



OMERS Energy Inc.

Application for a Well Licence and
Associated Pipeline and Battery

Warwick Field

June 28, 2005

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2005-067: OMERS Energy Inc., Application for a Well Licence and Associated Pipeline and Battery, Warwick Field

June 28, 2005

Published by

Alberta Energy and Utilities Board
640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

Telephone: (403) 297-8311
E-mail: eub.info_services@eub.gov.ab.ca
Fax: (403) 297-7040
Web site: www.eub.gov.ab.ca

CONTENTS

1	Decision	1
2	Introduction.....	1
2.1	Applications.....	1
2.1.1	Application No. 1339435	1
2.1.2	Application No. 1341408	1
2.1.3	Application No. 1385507	1
2.2	Intervention.....	2
2.3	Hearing	2
3	Issues.....	2
4	Proposed Facilities	3
4.1	Views of the Applicant.....	3
4.2	Views of the Grykuliaks	5
4.3	Views of the Board.....	7
5	Corporate Structure.....	9
6	Other Matters	10
	Appendix 1 Hearing Participants.....	12
	Appendix 2 Summary of Conditions	13
	Figure 1 Proposed 4-33 well site, pipeline, and battery	14

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**OMERS ENERGY INC.
APPLICATION FOR A WELL LICENCE AND
ASSOCIATED PIPELINE AND BATTERY
WARWICK FIELD**

**Decision 2005-067
Applications No. 1339435, 1341408,
and 1385507**

1 DECISION

Having carefully considered all of the evidence, the Alberta Energy and Utilities Board (EUB/Board) hereby approves Applications No. 1339435, 1341408, and 1385507, subject to the conditions listed in Appendix 2.

2 INTRODUCTION

2.1 Applications

OMERS Energy Inc. (OMERS) applied for licences for a well, pipeline, and gas battery, as detailed in the following sections. The proposed projects would be located about 12 kilometres (km) east of Vegreville. The maximum hydrogen sulphide (H₂S) concentration of the well, pipeline, and battery would be 0.00 mole per kilomole (mol/kmol) (0.0 per cent).

2.1.1 Application No. 1339435

OMERS applied on March 23, 2004, to the EUB, pursuant to Section 2.020 of the *Oil and Gas Conservation Regulations*, for a licence to drill a vertical well from a surface location at Legal Subdivision (LSD) 4 of Section 33, Township 51, Range 13, West of the 4th Meridian (4-33 well). The purpose of the proposed well is to obtain gas production from the Waseca Member.

2.1.2 Application No. 1341408

OMERS applied on April 2, 2004, pursuant to Part 4 of the *Pipeline Act*, for approval to construct and operate a pipeline for the purpose of transporting natural gas from the proposed 4-33 well to a pipeline tie-in point at LSD 10-33-51-13W4M (10-33). The proposed pipeline would be about 1.22 km in length, with a maximum outside diameter of 114.3 millimetres.

2.1.3 Application No. 1385507

OMERS applied on February 9, 2005, pursuant to Section 7.001 of the *Oil and Gas Conservation Regulations*, requesting approval to construct and operate a gas battery in LSD 4-33-51-13 W4M. The battery equipment would consist of a separator, metering skid, and water storage tank for the purpose of separating and measuring production from the proposed 4-33 well and temporarily storing the produced water.

2.2 Intervention

Lawrence Grykuliak and Peter Grykuliak (the Grykuliaks) own the southwest quarter of Section 33-51-13W4M, the land on which the proposed well, battery, and majority of the pipeline would be located. Lawrence Grykuliak lives about 270 metres (m) west of the proposed project. The Grykuliaks raised several concerns, including construction and timing, change of conveyed substance, aboveground structures, weed control, soil assessment, abandonment, and reclamation and remediation. They referred to past experiences with OMERS and its predecessor company. During the hearing, the routing of the pipeline was identified as an additional concern.

2.3 Hearing

The Board initially scheduled a public hearing for October 27, 2004, to be held in Vegreville, Alberta. Subsequent to the initial scheduling of the hearing, the Board received six requests to reschedule the hearing. The rescheduled hearing was held in Vermilion, Alberta, on March 31, 2005, closing the same day, before Board Member J. R. Nichol, P.Eng. (Presiding Member) and Acting Board Members R. J. Willard, P.Eng., and D. K. Boyler, P.Eng. The panel members and Board staff conducted a site visit on March 30, 2005. Those who appeared at the hearing are listed in Appendix 1.

