ALBERTA ENERGY AND UTILITIES BOARD
Calgary Alberta

PRINCE RESOURCE CORPORATION,
RICHARD YU **Decision 2002-053**
REVIEW OF ABANDONMENT COSTS **Board-Initiated**
ORDER NO. ACO 2000-1 **Proceeding No. 2000231**

1 INTRODUCTION

On June 1, 2000, the Corporate Compliance Group (CCG) of the Alberta Energy and Utilities Board (EUB/Board) issued Abandonment Costs Order No. 2000-1 (ACO 2000-1) to Prince Resource Corporation (Prince), Richard Yu, Bruce Macovichuk, David Schick, Danny Mak, and Priscilla Yu (the applicants) to pay abandonment costs totaling $ 374 717.87 for three wells with the unique identifiers of 00/10-35-075-10W5/0, 100/10-36-75-10W5/0 and 00/08-31-075-18W5/0 (the wells). ACO 2000-1 included a 25 per cent penalty and GST. By way of letter dated June 30, 2000, the applicants requested the Board, pursuant to Section 43 of the Energy Resources Conservation Act (ERC Act) R.S.A. 1980 c. E-11 to review ACO 2000-1. The Board granted the applicants' request and a public hearing of the matter was conducted at the EUB's offices in Calgary, Alberta, on March 26, 27, and 28, 2002.

CCG is responsible for the administration and implementation of the EUB's compliance and enforcement functions. In this capacity, CCG monitors and participates in the EUB's abandonment activities. In this particular situation, CCG had been dealing with the applicants prior to the issuance of the abandonment orders, and it was CCG that provided the Board with the information that led to the issuance of the abandonment orders and ACO 2000-1. All of the Board's decisions, orders, and directions with respect to the wells were provided to the applicants through CCG.

In the normal course, the role of EUB staff and counsel at a hearing is to provide assistance and advice to the Board in those areas that fall within their particular expertise. Board counsel examines witnesses and is often consulted by all parties 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, 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, as well as staff from the EUB's Operations Group. 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 applicants' witness and made final argument in support of its position.

CCG was treated by the Board as an independent party. As such, all communication between CCG and the Board with respect to the proceeding was conducted via correspondence copied to the applicants, and neither the CCG staff who participated in the proceeding nor the lawyer

assigned to represent CCG had any contact with the Board with respect to those matters before, during, or after the proceeding.

1.1 Background

The Oil and Gas Conservation Act (OGC Act) R.S.A. 2000 c. O-5 requires any party applying for an EUB licence to have an identification (company) code issued by the EUB. On May 30, 1996, Prince applied for an EUB identification code and Mr. Richard Yu, as chief executive officer of Prince, signed a declaration formally acknowledging Prince's responsibilities as an EUB licensee. The EUB identification code was issued to Prince, which subsequently submitted an application to the EUB for the transfer of 16 well licences from Cutbank Oil & Gas Co. Ltd. (Cutbank) to Prince.

When Prince acquired the 8-31 well in 1996, it was already subject to an abandonment order issued against Cutbank. The abandonment order reflected Cutbank's failure to renew the mineral lease associated with the well. To ensure the transfer, Prince committed to convert the 8-31 well to an injection well by no later than December 1997, and Prince posted an abandonment deposit for the well in the amount of $24 500. CCG notified Prince that failure to convert the well into an injector by the stipulated date would result in the EUB initiating action to have the well abandoned. The abandonment order issued to Cutbank was rescinded by the EUB when it approved the well transfer.

All 16 well licence transfer applications were approved by the EUB on December 23, 1996. In its licence application, Prince advised the EUB that it owned 100 per cent of the working interest in all of the wells that are now the subject of ACO 2000-1.

On February 26, 1998, CCG issued Abandonment Order No. AD 98-9 with respect to the 8-31 well for its failure to convert the well into an injector within the stipulated time frame. The order required that the well be abandoned on or before April 24, 1998. Abandonment Order AD 98-14 was issued by CCG on June 18, 1999, against the 10-35 well after the subject well failed a 1997 packer isolation test. Prince never addressed the packer problem, and the order directed that the well be abandoned for environmental and public safety reasons.

Abandonment Order AD 1999-358 was issued on June 18, 1999, for the 10-36 well, following notification by the Department of Energy to Prince and the EUB that the Crown mineral lease underlying the subject well had lapsed. The order stipulated that the10-36 well be abandoned on or before August 17, 1999.

