



Bowood Energy Ltd.

Section 40 Review of Well Licence No. 0413339

March 23, 2010

ENERGY RESOURCES CONSERVATION BOARD

Decision 2010-016: Bowood Energy Ltd., Section 40 Review of Well Licence No. 0413339

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Published by

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

**BOWOOD ENERGY LTD.
SECTION 40 REVIEW OF
WELL LICENCE NO. 0413339**

**Decision 2010-016
Proceeding No. 1630569**

1 DECISION

The Energy Resources Conservation Board (ERCB/Board) grants the preliminary motion filed by Bowood Energy Ltd. (Bowood) and hereby cancels Proceeding No. 1630569. The Board denies the preliminary motion filed by Advantage Oil and Gas Ltd. (Advantage).

2 INTRODUCTION

2.1 Review Application

Bowood filed Application No. 1627809 for approval to drill a second gas well at Legal Subdivision (LSD) 12, Section 24, Township 31, Range 8, West of the 4th Meridian. On October 23, 2009, the ERCB approved the application and Licence No. 0413339 was issued for the 102/12-24-31-8W4M well (the 102/12-24 well). The 102/12-24 well was drilled on target. On October 27, 2009, Advantage submitted a review and variance application under Section 40 of the *Energy Resources Conservation Act (ERCA)* for a review of the ERCB's decision to approve Application No. 1627809 and grant Licence No. 0413339. Advantage also requested that the Board suspend Bowood's 102/12-24 well pending a review hearing into the approval.

Advantage is an adjacent mineral rights holder in Section 23-31-08W4M and operates two gas wells in the same Upper Mannville M Pool (Mannville M Pool) that Bowood's 102/12-24 well targets. Bowood also drilled the 100/12-24-31-08 well (100/12-24 well), which at the time of Advantage's review application was completed in the Mannville M Pool. The 100/12-24 was drilled off target. Both Sections 24 and 23 are subject to the same spacing, which permits two wells to produce from the same pool at the same time in the section, and the sections are further governed by buffer zone controls.

On January 19, 2009, the ERCB directed that the 100/12-24 well be shut in as a result of overproduction and remain shut in until all overproduction and penalty are retired. After subsequent ERCB communications, Bowood ultimately shut in the 100/12-24 well on September 21, 2009. According to the ERCB's public records, the 100/12-24 well overproduced its gas allowable by 4 548 300 cubic metres (m³) and was assessed an overproduction penalty of 1 589 900 m³. The cumulative overproduction that Bowood must retire in order for the Board to remove its shut-in order is 6 138 200 m³.

Advantage argued that Bowood's two wells, the 102/12-24 well and the 100/12-24 well, were located in close proximity to one another, and the 102/12-24 constituted inappropriate subsurface clustering of wellbores. Furthermore, Advantage argued that the clustering would affect Advantage's equity interest in the Mannville M Pool. Advantage also argued that the 102/12-24 well was an attempt to evade the overproduction and penalty that are currently associated with

the 100/12-24 well such that Bowood would effectively not have to retire any of the overproduction.

On November 12, 2009, the Board granted a hearing with respect to Advantage's review application on the basis that Advantage's equity interest in the Mannville M Pool may be adversely affected by the close proximity of Bowood's two wellbores. The Board limited the review hearing to the issue of the location of Bowood's 102/12-24 well and its proximity to the 100/12-24 well and potential adverse impacts on Advantage's equity interest. The Board denied Advantage's suspension request because it was of the view that no irreparable harm could be caused to Advantage as the 100/12-24 well must remain shut in and unable to produce until its overproduction is retired. Furthermore, the Board found that the 102/12-24 well currently complied with ERCB requirements and was therefore entitled to produce.

In a separate application made October 6, 2009, Bowood applied, pursuant to Section 10.300(4) of the *Oil and Gas Conservation Regulations*, to reestablish the maximum daily allowable (Qmax) based on a recent absolute open flow (AOF) test, to revise an annual gas allowable, and to remove the overproduction penalty assigned to the 100/12-24 well for the production of gas from the Mannville M Pool. Application No. 1626057 was set down to be heard by the Board at the same public hearing into the review of Licence No. 0413339.

On February 8, 2010, the Board received correspondence from Bowood advising that it intended to abandon the Mannville M Pool in the 100/12-24 well. Bowood also advised that it wished to withdraw Application No. 1626057, the revised gas allowable application. As a result of the abandonment of the 100/12-24 well, Bowood requested that the Board make a preliminary determination dismissing Advantage's review and cancelling the review proceeding.

