



## West Energy Ltd.

Review and Variance of Decision 2006-058 Respecting  
Effective Date of Off-Target Penalty on Well 00/03-34-048-  
08W5/0

and

## Highpine Oil & Gas Limited

Application for Increase in Allowable Oil Production from  
Well 00/03-34-048-08W5/0

Pembina Field

June 5, 2007

**ALBERTA ENERGY AND UTILITIES BOARD**

Decision 2007-045: West Energy Ltd., Review and Variance of Decision 2006-058 Respecting Effective Date of Off-Target Penalty on Well 00/03-34-048-08W5/0 and Highpine Oil & Gas Limited, Application for Increase in Allowable Oil Production from Well 00/03-34-048-08W5/0, Pembina Field

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# ALBERTA ENERGY AND UTILITIES BOARD

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Calgary Alberta

## WEST ENERGY LTD.

**REVIEW AND VARIANCE OF DECISION 2006-058  
RESPECTING EFFECTIVE DATE OF OFF-TARGET  
PENALTY ON WELL 00/03-34-048-08W5/0**

## HIGHPINE OIL & GAS LIMITED

**APPLICATION FOR INCREASE IN ALLOWABLE OIL  
PRODUCTION FROM WELL 00/03-34-048-08W5/0  
PEMBINA FIELD**

**Decision 2007-045**

**Applications No. 1500270 and 1501391**

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## 1 DECISION

Having carefully considered all of the evidence, the Alberta Energy and Utilities Board (EUB/Board) hereby approves Application No. 1501391 by West Energy Ltd. (West) to vary EUB *Decision 2006-058: Review and Variance of Alberta Energy and Utilities Board Decision Respecting Off-Target Status of Well 00/03-34-048-08W5/0* with respect to the effective date of the off-target penalty applied to the Highpine Oil & Gas Limited (Highpine) well with the unique identifier of 00/03-34-048-08W5/0 (the 3-34 well). For the reasons noted below, the Board confirms that the off-target penalty is to be applied to production taken from the 3-34 well effective March 1, 2006. The Board also confirms that overproduction taken from the 3-34 well is to be retired as set out in Section 5 of this decision.

Further, for the reasons noted below, the Board hereby denies Application No. 1500270 by Highpine for an increase in allowable oil production from the 3-34 well.

## 2 INTRODUCTION

### 2.1 Applications

On August 8, 2005, West applied for an off-target penalty to be applied to production from the Pembina Nisku SS Pool (the SS Pool) through the Highpine 3-34 well. This application was registered as Application No. 1413462. By letter dated September 30, 2005, the EUB indicated that it had determined that the 3-34 well met the criteria for first well in a pool status, and that in accordance with EUB *Interim Directive (ID) 94-2: Revisions to Oil and Gas Well Spacing Administration* no off-target penalty would be applied.

In October 2005, West filed a request for a review and variance of the EUB's decision of September 30, 2005, pursuant to Section 40 of the *Energy Resources Conservation Act (ERCA)*. In *Decision 2006-058*, issued June 20, 2006, the Board decided that the 3-34 well did not meet the criteria required to be designated as the first well in the SS Pool, and that the well would therefore be subject to an off-target penalty. The decision did not address the nature or effective date of the penalty; however, on June 20, 2006, the EUB also issued a separate letter addressing these matters. The letter stated that a penalty of 0.25 would be applied to production from the 3-34 well effective June 20, 2006, and that for the purpose of applying the off-target penalty, the

capability of the 3-34 well was established as 201.9 cubic metres per day ( $\text{m}^3/\text{d}$ ), using production data for May 2006. The well capability was calculated on the basis of operating hours as opposed to calendar days. The resulting penalized allowable production was calculated to be  $50.5 \text{ m}^3/\text{d}$ .

In Application No. 1501391, filed on October 2, 2006, West applied to vary *Decision 2006-058* to apply the off-target penalty to production from the 3-34 well effective September 1, 2005, and it requested that Highpine be required to retire production taken from the 3-34 well in excess of the penalized allowable production volume as calculated from this date. As an alternative, West suggested that the effective date of the penalty and retirement order be November 1, 2005.

