

IN THE MATTER OF
the Utilities Commission Act
S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF
an Application by
Wainoco Oil and Gas Limited

DECISION

October 8, 1985

Before :

D.B. Kilpatrick, Chairman of the Division
N. Martin, Commissioner

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APPEARANCES

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D. FREDERICKSEN	for Baay Land Consultants
D. MORLEY	for B.C. Petroleum Corporation
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Hearing Officer
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LIST OF EXHIBITS

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B.C. Utilities Commission Order No. U-COM-2-80 dated October 16, 1980 and Decision	1
Letter June 7, 1985 - Wainoco Oil and Gas Limited to B.C. Utilities Commission Re : Rescinding BCUC Order No. U-COM-2-80	2
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1.0 INTRODUCTION

On June 7, 1985, Wainoco Oil and Gas Limited ("Wainoco" or the "Applicant") made Application to the British Columbia Utilities Commission ("the Commission") requesting that the Commission rescind Common Purchaser Order No. U-COM-2-80. That Order resulted from an Application in 1980 by Baay Land Consultants Ltd. ("Baay Land") for an Order of the Commission declaring the British Columbia Petroleum Corporation ("BCPC") to be a common purchaser of natural gas in the Wilder Halfway "A" Pool.

Wainoco's Application was set down for hearing on September 4, 1985 by Commission Order No. COM-1-85. Notice of Hearing was published by the Applicant and the Commission mailed copies of the notice to parties believed to have an interest in the hearing. Written interventions were received from Baay Land, BCPC, and Ocelot Industries Ltd. ("Ocelot").

The result of the 1980 Order declaring the Pool to be a Common Purchaser pool was that a portion of Wainoco's contract with BCPC, and a small contract held by Baay Land with BCPC, was shared with the well Baay et al Wilder 10-12-83-20 W6M. The Baay well number 10-12 was awarded 24.48% of the contract volumes in the pool.

At the commencement of the September 4, 1985 hearing, Counsel for the Commission advised all parties of the provisions of the Utilities Commission Act, Section 114, which allows the Commission to consider, vary or rescind a Decision or Order made by the Commission.

2.0 THE ISSUES

As a result of the conflicting evidence of the interested parties at the hearing, the Commission has found that disposition of the Wainoco Application rests in

large measure with the Commission's determination of the intent of the Common Purchaser legislation in the Utilities Commission Act.

There was little dispute over the technical data in the Application. As a result of Baay Land's entry into a "best efforts" contract with Ocelot, the Baay Land wells have produced in 1985 a much greater share of pool production than that determined by the Commission in Order No. U-COM-2-80. While little physical evidence of drainage was available at the hearing, the Commission is satisfied that ongoing production by the parties at current levels will ultimately result in drainage of natural gas from the Wainoco unit.

Wainoco recognized that a "best efforts" contract with Ocelot similar to the contract in force with Baay Land, is available to it. Wainoco testified, however, that as a result of the higher royalties the older Wainoco well must pay and the tax position of Wainoco, the company could not economically replace gas inventory sold at the current prices offered by Ocelot. Accordingly, the Applicant was not prepared to enter into such a contract.

Baay Land testified that at the current prices offered by Ocelot it can economically produce gas from its wells as long as it continues to hold its existing Common Purchaser contracts with BCPC. Baay Land attributes the ongoing costs of the wells to the BCPC contract and testified that on an incremental production basis, the Ocelot contract is profitable. Baay Land indicated, however, that the current prices would be inadequate to cover full production costs if the BCPC contract were to be withdrawn.

2.1 The Wainoco Position

The position of the Applicant is that a Common Purchaser declaration is intended to prevent drainage of gas from reserves surrounding a completed well which cannot secure a reasonable gas purchase contract. The granting of a Common Purchaser Order is viewed by Wainoco as a temporary Order, to

cover the period until the party without a contract is able to secure an alternative contract. Since the legislation is intended to protect against physical drainage of gas, Wainoco argued that it is not incumbent on the Commission to ensure that either Wainoco or Baay Land receive revenues proportionate to their reserves; rather, Wainoco took the position that the Commission should ensure each party had a reasonable opportunity to produce its proportionate share of pool volumes.

Since Baay Land had secured a new contract with Ocelot, Wainoco argued that the original Common Purchaser Order was now redundant and should be rescinded.

