

**MEMORANDUM OF DECISION
PREHEARING MEETING
MANHATTAN RESOURCES LTD.
APPLICATIONS FOR WELLS, PIPELINES, AND
FACILITIES LICENCES AND
AN AMENDMENT TO A FACILITY
FORT SASKATCHEWAN FIELD**

**Decision 2002-107
Applications No. (see Appendix A)**

This report provides the Alberta Energy and Utilities Board's (EUB/Board) decisions arising out of a prehearing meeting held to obtain input from interested parties. In light of the history of proposals for oil and gas development in the area east of Ardrossan, and having regard for concerns about how certain facilities have been licensed, the Board believes that it is useful to first document the background to the present applications.

1 BACKGROUND

Manhattan Resources Ltd. (Manhattan) applied to the EUB for approval to drill six wells, construct and operate a pipeline gathering system and well site surface facilities, and modify an existing facility at the locations shown on the attached figure. Manhattan filed the well licence applications between December 2001 and March 2002 and the pipeline gathering system application in May 2002. It filed the well site surface facilities applications in October 2002, with the modification to the facility filed later the same month. The EUB recommended that the individual applications be brought together as parts of a larger project. Ultimately, component-specific information on this project was provided to the public at various stages by various operators, starting as early as January 2000, with full project-specific detail compiled and issued by fall 2002.

Barrington Petroleum Limited (Barrington) originally applied for two of the well licences. Barrington amalgamated with Petrobank Energy and Resources Limited (Petrobank) on January 1, 2002, and the project was further advanced by Manhattan filing additional well licence applications. In February 2002, Manhattan and Petrobank informed the EUB that they intended to proceed cooperatively with a project involving six wells and a pipeline gathering system. On June 1, 2002, Petrobank informed the EUB that it had sold its interest in the Strathcona County area to Manhattan, including its interest in the six-well project. Manhattan then advised the EUB that it intended to proceed independently and that it would adopt the previously filed applications. It said that it would rely on the technical details and consultation achieved to date and would build upon that with the community. It submitted minor updates to both the well licence and pipeline applications and proceeded to evaluate its newly acquired existing facilities and need to modify facilities in the area, including a facility located at Legal Subdivision 7, Section 29, Township 53, Range 21, West of the 4th Meridian (the 7-29 facility).

Licensing of the 7-29 Facility

Prior to 2000, certain types of facilities did not require approval by the EUB. The 7-29 facility was one of those facility types. To ensure that a complete inventory of existing facilities was developed and that those facilities are identified and licensed to the correct owner, the EUB implemented the Retrospective Licensing Facility Program, as set out in *Interim Directive (ID) 2000-10*.¹ Under that program, operators were required to provide design and site information for existing facilities so that the EUB could effectively regulate facility ownership, transfer, abandonment, and reclamation liabilities associated with those sites. The program was targeted for completion in February 2001. However, as detailed in *General Bulletin GB 2002-16*,² the Board continued to retrospectively license facilities under the program until October 22, 2002, due to an incomplete description of facilities in the initial list. This program was intended to be a routine administrative process.

In the course of its evaluation of its newly acquired facilities, Manhattan determined that the 7-29 facility had not been identified and properly licensed under the retrospective program. Accordingly, on September 23, 2002, Manhattan filed an application consistent with the requirements in *ID 2000-10* to retrospectively license the 7-29 facility. The EUB approved the application routinely on October 10, 2002, under the retrospective licensing program. Manhattan then filed an application for modifications to the existing 7-29 facility on October 11, 2002, as part of the project it proposed to develop in the area east of Ardrossan. The Board notes that while the 7-29 facility was unlicensed for a number of years, it was not unregulated. EUB staff in the St. Albert Field Centre responded to any issues and public inquiries with regard to the facility.

The Board is aware of some concerns raised by community members respecting the licensing of the 7-29 facility. In addition, the Board has received two requests for a formal review of the application under Section 39 of the Energy Resources Conservation Act. The Board has therefore decided to include Application 1278764, Licence 27531, as part of the upcoming hearing.

