Agreement should the Board find that it affected the transfer of the Legal properties. CCG submitted that the Board did not possess the necessary jurisdiction to grant a rescission of the agreement under the doctrine of equity and that the common law remedy of rescission was unavailable to Tartan because of its conduct prior to and following its execution of the June and August agreements.

4.2 Views of Tartan

Tartan argued that it was inappropriate for the Board to make a determination with regard to the Agreement and its effect because that very matter was currently the subject of an action before the Court. Tartan submitted that interpretation of the Agreement and its effects was a matter beyond the Board's jurisdiction and an issue that may only properly be determined by the Court. Finally, Tartan argued that given the pending litigation, a determination of the matter by the Board could potentially prejudice one of the parties to that litigation. In light of the above, Tartan submitted that it would be appropriate for the Board to stay any abandonment cost order until litigation of the matter was concluded.

Tartan argued that support for this position could be drawn from the Board's decision in the South Alberta proceeding (EUB *Decision 2000-51*). Tartan suggested that in that case the Board refused to

impute liability on two of the parties named in an abandonment cost order because of its reluctance to interpret an agreement executed by the parties that purported to transfer the properties in question.

Tartan further argued that should the Board decide that it was appropriate to consider its status as a WIP, it submitted that it was definitely not a WIP. It stated that it never intended to acquire an interest in the 15-16 well and that because Legal did not possess the mineral rights associated with the 10-21 well, it could not convey an interest in the 10-21 well.

In the alternative, Tartan argued that had it acquired an interest in the wells pursuant to the Agreement, it was then entitled to rescind the Agreement on grounds of misrepresentation and breach of fiduciary duty. Given this right to rescission, Tartan argued, it should not be considered a WIP.

4.3 Views of Legal and Charles W. Forster

Legal and Mr. Forster disagreed with the proposal by Tartan that any decision of the Board be stayed pending the resolution of the litigation between the two. It was Legal and Mr. Forster's position that the Agreement effectively transferred the Legal properties, including the wells, to Tartan. Legal and Mr. Forster suggested that as the courts had yet to decide on the matter, the Agreement remained in full force and effect. Legal and Mr. Forster further submitted that given the circumstances, Tartan was not entitled to rescission and adopted the position of CCG in that regard.

4.4 Views of the Board

The Board is entitled by its governing legislation to name WIPs in its abandonment orders and abandonment cost orders. The Board notes in that regard that the term "working interest participant" is defined in the OGCA as "a person who owns a beneficial or legal undivided interest in a well or facility under agreements that pertain to the ownership of that well or facility."

It is the Board's view that the above definition requires, by implication, the review of agreements that pertain to interests in wells or facilities when making a determination of a party's status as a WIP. If, in the Board's opinion, it has sufficient evidence before it to reasonably conclude that a party is a WIP, then it possesses the necessary jurisdiction to require that WIP to meet its abandonment obligations pursuant to the OGCA. The Board recognizes that it may not be able to make such a determination in every case and that its ability to do so is entirely dependent upon the evidence before it.

The Board finds that the following evidence is undisputed by all parties:

- Both Legal and Tartan executed the June and August Agreements.
- The wells were included in the August Agreement.

- Both the June and the August Agreements included a provision that clearly stated that the mineral rights associated with the 10-21 well would soon expire.
- Tartan paid Legal the consideration required by the Agreement.
- Tartan transferred to Legal the share consideration required in the Agreement.
- On or about July 1, 1994, both parties executed well licence transfers associated with the Legal properties, including the wells.
- On or about July 1, 1994, both parties executed surface lease transfers associated with the Legal properties, including the wells.
- On or before July 1, 1994, both parties executed petroleum and natural gas lease transfers associated with the Legal properties.
- Although all of the above agreements and transfers were executed by the parties, Legal never forwarded a general conveyancing document in relation to the Legal properties.
- Tartan brought some of the Legal properties onto production and received production revenue in that regard.
- Tartan made royalty payments to Jay Ventures Ltd. in accordance with paragraph 18 of the Agreement.
- On September 21, 1994, Tartan entered into a farm-out agreement with Provost Petroleum Ltd. (Provost) and K.J. Resources Ltd. (K.J.) wherein it agreed to assign a portion of its interest in the Legal properties in exchange for a minimum of \$200,000.00 worth of work done on the wells. The August Agreement was incorporated into the farm-out agreement.
- On October 5, 1994, the Board approved Tartan's application to appoint Provost as its Registered Corporate Agent in the province of Alberta. Edward Brownless, the director of Provost, signed the application on its behalf. Mr. Brownless was also a director of Tartan at that time.
- Provost or K.J. acquired the petroleum and natural gas (P&NG) rights associated with the 10-21 well.
- Provost or K.J. performed or had performed on its behalf a "work-up" of the 10-21 well. After completing the work-up, a plug was set in the 10-21 well.