2.2 The Baay Land Position

Baay Land intervened at the hearing to request that the Commission deny the Application by Wainoco. Baay Land took the position that the "best efforts" contract with Ocelot was substantially different from the contract with BCPC. The contract with Ocelot contains no load factor or take-or-pay requirements. Although recent adjustments to the contracts have minimized the importance of the load factor clause, the BCPC contract with Baay Land does provide for a load factor. Moreover, Baay Land argued that Wainoco had an equal opportunity to attain a contract to sell excess gas to Ocelot, and that therefore even if drainage was in fact occurring, Wainoco had an equal opportunity to sell its gas. Baay Land therefore took the position that equity would be best served by leaving the existing Common Purchaser Order in place and allowing both companies to seek out new markets.

The Commission finds the arguments presented by Baay Land to be inconsistent. On the one hand Baay argued that although the Ocelot contract might be uneconomical to Wainoco, that fact was not material since Wainoco had an opportunity to sell its gas on conditions similar to those offered to Baay Land.

On the other hand, Baay Land testified that if its BCPC contract were to be withdrawn then it would terminate its then uneconomic contract with Ocelot and seek to be reinstated as a Common Purchaser in the Pool. The Commission finds this to be contradictory and clearly discriminatory reasoning which highlights the real purpose of the Common Purchaser legislation; namely, protection against physical drainage of reserves from lands surrounding a completed well which cannot obtain a contract.

2.3 The Ocelot Position

The position of Ocelot at the hearing was that the Commission should do nothing to limit the freedom of Ocelot to contract for discount gas. Ocelot argued that direct sales of discount gas are now permitted as a matter of government policy and should not be limited. Ocelot also took the position that the Commission did not have the power in the current proceeding to declare Ocelot a Common Purchaser of natural gas in the Wilder Halfway "A" Pool.

2.4 The B.C.P.C. Position

The major concern of the BCPC was that the corporation should not be used as a vehicle to adjust purchases from the Pool as a result of perceived inequities related to the Ocelot contract. BCPC pointed out that the volumes of natural gas purchased under its contracts were not sufficiently large enough to allow an equitable allocation of production. Moreover, BCPC testified that because information on sales to Ocelot is sometimes received by BCPC as late as several months after the sale is made, it has limited ability to undertake accounting adjustments for natural gas sold under various contracts.

3.0 COMMISSION CONSIDERATIONS AND CONCLUSIONS

The Commission recognizes that recent changes in B.C. Government policy and in the marketing of natural gas in the province are important considerations in determining appropriate disposition of the Wainoco Application. At the time of the original Common Purchaser declaration, the well owners were permitted to sell their gas only to the British Columbia Petroleum Corporation and at fixed prices. In this new era of market competition, discount sales and variable royalties, the conditions facing the producers are very different from those prevailing in 1980. Accordingly, where possible, the Commission's objectives must be to meet the intent of the Common Purchaser legislation, provide equity to the participants in the Pool, and at the same time support current government marketing policies.

In its interpretation of the Common Purchaser legislation, the Commission has of necessity considered whether the legislation was intended only to protect against physical drainage of gas volumes, or whether the Commission should take into account the economic impact on the well owners where drainage is involved. The Commission concludes that physical drainage rather than economic considerations should be the determining factor in its decision.

In its previous decisions the Commission has required that an Applicant for a Common Purchaser Designation demonstrate that physical drainage of gas volumes from its lands was taking place. The Commission concludes that the principal intent of the legislation is to offset drainage, and that although the Applicant failed to provide technical evidence to demonstrate current physical drainage, at current Baay Land volumes to Ocelot, drainage of Wainoco's gas reserves appears to be inevitable over time.

A further consideration pertaining to the legislation is whether the designation of a Common Purchaser Pool should be a temporary feature until the well which has no contract is able to secure an alternative market for its natural gas. Baay Land views the Common Purchaser designation in a Pool to be an on-going responsibility of the Commission. The Commission concludes that the duration of Common Purchaser status for a given Common Purchaser Pool should be determined on the basis of the particular circumstances prevailing in that pool. Accordingly, the Commission has dealt with the Wainoco Application on that basis.