In Application No. 1500270, submitted on January 29, 2007, Highpine applied to increase the penalized allowable production to be taken from the SS Pool through the 3-34 well from  $50.5$  to  $75.0 \text{ m}^3/\text{d}$ .

## 2.2 Interventions

Highpine opposed Application No. 1501391 to vary *Decision 2006-058* with respect to the effective date of the off-target penalty applied to production from its 3-34 well. West opposed Application No. 1500270 to increase the production allowed from the 3-34 well.

## 2.3 Hearing

The Board held a public hearing in Calgary, Alberta, on March 22, 2007, before Board Member J. D. Dilay, P.Eng. (Presiding Member), and Acting Board Members D. A. Larder, Q.C., and R. D. Heggie. Those who appeared at the hearing are listed in Appendix 1.

## 3 ISSUES

The Board considers the issues respecting the applications to be

- whether the Board has the authority to vary the effective date of the penalized allowable production for the 3-34 well with retroactive effect and, if so, should it,
- what the effective date of the penalty should be and how any overproduction by Highpine from the 3-34 well should be retired, and
- whether there is justification for increasing the penalized allowable production from the 3-34 well from  $50.5$  to  $75.0 \text{ m}^3/\text{d}$ .

## 4 BOARD'S POWER TO VARY WITH RETROACTIVE EFFECT

### 4.1 Views of West

West submitted that the Board's authority to vary decisions, pursuant to Section 39 of the *ERCA*, includes a discretionary and, in some cases, mandatory power to substitute one of its decisions for another with retroactive effect. It noted that there was nothing in the legislation that limited the Board's power in this regard. West also stated that the issuance of retroactive orders in appropriate cases would encourage a proper use of the Board's review process. It disagreed with

Highpine's argument that a "chilling effect" on industry would result if the Board found that its review powers included the power to vary decisions with retroactive effect.

West referred to various judgements to support its argument, including *BCW Local 468 v. White Lunch Ltd.*, [1966] S.C.J. No. 8, S.C.R. 282 (S.C.C.) (*White Lunch*) and *Westcoast Transmission Co. v. Husky Oil Operations Ltd. et al.*, [1980] A.J. 854, (1980) 109 D.L.R. (3d) 698 (C.A.) (*Westcoast Transmission*). West submitted that the judgements in *Beau Canada Exploration Ltd. v. Alberta (Energy and Utilities Board)*, 2000 ABCA 132, [2000] A.J. No. 507, (2000) 186 D.L.R. (4<sup>th</sup>) 690 (C.A.) (*Beau Canada*) and *Western Decalta Petroleum Ltd. v. Alberta (Public Utilities Board of Alberta)*, [1978] A.J. No. 597, (1978) D.L.R. (3d) 600 (S.C.A.D.) (*Western Decalta*), referred to by Highpine, were distinguishable from the facts at hand given that they did not relate to the Board's powers of review and variance under Section 39 of the *ERCA*.

Based upon the facts in this case, West stated that the Board was obliged to vary its decision such that the penalty had retroactive effect. It suggested that this would ensure consistent application of *ID 94-2*, which it submitted contemplated the retroactive issuance of a penalty. West also argued that retroactivity would ensure fairness between the parties given, among other things, that Highpine had taken a risk by drilling its well off target, yet had reaped a significant benefit for doing so while West, which had sought the penalty, bore the impact of the Board's September 30, 2005, decision. West submitted that Highpine's arguments regarding "colour of right" were not applicable, given that no allegation of improper or illegal activity had been made.

