

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**PRINCE RESOURCE CORPORATION
REVIEW OF ABANDONMENT COSTS
ORDER NO. ACO 2001-06**

**Decision 2003-029
Written Proceeding No. 1272676**

DECISION

The Alberta Energy and Utilities Board has considered the findings and recommendation set out in Board Member Report 2003-029. The Board adopts the Board Member's recommendation and directs that ACO 2001-06 is confirmed.

DATED at Calgary, Alberta, on April 28, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

Neil McCrank
Chairman

**BOARD MEMBER REPORT RESPECTING
PRINCE RESOURCE CORPORATION
REVIEW OF ABANDONMENT COSTS
ORDER NO. ACO 2001-06**

**Decision 2003-029
Written Proceeding No. 1272676**

1 RECOMMENDATION

Having considered the submissions and arguments of Prince and the written evidence provided by CCG within its submissions, the Board Member concludes that Prince was the licensee of the well and 100 per cent interest participant in the well and that it was properly named in ACO 2001-06, pursuant to Sections 28, 30, and 100 of the Oil and Gas Conservation Act (OGCA), R.S.A. 2000, c. 0-6. The Board Member further concludes that Prince is statutorily required to reimburse the Board for the costs incurred on its behalf for the abandonment of the well, as well as the penalty. The Board Member finds that the abandonment costs incurred with respect to the well were reasonable. Therefore, the Board Member recommends that the Board confirm ACO 2001-06.

2 INTRODUCTION

On December 6, 2001, the Corporate Compliance Group (CCG) of the Alberta Energy and Utilities Board (EUB/Board) issued Abandonment Costs Order No. 2001-06 (ACO 2001-06) to Prince Resource Corporation (Prince) to pay abandonment costs totalling \$29,807.31 for a well located at 06-04-072-18W5M, licence number 126850 (the well). ACO 2001-06 included a 25 per cent penalty and GST. On January 7, 2002, the Board received a request from Prince to review ACO 2001-06 under Section 40 of the Energy Resources Conservation Act (ERCA) R.S.A. 2000, c. E-10. The Board granted the review request on May 21, 2002, by way of a written hearing.

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 applicant prior to the issuance of the abandonment order and had provided the Board with the information that led to the issuance of the abandonment order and ACO 2001-06. All of the Board's decisions, orders, and directions with respect to the wells were provided to the applicants through CCG.

Because of CCG's role in the abandonment activities, its participation in the written hearing was 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. 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 applicant, and neither the CCG staff nor the lawyer assigned to represent CCG had any contact with the Board with respect to those matters before, during, or after the proceeding.

2.1 Background

On November 22, 2000, CCG issued Abandonment Order AD 2000-71 ordering Prince as the licensee and a working interest participant to abandon the well on or before December 22, 2000. The reason for issuing the abandonment order was that Prince had not complied with the CCG notice dated September 7, 2000, to abandon the well because Prince's rights to surface access were terminated by the Surface Rights Board under SRB Termination Order RC 729/2000, as required by Section 3.068 (1)(a) of the Oil and Gas Conservation Regulations (OGCR).

On November 28, 2000, CCG wrote to Prince noting that the Abandonment Order AD 2000-71 had been delivered to Prince's office and that CCG was concerned that Prince was not supplying care and custody of the well. On March 19, 2001, the EUB completed the abandonment of the well.

On October 29, 2001, CCG sent a Notice to Pay to Prince in the form of a notice to counsel for Prince for the abandonment costs of the well in the amount of \$23,845.85. Invoice No. 1719 was sent with the notice, which set out the total abandonment costs of \$66,000.63, the revenues from salvage of \$26,645.93, well abandonment trust deposit plus interest of \$17,068.86, and GST of \$1,560.00. Prince was given until November 30, 2001, to pay and was told that a 25 per cent penalty would be added to the invoiced costs if Prince did not pay and that the EUB would then order the payment of the costs. On December 6, 2001, ACO 2001-06 was issued.

ACO 2001-06 noted that Prince failed to pay the invoiced costs and that the OGCA provides for the application of a penalty up to 25 per cent of the costs. Therefore, Prince was ordered to pay the total invoiced costs of \$23,845.85 plus a 25 per cent penalty of \$5,961.46, the total amount owing being \$29,807.31, with payment due within 30 days of the issuance of the Order.