Wainoco presented five potential options for adjustments to Pool production. Option E would require the Commission to direct BCPC to nominate additional volumes of gas from the Pool, and this is clearly not possible under Section 83 (3) of the Act. Options A, C, and D would require the Commission to intervene in and adjust the Ocelot contract. Although Option B is possible, whereby the Commission would rescind the Common Purchaser Order and allow Wainoco to obtain an Ocelot contract, both Wainoco and Baay Land objected to that proposal.

The Application before the Commission specifically requests that Commission Order No. U-COM-2-80 be rescinded. The Commission therefore concludes that it would be inappropriate, in the absence of an Application for Common Purchaser designation, to respond with a decision declaring Ocelot to be a Common Purchaser in the pool. The Commission accordingly concurs with the BCPC and Ocelot position in that regard.

4.0 OPTIONS OPEN TO THE COMMISSION

In view of the foregoing circumstances, the Commission has considered the following three options to remedy the perceived drainage situation in the Pool :

4.1 Deny the Application

Baay Land requested that the Commission deny the Application of Wainoco. To comply with that request, the Commission would have to conclude that Wainoco has an opportunity to complete agreements for the sale of its gas and avoid any current drainage. Baay Land argued that since contracts for surplus gas could be obtained, Wainoco had been afforded adequate opportunity to avoid drainage. Wainoco, however, testified that because of its tax position and the higher royalties on its older wells, production for sale to Ocelot would be uneconomic. Physical drainage of gas from the Wainoco wells would therefore be on-going.

The Commission concludes that equity would not be served by affording Baay Land the opportunity to substantially drain gas from Wainoco while at the same time holding a portion of a high priced contract won from Wainoco as a result of earlier drainage of Baay Land by Wainoco. Such an option appears to the Commission to fly in the face of the legislation and simple equity. The Commission therefore concludes that either equitable volumetric production from the Pool should be maintained or the Common Purchaser status of the Pool should be terminated.

4.2 Reallocate Common Purchaser Contracts

During the hearing Commission Counsel put to each party a proposal whereby if a producer benefitting from a Common Purchaser designation in a Pool subsequently entered into a contract with a new purchaser, then the Common Purchaser contract for the well would be reduced by a proportionate volume and reallocated back to the holders of the initial contract. Production from the Pool would thereby continue to meet the percentage shares identified in the Common Purchaser Order. After the Common Purchaser contracts had been returned to the initial holders, all parties would be free to seek new markets.

In the present case for example, if Baay Land were to sign a contract with Ocelot to deliver ten units of gas from well No. 10-12, then the BCPC/Baay Land contract for that well would be reduced by $(1-.2448) \times 10$ units of gas. This gas would be reallocated proportionately back to the Baay Land well No. 10-18 and the Wainoco unit.

Wainoco accepted this proposal immediately. Baay Land, however, objected to it and testified that, because of the low price in the Ocelot contract, if it were to be adopted, Baay Land would terminate its contract with Ocelot.

BCPC indicated several administrative problems with the proposal. BCPC would not be aware of sales under the various contracts until some months following actual production. Any adjustments to contracts would therefore involve a significant lag period. This could create problems because the nominations of gas by BCPC in the summer months would be much lower than those during the colder winter days. As a result, the Wainoco unit and the Baay Land well No. 10-18 could be reallocated a higher production during a peak period when they would be unable to meet the subsequent nominations.

The Commission believes that conceptually the proposal has several potential advantages. It would allow producers to seek out new contracts on terms which they found attractive. The owners of a Common Purchaser well would clearly be pleased to complete a contract for a price higher than the BCPC price. Such a producer, however, might also wish to enter contracts at higher load factors but at prices even below the BCPC contract price. Common Purchaser wells would thereby be able to pursue new opportunities while wells giving up portions of their BCPC contracts to accommodate the Common Purchaser wells would have an opportunity to regain their original contract positions when the new contracts are realized.

While the Commission views this proposal as being equitable as well as compatible with the new gas marketing policies of the government, it also recognizes the very significant administrative problems that would beset BCPC if the proposal were implemented. Accordingly, and because under the new Natural Gas Price Act (Bill 52) the number of cases like Wainoco's that may arise could be considerable, the Commission is not prepared to impose this potentially workable option at this time.