#### 4.2 Views of Highpine

Highpine, citing the judgement in *Beau Canada*, noted that it is a fundamental principle of statutory interpretation that a body may only exercise retroactive power if that power is clearly granted in the legislation. In this case, Highpine submitted that the Board's authority under Section 39 of the *ERCA* does not contain clear authority to vary one of its decision with retroactive effect. Instead, it submitted that Section 25 of the *ERCA* is clear that Board decisions are to be "final and conclusive," with the limited exception of the review process established by Section 40 of the *ERCA* and the appeal process established by Section 41 of the *ERCA*. In addition, Highpine submitted that Section 30 of the *ERCA* is clear that Board decisions are to be prospective, as confirmed in the *Western Decalta* case. Further, Highpine was of the view that a body acting in original jurisdiction, as it stated the Board does under Section 39, cannot issue a decision with retroactive effect.

Highpine indicated that the Alberta Court of Appeal in *Beau Canada* considered the Board's authority to fix off target penalties and concluded that there is nothing in the Board's legislation that allows it to give retroactive effect to one of its decisions. It distinguished the case law referred to by West on grounds that those judgements had been based upon statutory schemes and factual circumstances different to those at hand. In addition, Highpine clarified its position that *ID 94-2* should be interpreted as authorizing a penalty only on a prospective application, given that *ID 94-2* states that an off-target penalty is to be applied in the month following the making of an application to the Board.

If the Board found that it had the power to vary its decision with retroactive effect, Highpine submitted that the Board would not be obliged to do so given the discretionary power granted by Section 4.060(2) of the *Oil and Gas Conservation Regulations (OGCR)*. In this case, Highpine

submitted that the Board should exercise its discretion not to apply the penalty retroactively given, among other things, that Highpine had produced from the 3-34 well with the honest belief that it was doing so in accordance with Board requirements and that West's off-target application had been made prematurely.

### 4.3 Views of the Board

The Board considers that the parties raised two issues: first, does the Board have the authority to vary a decision with retroactive effect, and second, if so, is this authority discretionary and should it be exercised in this case in order to make the off-target penalty on the 3-34 well effective prior to June 20, 2006?

As a preliminary matter the Board notes that the parties have framed the issue as involving a retroactive exercise of the Board's power. The Board notes that while a distinction between retroactive and retrospective power is drawn in certain case law, the parties did not argue and the Board does not consider that any distinction is relevant to this case. Accordingly, the Board has considered the issue as one involving retroactivity, but given equal consideration to case law regarding retrospectivity.

With regard to the first question, the Board notes that in *Beau Canada* the Alberta Court of Appeal (Court of Appeal) concluded that it

... is a fundamental principle of statutory interpretation... that retrospective power can only be granted through clear legislative language... This principle is based on notions of fairness and reliability of expectations...

The Board considers that the issue here is whether Section 39 of the *ERCA* contains clear language that gives the Board the power to vary its decisions with retroactive effect.

Section 39 of the *ERCA* states that

The Board may review, rescind, change, alter or vary an order or direction made by it, or may rehear an application before deciding it.

A related review power is set out in Section 40 of the *ERCA*, which states

**40(1)** A person affected by an order or direction made by the Board without the holding of a hearing may, within 30 days after the date on which the order or direction was made, apply to the Board for a hearing.

**(2)** A person affected by an order or direction made by the Board after a hearing and to whom notice of the hearing was not directly given may, within 30 days after the date on which the order or direction was made, apply to the Board to vary, amend or rescind it....

These provisions establish a review and variance process by which review requests filed more than 30 days after a Board order are considered pursuant to Section 39 of the *ERCA*, while review requests filed within 30 days of a Board order are considered pursuant to Section 40 of the *ERCA*.



Section 46 of the *Alberta Energy and Utilities Board Rules of Practice* establishes a two-step process with regard to Section 39 and Section 40 review requests. First, the Board determines the preliminary question of whether its decision should be reviewed. If the Board determines that its decision should be reviewed, it proceeds to the second step of a full review hearing. This process is set out in subsections 5, 5.1, and 6 of Section 46, which state

**46(5)** The Board shall determine, with or without a hearing in respect of an application for review, the preliminary question of whether the order, decision or direction made by it should be reviewed.