By letter dated April 7, 2005, OMERS requested the Board to reopen the hearing to consider its request to correct the record with respect to the employer status of one of its witnesses. The Board decided to initiate a written process and required the parties to submit written arguments relating to this matter. Within the Grykuliaks' submission to the above, they requested the opportunity to raise issues regarding the management of the applications. The final reply to this process was received on April 22, 2005.

Based on the information provided by both parties, the Board decided to reopen the oral part of the hearing for two items: cross-examination and argument on the new evidence presented by OMERS to correct the record regarding the employer of one of its witnesses and argument from the Grykuliaks regarding the management of the applications. A one-day reopening of the hearing was held in Vermilion, Alberta, on June 6, 2005, before the same Board panel. The Board considers this to be the closing date for the hearing. Those who appeared at the reopening are listed in Appendix 1.

3 ISSUES

The Board considers the issues respecting the applications to be

- need for and location of the proposed facilities,
- general impacts,
- corporate structure, and
- other matters.

4 PROPOSED FACILITIES

4.1 Views of the Applicant

OMERS stated that it held the mineral rights under Section 33 and that the 4-33 well was required to extract the reserves. It identified its primary target as the Waseca Member and secondary targets as the Nisku and Colony Formations. OMERS explained that the proposed target in the Waseca Member was determined by using seismic data that identified a structural high at the applied-for bottomhole location. OMERS stated that it expected to encounter original reservoir pressures, and based on other Waseca production in the area, it expected the productive life for the well to be seven to ten years. OMERS further clarified that if the secondary targets were productive, it would likely extend the life of the 4-33 well by two to three years. However, OMERS explained that the secondary targets were only going to be explored if the Waseca Member was not commercially productive and that, at this time, it had no plans to dually complete the well in any of the secondary zones. OMERS submitted that if the 4-33 well were successful, a pipeline and single-well gas battery would be necessary. OMERS explained that the battery would include a separator skid, metering package, and 100 barrel (bbl) water tank. It said that the equipment would be housed inside a building about 10 feet by 16 feet, with a 250 gallon methanol tank on the outside, as well as a pipeline riser and pig barrel, and with a 20 foot tall aluminum pole with a solar panel and antenna for the Supervisory Control & Data Acquisition system.

OMERS stated that it required the water tank to protect the integrity of its pipelines. Since the Grykuliaks would not allow water tanks on their leases, OMERS explained that it applied for the facility licence so that the application could be heard with the well and pipeline applications. OMERS indicated that administrative restrictions in the EUB applications process only provided for filing an application for a multiwell gas battery. However, OMERS gave assurance that the site would only be operated as a single-well gas battery.

OMERS stated that it had considered an alternate well site in response to the Grykuliaks' aesthetic concerns. OMERS reported that it had offered to directionally drill the proposed 4-33 well from the existing site at 1-32-51-13W4M (1-32 well), consolidating two operations onto a single surface pad. However, OMERS indicated that the Grykuliaks rejected this offer, as the 1-32 well site was closer to Lawrence Grykuliak's home. OMERS argued that the 4-33 well site was the most suitable surface location, as it was adjacent to Range Road 134, a high-grade gravel road, thus eliminating the need for a longer road to access the well site and minimizing impacts on the Grykuliaks' farming operations in the southwest quarter of Section 33. OMERS agreed to the landowners' suggestion to build the 4-33 well site and access as a stripped site, which would require the topsoil and subsoil to be pushed back, then reclaim it into a teardrop shape if the well were viable. OMERS also stated the lease site would be constructed in accordance with all relevant EUB and Alberta Environment requirements.

OMERS acknowledged the Grykuliaks' concerns regarding traffic and impacts on roads. If the well were successful, OMERS explained that it would require water to be trucked out relatively infrequently. This would be in addition to light truck traffic as part of day-to-day operations. It agreed that the biggest issue was rutting and erosion of existing roads after rig moves. OMERS stated that if requested by the county, it would repair any damage it may have caused to the county roads.

OMERS indicated that there would be minor sources of noise associated with the operation of a well and battery facility on the 4-33 site. These included stroking of the methanol pump, vented gas as the separator removed produced fluids, and gas flowing through the wellhead to the separator building. OMERS committed to meeting EUB *Guide 38: Noise Control Directive—User Guide* during drilling, completion, and operation of the 4-33 well.

OMERS stated that it would attempt to minimize the flaring associated with the testing of the well and that it expected testing to be less than three days. OMERS stated that any additional flaring would only be required in the event of upset well conditions.