As noted above, Prince filed a review request of ACO 2001-06. After receiving submission from CCG, on May 21, 2002, the Board granted the review request, as the request was filed within 30 days of the issuance of ACO 2001-06, no hearing was held before the order was issued, and Prince was directly and adversely affected by the issuance of the order as the person liable for payment of the amount owing. However, the Board granted a written hearing on the merits of the review of ACO 2001-06, but did not grant a suspension of the enforcement of the order.

2.2 Written Hearing

On June 21, 2002, the Board issued a written process with respect to the review Proceeding No. 1272676 to the parties as set out in Appendix 1. The Board assigned a single Board Member to consider the submissions and arguments of Prince and the written evidence provided by CCG within its submissions. The procedural schedule afforded Prince the opportunity to file information requests of CCG, as well as CCG to file information requests of Prince. The schedule also provided for the filing of submissions and arguments by CCG and Prince with a reply from CCG. On July 5, 2002, Prince requested that the procedural schedule be modified to commence August 5, 2002. The Board also received several requests from the parties, and the proceedings closed on February 13, 2003.

The parties to the written hearing and abbreviations used in the report are listed in the following table.

THOSE WHO PARTICIPATED IN THE WRITTEN HEARING

Principals and Representatives (Abbreviations Used in Report)

Enforcement Section of Corporate Compliance
Group (CCG)
D. F. Brezina

Prince Resource Corporation (Prince)
F. Monaghan

Alberta Energy and Utilities Board staff
P. K. Ferensowicz
G. Bentivegna, Board Counsel

3 PRELIMINARY MATTERS

3.1 Prince's Request for Information from the Board

3.1.1 Views of Prince

On August 6, 2002, Prince wrote a letter to the Board requesting "all documentary material in possession of the Energy and Utilities Board relating to the administration, and decisions taken in relation to the Abandonment Costs Order, the Cost Order and related information which bears directly or indirectly upon those matters relating to the well located at 06-04-72-18W4M." In addition, Prince requested that Board counsel assist it in determining what is material, probative, and relevant to the hearing issues.

On August 9, 2002, counsel for the Board responded that the Board could not provide the assistance requested by Prince, as the Board is not a party but the decision-maker on the review request. Counsel for the Board pointed out that Section 27 of the Board's *Rules of Practice* provides for an information request process for the parties involved in a proceeding before the Board and it is that process that counsel should engage to obtain the information sought. Prince again raised this matter in its Submissions and Argument and added that counsel for the Board "apparently has determined that there should be no informal communication to determine what information can be produced without formal application." Prince cited two cases.

3.1.2 Views of the Board

The Board Member noted that Prince was afforded the opportunity in the proceedings schedule to made information requests of CCG, the other party to the proceeding, regarding abandonment costs relating to the well. Prince did not make any information requests of CCG.

As noted by counsel to the Board, the Board as the decision-maker will provide information on procedural matters, but it is up to the parties to obtain evidence and file relevant evidence in support of their positions. The Board even extended Prince's deadline for filing an information request to August 16, 2002, to ensure that with the clarification provided by counsel to the Board,

Prince now understood the distinction between the Board and CCG. The Board Member is of the view that cases cited by Prince do not apply, as the Board is not a party to the proceedings.

3.2 Did the Board delegate decision-making power in this hearing to one Board Member?

3.2.1 Views of Prince

Prince submitted that the Board did not have the jurisdiction to delegate to a single Board Member the powers to adjudicate upon the review hearing. Prince argued that Section 11 of the ERCA authorizes the Board to appoint a Member to any question or matter arising in connection with the business of the Board and that the “business” of the Board does not include the hearing process. Prince argued that quasi-judicial determinations are to be made by at least a quorum of three members appointed by the chair for that purpose.

3.2.2 Views of the Board

The Board Member notes that the minutes of the Board meeting of May 21, 2002, record the decision of the Board to hold a written review hearing with the single Board Member making a recommendation to the Board on the disposition of the written proceeding. A copy of the minutes was provided to Prince. The Board Member is of the view that under Section 11 of the ERCA the Board may authorize a Board Member to report on any question or matter arising in connection with the business of the Board, including a matter with respect to a hearing. The Board Member’s view is supported by Section 11(2) of the ERCA that authorizes a Board Member to exercise all the powers of the Board for the purpose of taking evidence or acquiring the necessary information for the purposes of the Board Member’s report. In this review hearing, the Board Member’s report will take the form of a recommendation.

