

1 RECOMMENDATION

The examiners have considered the evidence and recommend that

- the Alberta Energy and Utilities Board (EUB/Board), with the approval of the Lieutenant Governor in Council, issue an order under Section 72 of the Oil and Gas Conservation Act (the Act) designating that all tracts within Section 35 of Township 35, Range 25, West of the 4th Meridian (Section 35), be operated as a unit for the production of gas from the Belly River Group through the well with the unique identifier of 00/08-35-035-25W4 (the 8-35 well);
- the order allocate the costs and revenues for each tract on an area basis, with each tract's share being in the same proportion as the area of the tract is to the total area of the drilling spacing unit;
- the order specify that if production is obtained and a tract owner fails to pay its share of actual costs of drilling and completing the 8-35 well in the Belly River Group within 30 days of 1) the pooling order being issued, 2) the owner being given notice in writing of its share of costs, or 3) the well having commenced production, whichever is later, then a penalty equal to two times the unpaid amount shall be added to the amount already payable by that owner; and
- the order designate Artemis Energy Limited (Artemis) as the operator of the 8-35 well.

2 INTRODUCTION

2.1 Application, Intervention, and Hearing

Artemis filed Application No. 1089745 under Section 72 of the Act for an order prescribing that all tracts within the drilling spacing unit comprising Section 35 be operated as a unit for the production of gas from the Belly River Group through the 8-35 well.

Gauntlet Energy Corporation (Gauntlet) filed a submission opposing the application.

The application was considered at a public hearing on June 22, 2001, by Board-appointed examiners T. M. Hurst, H. W. Knox, P.Eng., and G. A. Habib.

The following lists the participants at the hearing and abbreviations used in the report:

THOSE WHO APPEARED AT THE HEARING

Principles and Representatives (Abbreviations Used in Report)

Witnesses

Artemis Energy Limited (Artemis)
A. McConnell

G. A. Loewen, P.Eng.
G. K. Kruvssen

Gauntlet Energy Corporation (Gauntlet)
K. F. Miller

K. Rossi
G. J. Van Ee, P.Eng.

Alberta Energy and Utilities Board staff
K. Fisher
L. Lacasse

2.2 Background

Artemis acquired all of the gas rights of interest in Section 35 except in the northwest quarter, where the rights are held by Gauntlet. The applicant drilled the 8-35 well in February 2001 and encountered a productive Belly River reservoir.

Artemis and Gauntlet entered into negotiations, participated in an Appropriate Dispute Resolution (ADR) process respecting pooling their interests in the section, and resolved all of the issues associated with the application except the question of who should be appointed as the operator of the 8-35 well.

3 ISSUES

The examiners consider the issues respecting the application to be

- the need for a pooling order, and
- the provisions of a pooling order if issued and, in particular, who should be appointed as the operator of the 8-35 well.

4 CONSIDERATION OF THE APPLICATION

4.1 Views of Artemis

Artemis submitted that its efforts to obtain a voluntary pooling arrangement on reasonable terms with Gauntlet through negotiations and ADR had been partly successful. The applicant indicated that Gauntlet had agreed with the provisions requested in the application that the 8-35 well should be produced from the section and that costs and revenues associated with drilling the

8-35 well to, and completing it in, the Belly River Group should be shared on a tract area basis. In addition, no concerns were raised respecting the applicant's request that the maximum penalty allowed under the Act be applied to a tract owner's share of drilling and completion costs if those costs were not paid within 30 days of the later of the pooling order being issued, the tract owner being notified in writing of its share of the costs, and the well commencing production.

However, as the parties were unable to agree on who should be the designated operator of the 8-35 well, no voluntary pooling agreement was reached. The applicant concluded that a pooling order was therefore needed to allow for the production of the 8-35 well.

Artemis submitted that it should be named the operator of the 8-35 well in the pooling order on the basis that it has the majority interest within Section 35, has licensed, drilled, and completed the 8-35 well, and is an experienced operator who is recognized by the EUB. Further, Artemis considered that as operator it could better protect its interest in the section.

The applicant submitted that Gauntlet would be in an apparent conflict of interest if named the operator of the 8-35 well, because Gauntlet also owns and operates a plant located some 100 metres from the well (the 8-35 facility), as well as two adjacent Belly River wells with the unique identifiers of 00/11-25 and 00/05-36-035-25W4. Artemis was concerned that for competitive drainage reasons, it would be in Gauntlet's best interest not to have the 8-35 well on production. If the 8-35 well were tied into the Gauntlet facility and the capacity available in the facility for gas from the 8-35 well were reduced to allow more of Gauntlet's own production, Artemis, as the designated operator of the 8-35 well, could then immediately make other arrangements. While Artemis wanted to be appointed the operator of the 8-35 well in the pooling order and have overall control of the well, it did offer to engage the same contract operator currently overlooking Gauntlet's facilities in the area if coordination of the entire system was the reason for Gauntlet's desire to be named operator of the 8-35 well. Artemis stated that it had not yet made final arrangements to tie the 8-35 well in and noted that the Gauntlet 8-35 facility was only one of several possible alternatives.