Based on all of the above, the Board finds that it has sufficient evidence to determine that Tartan became the 100 per cent WIP in the Legal properties, including the wells, upon its execution of the

Agreement. It is the Board's position that the evidence before it clearly demonstrates that Tartan assumed custody and control over the Legal properties, including the wells, following the execution of the agreement. In arriving at this conclusion, the Board considered the terms of the Agreement and the conduct of the parties both prior and subsequent to its execution. The Board also considered the lack of general conveyancing documents at the time when the Agreement was executed and found that this was in no way determinative of the issue.

The Board finds that Tartan's argument based upon the South Alberta decision must also fail. One of the issues in conflict at that proceeding was whether or not a transfer of shares took place between two parties. While an agreement to that effect had been drafted and executed, both parties to the agreement stated in evidence that the deal had not been completed and the shares had not been transferred. The Board's decision in that case was that it could not conclude that the transfer had been affected by the agreement in the face of evidence to the contrary provided by the parties to the agreement. It was not a case, as suggested by Tartan, where the Board refused to make a determination because of a lack of jurisdiction to consider the agreement as evidence.

Further, the Board finds that Tartan's assertion that it had never intended to acquire the wells cannot be supported. Both wells were clearly included in the assets to be transferred in the Agreement as executed by Tartan. Tartan's conduct following the Agreement's execution, including the work performed on the 10-21 well, the reacquisition of the mineral rights associated with the 10-21 well by its agent or farm-out partner, and the inclusion of the wells in the 1994 United Compass Annual Report, all indicate that Tartan had assumed control and ownership of the wells.

Given its determination that Tartan is the 100 per cent WIP in the Legal properties and thus the wells, the Board must also address the question of whether or not Tartan is entitled to rescission of the Agreement, or to any other like remedy, based upon the conduct of Legal or Mr. Forster. It is the Board's position that this issue raises a question of law whose determination is beyond its jurisdiction. The Board acknowledges that such remedies may only be granted by the Court. The Board finds, however, that until the Court renders a contrary decision in this regard, it considers the Agreement to be valid and binding upon the parties.

5 WERE LEGAL, MR. FORSTER, AND TARTAN PROPERLY NAMED IN ABANDONMENT ORDER AD 98-10?

5.1 Views of the Corporate Compliance Group

CCG stated that all the parties named in the abandonment order were properly named pursuant to the abandonment provisions of the OGCA. CCG argued that Subsection 20.2(1) of the OGCA and Section 3.068 of the OGCR provide the authority for naming Legal, that Section 20.1, in conjunction with Subsection 20.2(1), provides the authority for naming Mr. Forster, and that Subsection 20.2(2) provides the authority for naming Tartan.

CCG stated that the EUB correctly exercised the discretion granted to it by Section 18 of the OGCA when it refused to direct the transfer of the licences of the wells to Tartan, as it was not in the public interest to transfer the wells to a party unwilling to accept the obligations of a licensee. As a result, CCG submitted, the fact that Legal may only be the “bare” licensee of the wells (i.e., without a working interest) does not excuse it from its obligations to abandon them. Given these facts, CCG stated, Legal was properly named in the Abandonment Order.

CCG further argued that Mr. Forster, as the 100 per cent shareholder and president of Legal, was clearly a “person in control” of Legal. CCG pointed out that Section 20.1 of the OGCA provides clear statutory authority for naming “persons in control” in abandonment orders and thus concluded that Mr. Forster was properly named in the abandonment order.

With regard to Tartan, CCG argued that it was the 100 per cent WIP in the wells and thus CCG had the authority to name it pursuant to Section 20.2(2). As stated earlier, it was CCG’s contention that Tartan’s execution of the Agreement and its subsequent conduct provided ample evidence to establish Tartan’s ownership interest in the Legal properties, including the wells.

CCG submitted that as WIPs are liable for abandonment costs pursuant to Section 20.3, it is only proper that they be provided with the opportunity to perform the abandonment work themselves. CCG submitted that Section 20.2 does not require the EUB to choose between the licensee and the WIPs when issuing an abandonment order; rather, it provides the authority to issue an abandonment order to both the licensee and the WIPs.

