



Oban Energy Ltd.

Complaint Respecting ERCB
Enforcement Action, ERCB Invoice No. 900112407

June 10, 2008

ENERGY RESOURCES CONSERVATION BOARD

Decision 2008-049: Complaint Respecting ERCB Enforcement Action Against Oban Energy Ltd.,
ERCB Invoice No. 900112407

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ENERGY RESOURCES CONSERVATION BOARD

Calgary Alberta

COMPLAINT RESPECTING ERCB ENFORCEMENT ACTION AGAINST OBAN ENERGY LTD. (ERCB Invoice No. 900112407)

**Decision 2008-049
Proceeding No. 1574786**

1 DECISION

Having carefully considered the evidence and submissions from all parties, the Energy Resources Conservation Board (ERCB/Board) hereby denies the appeal of Oban Energy Ltd. (Oban) and upholds and affirms the decision by ERCB staff to assess fees against Oban for the late filing of volumetric data for the month of January 2008.

2 BACKGROUND

Under Section 3.2 of *Directive 007: Volumetric and Infrastructure Requirements*, licensees must report well volumetric data on a monthly basis to the ERCB. Data for the preceding month that must be reported under Section 3.2 of *Directive 007* must be submitted to the Petroleum Registry of Alberta (PRA) no later than the 18th day of each month, or if the 18th day is not a business day, on the next business day or as otherwise directed by the ERCB. The filing dates for volumetric data are published several months in advance in the Registry Reporting Calendar on the Bulletin Board on the PRA Web site at www.petroleumregistry.gov.ab.ca.

In January 2008, Oban was late in filing volumetric data for two active wells operated by it (Facility IDs ABB50095512 and ABBT0095513). For the month of January 2008, the data were required to be submitted by Oban to the PRA no later than January 21, 2008. In accordance with the usual practice of the PRA, when it did not receive any volumetric data for these wells, the PRA issued to Oban a Noncompliance Warning Report on Friday, January 18, 2008 (warning report). On January 22, 2008, the ERCB issued to Oban a First Notice of Low Risk Noncompliance for Volumetric Reporting Deficiencies Invoice No. 900112407 in the amount of \$1050.00 (invoice). Oban filed the data on the PRA on January 23, 2008.

Oban is a start-up junior company with nine employees and one part-time production/revenue accountant (Oban accountant) who works one day a week on Wednesdays.

Oban advised that the Oban accountant did not receive the warning report or invoice until Wednesday, January 23, 2008. On that same day, the Oban accountant contacted ERCB staff by e-mail to advise that she only worked at Oban on Wednesdays and had missed the deadline for submitting Oban's volumetric data. In that communication, the Oban accountant requested that penalties not be assessed to Oban for the late filing of Oban's volumetric data.

By letter dated January 24, 2008, ERCB staff advised the Oban accountant that the ERCB had denied Oban's request for a review of the enforcement action on the basis that the error could have been avoided and/or corrected by Oban prior to the deadline, as it had been identified in the warning report that was sent to Oban on January 18, 2008.

On January 30, 2008, the Oban accountant wrote to the ERCB Enforcement Advisor requesting reversal of the invoice. In that letter, the Oban accountant stated that Oban was a small start-up company and would therefore appreciate the ERCB's understanding that it might encounter operating difficulties during the start-up months of operation. In that correspondence, Oban confirmed its intention to comply with the filing deadline in this case and advised that as soon as the error was recognized, Oban had immediately submitted its data as required.

By letter dated February 6, 2008, the ERCB Enforcement Advisor advised Oban that he had denied the appeal and provided reasons for his decision.

3 SUBMISSIONS OF THE PARTIES

By letter dated February 6, 2008, Oban requested the Board to exercise its discretion to reverse the invoice. Oban submitted that its failure to submit the data within the deadline was an isolated oversight in a junior oil and gas company in its start-up phase. Oban also submitted that the penalty imposed was a material amount for a small company and that Oban had taken steps to ensure that all future deadlines were met.

ERCB staff provided a written response on March 31, 2008. ERCB staff submitted that under Part 12 of the *Oil and Gas Conservation Regulations* adopted under the *Oil and Gas Conservation Act (OGCA)* and *Directive 007*, Oban was required to submit its data for the month of January through the PRA. ERCB staff submitted that the requirements are very clear and deadlines for reporting of volumetric data are published several months in advance in the PRA reporting calendar, which is available on the PRA Web site. ERCB staff further submitted that each month the PRA submits a balancing and data missing report two days before the ERCB filing deadline (the warning report) and that *Directive 007* clearly states that the warning report is the final notice of any filing errors prior to noncompliance consequences being assessed against the operator.