EUB staff completed a detailed review and audit of all of the applications and determined that they were complete and met the EUB's requirements set out in *Guide 56: Energy Development Applications Guide* and applicable acts and regulations.

2 PREHEARING MEETING

Residents and landowners in the vicinity of Manhattan's project, in addition to other interested parties, corresponded with the company, its predecessors, and the EUB expressing concerns with the proposed project. These concerns were expressed most recently in a public meeting held by EUB staff on October 3, 2002, and at a public meeting conducted by Manhattan on October 24, 2002. Having regard for the numerous unresolved concerns, the Board directed that the subject applications be considered at a public hearing. However, before scheduling a hearing, the Board decided that it would be useful to obtain further information from the interested parties and

¹ *ID 2000-10: Retrospective Facility Licensing Program*.

² *GB 2002-16: Recision of ID 2000-10: Retrospective Facility Licensing Program* and *Guide 68: Retrospective Facility Licensing*, October 2000.

Manhattan regarding aspects of the public hearing to ensure that the hearing will be conducted in the most efficient and effective manner.

The EUB held a prehearing meeting in Sherwood Park, Alberta, on November 20, 2002, before Presiding Board Member M. N. McCrank, Q.C., and Board Members J. D. Dilay, P.Eng., and T. M. McGee.

The Board received input from the applicant and interested parties on a number of issues, including the scope of the hearing, timing, procedures, participant roles, costs, and funding. The Board did not hear evidence, submissions, or arguments pertaining to the merits of the applications or objections. Parties will be given an opportunity to present evidence, cross-examine witnesses, and make arguments regarding the merits of the applications at the public hearing.

Those who spoke at the prehearing meeting on behalf of a group of interested parties or on their own behalf are listed in Appendix B. The parties who registered their interest by providing a Participant Registration Form are listed in Appendix C.

3 PRELIMINARY MATTERS

Prior to the convening of the prehearing meeting, several parties had written to the Board requesting an adjournment of the meeting on the basis that more time was required to review and understand the applications. The Board responded to these parties by letter indicating that the prehearing meeting would proceed and be focused on procedural matters and identifying the scope and other features of the public hearing, not the merits of the applications. At the prehearing meeting, some participants reiterated the view that the meeting was premature but acknowledged that since the Board, the applicant, and a large number of residents were in attendance, some benefit might result if the meeting proceeded. The Board agreed with this sentiment.

Counsel for the Downeys applied to the Board to stay the consideration of the applications until such time as an inquiry had been conducted into the cumulative impacts of oil and gas projects on the community. He argued that such an inquiry was essential to fully understand and address the many issues created by the proximity of industrial activities to the expanding residential population of the area. He made specific reference to earlier Board decisions³ pertaining to Strathcona County and the oil sands areas in which, according to counsel, the Board had made comments regarding the utility of such a process. The Board notes that these comments were made in the context of a large, heavily concentrated infrastructure of industrial activity encroaching upon a relatively few number of residents. The Board does not believe that the scale of the proposed project warrants an inquiry of the kind requested and is of the view that a public hearing, with its attendant prehearing filings, information request (IR) exchanges, and examination of ordinary and expert evidence and argument at the hearing, will provide a satisfactory forum for the consideration of all relevant issues.

³ EUB *Decision 2001-99*, *Decision 1997-4*, and *Decision 1997-07*.

Some participants argued that the applications were not complete with respect to the proposed pipeline and that consideration of them should be halted until the deficiencies were addressed. Specifically, a landowner contended that he was unable to confirm from the application materials whether the proposed pipeline route crossed his property. Other residents maintained that the entire route was not shown in the materials. The Board notes that it requires detailed base maps depicting the applied-for pipeline route to be included as part of a routine application. It also requires a list of landowners who will be impacted by the route. The Board notes that both of these requirements have been fulfilled in Manhattan's applications filed with the EUB.