When questioned on why CCG had decided not to name a “person in control” of Tartan, it responded that it was the policy of CCG not to do so. CCG stated that it was difficult to determine “persons in control” of WIPs because it often lacked the necessary information to do so. As a result, CCG recognized that it would be problematic to consistently name such persons and could potentially result in an inconsistent application of the legislation. CCG submitted that in the interests of fairness and certainty, it decided that they would name only “persons in control” of the licensee.

With respect to the timing of the abandonment order, CCG argued that there was no pressing need for abandonment of the wells until it became apparent that neither Legal nor Tartan was willing to assume responsibility for the care and custody of the wells. CCG suggested that when such a situation arises, there is a greater likelihood of accidental damage, vandalism, or theft of the equipment associated with the well or facility. Such events, CCG testified, could in turn lead to greater problems when the well is eventually abandoned and could create a significant risk to public safety. CCG further stated that in 1994 the Board’s governing legislation underwent significant amendments that gave rise to a more rigorous well monitoring and abandonment process. CCG concluded that the timing of the abandonment order should in no way limit or reduce the liability of the parties named in the abandonment order.

5.2 Views of Tartan

For the reasons stated earlier in Section 4.2 of this decision, Tartan argued that the Board should not make a determination as to its status as a WIP. Further, Tartan denied being a WIP in the Legal

properties and specifically stated that it had never become a WIP in the wells. For all of the above reasons, Tartan argued that it would be improper to include it in the abandonment order.

Tartan further argued that even if it had become the sole WIP in the Legal properties and the wells, it should not be liable for the abandonment and associated costs because CCG should have ordered the wells abandoned long before Tartan acquired its interest. Tartan argued that the wells had a long history of environmental problems that the EUB became aware of long before Tartan became involved with them. Tartan suggested that it would be entirely unfair to hold it responsible for such costs when the EUB should have dealt with them with years ago.

Tartan requested the Board to remove the names United Compass Resources Ltd., Tartan Energy Inc., and any other related parties from the abandonment order. Tartan further requested that the Board refuse to remove the names of Legal and Mr. Forster from the abandonment order and to name only Legal and Mr. Forster in any subsequent abandonment cost order.

5.3 Views of Legal and Charles W. Forster

For the reasons stated previously in Section 4.3 of this decision, Legal and Mr. Forster submitted that Tartan was the 100 per cent WIP and that Legal was only the “bare” licensee of the wells.

Legal and Mr. Forster argued that Tartan clearly acknowledged its obligations to abandon the wells in its 1994 Annual Report. Legal and Mr. Forster submitted that Tartan should not be allowed to escape its statutory obligation to properly abandon the wells and pay the associated costs thereof simply because it was dissatisfied with them.

Mr. Forster admitted that he is the controlling mind of Legal, its sole director, shareholder and corporate officer. Legal and Mr. Forster were of the opinion, however, that naming Mr. Forster in the EUB’s abandonment order was unfair, as CCG was unwilling to name persons in charge of Tartan in the abandonment order.

In light of the above, Legal requested that the Board delete the names of Legal and Mr. Forster from the abandonment order. Legal further submitted that if the Board was unwilling to make the above deletions, then it requested that Tartan continue to be named in the abandonment order as the 100 per cent WIP and be held ultimately responsible for all of the abandonment costs associated with the wells.

5.4 Views of the Board

It is the Board’s position that the persons named in the abandonment order were properly included therein. The Board directs that the abandonment order remain in full force and effect. The Board finds that Legal was properly named in the abandonment order as the licensee of the wells pursuant to Section 20.2(1) of the OGCA. The Board finds that Mr. Forster was properly named in the abandonment order pursuant to Section 20.1 and Subsection 20.2(1) of the OGCA.

It is the Board's view that the above provisions very clearly establish the licensee's obligation to abandon the wells. The Board finds that those obligations were in no way diminished by the fact that, in the Board's opinion, Legal is no longer a WIP in the well. In that regard, the Board refers to Section 4(b) of the OGCA, which states:

4. The purposes of this Act are

- (b) *to secure the observance of safe and efficient practices* in the locating, spacing, drilling, equipping, constructing, completing, reworking, testing, operating, maintenance, repair, suspension and *abandonment of wells and facilities* and in operations for the production of oil and gas [emphasis added].

It is the Board's position that Section 4 places an obligation upon it to ensure that wells and facilities are abandoned in a safe and efficient manner. The Board recognizes that this goal would have been placed in jeopardy had CCG agreed to transfer the subject well licences from Legal to Tartan when Tartan clearly expressed that it would not assume the responsibilities incumbent upon a licensee.