**(5.1)** When determining the preliminary question, the Board shall grant an application for review,

(a) with respect to a review of an order, decision or direction other than a review under section 40 of the *Energy Resources Conservation Act*, if the Board determines that,

(i) in the case where the applicant has alleged an error of law or jurisdiction or an error of fact, the applicant has, in the Board's opinion, raised a substantial doubt as to the correctness of the Board's order, decision or direction, or

(ii) in the case where the applicant has alleged new facts, a change in circumstances or facts not previously placed in evidence, the applicant has, in the Board's opinion, raised a reasonable possibility that new facts, a change in circumstances or facts not previously placed in evidence, as the case may be, could lead the Board to materially vary or rescind the Board's order, decision or direction,

or

(b) with respect to a review under section 40 of the *Energy Resources Conservation Act*, if the Board determines that the applicant has, in the Board's opinion, shown that the order, decision or direction made by it on the initial application may directly and adversely affect the applicant's right.

**(6)** If the Board grants the application under subsection (5), it shall issue a notice of review, and a new hearing must be held in accordance with these Rules.

Notably, while subsection 46(5.1) of the *EUB Rules of Practice* clarifies that a different test must be met by a review applicant depending upon whether the review request was filed pursuant to Sections 39 or 40 of the *ERCA*, subsection 46(6) establishes that the same form of review hearing will be held once the preliminary question is answered by the Board in the affirmative. At the conclusion of a review hearing, the Board may, pursuant to Section 39 or 40 of the *ERCA*, take various steps, including varying or rescinding its initial decision.

As noted by West, in *White Lunch* the Supreme Court of Canada considered the meaning of the word vary in Section 65(3) of the *Labour Relations Act*, which established a similar form of review and variance power as that set out in the *ERCA*. That legislative provision gave the British Columbia Labour Relations Board the power to vary and amend one of its decisions. Noting that the *Labour Relations Act* designated board decisions as "final and conclusive," Hall, J., writing for the court, concluded that

I cannot read the section as narrowing the plain meaning of the word "vary". It is defined in the Shorter Oxford Dictionary as: "to cause to change or alter; to adapt to certain circumstances or requirements by appropriate modifications" nor do I accept the view that the word "vary" cannot apply retroactively. *It has not such a limited meaning and circumstances will frequently arise where it must have a retroactive effect.* (italics added)

In *Westcoast Transmission*, the Alberta Court of Appeal also considered the meaning of the word vary as contained in Section 7 of the *Natural Gas Pricing Agreement Act*. That section established a right of appeal from certain determinations by the Alberta Petroleum Marketing Commission to the Public Utilities Board (PUB) pursuant to which the PUB had the power to vary the initial determination. Laycraft, J.A., writing for the majority of the court, concluded in paragraphs 50-51 that the power to vary the initial determination included the power to do so retroactively:

I am also of the view that the PUB order is bound to take effect from....the date when the determination by the APMC was effective. It must be remembered in this hearing that the PUB was not functioning as a tribunal of original jurisdiction but was sitting on appeal from the APMC. That fact distinguishes this case from the usual utility rate cases in which the issue of retroactivity often arises...

By s. 7 of the Regulations... the PUB is given the power to confirm or vary the APMC determination..... *The power to vary necessarily implies that the determination as varied will continue to speak with reference to the same months with which the APMC was dealing....* (italics added)

Having regard for the nature of the review process established by the *ERCA* and the *EUB Rules of Practice*, the Board considers that the reasoning of the Supreme Court in *White Lunch* and Alberta Court of Appeal in *Westcoast Transmission* is applicable in this case. As in those cases, the legislation has provided the Board, as an administrative body, with the right to review an initial determination separate from the judicial review or appeal process. Pursuant to this review power, the Board is provided with the authority to undertake an initial determination of whether a review hearing is warranted and following such a hearing may take various steps, including varying its decision. This power is by nature corrective and, in the case of Section 39 of the *ERCA*, is designed to address errors or new circumstances that come to light after an initial determination is made. As such, the Board considers that the authority to review is best characterized as a form of internal appeal rather than an exercise of original jurisdiction. In order to give effect to this review power, the Board considers that the legislator intended that the word vary in Section 39 of the *ERCA* include the power to vary retroactively in appropriate cases in order to allow full reconsideration and correction of an initial decision.