4.2 Views of Gauntlet

Gauntlet agreed that the 8-35 well should be produced from the section and that the costs and revenues associated with drilling the well to, and completing it in, the Belly River Group should be shared on a tract area basis. In addition, Gauntlet had no objection to the penalty provision requested by the applicant. However, Gauntlet supported the need for a pooling order, because the parties had not been able to agree on who should operate the 8-35 well.

Gauntlet requested that it be named as the operator of the 8-35 well in the pooling order only if the well is tied into its facility. It considered that tying into the 8-35 facility represented the most economic option given its proximity to the 8-35 well and the reasonable custom processing fee offered to Artemis. With the 8-35 well tied into the Gauntlet facility, it would be practical from an operational point of view for Gauntlet to also operate the well, as it could then coordinate the handling of potential problems, scheduled maintenance, and any safety issues that may arise. Gauntlet considered that it was relatively common practice for a plant operator to also operate wells licensed to other companies that were producing into its facility, so that the day-to-day operations of the entire system could be optimized.

With respect to the conflict-of-interest concern raised by Artemis in the event that Gauntlet was the operator of the 8-35 well, Gauntlet said that a standard operating agreement between the parties could alleviate many of the concerns raised by Artemis. Moreover, Gauntlet submitted that in the event there were any perceptions of conflict or unfair play, it would be prepared to allow Artemis to pursue alternative arrangements for its share of gas and/or seek appropriate regulatory remedies.

4.3 Views of the Examiners

The examiners note that the two parties have not been successful in attempts to reach a mutually satisfactory pooling arrangement and conclude that there is a need for a pooling order.

The examiners note that the parties agreed that the tracts in Section 35 should be pooled to allow the production of gas from the Belly River Group through the 8-35 well and that the costs and revenues associated with drilling the well to, and completing it in, the Belly River Group should be shared on a tract area basis. Further, no concerns were raised respecting the penalty provision requested by the applicant. The examiners conclude that the pooling order should include these provisions.

With respect to the issue of who should be appointed as the operator of the 8-35 well in the pooling order, the examiners note that the normal EUB practice is to name the well licensee as operator. This practice has been followed because the EUB holds the licensee accountable for operations at the well and for impacts of the well throughout the life of the well to abandonment, even if another party has been contracted to operate the well.

The examiners recognize that well licensees often contract other parties to operate their wells; however, the examiners do not consider this situation equivalent to appointing an operator in a pooling order. Contractual agreements signed between parties would lay out the responsibilities of an operator, and the well licensee generally has some contractual recourse to hold the operator responsible for well operations and impacts. However, the provisions of a normal pooling order offer a well licensee limited avenues to influence and control the operator's action. Thus, to name a party other than the licensee as operator of a well would add an unnecessary complexity.

On the basis of the foregoing, the examiners believe that the practice of naming the well licensee operator of the well subject to a pooling order should be followed unless there are compelling reasons justifying otherwise.

In the present case, Artemis is the licensee of the 8-35 well, has drilled and completed the well, and is the largest working interest owner in the section. There was no dispute as to its qualification as an operator. Gauntlet simply stated that if the well was to be tied to its facility it should be named operator to ensure day-to-day coordination of operations. The examiners have considered these factors and conclude that there are no substantive reasons as to why Artemis should not be appointed operator of the well. It is not unusual for a well licensee to operate its own well that is producing into another party's facility without unduly hampering day-to-day operations or safety. There is no reason to consider that Artemis would not be cooperative when activities need to be coordinated. The examiners note that Artemis is not opposed to using the

same contract operator for the 8-35 well as that engaged by Gauntlet to alleviate any concerns that Gauntlet may have with regard to coordination of the operations of the different facilities. The examiners also note that Gauntlet's request to be operator is conditional on the well being tied in to the Gauntlet 8-35 facility. The examiners believe that a pooling order should not contain terms that limit the well licensee's ability to pursue what it considers to be the best means of placing the well on production and of obtaining an equitable share of pool reserves. The issue of where the 8-35 well should be tied in is beyond the scope of this pooling application, and any decision on the pooling application that directly points to a specific facility or tie-in would be inappropriate. Moreover, the examiners note that under a pooling order, a tract owner has the option of taking gas in kind. This should alleviate any concerns that Gauntlet may have with respect to the most economic tie-in and handling of its share of gas production from the 8-35 well.

The examiners also recognize the conflict-of-interest issue raised by Artemis as a valid concern and consider that naming Gauntlet as the operator of the 8-35 well could give it undue advantage in a potential equity dispute. In the event that a conflict-of-interest issue arises, the examiners believe that a scenario where Artemis is pursuing options while Gauntlet has the right to operate the 8-35 well may be prejudicial to Artemis.

On the basis of the foregoing, the examiners consider that Artemis should be named the operator of the 8-35 well under the pooling order.

5 CONCLUSION

The examiners conclude from a review of the evidence that a pooling order, with the provisions noted previously, should be issued to address the matters raised by the hearing participants.

DATED at Calgary, Alberta, on August 8, 2001.

<Original signed by>

T. M. Hurst

H. W. Knox, P.Eng.*

G. A. Habib*

* Mr. Knox and Ms. Habib were unavailable for signature but concur with the contents and with the issuing of this report.