As stated previously in Section 4.4 of this decision, it is the Board's position that Tartan is the 100 per cent WIP in the wells, and as such the Board finds that it was properly named in the abandonment order pursuant to Subsection 20.2(2).

Further, the Board finds that the abandonment provisions implicitly contemplate the naming of both the licensee and the WIPs in an abandonment order. It is the Board's position that to interpret those provisions otherwise could contribute to an unfair and inconsistent process and would provide a less efficient mechanism for achieving the safe abandonment of wells and facilities.

The Board carefully considered the evidence of Tartan at the hearing as to whether or not an individual or individuals should be included in the abandonment order as a "person in control" of Tartan. In the South Alberta decision (*Decision 2000-51*) the Board stated the following with regard to what constitutes a "person in control" for the purposes of Section 20.1 of the OGCA:

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.

It is the Board's position that the evidence before it does not suggest the existence of a person or persons within the Tartan organization who possessed the power to direct the business of Tartan and make decisions that would be complied with and acted upon by Tartan. In that regard, the Board notes

the testimony of Mr. Lees of Tartan, who stated that no single shareholder owns more than 50 per cent of the voting shares of Tartan. Further, none of the parties presented any evidence to establish that an individual or individuals within Tartan exercised the power or control necessary to demonstrate actual control of Tartan.

With regard to CCG's decision to not name "persons in control" of WIPs, the Board understands the difficulties faced by CCG in making such a determination for WIPs. The Board finds, however, that this position is contrary to the express wording of the legislation and that the applicable provisions provide no discretion in this regard. While the Board recognizes CCG's intent to achieve fair application of the abandonment provisions, it cannot support this approach. As such, the Board expects that CCG shall name "persons in control" of WIPs whenever it has the necessary information to do so.

Finally, with respect to the timing of the wells' abandonment, the Board finds that CCG's approach was reasonable. While the evidence produced by Tartan did indicate that the wells had previously been considered for abandonment because of nonproduction, the Board notes that up until the execution of the Agreement, the EUB had some confidence that the wells were under the care and custody of the licensee. It was not until 1997, when the EUB discovered that neither the licensee, Legal, nor the 100 per cent WIP, Tartan, refused to assume responsibility for the wells, did a pressing need for their abandonment arise. The Board therefore finds that the abandonment order was issued at an appropriate time and that liability of the parties named in the abandonment order should in no way be limited or reduced as a result of the timing of its issuance.

6 WHAT PARTIES SHOULD BE NAMED IN THE EUB'S ABANDONMENT COST ORDER?

6.1 Views of the Corporate Compliance Group

CCG maintained that all of the parties named in the abandonment order should be named in the associated invoice and, if necessary, abandonment cost order. CCG submitted that Section 20.1 and Subsection 20.2(1) of the OGCA clearly establish the liability of Legal and Mr. Forster for the abandonment of the wells, that Subsection 92(2) of the OGCA clearly established the liability of Legal and Mr. Forster for the associated abandonment costs, and that Section 20.3 of the OGCA clearly established the liability of Tartan, as the 100 per cent WIP, for abandonment costs.

CCG argued that the above sections must be interpreted in a manner that avoided conflict and absurdity and gave meaning to the intent and purpose of the legislation. CCG suggested that while Sections 20.3 and 92(2) may appear to contradict each other, when examined within the context of the entire abandonment scheme, the two provisions may be reconciled. CCG stated that Section 20.3 requires WIPs to pay abandonment costs pursuant to their proportionate share. CCG further argued that Sections 20.2 and 92(2) work in concert to establish a similar obligation for the licensee. With regard to the interplay between Sections 20.2 and 92(2), CCG argued that it would be absurd to make the licensee responsible for the abandonment of a well or facility but not require it to pay the associated

abandonment costs should it fail to comply with the abandonment order. Such an interpretation, CCG stated, would encourage noncompliance and promote avoidance of the legislative intent of the abandonment scheme.

Based on the above, CCG concluded that the abandonment scheme was designed to enable the EUB to collect the abandonment costs it incurred from as many parties as possible. In that regard, CCG noted that the legislation contains a mechanism that allows a party who pays a disproportionate share of abandonment costs to easily collect amounts owing from other parties. While CCG recognized that, generally, the licensee will be a WIP, it argued that even if the licensee does not have a working interest, the legislation requires that it accept liability for the abandonments as ordered.