It follows that the Board does not consider the *Beau Canada* judgement determinative of the issues at hand, given that the primary issue in that case was the nature of the power granted to the Board by Parts 4 and 10 of the *OGCR* rather than its review powers under the *ERCA* and *EUB Rules of Practice*. Specifically, the Board considers that the Court of Appeal's consideration of Section 10.060 of the *OGCR*, which allows the Board to "vary, alter or exempt from application," is not determinative, given that the latter provision is primarily administrative in nature and, as such, substantively different than the power of internal review and rehearing contained in Section 39 of the *ERCA*. The Board is also cognizant that in *Beau Canada* in paragraphs 49-50, the Court of Appeal made reference to the Board's powers of review then contained in Section 42 of the *ERCA* and suggested that in a "properly convened and directed proceeding" the Board may have had the jurisdiction to issue the impugned order. The Board also considers that the judgement in *Western Decalta* is distinguishable from the facts at hand, given that it involved an initial decision rather than a review and variance decision.

It also follows from the above that the Board does not consider that Sections 25 or 30 of the *ERCA* limit the Board's ability to retroactively vary one of its decisions under Section 39 of that act. With regard to Section 25, the Board notes that in *White Lunch* a similar privative clause existed but was not found to bar retroactive application of the Labour Relation Board's decision. With regard to Section 30, the Board considers that there is nothing in the legislation that suggests that this provision refers to decisions made pursuant to Section 39 or 40 of the *ERCA*.

Having found that the Board has the power to vary one of its decisions with retroactive effect, the second issue is whether this power is discretionary and should be exercised in favor of retroactive application in this case. Given that Section 39 of the *ERCA* is a discretionary power, the Board considers that it is also within the Board's discretion whether or not its variance decision should have retroactive effect. Further, the Board notes that it is provided with a discretionary power regarding the application of off-target penalties in Section 4.060(2) of the *OGCR*, which states

**4.060(2)** Notwithstanding any other provision of this section, where a well is off-target, the Board may specify that the off-target penalty factor prescribed for the well pursuant to section 4.070 shall not apply, or may be modified or changed, subject to such terms and conditions as the Board may prescribe.

The Board's policy regarding the application of off-target penalties is set out in *ID 94-2*, which establishes a self-policing policy designed to recognize companies willing to take the risk associated with drilling exploratory wells, while at the same time ensuring orderly and equitable development within a pool. Under *ID 94-2*, a company may make an application to the Board for an off-target penalty against a competitor's well that, if it does not qualify for first well status, "will be subject to an off-target penalty effective the first day of the month following the date a request is received by the Board to apply the penalty."

In this case, the application for penalty was made on August 8, 2005, while the penalty was not ultimately made effective until June 20, 2006. By producing the 3-34 well during this time period, the Board is of the view that Highpine was placed in an advantageous position relative to other industry participants by being able to produce while its well did not qualify for first well status. The Board notes that Highpine was on notice that the Board's decision was the subject of a review and variance request from October 2005.

Under these circumstances, the Board considers that it is appropriate for the effective date of the penalty to be retroactive to ensure fairness between the parties. In addition, the Board considers that its decision in this regard will clarify for industry participants its expectations with regard to the application of Board requirements. The Board does not consider that either party has identified conduct or other circumstances that should alter the Board's decision in this regard.

## **5 THE EFFECTIVE DATE OF THE PENALTY AND RESULTING OVERPRODUCTION TO BE RETIRED**

### **5.1 Views of West**

West submitted that the Board should have substituted its June 20, 2006, decision for its September 30, 2005, decision, thereby making the penalty effective September 1, 2005, which was the first day of the month following West's application of August 8, 2005. Alternatively, West submitted that November 1, 2005, should have been the effective date of the penalty, given that this was the first day of the month after it filed its review request on October 14, 2005. West rejected Highpine's submission that the effective date should be March 2006 as West stated that there is no requirement in *ID 94-2* that an applicant requesting an off-target penalty have a "qualifying well." Given the above, West was of the view that the Board should direct Highpine to retire all overproduction accumulated from either September 1 or November 1, 2005.