In the fall of 1999, CCG and Prince met and explored various options to resolve the concerns surrounding the wells. No resolution was reached, and Prince was informed that if it failed to abandon the wells, as per the orders, by a specified date, CCG would undertake the abandonments and invoice Prince for the costs. Prince failed to abandon the wells within the time provided, and CCG instructed the EUB's Operations Group to proceed with the abandonments. The Operations Group hired Prestige Technical Services Ltd. (Prestige) to perform the abandonments. Prestige provided Operations with an estimate for the three abandonments, and Operations' initial approval for expenditure (AFE) for the abandonments was $162 000.00. Final

abandonment operations of the three wells were completed by Operations in November 2000, for a total cost of $356 305.65.

1.2 Interventions

Prince, Richard Yu, Bruce Macovichuk, David Schick, Danny Mak, and Priscilla Yu applied, pursuant to Section 42 of the ERC Act, for a hearing to review ACO 2000-1. The applicants applied for

- a declaration that Richard Yu, Bruce Macovichuk, David Schick, Danny Mak, and Priscilla Yu, and any other director or officer of Prince Resource Corporation are not persons in control of Prince Resource Corporation and are not liable to pay for any amounts that may be owing by Prince Resource Corporation; and
- a reduction in the amount required to be paid pursuant to ACO 2000-1, to $ 60 000.00.

The Board granted the parties' requests for a review and directed that a public hearing be held.

1.3 Hearing

The Board originally scheduled the hearing for May 24, 2001, but received several requests from the parties to adjourn the hearing. The Board granted the requests, and the matter was set down for hearing in Calgary, Alberta, from March 26 to 28, 2002, before a Board panel consisting of T. McGee, Presiding Member, M. J. Bruni, Q.C., Acting Board Member, and K. G. Sharp, P.Eng., 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
	M. Douglas
Prince Resource Corporation, Richard Yu	
F. Monaghan	R. Pacholko
Alberta Energy and Utilities Board staff	
P. K. Ferensowicz	
J. P. Mousseau, Board Counsel	

2 PRELIMINARY MATTERS

2.1 CCG's Motion for Further and Better Responses to Information Requests

On March 5, 2002, CCG filed a Notice of Motion and supporting affidavit with the EUB requesting further and better responses from the applicants to its information requests. By letter from the Board's counsel dated March 15, 2002, the Board indicated that it would consider the motion as a preliminary matter at the outset of the hearing. CCG withdrew this motion at the proceeding.

2.2 The Applicants' Motions for Further and Better Disclosure and Costs

On March 22, 2002, the applicants filed a Notice of Motion, without a supporting affidavit, requesting that the Board direct CCG to

- make further and better disclosure of all documents in the possession of the EUB relating to Board Order AD 95-265 and its decision and all documents regarding the transfer of the well licence in relation to well 8-31;

- produce and disclose all documents pertaining to the well screening analysis done by Mr. Bob Stoddart, then with the EUB's Liability Management Section, in the period leading up to ACO 2000-1; and

- pay the costs of this application to Prince.

2.2.1 Views of the Applicants

The applicants withdrew their third motion at the proceeding but requested the Board to consider the first two. The applicants argued that CCG had not produced all of the documents relating to AD 95-265, relating to the transfer of the 8-31 well, and relating to Mr. Stoddart's well screening analysis.

2.2.2 Views of CCG

In response to the applicants' first motion, CCG indicated that it had disclosed or produced to the applicants all the material and relevant documents within its power and control. CCG stated that it may not have produced all of the documents disclosed to the applicants because the applicants had never requested such production. CCG agreed to produce all such documents to the applicants, and they were duly provided. With respect to the second motion, CCG stated that it had disclosed and produced all documents related to Mr. Stoddart's well screening analysis.

2.2.3 Views of the Board

The Board found that CCG had disclosed the existence of all the documents requested by the applicants and that with the production of the remaining documents to Prince, the motion had been addressed.

2.3 The Applicants' Submission Requesting That Bruce Macovichuk, David Schick, Danny Mak and Priscilla Yu Be Removed from ACO 2000-1

The applicants pointed out that the Board, by way of a letter dated September 21, 2001, stated that Bruce Macovichuk, David Schick, Danny Mak, and Priscilla Yu shall be dropped from the proceeding. Following correspondence from both parties on the issue of whether ACO 2000-1 should be amended to reflect this change, the Board determined that any decision on this regard would be made as part of the proceeding. The applicants questioned why the Board had not amended the order when first requested and asked that the Board make a determination as to their inclusion in the cost order.

2.3.1 Views of CCG

CCG stated that it did not intend to present evidence with respect to the liability of the above-named directors of Prince. It stated that it had originally asked that they be dropped from the proceeding because CCG had no evidence to suggest that they were "persons in control" of Prince and because the Board had authorized the issuance of the abandonment order only as against Prince and Mr. Yu. CCG stated, however, that it may be prudent for the Board to amend ACO 2000-1 after the proceeding, as it was possible that Prince or Mr. Yu could introduce evidence indicating that one of these individuals was a person in control.