CCG further argued that the abandonment provisions clearly establish Mr. Forster's liability for abandonment costs because he was the "person in control" of Legal. CCG submitted that Section 20.1 of the OGCA, which extends liability to "persons in control" for the purposes of Sections 20.2, 20.3, and 20.4 of the OGCA, also applied to Section 92(2). CCG stated that it would be absurd to interpret the OGCA to mean that Mr. Forster was required to abandon the wells under Section 20.2 but was not required to pay abandonment costs under Section 92(2) if he failed to do as required. CCG reiterated its position that an interpretation of the abandonment scheme that promoted compliance should be preferred over an interpretation that did not. CCG stated that Mr. Forster was properly named in the abandonment order and that he failed to take the steps required of him. As a result, CCG argued, Mr. Forster should be responsible, along with Tartan and Legal, for the abandonment costs incurred by the EUB, because to allow him to escape liability would encourage noncompliance.

CCG further contended that the liability should be apportioned on a joint and several basis among those named in the order. CCG argued that support for such a position may be drawn from Section 20.3(4), which allows a party who has paid a disproportionate share of the abandonment costs to collect the proportionate share of others.

6.2 Views of Tartan

For the reasons previously recorded in Sections 4.2 and 5.2 of this decision, Tartan argued that it was not a WIP in the Legal properties and specifically not a WIP in the wells.

Tartan also argued that Legal should be made responsible for the associated abandonment costs pursuant to Section 20.4 of the old legislation or Section 20.6 of the new legislation.

6.3 Views of Legal and Charles W. Forster

Legal maintained that Tartan should be liable for the abandonment costs related to the wells. Legal argued that, based on the evidence previously detailed, Tartan was the 100 per cent WIP in the wells and, pursuant to Section 20.3, was responsible for the associated abandonment costs.

Legal and Mr. Forster argued that under the new legislation, neither Mr. Forster nor Legal was liable for the abandonment costs. Legal and Mr. Forster noted that the new legislation did not contain personal liability provisions for those in control of a WIP or a licensee. Legal and Mr. Forster further pointed out that the new legislation attributed all abandonment liability to WIPs and, as a “bare” licensee, Legal would not be responsible for abandonment costs. Legal and Mr. Forster concluded that any abandonment cost order issued by the Board should name Tartan alone because Tartan was ultimately responsible for such costs under Section 20.3 of the old legislation. Legal and Mr. Forster also suggested that while Section 92(2) may make Legal liable to reimburse the EUB for abandonment costs, the real liability for such costs rested with the WIP. As such, Legal and Mr. Forster argued, the invoice for the abandonments should be issued to Tartan, and only if the EUB were unsuccessful in recovering the abandonment costs from Tartan should it look to Legal.

Legal and Mr. Forster also argued that it would be improper to name Mr. Forster in an abandonment cost order because Section 92(2) is not subject to the personal liability exception contained in Section 20.1. Legal and Mr. Forster argued that Section 92(2) contains no language that establishes personal liability for the person in control of the licensee. Absent such language, Legal and Mr. Forster submitted, it would be improper to pierce the corporate veil and attribute liability to Mr. Forster. Legal and Mr. Forster also argued that it would be improper to attach personal liability to Mr. Forster as a “person in control” of Legal and to not name the “persons in control” of Tartan.

Legal and Mr. Forster argued that if the EUB did name them in an abandonment cost order, it would be improper to make them responsible for the extra abandonment costs incurred as a result of the unreported work on the 10-21 well performed by or on behalf of Tartan. Legal argued that if the order did name both Legal and Tartan as responsible for costs, it would be most appropriate to allocate the costs equally between the parties named. Legal submitted that it would be unfair to make the parties liable on a joint and several basis.

6.4 Views of the Board

As stated previously in Section 4.4 of this decision, it is the Board’s position that Tartan is the 100 per cent WIP in the wells. As such, the Board finds that it is appropriate to name Tartan, pursuant to Section 20.3 of the OGCA, in the forthcoming invoice and any subsequent abandonment cost order.

With regard to Tartan’s suggestion that the Board should look to Legal for 100 per cent of the abandonment costs pursuant to Section 20.4 of the OGCA, it is the Board’s position that until it issues an invoice or an abandonment cost order, it cannot rely on Section 20.4. While the Board acknowledges that Section 20.4 allows the EUB to collect abandonment costs from a previous WIP if the current WIP is not the licensee and fails to pay its proportionate share of abandonment costs, it is the Board’s view that Section 20.4 in no way limits or affects a successor WIP’s liability for abandonment costs. It is the Board’s position that Section 20.3 establishes a WIP’s ultimate liability for abandonment costs and that Section 20.4 merely provides the Board with another avenue for the collection of the abandonment costs it has incurred.