4 HEARING

The Board decided to hold a written hearing and based its decision on the written submissions of the parties.

5 ISSUE

The Board considers the sole issue in this proceeding to be whether or not Oban's appeal of the decision of the ERCB Enforcement Advisor should be allowed and the decision of the Enforcement Advisor set aside.

In reaching its decision as contained in this report, the Board has considered all relevant materials constituting the record of this proceeding, including the evidence, argument, and submissions provided by Oban and ERCB staff. Accordingly, references in this report to specific parts of the record are intended to assist the reader in understanding the Board's reasoning relating to a particular matter and should not be taken as an indication that the Board did not consider all relevant portions of the record with respect to that matter.

6 FINDINGS OF THE BOARD

In considering the parties' submissions, the Board noted that Part 12 of the *OCGR* and *Directive 007* require each oil and gas licensee or operator in Alberta to file with the ERCB a record of monthly activities at every well, facility, and pipeline. Each record consists of the volumetric data respecting each well, facility, and pipeline and any well status changes. These data must be filed monthly on the deadline specified. The deadlines are specified several months in advance and are available through the PRA Web site. In addition, each licensee has an e-mail account on the PRA to which notices and communications are sent. Oban received advance notification via the noncompliance warning report that was sent to Oban's account on the PRA on January 18, 2008.

The ERCB gathers the data required under Part 12 of the *OGCR* and *Directive 007* to maintain accurate historical records of the hydrocarbon production and by-products from each well. Among other uses, the data are used for royalty calculation and verification.

In considering Oban's appeal, the Board considered numerous criteria on which a decision of the Enforcement Advisor can be overturned. The Board considered the well-established tests that must be met to obtain leave to appeal to the Court of Appeal. An appellant can appeal an ERCB decision based on an error of law or an error of jurisdiction. Further, to succeed on an application for leave to appeal an ERCB decision to the Alberta Court of Appeal, an appellant must satisfy the court that there is a serious, arguable issue that has a reasonable prospect of success. In applying these tests, the Board must decide whether the ERCB erred in law or exceeded its jurisdiction when it assessed penalties against Oban for noncompliance with the filing requirements for volumetric data.

In connection with his deliberations in this matter, the Board found that

- 1) the requirement to file monthly volumetric data is found in Part 12 of the *OGCR* and *Directive 007*;
- 2) the ERCB has the statutory jurisdiction to impose requirements to file monthly volumetric data;
- 3) Oban missed the January 2008, deadline for filing volumetric data for facilities ABBT0095512 and ABBT0095513;
- 4) the ERCB has the jurisdiction to assess penalties for noncompliance, as outlined in the Schedule of Fees in Part 17 of the *OGCR*; and
- 5) Section 5.1 of *Directive 007* states that an operator that has missing data or data discrepancies that are not corrected prior to the filing deadline may receive an invoice for fees.

Based on the foregoing, the Board finds that the ERCB did not err in law or exceed its jurisdiction in assessing the noncompliance penalties against Oban.

The Board also considered additional criteria in determining whether to grant Oban's appeal. In particular, in addition to considering whether ERCB staff erred in law or exceeded their jurisdiction in connection with this matter, the Board also considered whether

- the licensee was in technical compliance with ERCB requirements;
- ERCB staff or some other governmental body contributed to the noncompliance; or
- the noncompliance was not risk-assessed or was assigned an improper risk assessment and/or improper risk level.

In considering this additional enforcement appeal criteria, the Board examined whether Oban had technically complied with the data filing requirements, whether ERCB staff or other government body made any technical or legal errors that may have contributed to Oban's inability to comply with the filing requirements, and whether ERCB staff erred in categorizing this infraction as low risk. The Board was unable to conclude that any of these additional enforcement appeal criteria had been satisfied in this case.

The Board also noted and considered Oban's submissions that it is a junior start-up oil and gas company and should therefore be afforded some leeway in meeting its volumetric data filing obligations during its first few months of operations. With due respect to Oban and its plight, the fact that an issuer is in the start-up phase of operations cannot rightfully justify a relaxation of the filing requirements for volumetric data or retraction of the noncompliance penalties in this case. Noncompliance penalties are assessed as a deterrent against noncompliance with the filing deadlines in *Directive 007*. Oban acknowledged in its submissions that the penalties exist to deter companies from failing to meet their data filing obligations.

In light of and based on the foregoing, the Board denies Oban's appeal in this matter.

Dated in Calgary, Alberta, on June 10, 2008.

ENERGY RESOURCES CONSERVATION BOARD

<original signed by>

Michael J. Bruni, Q.C.
Board Member