OMERS acknowledged that in the past, it had a problem with limited volumes of produced water being spilled during transfer on some of its lease sites but that it had corrected the problem by adding containment boxes for the truck-loading lines to all existing well sites. OMERS noted that where the produced water had been spilled, the soil was collected and taken to a suitable landfill. OMERS stated it had also altered the design of its new facilities to include containment boxes. OMERS admitted that it was aware that the Grykuliaks did not want water tanks on any of their leases. However, OMERS emphasized that it required a produced water tank on the 4-33 well site because the local gas gathering system was designed to transport dry gas. OMERS explained that if there was no produced water tank on site, it would cause operational issues because the water would have to be injected back into the pipeline. It argued that this procedure would raise pipeline pressures, thereby preventing other wells from flowing into the pipeline system. It said that to overcome these line pressures, more compression may be required in the area. OMERS stated that its biggest concern would be the inability to effectively produce the well because of the back pressure caused by the water handling in the pipeline system. The methanol tank would be required to prevent hydrates at the wellhead and in the pipeline.

OMERS stated that in order to protect groundwater, it would set surface casing to at least 15 m below the base of the groundwater. OMERS explained that to ensure good isolation and protection of groundwater, it would perform a “sandwich squeeze” cement job. It noted that it had a set procedure in place to test water wells. It stated that, if so requested, its water well testing program would include the testing of all water wells within a one mile radius of the 4-33 well both before drilling and within 30 days after drilling. The wells would be tested for quality and quantity. OMERS committed to testing the Grykuliaks’ water well, and if it was determined that the drilling of its well had a negative impact on the Grykuliaks’ water, OMERS would ensure that their water supply was replaced, including, if necessary, the drilling of a new water well at its expense. OMERS confirmed that it would be willing to work with the Grykuliaks to find a third-party contractor acceptable to both parties to complete the water well testing program.

OMERS believed that the weed problem was primarily associated with the previous owner of the existing facilities and felt that it had taken steps to address the Grykuliaks’ concerns. OMERS stated that it promoted weed maintenance by a combination of cutting or cutting and spraying. OMERS acknowledged that it had existing weed control problems, specifically of mayweed, on another lease site. It had initiated a program to spray the weeds three times a year, along with a picking program, to bring the existing weed problem under control. If this program was not initially fully successful, it would be repeated. OMERS agreed to the Grykuliaks’ request not to mow weeds from leases on their land and to use an herbicide acceptable to them.

OMERS confirmed that it was aware of the Grykuliaks' complaints about garbage on its sites. OMERS stated that it had someone come out to the Grykuliaks' leases once a month, specifically to look for garbage. It believed that reasonable efforts had been made in good faith to deal with the garbage.

OMERS noted that it had also considered an alternative pipeline route involving a shorter tie-in at the 1-32 well. It stated that this option was rejected, however, as the pressures and flow rates expected from the 4-33 well would be higher than what the gathering system from the 1-32 tie-in could accommodate without incremental compressor facilities. OMERS argued that the only viable option was the proposed pipeline route. OMERS stated that prior to the hearing it was not aware that the route of the pipeline was of concern to the Grykuliaks but believed, in light of their concerns, that the applied-for route was still appropriate.

It stated that it would bury the pipeline to a depth of 1.5 m. OMERS submitted that it would not commit to deferring pipeline construction until after harvest but would be open to further discussions with regard to the Grykuliaks' timing issues if the pipeline licence were granted. OMERS also committed to perform a presite assessment, including soil sampling of the pipeline right-of-way, to establish a baseline to better ensure that the proposed site would be reclaimed to its original state. OMERS confirmed that it would be willing to work with the Grykuliaks to find a third-party contractor acceptable to both parties to complete the soil assessment.

OMERS stated that the pipeline would be abandoned in place when the 4-33 well was no longer economic. It added that the 4-33 well site would be abandoned and reclaimed according to all relevant EUB and Alberta Environment requirements.

4.2 Views of the Grykuliaks

The Grykuliaks farm about 3000 acres, using "no till" farming practices. They described no till as seeding directly into the stubble, which allowed for moisture to be left in the ground, reducing soil erosion. Lawrence Grykuliak stated he was a third-generation farmer on the land and farmed with the help of his family.