The Board also concludes that Legal should likewise be named in the forthcoming abandonment costs invoice and, if necessary, abandonment cost order, pursuant to Section 92(2) of the OGCA. It is the Board's view that Section 92(2) very clearly establishes the liability of the licensee for abandonment costs and that liability is in no way diminished by the fact that, in the Board's opinion, Legal is no longer a WIP in the wells.

With regard to Mr. Forster, the Board notes that the personal liability for "persons in control" established by Section 20.1 is expressly limited in its application to Sections 20.2, 20.3, and 20.4. The Board is cognizant that the creation of such personal liability represents an extraordinary measure, which generally may only be established by express legislation to that effect. It is the Board's position that absent such express language, the Board is not prepared to extend the liability of the licensee for abandonment costs, pursuant to Section 92(2), to the person in control of the licensee.

For the reasons previously expressed in Section 4.4 of this decision, the Board does not feel the timing of the issuance of the abandonment order in any way limits or restricts the liability of the parties named in the abandonment order for the costs of the abandonment.

Finally, it was also necessary for the Board to decide on what basis the costs should be allocated between the parties. The Board recognizes that this matter of allocation arises only as a result of the rare circumstances of this case. Generally, the licensee will also be a WIP, so there will be no need to reconcile Section 20.3 with Section 92(2).

It is the Board's position that the abandonment costs shall be payable on a joint and several basis. The Board finds support for this position within the abandonment provisions themselves. The Board notes that the legislation creates liability for both the licensee and the WIPs under separate provisions. The Board also recognizes that the legislation provides a mechanism by which a party who has paid a disproportionate share of costs to collect the proportionate share of parties who have yet to contribute. Taken together, the Board finds that the most logical way to reconcile the two provisions is to read them as creating joint and several obligations for the licensee, Legal, and the WIP, Tartan. The Board finds that such an interpretation gives meaning to the ambiguity in the statute and best meets the intentions of its drafters.

Given the above, the Board finds that it must reject Legal's request that Tartan alone be held responsible for the abandonment costs incurred as a result of the unreported plug in the 10-21 wellbore. The Board therefore directs that an invoice for the total abandonment costs be issued to Tartan and Legal. Should the abandonment costs not be paid by the parties within the time provided in the invoice, the Board further directs that an abandonment cost order be issued naming both Legal and Tartan as responsible for such costs.

7 WERE THE ABANDONMENT COSTS INCURRED ON BEHALF OF THE CORPORATE COMPLIANCE GROUP REASONABLE?

7.1 Views of the Corporate Compliance Group

CCG submitted that the abandonment costs related to the wells were reasonable given the scope and nature of the work performed. CCG argued that it provided Legal and Tartan with ample opportunity and notice that failure to carry out the abandonments as ordered would result in CCG performing the abandonments on their behalf and at their expense.

CCG testified that prior to 1997 there was no pressing need to abandon the wells. CCG stated that it initiated abandonment operations after it had verified complaints from the Visschers (the landowners) concerning the apparent lack of a responsible party to exercise the necessary care and custody over the 15-16 well. As stated above, the EUB shared the Visscher's concerns in this regard and thus did not agree to transfer the two well licences from Legal to Tartan.

CCG testified that it had two distinct processes for awarding well abandonment contracts. It stated that for larger projects, with many similar wells or facilities, it used a selective bid process based upon an established bid list. However, for projects that required a great deal of expertise and for small projects, CCG testified that the bid process might not be used. CCG stated that some projects required the specific expertise of a particular company that had proven itself efficient, capable, and reliable in such situations. CCG further submitted that when the contract involved a very small number of wells, the use of the bid process was less efficient and more expensive than awarding the contract to a company with a proven track record in the work required.

CCG stated that this project was too small to efficiently utilize the bid process. CCG further testified that the contract was awarded to Treeline because CCG knew it to be an experienced company with a proven track record in efficient abandonment work conducted for the EUB.

CCG testified that the abandonment operations conducted by Treeline on the 15-16 well were successfully completed without encountering any problems. CCG submitted that the actual abandonment cost for the 15-16 well was \$31,086.63.