The Board was invited by counsel for the Klingspons to provide its views on the meaning of "in the public interest." Decisions regarding the approval or denial of oil and gas facilities must, of course, be made in the public interest, and each decision issued by the Board contains a discussion of the public interest in the context of that particular application. The determination of the public interest is ultimately a subjective one bounded only by the general and specific objects of the legislation in question and the powers of the EUB to carry out those purposes. Such a determination must also arise from the evidence presented and the careful, fair, and objective discernment of that evidence by the Board. The facts, circumstances, and issues of each individual application necessarily mean that no single objective test of what constitutes "in the public interest" can be formulated.

Generally, the public interest standard is met by an activity that benefits the segment of the public to which the legislation is aimed, while at the same time minimizing, to an acceptable degree, the potential adverse impacts of that activity on more discrete parts of the community. The existence of regulatory standards is an important element in deciding whether potential adverse impacts are acceptable and whether a proponent has satisfactorily accounted for these impacts, but the Board retains the discretion where circumstances require to find that a project fails to meet the public interest notwithstanding its compliance with these standards.

The Board's consideration of an energy facility application under the Oil and Gas Conservation Act,⁴ the Pipeline Act,⁵ and the Energy Resources Conservation Act⁶ (the "energy statutes") obliges it to take account of the legislative purposes set out in the energy statutes in determining the public interest. These include, but are not limited to,

- the economical, orderly, and efficient development of energy resources in the province;
- the conservation of energy resources and the prevention of the waste of these resources;
- securing safe and efficient practices in the exploration for, processing, development, and transportation of the energy resources of Alberta;
- pollution control and environmental conservation in the energy sector; and
- affording each owner the opportunity of obtaining the owner's share of the production of oil or gas from any pool.

In assessing whether a proposed project meets these purposes and the various specific technical requirements for energy facilities, the Board must, in addition, "give consideration to whether the project is in the public interest, having regard to the social and economic effects of the project and the effects of the project on the environment."⁷

⁴ RSA 2000, Ch. O-6.

⁵ RSA 2000, Ch. P-15.

⁶ RSA 2000, Ch. E-10.

⁷ Energy Resources Conservation Act, *supra* section 3.

The components of the public interest as expressed in these provisions are broad and flexible. This inherently demands that the Board assess and balance the competing elements of the public interest in each specific application before it. As indicated earlier, part of this exercise is an analysis of the nature of the impacts associated with a project and the extent to which a project proponent has addressed these impacts. Balanced against it is an assessment of the project's potential public benefits.

4 ISSUES CONSIDERED AT AND ARISING FROM THE PREHEARING MEETING

The Board identified a number of issues concerning the applications from correspondence it received from area landowners and from the meetings in the area. It listed these issues in an attachment to its October 17, 2002, letter that accompanied the Notice of Prehearing Meeting. Some participants expanded on those issues and presented additional ones at the prehearing meeting. It is the Board's view that all of the issues raised are relevant for consideration at the upcoming public hearing. The Board has organized the issues as follows:

- Need for the Applied-for Wells, Pipelines, and Facilities
- Location of Proposed Wells and Facilities and Routing of Pipelines
- Environmental Impacts
 - ◀ Potential for Contamination of Air, Water, and Soil
 - Measures for air monitoring, water well testing, and drilling fluid management
 - ◀ Noise
 - ◀ Dust
 - ◀ Cumulative Effects
 - ◀ Abandonment and Reclamation
- Health and Safety Impacts
 - ◀ Human Health
 - ◀ Emergency Response Planning
 - ◀ Poultry Operations
 - ◀ Bee Operations
 - ◀ Race Horse Operations
 - ◀ Organic Growing Operations
 - ◀ Wildlife Impacts
- Land-Use Impacts
 - ◀ Quality of Life
 - ◀ Aesthetics
 - ◀ Property Values
 - ◀ Potential for Future Oil and Gas Development
- Resource Recovery and Benefits
- Adequacy of Public Consultation Efforts
- Financial Security and Technical/Operational Ability of Manhattan

The Board is of the view that the matter of cumulative effects requires elaboration. As outlined earlier in the report, the Board does not believe that an inquiry into the general cumulative impacts of industrial activity in the area is warranted by this particular application. With respect to environmental impacts, the Board is prepared to hear the site-specific evidence about the nature of the proposed facilities' impacts to the air, water, and soil, the potential consequences of such impacts to the environment, and whether such effects are in compliance with provincial environmental standards, such as the Ambient Air Quality Guidelines established by Alberta Environment. These are relevant lines of inquiry, and the fullest opportunity will be provided to participants to explore them.