### **5.2 Views of Highpine**

If the Board decided to vary its decision with retroactive effect, Highpine submitted that various factors would be relevant to the effective date of the penalty and date from which overproduction should be directed retired. It submitted that the earliest effective date was March 2006 which corresponded to the time at which the West well 04/14-27-048-08W5/0 (the 14-27 well) became capable of production from the SS Pool. Alternatively, Highpine submitted that the prohibition of retroactive orders without clear legislative authority meant that the earliest possible effective date was November 1, 2005, after the review request was filed.

### **5.3 Views of the Board**

Although there is no requirement for a qualifying well set out in the legislation, the Board notes that the Alberta legislature has given it the discretion to modify the application of the penalty provisions pursuant to Section 4.060(2) of the *OGCR*. The Board considers that this discretion is granted in order to, among other things, ensure the proper application of policies, such as those set out in *ID 94-2*.

The Board notes that while *ID 94-2* states that an off-target penalty will be effective the first date of the month following the date a request for a penalty is made, it also states that

The establishment of the "first well" designation will be initiated when a well of competitive ownership becomes capable and a request to apply the off-target penalty is made to the Board...

The Board considers that it is implicit in this provision that a well will be subject to an off-target penalty effective the first day of the month following the date a completed request for a penalty is received by the Board, and that it is a prerequisite for a completed application that the applicant have a well of competitive ownership that is capable.

The Board notes that Section 4.060(6)(a)(i) of the *OGCR* states that in order for an oil well to be considered capable for the purposes of first well status, it must have been placed on production within six months of the spud date. The Board considers that the same definition of capability

should be applicable for a well of competitive ownership as for a first well in order to ensure consistency and fairness between the parties.

In this case, the Board is of the view that West's 14-27 well did not become capable of sustained production until March 2006. Given this, the Board has concluded that the effective date of the penalty should be March 1, 2006, and that overproduction that occurred after this date must be retired in accordance with *Directive 007-1: Allowables Handbook—Guidelines for the Calculation of Monthly Production Allowables in Alberta*. A calculation is set out in Appendix 2.

## 6 INCREASE IN ALLOWABLE PRODUCTION FOR 3-34 WELL

### 6.1 Views of Highpine

Highpine applied to increase the penalized allowable production to be taken from the SS Pool through the 3-34 well from 50.5 to 75.0 m<sup>3</sup>/d. It submitted that the well capability of 201.9 m<sup>3</sup>/d used to calculate the penalized allowable production does not reflect the capability of the 3-34 well. It noted that the well capability was based on production from the 3-34 well in May 2006, when production from the 3-34 well was interrupted by plant shut in and by plant operational problems, which forced Highpine to curtail production below the well's capability.

Highpine submitted that the well was capable of producing 300 m<sup>3</sup>/d of oil, and that this production capability should be used in calculating an increase in penalized allowable production for the well. This would result in a penalized allowable production of 75.0 m<sup>3</sup>/d. To support its assertion that the 3-34 well is capable of producing 300 m<sup>3</sup>/d of oil, Highpine submitted daily production information for portions of December 2006 and January 2007. It noted that during the six days from December 28, 2006, to January 2, 2007, the estimated production from the well ranged from 269.5 to 322.1 m<sup>3</sup>/d, while the prorated production ranged from 233.7 to 288.6 m<sup>3</sup>/d.

In explaining the production information, Highpine confirmed that production from the 3-34 well was determined by applying a battery proration factor to estimated production. In response to West's questioning of the method by which the battery proration factors were calculated, Highpine submitted that the way its calculations were made were not that different from the way West makes its calculations, and that the differences between estimated and prorated volumes were not unreasonable. Highpine stated that production numbers reported to the Alberta Petroleum Registry were accurate.