CCG testified that when it calculated the initial abandonment costs for the 10-21 well, it was estimated to be \$31,900, as Operations expected a two-zone abandonment. CCG reported that abandonment operations on the 10-21 well commenced on January 21, 2000, but that subsequently Treeline experienced problems abandoning the well due to an unforeseen obstruction in the wellbore. Abandonment work had to be suspended until the nature of the obstruction within the wellbore could be determined. CCG testified that when it conducted the abandonment operation on the 10-21 well, neither CCG nor Treeline was in actual possession of information or records that would indicate the existence of a plug in the wellbore. Given the unexpected obstruction within the 10-21 wellbore, CCG was forced to re-evaluate its abandonment options and review abandonment costs expended to date.

CCG testified that in trying to determine the nature of the obstacle within the wellbore, it approached various sources and was eventually able to view tour reports provided by legal counsel for Corram Well Services Ltd. (Corram). CCG testified that in viewing the tour reports, it had discovered that Corram had performed work on the 10-21 well during the months of November and December 1994 on behalf of Provost Petroleum Ltd. The tour records suggested that a plug had been set in the 10-21 wellbore. CCG further testified that once the potential obstruction within the wellbore became known, it was then necessary to seek additional funding for the project to cover the unanticipated costs. Due to the difficulties associated with the plug in the 10-21 well, the final abandonment cost was \$46,487.30, an increase of \$14,587 over the original AFE originally planned for. CCG submitted that the final cost for the abandonment of the wells exclusive of GST was \$77,574.13.

In its final argument, CCG maintained that there was urgency in having the abandonment work performed, as there was no apparent responsible party exercising care and custody over the wells. It pointed out that awarding the work to Treeline was reasonable given the anticipated scope and nature of the abandonment project. With respect to scrutiny of abandonment costs by an independent third party, as raised in EUB *Decision 2000-51*, CCG noted that the abandonment of the wells began prior to that decision being issued. CCG added that a process such as described in *Decision 2000-51* was being developed.

CCG further testified that the abandonment costs were potentially subject to three different levels of scrutiny. First, the abandonments were under the direction of Mr. Agnew, who testified to having been involved in approximately 200 abandonments on behalf of the EUB. Mr. Agnew also stated that he had extensively reviewed the abandonment costs incurred by industry and concluded that the costs for these two wells were not excessive in comparison to like wells in that area. In addition to Mr. Agnew's supervision, CCG testified that the abandonment costs were also subject to the scrutiny of his supervisor, who had the opportunity to review and question the costs incurred. Finally, CCG stated that the costs could also be reviewed by the manager of the Fund Advisory Committee, the body responsible for the management of the Orphan Well Fund.

CCG argued that the substantive issue for the Board's determination was whether the incurred abandonment costs were reasonable given the nature and scope of the actual abandonment project and taking into account the unexpected difficulties associated with abandoning the 10-21 well. It argued that the use of Treeline and the process used in awarding the abandonment work was immaterial with respect to the reasonableness of abandonment costs incurred. CCG argued that the costs could have been controlled had Tartan and or Legal carried out the abandonment work under their respective supervision. CCG concluded that the actual abandonment costs were within the range of costs that Tartan itself had estimated.

7.2 Views of Tartan

In its written submission, Tartan stated that CCG had incurred unreasonable costs in abandoning the wells. Further, Tartan asserted that CCG had not adhered to its own protocols in having the proposed abandonment work tendered out for bid. Tartan further stated that there was no immediate urgency for

CCG to abandon the wells, as they had been suspended for a significant period of time prior to the actual well licence transfers. In addition, it pointed out that information with respect to environmental contamination associated with the Legal properties was known to CCG prior to Tartan becoming involved with the Legal properties but was not acted upon by CCG and did not become a significant issue until the well licence transfer process was engaged.

Tartan further pointed out that in undertaking abandonment operations CCG was influenced by a landowner complaint with respect to the 15-16 well, that significant time had elapsed since the EUB abandonment order was issued, and that CCG was intent on reporting the abandonment costs to the tribunal.

During his direct testimony at the hearing, Mr. Lees made no comment with regard to the awarding of the abandonment project. In cross-examination, Mr. Lees stated that the abandonment costs appeared to be “high” and that he possessed an engineering report suggesting that an amount of \$28,000 was reasonable for well abandonment.

In its final argument, Tartan pointed out that in situations where abandonment cost orders were issued by the regulator against noncompliant operators, adversarial positions could arise with respect to the reasonableness for such costs, and thus it would be appropriate for the regulator to appoint an independent third party to scrutinize abandonment costs levied by the tribunal. It argued that the Board had previously ruled that abandonment projects should be tendered out through a bid process.

Tartan concluded by asserting that there was no incentive for CCG to maintain reasonable costs for the well abandonment work, as there was no third-party scrutiny of the abandonment costs incurred and the abandonment work was not tendered.