The Board makes the general observation that while all the enumerated issues may have relevance to the applications, the weight to be accorded each issue in making a decision will be assessed in light of the scale and nature of the proposed Manhattan development.

5 PARTICIPATION AT THE PUBLIC HEARING

Standing

As evident from the steady volume of correspondence received by the Board, the high attendance at the recent public meetings, and the large number of people (over 300) who came to the prehearing meeting, the community has a considerable desire to participate at the public hearing. In identifying who may participate at a public hearing, the Board is governed, first, by Section 26 of the Energy Resources Conservation Act, which provides that those persons whose rights may be directly and adversely affected by the approval of an energy facility are entitled to an opportunity to lead evidence, cross examine, and give argument—in short, full participation at a hearing or “standing.”

Others who may not be able to meet the standing test (for example, those persons who are not situated in close proximity to a proposed facility) are not afforded these participation rights by the statute. However, it is the long-standing practice of the Board to allow those persons who would otherwise not have standing to participate to some extent at a public hearing provided they offer relevant information. However, funding to cover costs, as described below, are not available to persons who may participate but do not have standing.

In the present case, Manhattan has acknowledged that there are indeed a number of residents who qualify as interveners under Section 26 of the Energy Resources Conservation Act. These persons either own or occupy land on which part of the facilities are proposed or are close enough geographically to the sites to trigger hearing participation rights. The Board agrees with Manhattan.

Given the potential number of participants and the proximity of several subdivisions to the facilities, and taking into account that under *Guide 56* Manhattan is required to use a 1.5 kilometre (km) personal consultation radius and a 2 km notification radius, the Board is of the view that residents and landowners located within the 2 km radius of the wells, facilities, and pipelines have standing for the purposes of participating at the public hearing under Section 26 of the Energy Resources Conservation Act.

The Board cautions that participation at the public hearing is also predicated on persons

complying with the Board's *Rules of Practice* regarding the presentation of evidence and procedural matters. For example, persons who do not file their own evidence and that of their experts prior to the hearing (as more particularly outlined in the next section) may be denied the opportunity to give that evidence at the hearing.

Those parties who have registered their interest and who fall outside of the 2 km radius may participate at the hearing but, depending on whether they have joined a group with standing, their participation may be limited to presenting a short statement of their position, without full participation rights, such as leading evidence, cross-examination of witnesses, and giving final argument.

Local Intervener Costs

Parties who are entitled to participate at a public hearing under Section 26 of the Energy Resources Conservation Act may also qualify for funding so that they may effectively and efficiently present their interventions. Such funding is referred to as "local intervener costs" and is provided for under Section 28 of the Energy Resources Conservation Act. This section grants the Board the discretion to award costs to participants who have an "interest in land" that may be directly and adversely affected by the approval of an energy project. When such awards are given, the applicant company is directed to pay the monies. Generally, if people qualify for participation, i.e., standing under Section 26, they also qualify for local intervener funding.

It is extremely important to note that a finding of local intervener status does not automatically mean that all or any costs incurred by local interveners will be approved by the Board. Costs must be shown to be reasonable and necessary to the intervention, as well as meet the requirements of Part 5 of the *Rules of Practice*. The Board must also find that the intervention added to its understanding and appreciation of the relevant issues before costs or a part of them are approved. Duplication of effort on common issues by two or more interveners or excessive representation on issues that are clearly common to a number of participants will not likely result in more than one set of costs being approved in the absence of special circumstances. Parties must review Part 5 of the *Rules of Practice* and *Guide 31A: Guidelines for Energy Cost Claims* to acquaint themselves with the cost regime administered by the Board.

The Board strongly encourages individuals who share a common purpose and concerns to pool their resources and present a collective intervention. Such interventions are usually effective and efficient, as they eliminate duplication of effort and costs that may occur when several individual residents present essentially the same intervention. At the prehearing meeting the Board noted that a number of individuals with similar interests had formed into groups.