2.3.2 Views of the Board

After considering the parties' submissions, the Board found that the named directors would be removed from ACO 2000-1 unless the Board heard evidence to the contrary. In making this decision, the Board relied on statements made by the parties indicating that neither intended to present any evidence in this regard.

2.4 Was Mr. Yu Properly Named in ACO 2000-1?

2.4.1 Views of the Applicants

The applicants argued that Mr. Yu should not be liable for the abandonment cost for the 10-35 well, as he was not named in the original abandonment order and was not named in an internal EUB memo with respect to the abandonment costs associated with that well. In its written submission, the applicants argued that because Bill 13 was assented to by the Legislature on May 30, 2000, ACO 2000-1, which was issued on June 1, 2000, must fall under the new legislation, which does not provide for personal liability of persons in control. At the proceeding, however, the applicants made no arguments with respect to the applicable legislation and, in fact, suggested that the pre-Bill 13 legislation applied to the orders in question.

2.4.2 Views of CCG

CCG put forth the position that because the abandonment orders and abandonment costs order were issued prior to the proclamation of Bill 13, which amended the OGC Act, those named in any subsequent invoice or associated abandonment costs order should be determined by the pre-Bill 13 legislation. CCG submitted that the abandonment orders and abandonment costs order at issue were issued prior to the proclamation of Bill 13, and as such CCG viewed the liability for

abandonment and costs as having crystallized at or prior to that time. CCG submitted that its approach was consistent with the Board's previous ruling in *Decision 2000-51*.[1] Furthermore, CCG submitted that Section 31(1) of the Interpretation Act R.S.A. 1980 c. 1-7 provides support for its position. 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.

2.4.3 Views of the Board

The Board ruled that the pre-Bill 13 legislation was applicable at all material times, as the new legislation did not come into force until approximately one month after ACO 2000-1 was issued. The Board noted that the legislation specifically contemplated the naming of persons in control in both abandonment orders and abandonment costs orders. It further concluded that the question of whether Mr. Yu was a person in control of Prince, and thus liable for the abandonment cost for all the wells, was one of the primary issues to be decided in the proceeding, and the Board noted that such a determination could not be made until evidence and argument had been presented and considered. Any reference to the OGC Act contained within this report will refer to the pre-Bill 13 legislation, the relevant sections of which are attached to this report in the Appendix.

3 ISSUES

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

- Should the wells have been ordered abandoned?
- What parties should be named in the EUB's Abandonment Costs Order?
- Were the abandonment costs reasonable?

4 SHOULD THE WELLS HAVE BEEN ORDERED ABANDONED?

4.1 Views of CCG

CCG stated that all three wells were properly ordered abandoned pursuant to the OCG Act and its Regulations. Specifically, CCG relied on Section 3.068 of the OGC Regulations, which states:

> 3.068 (1) A licensee shall abandon a well
> (a) On the termination of the mineral lease, surface lease or right of entry
> (b) If the Board notifies the licensee that in the opinion of the Board the well may be an environmental or a safety hazard,
> (c) If the licensee is dissolved or the corporate registry status of the licensee is struck or rendered liable to be struck under any legislation governing corporations,
> (d) If the licensee has suspended the well in contravention of the requirements established by the Board under section 3.020, or
> (e) When so ordered by the Board.

CCG testified that it is the EUB's policy to issue an abandonment order to a licensee when the mineral rights associated with the licensed well have lapsed. CCG stated that upon receiving

[1] EUB *Decision 2000-51* (July 17, 2000), South Alberta Energy Corp., Greg Justice, 693040 Alberta Ltd., and Marc Dame Review of Abandonment Costs Order No. ACO 98-1.

notice from the Department of Energy that a mineral lease has expired, it writes to the licensee and provides 30 days to the licensee to explain what steps it intends to take with respect to reacquisition of the mineral rights. CCG stated that if the licensee does not establish an appropriate plan with respect to the well, or if it fails to respond to the notice within the time provided, an abandonment order for the well is issued. Should the licensee fail to take the appropriate steps to abandon the well within the time period stated in the abandonment order, CCG indicated that it proceeds to conduct the abandonment operations on behalf of the licensee.

CCG was of the view that Prince was given ample notice of the events leading up to the actual abandonments. It stated that Prince was advised on numerous occasions of what steps it was required to take to ensure compliance. CCG stated that its deadlines for those actions were expressly communicated to the applicants, through Mr. Yu, as were the potential consequences of noncompliance.