7.3 Views of Legal and Charles W. Forster

Legal and Mr. Forster made no comment in written submissions, during testimony at the hearing, or in final argument as to the awarding of the abandonment project or the quantum of the abandonment costs.

As stated previously in Section 6.3 of this decision, Legal and Mr. Forster did suggest that it would be unreasonable for the Board to hold them responsible for the extra abandonment costs occasioned by the unreported plug placed in the 10-21 wellbore by or on behalf of Tartan.

7.4 Views of the Board

The term “well abandonment costs” is defined in Section 1(1)(y.1) of the pre-Bill 13 OGCA 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 EUB's governing legislation is silent as to the manner in which it awards contracts for the abandonment of wells and related facilities. The Board notes that Legal made no comment in its written submissions, during its testimony at the hearing, or in final argument as to the awarding of the abandonment project or the quantum of the abandonment costs.

In addition to Tartan's written submission, the Board notes that Mr. Lees, in cross-examination, stated that the abandonment costs appeared "high" and that he possessed an engineering report that suggested an amount of \$28,000 was a reasonable cost for well abandonment. The Board notes that Mr. Lees provided no elaboration or additional information, including an actual or near comparison, to substantiate his claim that the abandonment costs incurred by CCG were too high.

The Board is satisfied that the abandonment project was awarded to a qualified and experienced company with a proven track record of performing abandonment work for the EUB. The Board acknowledges that the abandonment project involved two wells and that therefore the EUB's selective bid process would not apply in these particular circumstances. The Board is of the view that comparing this abandonment project with that performed on behalf of South Alberta Energy Corp. is misleading given the magnitude of the latter abandonment program. Further, the Board accepts the urgency in having the wells abandoned, as there was no apparent responsible party exercising care or custody of the subject wells for some time. The Board is always sensitive to landowner complaints and in this particular case the Board notes that the 15-16 well was located on the Visschers' property.

The Board is, however, concerned that there may be some uncertainty in the eyes of the public with regard to the criteria used by CCG and Operations when awarding abandonment projects. In the South Alberta decision (*Decision 2000-51*), the Board directed that notice be provided to the public of the criteria upon which the EUB determines its bid list for large projects. The Board directs that such notice shall also include the criteria used to determine whether a project will be awarded by direct contract or through the bid process. Further, such notice shall also detail the criteria used to select an abandonment contractor when the bid process is not used.

The Board is cognizant of the potential difficulties associated with abandoning wells that have not been properly maintained or monitored for some time. The Board accepts and acknowledges the difficulties that arose during the abandonment operations of the 10-21 given the unreported plug in the wellbore and that this resulted in a more difficult and expensive abandonment process than originally anticipated. The Board is concerned that work was performed on the 10-21 well by Corram on behalf of Provost/Tartan and was not reported to the EUB as per the regulatory requirements.

The Board finds that, given the scope and nature of this well abandonment project, it was appropriate to award it to a company with a proven track record. The Board is satisfied that the abandonment costs for the 15-16 well are not excessive and that the actual costs incurred for the abandonment of the 10-21 well, given the lack of information with respect to unexpected plug in the wellbore, resulted in a more difficult and expensive abandonment process than originally anticipated.

8 DECISION

Having carefully considered all of the evidence, the Board concludes that Legal Oil & Gas Ltd., Charles W. Forster, and Tartan Energy Inc. were properly named in the abandonment order and that no amendments to that order are therefore required. The Board further concludes that Legal Oil & Gas Ltd. and Tartan Energy Inc. are statutorily required to reimburse the EUB for the costs incurred on their behalf for the abandonment of the wells. The Board finds that Legal Oil & Gas Ltd. and Tartan Energy Inc. shall be responsible for such costs on a joint and several basis.

The Board further finds that the awarding of the abandonment project to Treeline without the use of the established bid process was warranted given the small size of the project. The Board also concludes that the costs incurred in abandoning the wells on behalf of the parties are fair and reasonable given the scope and nature of the abandonments.

The Board therefore directs CCG to issue an invoice for the well abandonment costs incurred to the two aforementioned parties. The Board further directs that should Legal Oil & Gas Ltd. and Tartan Energy Inc. not pay the costs contained in the invoice within the specified time period, CCG issue an abandonment costs order naming Legal Oil & Gas Ltd. and Tartan Energy Inc.

Dated at Calgary, Alberta, on February 13, 2001.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

B. F. Bietz, Ph.D., P.Biol.
Presiding Board Member

<original signed by>

T. McGee
Board Member

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