4.3 Rescind the Common Purchaser Order

Wainoco has requested that the Commission rescind the original Common Purchaser Order. To comply with that request, the Commission must first conclude that a Common Purchaser designation for the Pool is no longer applicable because Baay Land has subsequently obtained a contract to sell its natural gas. Since one of the three conditions required for Common Purchaser designation can no longer be met by Baay Land, the Commission could return the gas purchase contracts to the owners who had been forced to accommodate the new well in the first instance. Baay Land did not accept this option. They argued that the new contract is not a contract like the BCPC contract, and that on-going Common Purchaser regulation of the designated pool should continue.

The Commission concludes that it should not attempt to differentiate between one gas sales contract and another on the basis of load factor or price. The Commission further concludes that such issues as whether a contract is economic or only economic for incremental production, are not matters contemplated in the present Common Purchaser legislation as appropriate for either consideration or decision by the Commission.

5.0 DECISION

In light of the foregoing, the Commission concludes that the appropriate course of action in response to the current Application is to rescind Order No. U-COM-2-80 and will so order.

While the Commission views this action as appropriate for this particular Application, it is not convinced that all circumstances of increased production from Common Purchaser Pools will necessarily require that Common Purchaser Orders in those pools be rescinded. There are many circumstances which may result in increased production from such pools and each case will have to be reviewed on its own merits. Accordingly, the Commission emphasizes that the industry should not view this decision as a firm precedent for all future cases involving new gas contracts from Common Purchaser Pools.

Because this is the first case before this Commission involving new contracts in Common Purchaser pools and because Baay Land may be unduly harmed by rescission of the Order, the Commission will afford Baay Land thirty days from the date of the Order accompanying this Decision to advise if it will continue with its gas purchase contract with Ocelot. If Baay Land advises the Commission that it has terminated the Ocelot contract and wishes Order No. U-COM-2-80 to remain in force, the Commission will so order. Without such advice an Order rescinding U-COM-2-80 will take effect.

The Commission recognizes that the actions of Baay Land have resulted in some potential drainage of natural gas from the Wainoco unit. Because of variations in both pressures and future production rates in the respective wells it is not possible, on the basis of available evidence, for the Commission to quantify the drainage which will occur from the Wainoco unit as a result of production for the Ocelot contract. The Commission will therefore not take any action at this time to compensate Wainoco for the perceived but not demonstrated drainage during the period of the Ocelot contract to date.

If the Applicant so desires, the Commission will consider an Application for compensation if it is supported by the necessary evidence of physical drainage.

DATED at the City of Vancouver, in the Province of British Columbia,
this 8th day of October, 1985.

D.B. Kilpatrick

D.B. KILPATRICK, Chairman of the Division

N. Martin

N. MARTIN, Commissioner



PROVINCE OF BRITISH COLUMBIA

BRITISH COLUMBIA UTILITIES COMMISSION

BRITISH COLUMBIA UTILITIES COMMISSION	
ORDER	
NUMBER	COM-2-85

IN THE MATTER OF the Utilities Commission
Act, S.B.C. 1980, c. 60, as amended

and

IN THE MATTER OF an Application by
Wainoco Oil & Gas Limited

BEFORE: D.B. Kilpatrick,)
Chairman of the Division; and) October 8, 1985
N. Martin,)
Commissioner)

O R D E R

WHEREAS Wainoco Oil & Gas Limited ("Wainoco")
applied June 7, 1985 for an Order of the Commission rescinding
Commission Order No. U-COM-2-80; and

WHEREAS pursuant to Order No. U-COM-1-85, the
Application was heard in a public hearing in the Commission
hearing room on September 4, 1985; and

WHEREAS the Commission issued a Decision in this
matter dated September 27, 1985; and

NOW THEREFORE the Commission hereby orders as
follows:

1. Baay Land Consultants Ltd. is afforded thirty days
from the date of this Order to advise the
Commission if the company will continue to sell
natural gas to Ocelot Industries Limited from the
well Baay et al Wilder 10-12-83-20 W6M.
2. If the Commission is not advised of the
termination of the Ocelot contract as provided for
in clause 1 above, the Order U-COM-2-80 is
rescinded effective thirty days from the date of
this Order.
3. If the Commission is advised of the termination of
the Ocelot contract as provided for in clause 1
above, the Order U-COM-2-80 will remain in force.

DATED at the City of Vancouver, in the Province of
British Columbia, this 8th day of October, 1985.

BY ORDER

D.B. Kilpatrick
Chairman of the Division