The Grykuliaks did not contest OMERS's right to capture the petroleum reserves. Rather, they stated that they were concerned about the proximity of the 4-33 well site to their residences and the impacts the location would have on their land and the view from their houses. They also noted that they had a number of gas wells on their land originally operated by companies other than OMERS and they had experienced a range of company performances. The Grykuliaks also stated that they were not happy about the filing of the facility application as a multiwell battery. They believed that a multiwell battery application should not simply be accepted based on administrative restrictions. As such, they requested that should the licence be approved, it only be licensed for a single-well gas battery.

The Grykuliaks admitted that they originally requested OMERS to construct a minimal disturbance lease, but after having experienced this type of lease for a few years, they believed that was no longer the best option to preserve the land. They stated that minimal disturbance leases can cause more problems because the companies cannot stay on the leases and trucks end up sliding off, causing rutting of the soil. They explained that both the county roads and the lease roads were often rutted, which could create erosion problems. They requested that the lease be stripped and teardrop shaped, with the access built as a high-grade gravel road. The Grykuliaks

agreed with OMERS's commitment to build a raised access to the 4-33 well site, but they understood that to be equivalent to a high-grade road with gravel on it. They stated that they would prefer to see three-quarter-inch gravel used for the access road.

The Grykuliaks emphasized that they had been battling a weed control problem, particularly since OMERS commenced activities on their lands. They argued that a better weed control program was necessary. The Grykuliaks said that the combine often picked up the weeds, causing the seeds to spread throughout the field. They indicated that the spreading had increased the amount of weed spraying they had to carry out, thus increasing the cost of their farming operations. The Grykuliaks emphasized that they did not want the weeds to be mowed, because that spread the weeds. They said the weeds should be sprayed and handpicked. The Grykuliaks believed that OMERS has not done a good job of getting the existing weed problem under control and questioned whether the reported program was actually done. They explained that their main concern was mayweed, a noxious weed that spread easily. As a preventive measure, they expected OMERS to wash its equipment prior to entering their land.

The Grykuliaks emphasized their concerns about contamination of their water well. They admitted that OMERS offered to test their water well before and after drilling. However, they expressed concerns regarding the selection of the water testing company and believed they should have the right to pick a third-party tester that they had confidence in. The Grykuliaks agreed to discuss the possibility of selecting a third-party contractor with OMERS to complete the water well testing, as long as they could bring along a professional for their opinion.

The Grykuliaks also outlined a number of operational concerns regarding flaring, noise, garbage, and spills. They explained that even limited flaring is a fire hazard, as no till farming left stubble on the ground all year round. The Grykuliaks also stated that any amount of noise coming from the lease and garbage left on the lease were unacceptable. They stated that they would agree to the 4-33 well site if the entire facility were contained underground and did not include a water tank. The Grykuliaks further explained that they did not want a water tank on their land due to the amount of trucking and potential for spills.

The Grykuliaks understood that if they crossed the proposed pipeline right-of-way with their farming equipment, it would be considered trespass. As such, they requested during the hearing that the pipeline be routed along the west and north boundary of their quarter section so as not to impact their farming operations. They also requested that the pipeline be buried to a depth of 3 m so they would not have to worry about damaging the pipeline with heavy equipment. The Grykuliaks explained that they have used heavy equipment in the past to restructure their fields. They stated they may do this in Section 33, where the pipeline is proposed, but could not confirm when that might take place. The Grykuliaks requested that if the licence were granted, they would like OMERS to construct the pipeline after harvest, preferably when the ground was frozen. As well, the Grykuliaks stated that they would like a soil assessment completed to check the soil depths prior to any work being done. The Grykuliaks expressed their concern about the abandonment of the pipeline, because they were unclear as to who would have responsibility for the pipe in the ground. They explained that the land should be reclaimed back to its original condition. The Grykuliaks believed that it should be mandatory for OMERS to reclaim the 4-33 well site immediately after abandonment of the well and surface facilities.

4.3 Views of the Board

The Board notes that OMERS has acquired the appropriate petroleum and natural gas rights to permit exploitation of the minerals. The Board agrees that the proposed well is necessary to capture the reserves under Section 33. It follows that should the well be found capable of commercial production, a production facility and associated pipeline would be required to produce the reserves. The panel further notes that the Grykuliaks did not contest the need for the well.

The Board finds that with respect to the location of the well and surface facilities, the Grykuliaks presented no evidence respecting any negative impacts associated with these applications other than operational issues, such as noise, garbage, and weed control at existing facilities. The Board agrees that the well site should be constructed as a stripped site in a teardrop shape with a high-grade gravel access to the well using three-quarter-inch gravel. The Board is satisfied that locating the well immediately adjacent to the range road will minimize any impacts on the Grykuliaks' farming operation. The Board further believes that a well site of this nature would not cause an incremental visual impact but encourages OMERS to use appropriate measures to minimize this impact. The Board therefore finds that the applied-for location for the well and production facility is appropriate.