The Board is concerned about the number of counsel who advised the Board at the prehearing meeting and in correspondence of their particular representation of residents and landowners. Local intervener funding does, of course, acknowledge the retention of experts in various occupations, including lawyers, to assist interveners. At least nine counsel and one representative advised the Board of their anticipated involvement in the process leading to and including the public hearing. It is the Board's view that given the commonality of issues raised by the various residents and landowners in the community, and taking consideration of the nature and magnitude of the applications, this number appears excessive. Certainly, the anticipated number of participants will require coordination and administrative resources to manage effectively.

interventions, but parties and their current representatives are advised that they seriously risk an unsuccessful cost claim for legal fees if the present numbers of counsel remain. This does not mean that parties cannot retain counsel of their choice to represent their interests, only that funding in whole or in part may not be available under the local intervener cost regime.

It has been the Board's policy to award an advance of costs where it is shown that an advance payment of forecast expenditures is essential in preparing and presenting a submission. Parties must also show that they do not have the financial resources to initially retain necessary consultants and bear other related costs. An award of advance funding is subject to the Board's posthearing assessment of whether an individual's or group's costs are reasonable and directly and necessarily related to the intervention. Costs awarded in advance of a hearing are paid by the applicant company and form part of the overall costs of an intervention. If the Board approves overall costs in an amount that is less than the sum advanced prior to the hearing, the individual or group must repay the difference.

Parties who wish to have their status confirmed as local interveners for costs purposes as well as for an advance of costs, must submit an application to that effect to the Board by December 31, 2002. A copy of the application must also be sent to Manhattan.

6 TIMING

Manhattan noted that an applicant has the right to have its applications heard on a timely basis and that there should be a balance between the applicant's needs and the interveners' needs. As a consequence, Manhattan proposed a start date for the hearing by mid-March 2003. Some participants submitted that the applicant had not conducted adequate or satisfactory public consultation or attempted in a meaningful way to negotiate resolution of the issues with residents. They expressed the view that setting a time for the hearing was premature and that the commencement of a public hearing should only be considered when the applicant established that it had engaged in diligent and genuine efforts to resolve the community's concerns.

Interveners proposed hearing dates that ranged from March to late fall 2003. Parties expressed concern over having sufficient time to obtain expert support and to collaborate effectively with other parties with similar interests.

Having considered the views expressed at the prehearing meeting, the Board finds that the applications will be considered at a hearing in Sherwood Park, Alberta, commencing on March 24, 2003. The Board supports ongoing consultation and negotiation of the issues and believes that setting the hearing date in March will provide the parties sufficient time to conduct such discussions and prepare for the hearing. The Board notes that some of the applications have been filed since December 4, 2001, and known to the community as early as January 2000. It is the Board's experience that setting the hearing date provides the parties with the incentive to conduct both meaningful and timely discussions if a mutual desire to do so exists.

In order to help parties gain a greater understanding of another's position, the Board may allow that written questions and answers be exchanged by the parties. This is referred to as the information request/response process, or IR process. IRs are intended to clarify evidence already filed with a view to making the actual hearing more efficient, as the IRs form part of the

evidence at the hearing. Sections 27, 28, and 29 of the *Rules of Practice* outline the procedure for making an IR. In this case, the Board will allow participants with standing, if they wish, to issue IRs to Manhattan. Manhattan will have the opportunity to file rebuttal evidence before the hearing commences. The Board directs that the following schedule regarding IRs and submissions be followed:

- December 31, 2002 – Applications filed for advance of costs
- February 4, 2003 – Interveners issue IRs
- February 18, 2003 – Manhattan responds to IRs
- March 3, 2003 – Interveners file submissions
- March 14, 2003 – Manhattan files rebuttal submission
- March 24, 2003 – Hearing commences

The Board will issue a formal notice of hearing in due course and send a copy of the notice directly to each party who participated at the prehearing meeting, as well as to parties who completed the participant registration forms, those who provided written objections to the applications to the EUB but did not attend the prehearing meeting, and all of the others identified in the applications as being potentially affected by the proposed developments. The notice will also be published in the local newspapers. At the commencement of the hearing, the Board will be prepared to discuss the sitting times for the hearing.