On February 12, 2010, after receiving submissions from the parties on Bowood's preliminary motion, the Board determined that it would hear oral arguments from the parties in relation to Bowood's motion. The Board determined that the review proceeding would commence as scheduled to consider Bowood's preliminary motion. Furthermore, pursuant to Section 21 of the *Energy Resources Conservation Board Rules of Practice*, the Board accepted the withdrawal of Application No. 1626057 by Bowood.

On February 18, 2010, the Board received a request from Advantage to suspend Licence No. 0413339 for the 102/12-24 well pending the Board's decision on the review proceeding. The Board informed Bowood and Advantage that it would consider Advantage's suspension request along with Bowood's motion as preliminary matters at the review proceeding.

On February 22, 2010, Bowood advised the Board that the Mannville M Pool zone of its 100/12-24 well was abandoned on February 16, 2010.

2.2 Hearing

The Board commenced a public hearing into the review of Licence No. 0413339 in Calgary, Alberta, on February 24, 2010, before Board Member G. Eynon, P.Geol. (Presiding Member) and Acting Board Members J. G. Gilmour, B.A., LL.B., and R. J. Willard, P.Eng. Following the presiding member's opening remarks, the Board heard the parties' arguments in respect of Bowood's preliminary motion and the suspension application of Advantage. Once arguments were completed on both Bowood's and Advantage's preliminary motions, the Board adjourned

the public hearing pending its rulings on the preliminary motions. Those who appeared at the hearing are listed in Appendix 1.

3 PRELIMINARY MATTERS

3.1 Bowood's Preliminary Motion

Bowood requested that the Board dismiss Advantage's application for review of Licence No. 1627809 on the basis that Advantage does not meet the test for a review under Section 40 of the *ERCA*. Bowood argued that as a result of the abandonment of the Mannville M Pool zone in the 100/12-24 well, Advantage was not and could never be directly and adversely affected by the Board's granting of Licence No. 0413339 on the basis of clustering. Bowood submitted that there was no clustering of the 100/12-24 and 102/12-24 wells, since not only was the 100/12-24 well shut in for overproduction, but the relevant zone in the well had now been abandoned. Bowood also argued that at no time since the licensing of the 102/12-24 well could there ever have been clustering of both wells, because the wells were never produced simultaneously; the 100/12-24 well was shut in prior to Bowood's drilling of the 102/12-24 well.

Bowood also argued that the issuance of the well licence for the 102/12-24 well had not directly and adversely affected Advantage by causing inequitable drainage. The 102/12-24 well was drilled on target in accordance with the Board's requirements and regulations. Bowood was within its legal right to drill and produce the on-target 102/12-24 well.

In response, Advantage argued that in *Bulletin 2006-24*¹ the Board determined subsurface clustering of wellbores to be inappropriate. Advantage submitted that there was clustering of the wells when the 102/12-24 well was approved and that clustering still remained, notwithstanding that the Mannville M Pool zone in the 100/12-24 well had been abandoned. Furthermore, Advantage argued that Bowood wrongfully drained Advantage's resources as a result of overproduction by the 100/12-24 well and Bowood's ignoring of the shut-in order. Advantage also argued that the 102/12-24 well was drilled as a surrogate for the 100/12-24 well to circumvent the Board's overproduction penalties.

The Board notes that when it granted Advantage's review application, it did so on the issue of clustering. Specifically the Board found that Advantage's equity interest in the Mannville M Pool may be adversely affected by the close proximity of Bowood's two wellbores. As a result, the Board limited the review hearing to the issue of the location of Bowood's 102/12-24 well and its proximity to the 100/12-24 well and potential adverse impacts on Advantage's equity interest.

The Board understands that the underlying question it must answer in this preliminary motion is whether Advantage satisfies the test under Section 40 of the *ERCA* in light of a change in circumstances, that being the abandonment of the relevant zone in the 100/12-24 well.

¹ *Bulletin 2006-24: Well Spacing Amendment Regulation Regarding Changes to Reservoir-Related Well Spacing Regulations, Application Requirements, and Application Review Process.*

Section 40(1) of the *ERCA* states:

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.

Further guidance on a section 40 is provided in Rule 48(6)(b) of the *Energy Resources Conservation Board Rules of Practice* which states:

48(6)(b) When determining the preliminary question, the Board shall grant an application for review, with respect to a review under section 40 of the 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.