With respect to the Grykuliaks' request that the well and production facility be located underground, the Board finds no evidence to support this request. The Board is also satisfied that the measures (containment boxes) that OMERS has taken to eliminate the spillage of produced water during truck loading operations have adequately addressed the concerns related to the placement of a produced water storage tank on the lease. The Board is satisfied that the use of on-site storage of produced water will result in the optimization of gas production from the reservoir and will likely eliminate the need for any on-site compressor.

The Board acknowledges the Grykuliaks' concern respecting the facility application being categorized as a multiwell gas battery. The Board notes that a single-well gas battery with less than 0.01 mol/kmol of H₂S is deemed to be an exempt activity, which does not require a licence under EUB *Guide 56: Energy Development Applications and Schedules*. However, when there is an unresolved outstanding objection to an exempt activity, an application must be filed and may be considered at a public hearing. The Board confirms that what has been applied for is a single-well gas battery, an exempt activity. The only way to allow for the application to be processed is to have the company apply as a multiwell gas battery. The Board is looking at upgrading its processes regarding these exempt activities in the future. OMERS stated at the hearing that it does not intend to develop this site as a multiwell facility. However, to remove any doubts, the Board will specifically condition any approval to allow for only one well to be tied into the facility.

The Board recognizes OMERS's desire to begin construction of the pipeline as soon as possible if the well proves viable but encourages OMERS to work with the Grykuliaks to address timing issues. The Board acknowledges OMERS's willingness to complete a presite assessment. The panel finds that there was no evidence presented as to the impacts associated with the routing of the pipeline across the quarter section. The routing of the pipeline along the west and north edges of the quarter section, as proposed by the Grykuliaks, would result in additional surface impact

and cost that are not justified by any evidence respecting the impacts of the proposed pipeline routing.

The Board does not believe that it is necessary to bury the pipeline any deeper than the standard 1.5 m. The depth of burial would be more appropriately addressed when the Grykuliaks finalize any plans for significant earth movement on the subject quarter section.

The Board notes that the Grykuliaks also raised concerns about their ability to cross the pipeline. The Board's understanding is that normal farming operations do not require the acquisition of a crossing agreement by the landowner. Crossing agreements are only required if the landowner is conducting any ground disturbance, such as digging post holes or conducting ground levelling within 30 m of the pipeline. Ongoing contact between the landowner and the owner of the pipeline should be maintained so that any areas of concern respecting activity on or near the pipeline right-of-way can be discussed as needed.

Regarding the Grykuliaks' desire to have the pipeline removed from their field when it is abandoned, the Board notes that pipeline removals are not a normal industry practice, as it generally causes unnecessary disturbance to the land. The Grykuliaks have not provided any evidence showing unique circumstances to warrant a variation of regular industry practices. Accordingly, the Board is not prepared to make this a condition of any approval. This is also a matter that would be more appropriately addressed at the time of abandonment, when the decision could be based on the situation that exists at that time.

The Board notes the concerns raised by the Grykuliaks with respect to reclamation. Further, the Board recognizes that concerns regarding reclamation are not within the EUB's jurisdiction, and as such believes they would best be addressed by Alberta Environment. However, the Board would encourage OMERS to initiate reclamation activities as soon as practical after completion of the abandonment of the well and surface facilities.

The potential impacts from energy-related traffic, other than rig moves, are considered by the Board as minor impacts within the normal bounds of a multi-use operation. However, OMERS must recognize the potential for more serious impacts on local residents from road rutting and delays in repair. In this regard, the Board accepts OMERS's commitment to work with the local authority to immediately address a road problem when requested to do so.

Although the EUB deals with weed control as it relates to lease site maintenance, the primary responsibility for weed control rests with the relevant municipal authorities, and the Board recommends that the Grykuliaks raise any ongoing concerns respecting weed control with those authorities. The EUB field staff will deal with on-site weed control complaints, but this kind of concern is best dealt with at the time of the occurrence. The Board notes OMERS's commitment to conduct a weed control program and repeat it as necessary. The Board encourages OMERS to provide the Grykuliaks with advance notice of the weeding to allow them the opportunity to witness the work.