It is important to emphasize that while the single Board Member made a recommendation to the Board, the Board is not bound to accept that recommendation. The Board as a whole has evaluated the documentary evidence, submissions, and argument and made its decision. Therefore, the Board Member dismisses Prince’s argument that it delegated its power to make a decision on a hearing to a single Board Member.

3.3 Has Prince made a case that the Board should have conducted an oral hearing in this instance?

3.3.1 Views of Prince

In its Submissions and Argument, Prince argued that that the Board did not validly exercise its discretion, as the Board did not provide evidence of the considerations the Board made to arrive at the decision to hold a written hearing. Furthermore, Prince submitted that any determination made by the Board in this matter required *viva voce* evidence from the individuals involved and that incomplete written submissions premised on nondisclosure of documents within the possession of the various departments of the EUB gave rise to an inference of institutional bias.

3.3.2 Views of the Board

The Board Member is of the view that the submissions made by Prince regarding the validity of these proceedings are without merit. Prince has not provided any evidence in support of its submissions. Prince was provided with the copies of the evidence put before the Board by CCG. The Board Member has only considered the documentary evidence filed in this review hearing and there are no undisclosed documents. The Board Member has ensured that documents were copied to all parties and requested the parties to do the same.

Furthermore, the Board, as the master of its procedure, has the discretion to decide whether to grant a written or an oral hearing. When the Board grants a written hearing, Section 45 of the Board's *Rules of Practice* provides that at any time during the written hearing, the proceeding may be disposed of by way of an oral hearing. Therefore, a party to a written hearing could request an oral hearing and give reasons for such a request.

In this case, the Board Member notes that Prince never requested or raised the issue of an oral hearing except in Argument. Prince could have made a case at the outset or during the proceeding that the hearing should be an oral one, as opposed to a written one. Also, the Board Member is of the view that Prince was given every opportunity to present its case and knew the case to be met. Prince did not show that a written hearing did not suffice to dispose of the issues in this case.

As previously noted, Prince had every opportunity to make information requests and could have requested affidavit evidence from CCG or submitted its own evidence. Prince has not made a case that the documentary evidence submitted by CCG is not credible on its face. The Board Member is not convinced by the arguments made by Prince that there was a need for an oral hearing in this case, as Prince has not shown that any evidence placed before the Board Member in this hearing needed to be tested in the presence of the Board Member.

As a result, the Board Member dismisses Prince's argument that an oral hearing should have been held in this case.

3.4 Does the Board have the power to delegate any of its powers or duties to Board staff?

3.4.1 Views of Prince

Prince made lengthy submissions in the form of questions regarding the decisions made by staff related to the Abandonment Order and the subsequent abandonment of the well by the EUB. Prince also questioned whether the Board may delegate to staff the power to abandon wells and how staff exercise that discretion.

3.4.2 Views of CCG

CCG submitted that the subject of the hearing was ACO 2001-06. CCG stated that Prince had an opportunity to dispute the Abandonment Order and did not request a review of it or appeal the Board's decision. Therefore, CCG maintained that the Board should not entertain any arguments

relating to the Abandonment Order. In addition, CCG submitted that the Board's legislation clearly authorized the actions taken by CCG.

3.4.3 Views of the Board

The Board made it clear to the parties from the outset that the subject matter of the review hearing was ACO 2001-06 and not the Abandonment Order. Prince cannot attack the validity of the Abandonment Order in these proceedings through collateral attack some two years later. The Alberta Court of Appeal in the Sarg Oils Ltd. case¹ supports this approach.

Furthermore, the Board Member is of the view that pursuant to Section 18 of the Alberta Energy and Utilities Board Act, R.S.A. c. A-17, the Board may delegate any of the powers and duties conferred or imposed on it under this Act or any other enactment to officials or employees of the EUB. The Board has chosen to delegate matters relating to compliance, enforcement, and abandonment to EUB staff. The Board Member finds that Prince has not put any evidence before the Board Member that raises questions about the manner in which the delegate carried his or her duties or the validity of the actions of the delegate. Prince did not even provide cogent reasons in support of its position other than speculation.

