

Scenario #3: A Question of Ownership: A Gas Processing & Drainage Dispute

THE ISSUE: Multiple ownership of a gas processing plant has created a dispute between large and small co-owners. Large oil company ("L Company") and small oil company ("S Company") are the sole owners of a gas processing plant and associated gathering facilities in Alberta. L Co. is the plant operator. The plant is not a core property of L Co. but its existence gives it a strategic advantage over other operators in the area.

Initial internal assessment

Applying the elements of this case study to your own issue or dispute, consider the following analysis and questions:

- Identify *all* of the *participants* in your dispute.
- Describe the problems and issues.
- What has happened to date? What resolution options have been explored? *Have the parties talked face- to- face?*

Important considerations in selecting a resolution option:

- How does relative corporate size or regional strength affect your dispute?
- How important are existing relationships to the success of my business?
- Is this an isolated issue or event (a dispute) symptomatic of bigger systemic problems (a conflict) between your companies?
- Will there be an on-going relationship between the parties? Could you do business in the future together?

COMPLICATING FACTORS: S Co. has existing and newly acquired undeveloped acreage in the vicinity of the plant that it believes is being drained by L Co.'s existing wells. S Company desires to drill offset wells on its lands and tie them into the plant. The area was never unitized. Plant capacity is under-utilized despite the fact that the single-train plant was recently enlarged to handle sour gas processing from L Co.'s wells located some distance from the plant that have so far under-performed and, as a result, plant costs have increased on a unit throughput basis along with the fact that the revised Capital and GCA components of the fee have become significant given the low volumes. There has been no effort or request for the operator to functionalise the plant by establishing new processing fees for sweet and sour gas. S Co. has expressed its concerns to L Co. about increasing accounting and reporting deficiencies in plant operator's monthly reporting statements of late, however its concerns have not been responded to and, seemingly, ignored. L Co. recently made a series of 'core' acquisitions outside of the area that has resulted in it being required to deploy significant capital to compete in several competitive drainage deep sour gas plays.

Cost Benefit Analysis

Analyzing the costs, risks and benefits of resolution is critical to selecting the appropriate resolution option or options. Consider the following analysis and questions:

- What are the complicating factors in your dispute? What additional information is needed?

- What are the major risks in allowing the current situation to continue? What are the costs and the benefits of resolving versus not resolving the issue?
- Identify the direct and indirect costs and the benefits in terms of people, money and time, for you in resolving versus not resolving the issue? (Refer to Cost Benefit Analysis Tool in the Resources section)
- What are your best and worst alternatives to a negotiated agreement (BATNA / WATNA)? What are the incremental steps that could be taken towards settlement of the current issue(s)?
- What is the cost for resolution by one party, all parties or no parties?
- What is the impetus for a resolution by all parties? What are the barriers to resolution thus far?

THE BUSINESS RELATIONSHIP: Ownership and operation of the plant is governed by a CO&O Agreement that requires both companies to unanimously approve the capital and operating expenditures required for plant expansion and enlargement, tie-in of new wells to the Plant, and replacing the plant operator. For the second year in a row, L Co. has proposed an operating budget that supports a 'breakdown maintenance' approach and zero funds budgeted for any capital improvements or maintenance. The budget for last year was not approved as S Co. repeatedly objected to L Co.'s current mode of operation. L Co. continues to operate as budgeted. S Company is feeling that matters will improve only if L Co. is replaced as the plant operator.

Resolution Potential & Options

- What common interests in resolving the dispute do the parties have? What is the common ground?
- Which of the informal, confidential or flexible, various ADR processes could be used to encourage various resolution options?
- What are your major cost factors in determining the best resolution option - including litigation?

APPROPRIATE DISPUTE RESOLUTION: After assessing the on-going situation, the responsible S Co.'s Vice President called his L Co. counterpart. After an informal lunch to talk over outstanding issues that were causing friction in the relationship between the companies, S Co. was not encouraged that L Co. had any intention of taking the matter seriously. L Co.'s priorities lay elsewhere.

S Co.'s Vice President was blunt in warning that legal action would be taken to settle the lingering dispute unless another resolution option could be found. S Co. proposed a facilitated meeting – informal and confidential, where managers could spend several hours brainstorming potential solutions – at minimum cost or risk to either company. After agreeing on a qualified facilitator proposed by S Co., a facilitated session was held a week later. The facilitator helped middle management participants from both companies explore the issues and the impact it could have on both companies operations and relationship – and the costs involved. The facilitator also outlined what ADR options might exist to incrementally work through the issues in dispute. While communications were sometimes difficult between the parties, the facilitator also helped to “bridge the gap”.

In the end, both parties avoided a lengthy and expensive court battle by continuing their discussions with the assistance of a mutually acceptable conflict management specialist, supported by technical experts and managers in both companies, who organized and addressed the outstanding issues, thus reducing overall tensions. L Co., whose focus was on acquisitions elsewhere avoided uncomplimentary and potentially damaging public attention that this conflict may have produced (affecting stock price). S. Co finally received some attention to issues that were affecting its bottom line – without the additional time and cost of being forced to litigate.