The Board is satisfied with the casing and cementing program proposed by OMERS and finds that this program should protect the usable water zones. The Board acknowledges and supports OMERS's procedures for the testing of offset water wells, both before and after drilling. The Board encourages OMERS and the Grykuliaks to work together in the selection of a suitable water well testing company. While the Grykuliaks are insistent that they alone select the

company, the outcome of any testing will be a reflection of the mutual confidence of the two parties that testing was technically correct and without bias. The Board is not prepared to grant the Grykuliaks exclusive right to choose. The Board also notes OMERS's commitment to replace the Grykuliaks' water supply if it is responsible for any damage to their water well; this could include the drilling of a new water well.

The Board understands the Grykuliaks' concerns regarding noise and flaring. The Board notes that OMERS must comply with the requirements of *Guide 38* for noise and of *EUB Guide 60: Upstream Petroleum Industry Flaring Guide (Plus Updates)* for flaring. As such, the Board believes that OMERS has adequately addressed these concerns. With regard to fire hazard concerns, the Board encourages OMERS to consult with the appropriate municipal authority on weather conditions and fire response capacity before test flaring.

Much of the hearing time was spent on reviewing evidence respecting operational problems, such as garbage, low-level noise, and weed control. The Board does not condone any of the stated operational problems that were described. However, the nature and extent of these historical issues, some of which may not have been associated with the current licensees' operations, were not significant enough to cause the Board to deny the applications before it. Operational matters of this nature are best dealt with at the time the problem occurs, and the Board encourages the Grykuliaks to bring them to the attention of the EUB's Wainwright Field Centre if they encounter these problems in the future. Where necessary, EUB field staff will initiate the appropriate enforcement action to deal with any noncompliance matter that they detect during their response to a complaint.

In summary, the Board finds the applications as applied for to be in the public interest and within the mandate of economic, orderly, and efficient development. As such, the Board hereby approves the applications pursuant to the conditions outlined in Appendix 2.

5 CORPORATE STRUCTURE

OMERS explained that it owned the underlying oil and gas assets that are the subject of these applications. However, OMERS had contracted the administrative and management services of Guard Resources Ltd. (Guard) to administer these assets on a day-to-day basis.

OMERS presented a copy of the "Minutes of a Board Meeting of the Board of Directors of OMERS Energy Inc." dated July 15, 2004, which stated that Jim Anton, Vice President Finance and Administration and Chief Financial Officer, Max Coote, Vice President of Land, and Darren Gillanders, Vice President of Operations, were appointed as officers of OMERS. Accordingly, they were presented as officers of OMERS at the hearing of these applications and were also presented as officers of Guard in the same capacities that they hold for OMERS.

Guard indicated that it was a private company whose primary purpose was to administer and manage oil and gas assets for its clients (which includes OMERS). Pursuant to the management agreement, Guard had the authority to manage and operate OMERS's assets in a "good workmanlike manner" and under good oilfield practices. Guard stated that it could also contract and make commitments on behalf of OMERS within the limits of authority given to it by OMERS.

During the reopening of the hearing, OMERS further clarified the relationship between it and Guard. OMERS stated that as the licensee, all liabilities would ultimately be its responsibility. However, OMERS clarified that if there were operational problems, Guard should be contacted. OMERS affirmed that it understood that should it fail to fix or correct something it was ordered to do by the EUB, the EUB could intercede and conduct the work through various avenues. It stated that this process protected the landowner from liability issues. Mr. Gillanders confirmed that if the proposed applications were approved, he would have the authority to ensure that OMERS complied with all EUB regulations from both an operational and a financial perspective.

The Grykuliaks indicated that they were confused about the relationship between OMERS and Guard and which one would be ultimately responsible for any problems.

The Board recognizes that both OMERS and Guard are separate legal entities whose officers act on behalf of both companies. It notes that Mr. Anton, Mr. Coote, and Mr. Gillanders, who presented evidence at the reopening of the hearing, are officers of both OMERS and Guard.

The Board has considered the additional evidence presented by OMERS and is satisfied that it is structured and managed appropriately to own and operate oil and gas facilities in the province of Alberta. Based on the evidence presented, the Board finds that the officers presented on behalf of OMERS are aware of and have the authority and responsibility to ensure compliance with the EUB requirements, as well as to handle day-to-day landowner concerns. OMERS is the licensee and is ultimately the party responsible for the operations and any liabilities associated with any licences and approvals it holds. The Board is satisfied that the provision of staff, through the management agreement with Guard, is appropriate and consistent with the practices followed by many other oil and gas companies in Alberta.