The term "clustering" is not defined or set out in any ERCB legislation or regulations as a specific control. Moreover, the Board does not have specific anti-clustering requirements. The Board considers clustering to be a conservation and/or equity issue and should be avoided. Clustering is mentioned in *Bulletin 2006-24*, which announced the removal of interwell distances as a control mechanism in the part of Alberta south of Township 53 and east of the 5th Meridian, as shown in Schedule 13A of the *Oil and Gas Conservation Regulations*. The Mannville M Pool is located in this area. In the Questions and Answers section attached to the bulletin, the ERCB discusses clustering in an answer to a question concerning potential clustering of wells in the absence of an interwell distance. The relevant portion of the Questions and Answers reads:

Question: In the absence of an interwell distance, I'm concerned about the potential for "clustering" of wells or inappropriate fence line development. How will this be addressed?

Answer: For conservation purposes, the subsurface clustering of wellbores is inappropriate. Therefore the EUB expects operators to place their wells in a manner that will efficiently drain the reservoir. Historically this has not been an issue, and the EUB does not expect "clustering" to become a concern under the well spacing amendment regulation. However, any incidence of inappropriate development should be brought to the EUB's attention. The EUB will examine each case with the operator, which could result in the matter being addressed in a "show cause" hearing. Should a trend develop, the EUB may impose site-specific interwell distance requirements or further amend the regulation as warranted.

The ERCB's response notes that clustering of producing wells should be avoided by industry and explains that the ERCB may reconsider its decision to remove interwell distances in this regard or review unique cases should problems occur. The Board expects that in the normal course of activities clustering is to be addressed by industry best practices without the involvement of the ERCB. The Board also notes that the bulletin, although it is informative and provides guidance, is not part of the ERCB's regulations.

The Board considers that clustering might be an issue where two or more producing wells in a pool are located in close proximity to one another and they enable a company to exceed its equitable production from the pool. Therefore, there is the potential that clustering may impact conservation of the resources, as well as the amount of reserves other producers in the pool can produce.

The Board does not agree with Advantage's argument that clustering is present in the current circumstances simply because Bowood's wells have been drilled in close proximity to each other. Both wells must be producing at the same time or be able to produce simultaneously in order for there to be clustering of wells. The Board is of the view that given the abandonment of

the Mannville M Pool in the 100/12-24 well, Bowood's well is no longer able to produce from the Mannville M Pool. As a result of this change in circumstances, Advantage's equity interest is no longer potentially adversely affected by the proximity of the two wells. This was the limited basis on which the Board granted Advantage's review application originally.

Advantage requested that the Board transfer the overproduction and penalty assigned to Bowood's 100/12-24 well to the 102/12-24 well and have the 102/12-24 well retire the cumulative overproduction. Advantage argued that Bowood was evading the overproduction and penalty assigned to the 100/12-24 by drilling another well in close proximity. Where wells are drilled off target and subject to production rate control, the ERCB manages an annual production program. Failure by a company to produce within these controls will result in overproduction and, in some cases, overproduction penalties. The Board notes that the penalty imposed on Bowood's well takes into consideration the unacceptable length of time it took for Bowood to shut in the 100/12-24 well.

The Board has used its authority under its regulations and penalized Bowood appropriately for its actions in overproducing its gas allowable. Spacing in the area in which Bowood's wells are drilled permits two wells to be produced from a pool in the section. The overproduction penalty remains on the 100/12-24 well, and the well is retiring the overproduction and penalty imposed.

The Board finds that there is no valid reason for the Board to rescind or vary Licence No. 0413339 at this time.

As the Board finds that Advantage is not directly and adversely affected by Licence No. 0413339, the Board grants Bowood's preliminary motion to dismiss Advantage's review application and cancels the review proceeding.

3.2 Advantage's Preliminary Motion

Advantage requested that the Board immediately suspend Licence No. 0413339 on the basis that Advantage will suffer irreparable harm if the review proceeding were to be continued at a later date.

As the Board determined that Advantage is not directly and adversely affected by the Board's decision to grant Licence No. 0413339 and cancelled the review hearing, the Board denies Advantage's preliminary motion.

Dated in Calgary, Alberta, on March 23, 2010.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

G. Eynon, P.Geol.
Presiding Member

<original signed by>

J. G. Gilmour, B.A., LL.B.
Acting Board Member

<original signed by>

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

APPENDIX 1 HEARING PARTICIPANTS

Principals and Representatives
(Abbreviations used in report)

Bowood Energy Ltd. (Bowood)
K. J. Drozdowski, LL.B.

Advantage Oil and Gas Ltd. (Advantage)
J. E. Lowe, LL.B.

Energy Resources Conservation Board staff
B. S. Kapel Holden, Board Counsel
K. W. Stilwell, Board Counsel
K. Fisher
B. Keeler, P.Eng., P.Geol.
S. Mangat
