

Background Information on ADR – Jumping Pound (JP) Issues

C2C Task Force JP-90/95

Recommendations to Industry and EUB

That the sponsors of JP-95 (CAPP, SEPAC) the custodian (PJVA), and the EUB strike a task force to develop a report on:

1. How to effectively use JP-95 as a guideline to promote the negotiation of fair processing fees
2. The protocols that can be applied to resolve fee negotiation disputes
3. Recommendations of ways to ensure the industry is acting properly in the application and use of JP-95
4. The development of a user's guide to assist in the application of JP-95
5. Ways of building the awareness of industry on the requirements for the use of JP-95
6. Strengthening the requirements for the application of JP-95, both through the regulatory process, and through industry association stewardship.

Discussion on the proposed report contents

A. Report Introduction

7. An overview of what it is, and the purpose of the JP-90 and JP-95 reports
8. How the reports were originally developed by industry and rolled out to both the industry and the regulatory agencies, including groups representing the mineral rights holders.
9. The need for the update of JP-90 by developing the JP-95 report with the primary driver being “to clarify the intent and use of the JP-90 methodology” as there had been abuse or misuse of the application of JP-90.
10. The concern that JP-90/95 is still misunderstood, and the application of the methodology is being abused.
11. Learnings from the C2C Task Force including industry interviews. Synergy with the E.U.B in developing new regulatory streamlining on company vs. company disputes.

B. Barriers to Proper Use of JP- 90/95

12. Failure to conduct meaningful negotiations
13. Failure to collaborate on issue resolution

14. Failure to identify other complementary interests between the parties on other matters
15. Failure to disclose relevant information
16. Using facility access costs as a control measure to dominate the exploration and
17. Exploitation activities in an area
18. Understanding the bases for the inputs to the JP-95 methodology
19. Absence of existing contractual links between parties on the specific matters
20. Use of regulatory process for negotiating power, and
21. The above acts contrary to industry's need to
 - a) Do more with less,
 - b) Shorten project timelines,
 - c) Identify mutual gains through negotiation,
 - d) To seek better environmental and land use impact projects, and
 - e) To empower joint venture negotiators.

C. The Top Ten Abuses of JP-95

22. Return on Capital – Setting a high return on a parameter that is fixed under JP-95
23. Disclosure – Promoting fees that are “reasonable” but not disclosing the basis for the fees
24. Depreciation – Arbitrarily assigning depreciation rates depending on the age of the facility
25. Lost GCA - worst case - trying to use it on a plant that is fully depreciated
26. Fixed fee at 1st year rates (maximum depreciation) - with no option to revise downwards.
27. Replacement cost - the facility is "reborn" each year with a new replacement cost
28. Complete disregard for JP-95 - "No one is going to tell me what I can charge for my Plant - let them build their own"

29. Design capacity versus throughput - not the same in many cases but used interchangeably where advantageous
30. Good old days - "it's the way we've always done it. Why should we change now?" (Alternative - "it's too hard for the accountants to charge different fees")
31. One Fee Complex - "it's a postage stamp fee" (for 1 mile or 20 miles - but set at the 20 mile rate)

The Dispute Resolution Mechanisms of JP-90

32. JP-90 contained a section on dispute resolution processes available to the industry. This section was never updated in the JP-95 report, as this report dealt mainly with the application of the methodology.
33. The concepts that were discussed within JP-90 need to be updated to synchronize with the efforts of the EUB ADR guidelines, the draft CAPL 2003 Operating Procedure and the C2C task force recommendations.
34. C2C recommends that a new dispute resolution process be designed and implemented whereby;
 - a) the parties are strongly encouraged to negotiate in good faith based on the fact situation at hand,
 - b) should they not be successful in reaching agreement on all terms and conditions, one party may trigger a dispute resolution process that has specific time deadlines, disclosure obligations and other characteristics. The process would have neutral third parties to assist them. The parties would choose those neutral third parties at the time based on their preferences for the dispute at hand. The parties would be strongly encouraged to engage neutral third party experts rather than experts being retained by each party to solely advance their own argument. The neutral third party(s) may have expertise in owner/ non-owner access to facilities and negotiations thereto, in mediation, arbitration or otherwise as the parties see fit. For example, in a recent "test" case, the parties who had acrimoniously battled for many months finally agreed to engage both a gas processing expert and a mediator. Those parties further agreed in writing to empower the experts to impose a binding decision should the companies fail to reach one.
 - c) The effect of the new process will be to minimize "regulatory abuse", empower companies to reach their own confidential decisions and provide a process that has "rules/ procedures" backed by industry and the regulator.
 - d) C2C believes a joint committee of CAPP, SEPAC, PJVA, CGPA and the EUB should undertake the design and implementation of such a process.