CCG pointed out that when Prince acquired the 8-31 well in 1996, it committed to convert it to an injection well by no later than December 1997. CCG stated that this commitment was necessary because Prince did not hold the mineral rights associated with the well. CCG testified that it expressly told Prince that the EUB would abandon the well if Prince failed to convert it to an injector within the time allotted. CCG stated that Prince did not live up to its commitment and that in February 1998 it ordered the well abandoned, because Prince lacked the necessary mineral rights to produce the well and had taken no positive steps to convert it. For the 10-35 well, CCG stated that an abandonment order was issued for the 10-35 well following a failed packer isolation test in 1997, which Prince failed to remedy. CCG explained that a failed packer test is indicative of lack of wellbore integrity and thus represents a threat to the environment and public safety. CCG stated that after Prince allowed the associated mineral rights to lapse for the 10-36 well, it issued a well abandonment order in accordance with the policy described above.

CCG also testified that environmental and public safety issues became a consideration in its actions to seek abandonment of the wells, as, in its opinion, the record showed that Prince was not providing proper care and custody of the wells. CCG was of the view that such properties have a potential to become a real threat to the environment and to public safety. In its submission of July 2001, CCG wrote that conditions found at the three well sites during abandonment operations confirmed that Prince was not providing the required proper care and custody of the wells.

In its argument, CCG concluded that it would have undertaken the abandonment work at the three wells at an earlier date had it not been for its accommodating position with respect to Prince's requests for extensions. Abandonment work was undertaken in cold weather conditions, as two of the wells were winter access only and there was the expectation that abandonment of the 8-31 well would not be difficult. CCG further stated that, from a budgetary perspective, there were sufficient funds in the EUB's budget to conduct the work. With respect to the 10-35 and 10-36 wells, CCG submitted that there were operational efficiencies to be gained by abandoning the wells in sequence, as Prestige's equipment personnel were in the area to conduct the abandonments.

4.2 Views of the Applicants

Prince questioned the need for the abandonment of the wells in question. It stated that there was

no evidence when the abandonment orders were issued or when the wells themselves were abandoned that these wells represented a threat to the environment or public safety. Prince argued that that there was no emergent need to abandon the wells immediately and that extra costs were incurred by doing so during the coldest part of the winter.

With respect to the 8-31 well, the applicants submitted that they only agreed to assume the obligations for the 8-31 well because the EUB had made that a condition for the transfer of the other wells. They further stated that there was no evidence that this well represented a threat to the environment or public safety. The applicants made a similar argument with respect to the 10-36 well and submitted that CCG was aware of the applicants' plan to post lands associated with the well so as to reacquire the underlying mineral rights. The applicants stated that the abandonment of the 10-36 well deprived them from realizing any potential profit. For the 10-35 well, the applicants stated that while CCG was aware of the failed packer test, they were not aware of any other downhole problems and stated that, in their opinion, the failed packer test did not represent a threat to the environment.

The applicants argued that there was no credible evidence before CCG to determine that the abandonment of these wells was a high priority. They further stated that had Prince been provided with additional time to address the problems associated with the wells, the related costs would have been significantly lower.

4.3 Views of the Board

The Board notes that the language in subsection 3.068 of the ERC Regulations is mandatory and clearly states that a licensee shall abandon a well upon termination of the mineral lease. In the Board's view, the regulation recognizes that once the mineral rights associated with a licensed well are allowed to lapse, the character of the well may shift from that of an asset to that of a liability. It also recognizes, in the Board's opinion, that there may be little impetus for the licensee to abandon the well on its own initiative given the costs potentially associated with such an operation.

The Board is of the view that when a well is ordered abandoned on the basis of a lapse of mineral rights, there might be some benefit to having the well inspected by the EUB's field staff to determine its condition and assess what risk, if any, it poses to the environment or public safety. The Board notes that such wells must be abandoned by virtue of its legislation; however, a timely inspection would allow the EUB to promptly determine if it must assume immediate care and custody of the well and allow for the prompt abandonment of such problem sites. The Board believes that such an inspection process be implemented in a timely manner.

It is the Board's position that the practice of issuing and enforcing abandonment orders upon the loss of mineral rights effectively safeguards both the public and industry from future liabilities. The Board notes that affected parties are provided with two sets of notice from the EUB and an opportunity to renew the mineral lease or pursue other options. Only in situations where the licensee does not respond to the two notices is the well abandoned by the EUB on the licensee's behalf.

The Board agrees that all wells in Alberta may represent a potential risk to the environment and public safety if not managed properly and that such risk will increase with neglect and disregard.

In the Board's view, the practice adopted by CCG with respect to lapsed mineral leases is appropriate and in accordance with the EUB's broad public interest mandate with respect to the environment. The Board notes that subsection 4(f) of the OGC Act lists one of the purposes of the act to be "to control pollution above, at or below the surface in the drilling of wells and in the operations for the production of oil and gas and in other operations over which the Board has jurisdiction." The Board also notes that a similar provision is found in the ERC Act.