In response to West's submission that the production data on which Highpine was relying were undermined because the 3-34 well was producing at a gas/oil ratio (GOR) of over 400 m<sup>3</sup>/m<sup>3</sup>, contrary to the good production practice (GPP) approval issued by the EUB, Highpine noted that under the GPP approval, if the GOR exceeded 400 m<sup>3</sup>/m<sup>3</sup>, the operator was to modify production, but there was no penalty associated with exceeding the stated GOR.

Highpine argued that West's submission that the capability of the 3-34 well could not be higher than it was in May 2006 when the well capability was determined was untrue, as the rate has been greater than 201.9 m<sup>3</sup>/d, as shown by the December 2006 and January 2007 production information. Highpine submitted that the SS Pool had pressure maintenance and that the rate of the well was not necessarily tied to reservoir pressure, but was affected by other restrictions in

the system, such as wellhead chokes and conditions at the separators at the satellite facility and battery.

In summary, Highpine submitted that its information showed that the 3-34 well was capable of producing at 300 m<sup>3</sup>/d, and this capability should be used to calculate an increased penalized oil allowable production rate of 75.0 m<sup>3</sup>/d.

## 6.2 Views of West

West submitted that the Board should deny Highpine's application for an increased oil allowable production rate for the 3-34 well. To support its position, West contended that the production data on which Highpine was relying to show the capability of the 3-34 well were undermined for the following reasons:

- Highpine based well capability on six days of production information, rather than on monthly data as would normally be the case for off-target wells. West noted that production rates over the life of the 3-34 well ranged from 99 to 258 m<sup>3</sup>/d, with an average cumulative capability of 219 m<sup>3</sup>/d, which does not support a capability for the well of 300 m<sup>3</sup>/d.
- The method used by Highpine to calculate the proration factor for obtaining production volumes was questionable. The calculation should have been done at standard pressure and temperature, not at the conditions at the separator. West did not know exactly how Highpine calculated the proration factor, but argued that it was not the way to do the calculation for production accounting purposes.
- The 3-34 well was not being operated in accordance with the GPP approval for the SS Pool, as the GOR was over the 400 m<sup>3</sup>/m<sup>3</sup> limit for 39 of the 41 days reviewed. This is indicative that the well is not capable of supporting the current penalized rate of 50.5 m<sup>3</sup>/d.
- At the time the EUB determined the capability of the 3-34 well, the pressure of the SS Pool was at the minimum operating pressure (MOP) of 17 400 kilopascals. West submitted that as the GPP approval requires the MOP to be at that level, and since the production capability of any well was a function of the pressure drawdown of the well, the capability of the 3-34 well could not be any better than it was in May 2006.

In summary, West argued that as the information for the 3-34 well did not support the application for an increased allowable production rate, the application should be denied.

## 6.3 Views of the Board

The Board believes that the determination of an off-target penalty and oil well capability, together with the penalized allowable production calculation, should be transparent and reproducible from data readily available on the public record. Daily production values for a well are not normally accessible to the Board and, accordingly, it has been the Board's practice to use production information filed with the Alberta Petroleum Registry when determining an oil well's capability in the calculation of a penalized allowable production rate. The data are reported to the Alberta Petroleum Registry on a monthly basis and, therefore, these monthly values normally form the basis for the penalized allowable oil production calculation. On this basis alone, the

Board is not prepared to determine the capability of the 3-34 well using production data collected over a six-day period, as argued by Highpine.

With respect to the production values reported for the 3-34 well, the Board notes Highpine's statement that the values reported to the Alberta Petroleum Registry were accurate and is prepared to accept the statement. The Board notes the discussion by the parties on proration factors, but does not believe that an application for an increased allowable oil production rate is the mechanism through which to address production reporting issues. Such issues should be addressed through the EUB's Operations Group, if necessary.

The Board also notes the discussion at the hearing respecting how the GOR and MOP for the SS Pool should impact the penalized allowable production for the 3-34 well. The Board does not believe that an off-target penalty for a well should be used as a tool to govern pool production in order to obtain optimal recovery of the resources. Obtaining the maximum possible production from the pool is more appropriately addressed through the GPP approval for the pool.

