

ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

**NORTHSTAR ENERGY CORPORATION
RATEABLE TAKE
DARWIN BLUESKY A POOL**

**Decision 99-12
Application No. 1027106**

1 INTRODUCTION

Northstar Energy Corporation (Northstar) applied on behalf of itself and Giant Grosmont Petroleums Ltd. (Giant Grosmont) under section 23 of the Oil and Gas Conservation Act (the Act) for an order to distribute gas produced from certain wells in the Darwin Bluesky A Pool (the A Pool).

Northstar also applied for common carrier and common processor declarations under sections 37 and 42 of the Act; however, it withdrew these applications following successful negotiations with Baytex Energy Ltd. (Baytex).

Baytex filed an intervention respecting the application.

A public hearing to consider the application was scheduled for 15 April 1999 before Board Member F. J. Mink, P.Eng., and Acting Board Members E. A. Shirley, P.Geol., and R. J. Willard, P.Eng. Prior to the hearing, Baytex requested that the Board dismiss the application without hearing it on the basis that the Board has no jurisdiction to grant the application as requested by Northstar.

The Board decided to open the hearing as scheduled and hear arguments with respect to the jurisdictional issue raised by Baytex. This report deals only with these jurisdictional matters.

Those who appeared at the hearing are listed in the following table:

THOSE WHO APPEARED AT THE HEARING

Principals and Representatives
(Abbreviations Used in Report)

Witnesses

Northstar Energy Corporation (Northstar)

L. Keough

T. Weiss

Baytex Energy Ltd. (Baytex)

K. Miller

Alberta Energy and Utilities Board staff

A. Beken, P.Eng., P.Geol

K. Fisher

W. Kennedy

1.2 Background

Northstar alleged that its gas reserves in the A Pool were being unfairly drained by ongoing production from Baytex wells from 13 February 1998, when Northstar's two wells (00/03-01-095-18W5 (the 3-1 well) and 00/04-02-095-18W5 (the 4-2 well)) were completed and shown to be capable of production, but could not be produced due to ongoing disagreements with Baytex for processing capacity and access to pipeline capacity. Northstar noted that the drainage was eliminated on 17 March 1999, when its 3-1 and 4-2 wells were placed on production.

As its wells are now producing, the applicant acknowledged that drainage of its reserves is not an issue and common carrier and common processor declarations are unnecessary. The present application seeks relief for drainage that occurred between 13 February 1998 and 17 March 1999. Northstar argued that during this period its wells were capable of production but were not tied in and produced because of delays caused by Baytex. Northstar proposed that 75 per cent of future production from seven Baytex-operated wells be assigned to Northstar and Giant Grosmont until the volume of drained gas which it calculated to be 30.3 million cubic metres had been recovered.

2.0 JURISDICTIONAL ISSUES

2.1 Legislation

Counsel for Northstar and Baytex provided detailed oral submissions concerning the interpretation of section 23 of the Act. Section 23 states:

“The Board may, by order, restrict

- (a) the amount of gas, or
- (b) where gas is produced in association with oil, the amount of gas and oil,

that may be produced during a period defined in the order from a pool in Alberta, and the restriction may be imposed by either or both of the following means:

- (c) by limiting, if the limitation appears necessary, the total amount of gas that may be produced from the pool or part of the pool, having regard to the demand for gas from the pool or to the efficient use of gas for the production of oil, or to both of those considerations;
- (d) by distributing the amount of gas that may be produced from the pool or part of a pool in an equitable manner among the wells or groups of wells in the pool for the purpose of giving each well owner the opportunity of receiving his share of gas in the pool.”

Given the application, the Board must determine if, under section 23, it can grant equitable relief for past drainage when considering a rateable take application.

2.2. Views of Northstar

Northstar maintained that the Board has the jurisdiction to deal with the application as requested. It asked that the Board use discretionary power pursuant to section 23 to provide a remedy under this provision that included past drainage, as this would provide relief that is both fair and equitable.

Northstar noted and relied on two phrases in section 23 in support of its application. In section 23(d) the Board is empowered to restrict production “...by distributing the amount of gas that may be produced from the pool in an equitable manner among the wells in the pool for the purpose of giving each well owner the opportunity of receiving his share of gas in the pool.” Another phrase in section 23 is “...that (gas) may be produced during the period defined...”. Northstar suggested that the only reasonable purpose for this language is to provide a time specific period that would allow a producer to capture a volume of gas from future production based on drainage that had occurred in the past. Northstar took the position that the “forward looking” language of section 23 should be interpreted as an intent to provide for relief of past drainage by allocating future production to resolve the inequity.

Northstar stated that absent an order from the Board, it would be permanently deprived of the opportunity to receive its appropriate share of gas from the A Pool. It submitted that this would be contrary to the express wording in section 23. It also submitted that the Board’s authority under section 23 is bolstered by the more general powers of section 7 of the Act.

2.3 Views of Baytex

Baytex took the position that section 23 only provides for prospective relief and as the relief sought by Northstar was retrospective in nature, the Board has no jurisdiction to consider its application.

Baytex submitted that the Board's statutory authority under section 23 allows it, in the appropriate circumstances, to distribute production among wells, however, the language does not extend to the assignment of production after it comes out of the wellbore. The intervener suggested that the equitable jurisdiction of the Board must at all times be exercised within the context of the statutory jurisdiction available.

Baytex further submitted that Northstar's suggestion that the Board could use the general discretionary powers under section 7 of the Act was not properly before the Board as Northstar's application did not seek relief under that provision.

2.4 Views of the Board

The Board does not believe that the provisions under section 23 of the Act allow the Board to provide relief for past drainage. The Board considers the section to be prospective and apply to the assignment of production among producers where drainage is likely to occur in the absence of such an order. Given that potential drainage has been eliminated in this case the Board sees no need to reallocate production among the existing wells.

As a rule the need for rateable take orders has been prompted by evidence that producers are prevented from attaining a fair share of production due to inadequate access to purchase agreements, or pipeline or processing facilities. The respective response to such events may be common purchaser, common carrier, or common processor orders. As outlined in the statute the effective date of such orders may include an element of retroactive benefit. While such provisions may have applied in this instance, the merit is of no consequence since the applications for common carrier and common processor have been withdrawn and are of no effect.

The Board does not believe the circumstances exist to consider granting relief under Section 7 of the Act.

3 DECISION

Having carefully considered the evidence, the Board does not believe it has the jurisdiction to provide the relief requested. Accordingly, the Board denies the application.

DATED at Calgary, Alberta, on 27 May 1999.

ALBERTA ENERGY AND UTILITIES BOARD

[Original signed by]

F. J. Mink, P.Eng.
Board Member

[Original signed by]

E. A. Shirley, P.Geol.
Acting Board Member

[Original signed by]

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