6 OTHER MATTERS

The Grykuliaks expressed concerns regarding the fact that OMERS had not entered into meaningful negotiations with them and believed that the Board set the applications down for hearing prematurely. They felt that the Board should not have entertained a pipeline or facility application until the negotiations with regard to the well had been completed.

It appears to the Board that in this case the parties could have worked more closely together to achieve resolution. In general, the Board encourages companies to inform interested parties of area development to the fullest extent reasonable and to apply for a project as a whole. By negotiating and filing in this manner, all parties can weigh the impacts of the entire project. Furthermore, the Board expects companies to file all related applications when a proposed project is going to hearing. The Board fully supports the need for meaningful consultation and negotiation, which can result in win-win results and improve ongoing relationships between the parties. However, the Board also acknowledges that there needs to be some time certainty to the process for all parties. Within the Appropriate Dispute Resolution (ADR) process, the Board notes that there will be situations when the ADR process will be conducted in parallel to the Board's hearing process. The setting of the applications down for a hearing provides a reasonable but definitive timeline for both parties for the resolution of a dispute. However, the Board is always willing to consider granting an extension to a hearing date when requested to do so by both parties if they believe a resolution can be reached with a little more time. The Board emphasizes that ADR is a voluntary process and both parties must see value from continuing the

process in conjunction with the EUB's adjudicative process. It must not be seen as the sole or only option, and it is never intended to be used in lieu of the Board's normal hearing process.

There was also discussion and argument at the hearing regarding commitments. Specifically, inquiries were made as to whether the Board would enforce commitments or grant a review based on any breach of commitments made during a hearing and acknowledged in an EUB decision. Clearly, the Board expects the applicant to fully understand the implications of any commitments it makes and to fulfill its commitments. However, the Board cannot commit to enforcing all commitments, since there are times when some commitments fall outside of its jurisdiction. There may also be extenuating circumstances that make a commitment unnecessary or irrelevant. Nonetheless, when a company makes a commitment, the Board believes that the company has satisfied itself that the activity will benefit both parties, and as such the Board takes these commitments into account when formulating a decision. If commitments have been breached by a company, the EUB will have regard for this when considering a request by a landowner for a review and variance of the original approval. However, the fact that a company has not lived up to all of its commitments, in and of itself, will not constitute automatic grounds upon which the EUB would grant a review. The Board will consider the sum and substance of the breach(es) but would only likely grant a review if it felt that the breached commitments would have had a material impact on its original decision. In any event, each situation would have to be assessed on its own merits, and the panel cannot prejudge whether a review and variance request based on breached commitments would be successful or not. Should a review be granted, the Board would also review the circumstances of the situation and consider immediate suspension of operations.

Dated in Calgary, Alberta, on June 28, 2005.

ALBERTA ENERGY AND UTILITIES BOARD

<original signed by>

J. R. Nichol, P.Eng.
Presiding Board Member

<original signed by>

R. J. Willard, P.Eng.
Acting Board Member

<original signed by>

D. K. Boyler, P.Eng.
Acting Board Member

APPENDIX 1 HEARING PARTICIPANTS

**Principals and Representatives
(Abbreviations used in report)****Witnesses**

OMERS Energy Inc. (OMERS)
G. S. Fitch, LL.B.

W. Sopko, C.E.T.,
of Guard Resources Ltd. (Guard)¹
M. Coote,
of Guard
D. Gillanders, P.Eng.,
of Guard
J. Anton, C.A.,
of Guard²

L. Grykuliak and P. Grykuliak (the Grykuliaks)
R. Strom

L. Grykuliak

Alberta Energy and Utilities Board staff
T. Bews, Board Counsel
C. Giesbrecht
J. Smith

¹ Originally appeared for OMERS on March 31, 2005; record corrected at reopening on June 6, 2005.

² Partial attendance: present only for reopening of hearing on June 6, 2005.

APPENDIX 2 SUMMARY OF CONDITIONS

Conditions generally are requirements in addition to or otherwise expanding upon existing regulations and guidelines. An applicant must comply with the conditions or it is in breach of its approval and subject to enforcement action by the EUB. Enforcement of an approval includes enforcement of the conditions attached to that licence. Sanctions imposed for the breach of such conditions may include the suspension of the approval, resulting in the shut-in of a facility. The conditions imposed on the licences are summarized below.