4 ISSUES

The Board Member believes the issues with respect to this proceeding to be

- Jurisdiction of the Board to order well abandonment costs
- Were the abandonment costs reasonable?

5 JURISDICTION OF BOARD TO ORDER WELL ABANDONMENT COSTS

5.1 Views of Prince

Prince raised issues relating to the validity of the Abandonment Order. Prince questioned the authority of CCG to abandon the well and invoice Prince for the abandonment costs. Prince also questioned whether it should be liable for the abandonment costs of the well. Prince submitted that there was nothing to suggest on what basis the 25 per cent penalty was imposed and what circumstances were considered in determining to impose it. Prince further argued that CCG did not have the authority to convert assets belonging to Prince to salvage.

5.2 Views of CCG

CCG cited the relevant provisions of the OGCA and the OGCR respecting the abandonment of wells. CCG submitted that in accordance with this legislation, a licensee has the responsibility to abandon the well in accordance with the regulations and shall do so when directed by the Board or the regulations. In addition, CCG submitted that this legislation makes clear that well abandonment costs shall be paid by the working interest participants in accordance with their proportionate share in the well and that well abandonment costs may be determined by the Board

¹ Energy Resources Conservation Board and Sarg Oils Ltd., Court of Appeal of Alberta, Appeals No. 98-18104/18108, issued June 6, 2002.

on application by a person who conducted the well abandonment or on the Board's own motion. The OGCA further provides that if a working interest participant fails to pay its share of well abandonment costs within the time prescribed by the Board, unless the Board directs otherwise, the working interest participant must pay a penalty equal to 25 per cent of the party's share of the well abandonment costs.

CCG submitted that Prince, as the licensee of the well, was directed to abandon its well under Section 3.068 (1) (a) of the OGCR. Prince failed to do so. CCG argued that as Prince had not complied with the Abandonment Order issued on November 22, 2000, the EUB commenced the abandonment of the well in March 2001. CCG sent Invoice No. 1719 in the amount of \$23,845.85 to Prince, directing it to pay the outstanding costs associated with the abandonment. Prince was given a month to satisfy the invoice and was notified that a 25 per cent penalty would be imposed if Prince failed to pay within that month. Prince failed to do so, and CCG issued Cost Order ACO 2001-06 on December 6, 2001, which imposed a 25 per cent penalty against the invoice costs and required the payment of \$29,807.31 from Prince.

5.3 Views of the Board

The Board Member is of the view that Section 27 of the OGCA squarely places on a licensee the duty to abandon a well when directed by the Board or required by regulations. Also, Sections 28 and 100 of the OGCA states that Board may authorize any person to abandon the well if the licensee fails to do so. The Board Member further notes Section 30 of the OGCA, which states:

30(1) Subject to subsection (2), the well or facility suspension costs, abandonment costs and reclamation costs must be paid by the working interest participants in accordance with their proportionate share in the well or facility.

(2) The Board may determine the suspension costs, abandonment costs and reclamation costs

(a) on the application of the person who conducted the suspension, abandonment or reclamation, in the case of a well or facility that was suspended, abandoned or reclaimed by a licensee, approval holder, working interest participant or agent, or

(b) on the Board's own motion, in the case of a well or facility suspended or abandoned by the Board or by a person authorized by the Board,

and the Board shall allocate those costs to each working interest participant in accordance with its proportionate share in the well or facility and shall prescribe a time for payment

(3) A working interest participant that fails to pay its share of costs as determined under subsection (2) within the period of time prescribed by the Board must pay, unless the Board directs otherwise, a penalty equal to 25% of its share of the costs.

(5) Where a well or facility is suspended or abandoned by the Board or by a person authorized by the Board, the costs as determined under subsection (2), together with any penalty prescribed by the Board under subsection (3), constitute a debt payable to the Board.

The Board Member is of the view that this section provides clear authority to direct a licensee and a working interest participant to pay the abandonment costs in the case of a well abandoned by the Board or a person authorized by the Board.