In the Board's view, a failed packer isolation test is one strong indicator of downhole problems that must be rectified in a timely and effective manner. Absent prompt action in that regard by the licensee, the Board firmly believes that such wells must be abandoned in a timely fashion in order to protect the public interest.

The Board finds that the abandonment of the wells in question was appropriate given the circumstances. The Board notes, in that regard, that Prince provided no evidence in support of its contention that the wells were prematurely abandoned and did not pose an immediate threat to public safety or the environment. In the Board's view, Prince was provided with ample opportunity to address the concerns associated with the three wells: for the 8-13 well it had approximately 3 years to convert or abandon it, for the 10-35 well it had approximately 18 months to repair the packer or abandon it, and for the 10-36 well and it had over 6 months to reacquire the associated mineral rights or abandon it. It is the Board's position that both the condition of the wells and Prince's failure to take any steps to address the EUB's concerns in that respect necessitated the abandonment.

5 WHAT PARTIES SHOULD BE NAMED IN THE EUB'S ABANDONMENT COSTS ORDER?

5.1 Views of CCG

CCG argued that both Prince and Mr. Yu must be held responsible for the abandonment costs incurred. CCG noted that Prince is both the licensee and the 100 per cent working interest participant in the wells in question. CCG stated that the applicable legislation makes it very clear that the working interest participant is responsible for the reasonable abandonment costs associated with the wells.

It was CCG's position that Mr. Yu was a "person in control" of Prince, as defined in Section 20.1 of the ERC Act. CCG stated that all of its communications with Prince had been through Mr. Yu and noted that he had occupied various senior positions with the company, including president, CEO, and secretary. CCG also pointed out that Mr. Yu exercised proxy rights at shareholder meetings and often issued interim reports on behalf of the other directors of Prince. CCG stated that it was evident from its dealings with Mr. Yu that he was making decisions on behalf of Prince without consultation or reference to its other shareholders and directors. CCG submitted that it was Mr. Yu who requested all of the extensions on the abandonment orders and it was Mr. Yu who informed CCG of what wells would be abandoned and what wells would be brought into compliance with the EUB's regulatory framework. CCG stated that the only contact given for Prince was Mr. Yu and that the only phone numbers ever provided for Prince were Mr. Yu's phone numbers. CCG asserted that the above constituted strong evidence supporting its contention that Mr. Yu exercised real, effective, and practical control of Prince at the material times.

CCG argued that it may be appropriate for the Board to draw an adverse inference from Mr. Yu's decision not to provide evidence in this regard and from Prince's failure to provide company minutes reflecting its corporate governance.

CCG stated that Section 20.1 is broadly worded and that there is no impediment in applying it to persons in control of widely held, publicly traded companies. CCG submitted that every company must have a person in control, as companies are inanimate and must be operated by individuals.

CCG submitted that the fact that Mr. Yu was not named in the abandonment order for the 10-36 well is not a bar to his being held liable for its associated abandonment costs. CCG argued that there is nothing in the legislation that limits liability for abandonment costs to those parties named in an abandonment order. CCG asserted that as a person in control of the 100 per cent working interest participant, the Board was required, by its legislation to name him in ACO 2000-1.

With respect to the process for collecting the abandonment costs, CCG requested the Board to amend ACO 2000-1 so as to remove the other named directors, but to otherwise confirm that cost order in the amounts stated as against Prince and Mr. Yu. CCG pointed out that additional costs had been incurred on the abandonments since ACO 2000-1 was issued and sought direction from the Board to further invoice the applicants for these costs. CCG argued that such a process was appropriate, given the length of time it has been required to carry these costs. CCG requested that the Board impose the 25 per cent penalty, as provided in subsection 20.3(3) of the OGC Act, to the costs detailed in ACO 2000-1, but stated that the remaining costs should not be subject to the penalty unless the applicants failed to pay them within the time prescribed.

5.2 Views of the Applicants

It was the applicants' position that Mr. Yu should not be responsible for the abandonment costs associated with the three wells in question. They stated that it was not the intention of the legislation to foist liability on the directors and officers of companies that derived little or no benefit from the wells or licences in question. They stated that the likely intention of the legislation was to address companies that are governed by a 100 per cent shareholder, and that these provisions were not intended to capture publicly traded companies subject to proper corporate governance.