D. Rewrite, Revision or Clarification?

35. Although there are several fee methodology applications that have been suggested that could be added to the JP-95 report, for the most part they are unique and peculiar to specific segments of the industry. In general, the methodology and its application are still relevant to the G&P business today.
36. The fundamental drivers behind the development of the reports need reinforcement:
 - a) Minimize facility proliferation
 - b) Treat mineral rights owners and other affected parties fairly
 - c) Provide fair value for gas processing services
 - d) Provide a framework for negotiation of fees that take into account the risks to both producer and processor.
 - e) Minimize the degree of freedom in the negotiations for parameters to determine fees
 - f) Provide mechanisms for dispute resolution that promote negotiation outside legal or regulatory remedies
 - g) Avoid directing cost of service disputes between companies to the regulators or courts
37. The preferred course of action is to develop a report to industry that reinforces and clarifies the intent and use of JP-90/95, and not rewrite the entire report for re-issue (JP-03).

E. Promoting the Report Recommendations

Re-energize CAPP, SEPAC, PJVA and EUB to review, commit to and then take this on as a specific Task Force/ Committee in the fall.

Create a dispute resolution protocol that companies and associations endorse (and engage) to govern how they deal with conflicts in those situations where there is no other contractual link. (Hopefully this will be done through the main task force and will therefore be outside of the scope of this report. The C2C Task Force can do this as part of the November deliverables, after the CAPL feedback is received and there have been discussions with industry as to what the steps should be. The protocol can be easily drafted based on the CAPL article and using a final binding arbitration step by an industry expert(s) or a panel selected appropriate to that case.)

Develop a process that the EUB will endorse to ensure companies are following the JP-95 guidelines concerning collaboration, disclosure, and dispute resolution before disputes involving fee determinations are slated for a hearing.

Better educate the industry on the proper use of the report, specifically on the determination of those parameters that are negotiable. In particular, develop a “short form” users guide on how to assess the relevant range for a particular processing situation. Educate the industry that the fee derivation is not “wide open” but very tight in its application. *“There is not one correct fee for any given negotiation, but that a fee will lie within a relevant range depending on the specific circumstances (JP-90 Report)”*. *“For most custom processing situations the appropriate range is much narrower than the upper-lower limit definition of the relevant range given in JP-90 (JP-95 Report)”*

Find ways to have negotiators motivated to (as the situation dictates) and de-motivate parties who may refuse to engage or who will abuse the EUB process.

Have negotiators and companies to understand that to play both sides when they are an owner or a non-owner, may seem like effective bargaining but overall, wastes a lot of time and money for industry and also creates a lot of baggage which almost always comes back to bite you at a later date - either corporately or personally or both. (This comes back to trying to determine the cost of conflict. The C2C Task Force Report will show some examples of the costs versus the actual reward).

Upgrade dispute resolution provisions of JP-90/95 to reflect C2C, EUB ADR and CAPL 2003 Operating Procedure processes.

Link the understanding and application of the guidelines to CAPP Stewardship Program and industry’s *“license to operate”*.

F. Other Issues

38. Should a users guide be developed?
39. Is there a possible electronic form for the industry to access?
40. Can an iterative process be built in when there is a wide variation in results?

The JP-95 Assessment Group

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