In conclusion, the Board sees no justification for increasing the current penalized oil production allowed from the 3-34 well. The Board therefore denies Application No. 1500270.

Dated in Calgary, Alberta, on June 5, 2007.

#### **ALBERTA ENERGY AND UTILITIES BOARD**

*[Original signed by]*

J. D. Dilay, P.Eng.  
Presiding Member

*[Original signed by]*

D. A. Larder, Q.C.  
Acting Board Member

*[Original signed by]*

R. D. Heggie  
Acting Board Member

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**APPENDIX 1 HEARING PARTICIPANTS**

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Principals and Representatives  
(Abbreviations used in report)

Witnesses

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Highpine Oil & Gas Limited (Highpine)  
A. L. McLarty, Q.C.

R. B. Fryk, P.Eng.

West Energy Ltd. (West)  
D. A. Holgate  
D. Langen

K. McCagherty

Alberta Energy and Utilities Board staff  
C. McMeneny-Savage, Board Counsel  
K. Fisher  
S. Mangat

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## APPENDIX 2 RETIREMENT OF OVERPRODUCTION BASED ON OFF-TARGET PENALTY EFFECTIVE MARCH 1, 2006

| Month                   | Oil production (m <sup>3</sup> ) | Penalized monthly allowable (m <sup>3</sup> ) | Monthly overproduction (m <sup>3</sup> ) | Monthly overproduction penalty (m <sup>3</sup> ) | Cumulative overproduction (m <sup>3</sup> ) | Penalized daily rate (m <sup>3</sup> /d) |
|-------------------------|----------------------------------|---|--|--|---|--|
| March 2006 <sup>a</sup> | 471.8                            | 1565.5  | -1093.7                                  |  | 0.0   | 50.5 <sup>b</sup>                        |
| April 2006              | 7081.6                           | 1515.0  | 5566.6                                   | 2707.6   | 8274.2                                      | 50.5                                     |
| May 2006                | 5418.8                           | 1565.5  | 3853.2                                   | 1848.3   | 13 975.7                                    | 50.5                                     |
| June 2006               | 57.9                             | 1515.0  | -1457.1                                  |  | 12 518.6                                    | 50.5                                     |
| July 2006               |                                  | 1565.5  | -1565.5                                  |  | 10 953.1                                    | 50.5                                     |
| August 2006             |                                  | 1565.5  | -1565.5                                  |  | 9387.6                                      | 50.5                                     |
| September 2006          |                                  | 1515.0  | -1515.0                                  |  | 7872.6                                      | 50.5                                     |
| October 2006            |                                  | 1565.5  | -1565.5                                  |  | 6307.1                                      | 50.5                                     |
| November 2006           |                                  | 1515.0  | -1515.0                                  |  | 4792.1                                      | 50.5                                     |
| December 2006           | 1212.7                           | 1565.5  | -352.8                                   |  | 4439.3                                      | 50.5                                     |
| January 2007            | 1564.3                           | 1565.5  | -1.2                                     |  | 4438.1                                      | 50.5                                     |
| February 2007           | 1384.1                           | 1414.0  | -29.9                                    |  | 4408.2                                      | 50.5                                     |
| March 2007              | 1494.8                           | 1565.5  | -70.7                                    |  | 4337.5                                      | 50.5                                     |
| April 2007              | 1358.1                           | 1515.0  | -156.9                                   |  | 4180.6                                      | 50.5                                     |
| May 2007                |                                  | 1565.5  | -1565.5                                  |  | 2615.1                                      | 50.5                                     |
| June 2007               |                                  | 1515.0  | -1515.0                                  |  | 1100.1                                      | 50.5                                     |
| July 2007               |                                  | 1565.5  | -1565.5                                  |  |   | 50.5                                     |

<sup>a</sup> Effective date of penalty

<sup>b</sup> Penalized allowable rate (calculated based on May 2006 production):  $201.9 \text{ m}^3/\text{d} \times 0.25 = 50.5 \text{ m}^3/\text{d}$