With respect to the 10-36 well, the applicants argued that because Mr. Yu was not named in the abandonment order, the EUB is precluded from making him liable for the costs associated with it. With respect to the 8-31 well, they suggested that no evidence was presented to demonstrate that Prince intended to acquire this well. They stated that this well was originally ordered abandoned in 1994, when it was still owned by Cutbank. They argued that the liability for the abandonment should be addressed by Cutbank, as it was the recipient of the benefits associated with the well. Further, the applicants submitted that because they never acquired the mineral rights associated with the 8-31 well, they could not be the licensee of that well. In support of this, they relied upon the Board's Legal/Tartan decision (*Decision 2001-11*).[2]

[2] EUB *Decision 2001-11* (February 13, 2001), Legal Oil & Gas Ltd., Charles W. Forster, and Tartan Energy Inc., Review of Abandonment Order 98-10.

The applicants asserted that CCG did not demonstrate that Mr. Yu was a person in control of Prince and that it was not incumbent upon Mr. Yu to demonstrate that he was not a person in control. They stated that Mr. Yu was nothing more than a reservoir engineer who tried to run a company that was undercapitalized. They pointed out that Mr. Yu was a minority shareholder in Prince and that there were a number of other directors involved in the operation of the company. They also argued that the fact that he communicated with the EUB on behalf of the company does not mean that he was the person in control of the company.

It was the applicants' position that should the Board find them liable for the abandonment costs, it would not be appropriate to apply the 25 per cent penalty provided for in subsection 20.3(3) until the time to make such payment, as provided for in the amended abandonment order, had lapsed.

5.3 Views of the Board

The Board notes that the applicants did not dispute the fact that Prince was the licensee and the 100 per cent working interest participant in the wells. In the Board's view, the language of subsection 20.3(1) is clear and unambiguous and establishes that well abandonment costs shall be paid by the working interest participants in accordance with their proportionate share in the well. The Board also notes that, as Prince is the licensee of the wells in question, the EUB is precluded from seeking cost recovery for the abandonments from Cutbank by virtue of subsection 20.4(2).

With respect to the naming of Mr. Yu in ACO 2000-1, the Board, in the South Alberta decision (*Decision 2000-51*), stated the following with regard to what constitutes a person in control:

> 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 there is nothing within the legislation that expressly or implicitly limits the application of the personal liability provisions to companies controlled by a single shareholder or operated by a single employee or officer. In the Board's view, these provisions are equally applicable to all companies and will be applied in every situation where the Board determines that a person associated with a company has the capacity to exercise decision-making authority on matters of corporate policy.

The evidence presented by CCG indicates that Mr. Yu exercised the power to direct the business of Prince; he routinely made policy decisions on behalf of Prince and acted upon those decisions. The Board notes, in that regard, that all of the EUB's contact with Prince was via Mr. Yu; he signed all correspondence and attended all meetings. It was apparently Mr. Yu who arranged the extension on the abandonment orders in the fall of 1999, and it was apparently Mr. Yu who

decided that the additional abandonment deposit for the10-35 well was not something that Prince would entertain.

The Board also notes that Mr. Yu was in a unique position to clarify his role in the corporate governance of Prince and chose not to provide evidence in that regard. While Mr. Yu's failure to testify does not establish that he is a person in control, the lack of such evidence from him, in the face of the evidence provided by CCG, provided no grounds for the Board to determine otherwise.

Based on the above, the Board finds that Mr. Yu was at all material times a person in control of Prince as contemplated by Section 20.1 and, along with Prince, is responsible for the abandonment costs associated with the wells in question.

With respect to the 10-36 well, the Board is not convinced by the applicants' argument that the failure to include Mr. Yu in the associated abandonment order prohibits his liability for the abandonment costs. The governing legislation clearly directs that working interest participants and persons in control of those working interest participants will be responsible for abandonment costs, with no proviso requiring that such persons be named in the associated abandonment order.

The applicants argued that they never acquired the mineral rights associated with the 8-31 well, they should never have become the licensee of the well, and thus they cannot be held liable for its abandonment costs. In the Board's view, this argument must fail. Prince became the licensee of the well in 1996 by way of a transfer from Cutbank when it agreed to convert the well to a water injection well. The Board notes, in that regard, that the applicants provided no evidence to support their contention that they had been forced by the EUB to accept the transfer of the well. Had Prince not made that commitment, the well would not have been transferred. In making the commitment and accepting the transfer of the 8-31 well from Cutbank, Prince assumed the liabilities associated with the well.

With respect to the allocation of responsibility for abandonment costs between Prince and Mr. Yu, the Board finds that these parties are jointly and severally liable for this debt to the EUB. The Board notes that the legislation establishes liability for both the working interest participant and persons in control of the working interest participant without creating a priority for enforcement purposes. In the Board's view, the application of joint and several liability in this situation gives meaning to the ambiguity in the statute and best meets the intentions of its drafters.