DATED at Calgary, Alberta, on December 6, 2002.

ALBERTA ENERGY AND UTILITIES BOARD

<Original signed by>

M. N. McCrank, Q.C.
Presiding Member

<Original signed by>

J. D. Dilay, P.Eng.
Board Member

<Original signed by>

T. M. McGee
Board Member

APPENDIX A

Manhattan Resources Ltd.
Strathcona County Area
Applications for Well Licences
Applications No. 1250462, 1250463, 1260250, 1260253, 1260257, and 1269744

Application for Pipeline Gathering System
Application No. 1270601

Application for Well Site Surface Facilities
Applications No. 1279696, 1279698, and 1279699

Application for an Amendment to Existing Facility
Application No. 1280291

APPENDIX B

THOSE WHO PARTICIPATED AT THE PREHEARING MEETING

Principals

(Abbreviations Used in Report)

Representatives

Manhattan Resources Ltd.
(Manhattan)

D. C. Edie, Q.C.
M. B. Niven

B. McNabb, T. and C. Romaniuk,
C. Chevalier, B. and S. Bunker, D. and Y. Kadatz,
K. and A. Aasman

G. A. Smith

Dowling Estates (about 30 parties)

D. M. Hawerluk

K. and I. Grycan, H. and I. Manji, A. and F. Jaffer,
C. Tremblay, L. Caldwell, J. Penner,
N. and R. M. Coyne

T. D. Weiss

D. and K. Klingspon

D. J. Carter

J., S., and N. Andrew

S. K. Luft

P. and C. Downey (a.k.a. C. Bezooeyen)

W. L. McElhanney

A. and A. Campbell, H. Ewanchuck,
V. Bennett, G. Weber, L. and P. Clark,
R. Hucuiak, S. and S. Richard, J. and C. Hay,
D. and K. Joy, R. and P. Schaaf,
M. and D. Cartwright, N. and T. Gribby,
P. and C. Schaaf, L. and M. Tychkowsky,
D. and D. Kosanovitch, B. and D. Kutzner
G. Fitch

A. and N. Skjodt
B. Whiston

E. Sweet, A. and S. Morris,
G. McKee, A. Szelekovszky

M. Bronaugh

Sherwood Park Fish and Game Association

A. Boyd

(continued)

THOSE WHO PARTICIPATED AT THE PREHEARING MEETING (continued)

Principals

(Abbreviations Used in Report)

Representatives

THE FOLLOWING REPRESENTED THEMSELVES:

E. Moscicki

A. and D. Allen

C. Lavold

S. Chudley

T. Lipphardt

J. Pace

R. Thomas

J. Schoof

G. Berggren

E. Schotte

O. Stiener

B. Dobransky

D. Jait

M. Hughes

Alberta Energy and Utilities Board (EUB) staff

D. Larder, Board Counsel

P. Derbyshire

S. Brown

APPENDIX C

PARTIES THAT HAVE PROVIDED PARTICIPANT REGISTRATION FORMS BUT DID NOT GIVE AN ORAL PRESENTATION AT THE PREHEARING MEETING

Alec and Anne Marie Babich
Nick Christon
Kathy Duff
Susan Ellenwood
Glen A. Ferko
Gail and Gary Flint
Bob Gauvin
Richard Girard
Pat and Derrick Goldsmith
Eric and Sabrina Heglund
Paul and Alfreda Hotte
Edgar and Miriam Jenkins
John B. Jones
Stanley and Carole Kuzyk
Archie and Simone MacPherson
John and Tovè Marko
Bill and Kathrine Morusyk
Judy Nicolet
Kevin Norrena
Gordon and Roxanne Oslund
Garth and Betty Petrich
Arleen Puchala
Jessie and Geoff Readman
John and Pauline Schroter (Counsel - David Cook)
Jerry Grant and Grace Shewchuck
Sally Sielsky
Curtis and Jocelyn Stewart
Bryan James Thompson
Kenneth and Rhonda-May Trelenberg
White Bird Poultry Farm (Herman Klaassens)