Prince had an obligation to carry out the Abandonment Order, and no other notice was

necessary. The Board Member notes that Prince has not submitted any evidence to contest CCG's evidence that Prince was the licensee of the well and a 100 per cent working interest participant or that Prince had abandoned the well as directed.

As a result of the clear legislative authority, the Board Member finds that it had jurisdiction to direct Prince to pay the abandonment costs.

With respect to the penalty, the 25 per cent of the invoice costs of abandonment, Section 30(3) of the OGCA, noted above, is clear that if a working interest participant fails to pay its share of the costs within the period of time prescribed, the working interest participant must pay a penalty equal to 25 per cent of its share of the costs, unless the Board otherwise directs. In this case, Prince has not brought forward any evidence that it paid the costs within the 30 days given in the letter with the invoices to pay the abandonment costs. Therefore, the levying of the penalty is automatic on the failure to pay, unless the Board has directed otherwise. In the case of Prince, the penalty was added on as a result of the nonpayment.

With respect to the sale of Prince's equipment, the Board Member is of the view that Section 102(1) of the OGCA authorizes the Board to sell or dispose of, in a manner it sees fit, "any drilling, producing or operating equipment, installation or material found on the site or taken from the well or facility," in the case where the Board has conducted the abandonment of the well or facility. The only limitation is that the Board shall not sell any equipment, installation, or material knowing it is owned by someone other than the licensee or working interest participant.

The Board Member is also of the view that, under Section 102(3) of the OGCA, the Board is authorized to apply the money from the sale or disposal of any equipment, installation, or material "first, to the payment of unpaid costs and penalty determined under section 30 or 100, and second, if any money remains, to the payment of any other outstanding debt owing to the Board by the licensee, or working interest participant." This section clearly authorizes the Board, or a person authorized by the Board, to sell the equipment.

In this case, the Board Member finds that it had jurisdiction to sell Prince's equipment and apply salvage revenue against the abandonment costs incurred by the Board.

6 WERE THE ABANDONMENT COSTS REASONABLE?

6.1 Views of CCG

CCG argued that the costs expended by the Board to abandon the well were actual costs incurred and were reasonable for a well that received little, if any, maintenance in the years that Prince owned the well. CCG added that it followed its procedures in hiring a third party to abandon the well. It noted that for small jobs, such as the abandonment of one well, it was normal for CCG to not to tender the job to a number of companies but to find one company in the area that could do the job at a reasonable cost, in a reasonable time, and in accordance with the requirements. CCG submitted that these conditions were met when the EUB hired Treeline Well Abandonment and Reclamation Limited to conduct the abandonment of the well. CCG submitted that the approach

it followed with respect to small jobs was considered and affirmed by the Board in the Board's *Decisions 2001-11 and 2002-053*.²

6.2 Views of Prince

Prince stated that the abandonment costs were excessive. Prince argued that the average cost for abandoning industry wells in 2000 was \$21.94 per metre, but that the abandonment CCG directed was undertaken at a much higher average cost, well in excess of that initially authorized by the Board.

6.3 Views of the Board

The Board Member accepts that the costs incurred to abandon the well were actual costs and were reasonable. The Board Member notes that Prince has not provided any evidence that the costs were not reasonable and that the EUB improperly carried out the abandonment of the well. The Board Member emphasizes that Prince did not provide any evidence in support of its statements that the abandonment costs were excessive or that the industry average for 2000 was \$21.94 per metre. As a result, the Board Member finds that Prince did not make a case to demonstrate that the costs were unreasonable and did not raise any doubt as to the reasonableness of the costs.

The Board Member further notes that in previous decisions (see footnote below), the approach of finding a company in an area that can do the job at a reasonable cost in a reasonable time and in accordance with Board requirements for the abandonment of one well is acceptable.

DATED at Calgary, Alberta, on April 29, 2003.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

T. M. McGee
Board Member

² EUB *Decision 2001-11: Legal Oil & Gas Ltd., Charles W. Forster, and Tartan Energy Inc., Review of Abandonment Order No. AD 98-10*, February 13, 2001; *Decision 2002-053: Prince Resource Corporation, Richard Yu, Review of Abandonment Costs Order No. ACO 2000-1*, June 18, 2002.