6 WERE THE ABANDONMENT COSTS REASONABLE?

6.1 Views of CCG

CCG submitted that the abandonment costs related to the three wells were reasonable given the scope and the nature of the work performed. CCG argued that it provided Prince with ample opportunity, as well as express notice that failure to carry out the abandonments as ordered would result in CCG performing the abandonments on Prince's behalf and at its expense.

CCG stated that its original estimate for the abandonment costs was $ 162 000. In determining the original cost estimate, CCG noted that it had no information with respect to downhole conditions on any of the wells, nor was it in a position to predict weather conditions during the abandonment operations.

CCG argued that it was necessary to conduct the abandonments during winter months because the 10-35 and 10-36 wells could only be accessed in the winter. It testified that the access road for the10-35 well had to be rebuilt before actual abandonment operations at the well site could commence. CCG noted that the 8-31 well site was also inaccessible, as there was no approach off the road to the well site. CCG stated that the access road leading to the 10-36 well site was snow covered and that snow removal and road repair operations had to be undertaken before access could be gained.

CCG noted a number of complications with respect to the abandonment of the 8-31 well, including a broken rod string, a lodged rod pump, heavy wax build-up, and communications between the tubing and the casing. CCG stated that these conditions contributed to additional abandonment costs, as did the need for additional tubing, pressure testing, logging and analysis of data, and cementing operations required to remedy the corroded casing.

While no downhole difficulties were encountered at the 10-36 well site that were as significant as the others, CCG noted that there was a concerted effort required to clean up the debris at the site. These cleanup activities included the decommissioning of the battery facility at the 10-36 well site. CCG submitted that it spent a total of $356 305.65 to abandon the three wells and acknowledged that it had clearly exceeded the initial budget. CCG stated, however, that the costs incurred were reasonable given the unexpected cold weather conditions during which the wells were abandoned and the unanticipated downhole conditions of the wells.

CCG testified that the job was awarded to Prestige without a formal bidding process being instituted for the abandonment of the wells. In its submission, CCG stated that the decision to use Prestige was influenced by the size of the proposed abandonment project, the company's availability to conduct the abandonment operations in the winter of 2000, and its reputation and extensive operational history in the oil and gas industry. CCG further stated that Prestige also met the selection criteria for evaluating companies that were not previously used by the EUB. CCG noted that these operations were conducted prior to the issuance of *Decisions 2000-51* and *2001-11*, so that it did not have benefit of the Board's directions contained therein on bidding procedures.

CCG maintained that these abandonments had been properly characterized as a high priority, as Prince was not exercising care and custody over the wells. CCG noted that, at Prince's request, the corporation was granted numerous extensions over a two-year period and yet repeatedly failed to comply with the Board's direction to abandon the subject wells. CCG argued that Prince had ample opportunity to carry out abandonment work itself, and had it done so on its own initiative, the costs associated with the abandonments could have been controlled and scrutinized by Prince.

6.2 Views of the Applicants

At the hearing, a consultant hired on behalf of Prince and Mr. Yu testified that it believed the

abandonment costs were excessive given the original estimates and described this situation as cost mismanagement. The consultant acknowledged that while CCG did not use a formal bid process, this was not unusual under these circumstances. The consultant questioned why abandonment operations were conducted back to back. He also raised the issue of cost overruns incurred after completion of abandonment operations at the 8-31 well. The consultant concluded that the EUB should have reassessed the original cost estimates, including the decision to continue on with abandonment operations.

The consultant questioned the rationale for conducting abandonment activities in severe winter weather. He noted that such an environment is not conducive to the efficient employment of men or equipment and that abandonment operations should have been suspended until temperatures became milder. Prince's consultant further questioned the need for conducting abandonment operations at the 8-31 well in winter conditions, since the well was located near a highway and was accessible during both summer and winter. It was his view that conducting the abandonment of the 8-31 well in summer conditions would have resulted in cost savings of up to 50 per cent for the well.

Prince's consultant testified that in his original review of the invoices he had identified a number of inconsistencies related to the costs. Under cross-examination, however, he agreed that variances incurred in the abandonment costs were primarily the result of unforeseen downhole difficulties encountered at the time of actual abandonment. During examination by the Board, the consultant conceded that the costs incurred were appropriate given the timing of the abandonments and the unexpected downhole conditions. He maintained, however, that significant savings may have been realized by conducting the abandonments of the 10-35 and 10-36 wells in milder weather and of the 8-31 well during the summer months.

6.3 Views of the Board

The Board is satisfied that the abandonment project for the three wells was awarded to a qualified, experienced, and reputable company with sufficient experience to conduct the abandonment in an effective and professional manner. The Board acknowledges that the abandonment project involved only three wells and agrees that the EUB's selective bid process would not have been appropriate in these particular circumstances.