CONDITIONS

- 1) Application number 1385507, for a facility licence, will only be approved for the purpose of constructing and operating a single-well gas battery.
- 2) The Board directs OMERS to test the Grykuliaks' water well before and after drilling the 4-33 well. OMERS is required to use the water well testing program as agreed to by both parties and entered into evidence as part of the hearing. OMERS must provide copies of the resulting data to the Grykuliaks.
- 3) OMERS shall construct the access road to the 4-33 well site as a high-grade gravel road using normal grade three-quarter-inch construction gravel.

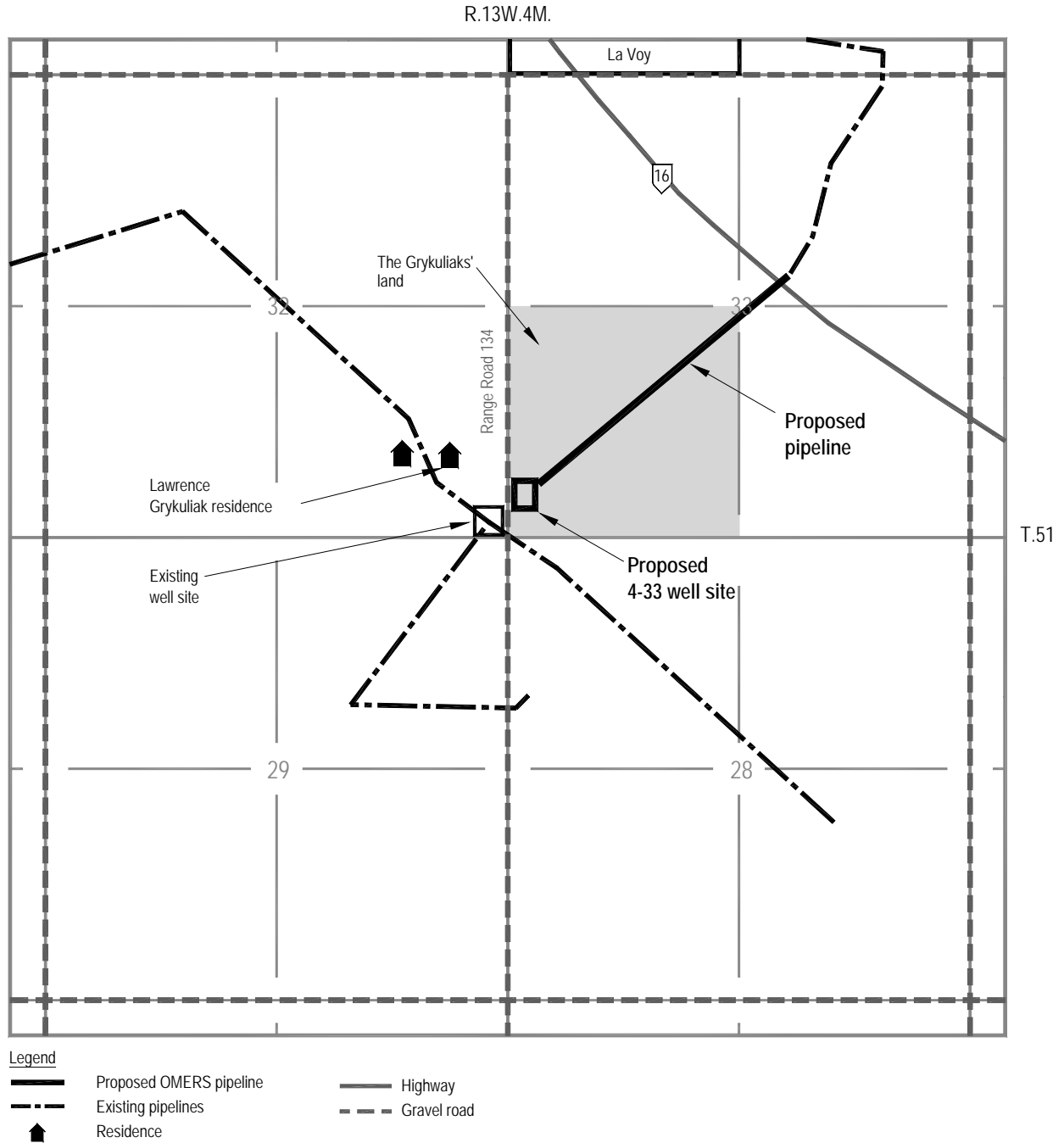


Figure 1. Proposed 4-33 well site, pipeline, and battery