In *Decision 2000-51*, the Board directed that the public be provided with the policy upon which the EUB determines its bid list for large projects. The Board directed that such notice shall include

- the criteria used to determine whether a project will be awarded by direct contract or through the bid process, and
- the criteria used to select an abandonment contractor when the bid process is not used.

The Board notes that since the issuance of *Decision 2000-51*, Operations has hired an external consultant who has worked with Operations in preparing a list of recommendations with respect to the bid process. The Board also recognizes that this matter will ultimately be brought forth to the entire Board for its consideration and disposition. Given the amount of time that has lapsed since the issuance of *Decision 2000-51*, however, the Board believes this matter to be a priority to remove any uncertainty surrounding its bid processes for abandonment projects.

The Board is cognizant of the potential difficulties associated with abandoning wells that have not been properly maintained for some time. The Board accepts and acknowledges the difficulties that were encountered during the abandonment operations of the three wells. In particular, the issue with respect to access and the unknown downhole conditions, namely, the broken rod string, lodged rod pump, misplaced packer, missing tubing string, and communication problems, were all factors that increased the complexity and scope of the abandonments.

The Board is satisfied that two of the wells (10-35 and 10-36) were winter access only. The Board notes the extreme weather conditions that were in existence at the time of the abandonments and accepts that this environmental condition contributed to additional abandonment costs. With respect to the 8-31 well, the Board finds that CCG's decision to abandon it in conjunction with the other wells, rather than waiting for the summer, was reasonable. While the Board recognizes that a summer abandonment may have resulted in lower costs, it notes that some savings in rig movement were realized by conducting the 8-31 abandonment with the other two. The Board further recognizes that given Prince's disinclination to act on the abandonments, there was a need to introduce some finality into the process and bring the abandonment of these wells to a conclusion.

The Board is satisfied that the abandonment costs for the three wells are not excessive and that the actual costs incurred for the abandonment of the wells, given the lack of information with respect to downhole conditions, access problems to the well sites, and severe winter conditions, resulted in a more difficult and expensive abandonment process than originally anticipated.

The Board is also satisfied that the applicants were provided with adequate opportunity throughout the process to conduct the abandonments on their own. The Board believes that Prince was aware of the schedule established by the EUB for the abandonment of the wells in question and of the fact that the Board's legislation provided for a review of the abandonment orders. In short, the Board finds that Prince had adequate notice of the Board's intention to abandon the wells, as well as sufficient opportunity to pursue those abandonments on its own. When Prince failed to live up to the abandonment obligations associated with these wells, the EUB was obligated by its public interest mandate to carry out the work on Prince's behalf.

7 DECISION

Having carefully considered all the evidence, the Board concludes that Prince was at all material times the licensee and 100 per cent working interest participant in the wells and that it was properly named in Abandonment Costs Order 2000-1 pursuant to Sections 20.3 and 92 of the OGC Act. The Board finds that there is no evidence upon which to conclude that Bruce Macovichuk, David Schick, Danny Mak, and Priscilla Yu were persons in control of Prince at the material times. With respect to Mr. Yu, the Board finds that at all material times Mr. Yu was a person in control of Prince and was properly named in Abandonment Costs Order 2000-1, pursuant to Sections 20.1(1), 20.3 and 92 of the OGC Act. The Board further concludes that Prince and Mr. Yu are statutorily required to reimburse the EUB for the costs incurred on their behalf for the abandonment of the wells. The Board finds that Prince and Mr.Yu shall be responsible for such costs on a joint and several basis.

The Board finds that the abandonment costs incurred with respect to the wells were reasonable, given the weather conditions when the abandonment operations were undertaken and the poor condition of the wells.

Having carefully reviewed the positions of the parties, the Board finds that ACO 2000-1 must be rescinded and a new order naming Prince and Mr. Yu and reflecting the additional abandonment costs incurred in November 2000 must be issued. As a result of the changes to the order, the Board does not feel that the imposition of the 25 per cent penalty is appropriate at this time.

The Board therefore directs CCG to rescind ACO 2000-1 and issue a new Abandonment Costs Order naming Prince Resource Corporation Ltd. and Mr. Richard Yu. Should Prince Resource Corporation Ltd. and Mr. Richard Yu fail to the pay the sum listed in the abandonment costs order within 30 days of its receipt, the Board further directs CCG to amend that order to include the 25 per cent penalty provided for in subsection 20.3(3).

Dated at Calgary, Alberta, on June 18, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

<Original signed by>

T. McGee
Presiding Board Member

<Original signed by>

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

<Original signed by>

K. G. Sharp, P.Eng.
Acting Board Member

APPENDIX—APPLICABLE ABANDONMENT LEGISLATION

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.