

Task Force Tackles Company-To-Company Dispute Resolution

By Elsie Ross, published in the Daily Oil Bulletin December 20, 2002

Disputes with other companies are an everyday occurrence for most oil patch operators.

They're also costly, not only in dollars but in lost opportunities and memories that linger and affect other potential deals.

However, those disputes need not end up before the Alberta **Energy and Utilities Board** or in court, says an industry task force that is looking for better ways to resolve conflicts.

"This isn't to make a lot of work for mediators and take work away from lawyers," **Dave Savage**, vice-president of business development at **TriQuest Energy Corp.**, said in a recent interview. "It's to more constructively collaboratively-resolve conflict."

A designated landman, he helped to spearhead the company-to-company dispute resolution task force earlier this year.

Savage emphasized the group does not want to see a two-year task force but hopes to have recommendations and guidelines by the spring of 2003. The task force consists of four teams that will address specific targets: communication, education and liaison; regulatory alignment; contractual provisions; and tools and guides for industry. The initial focus has been on meeting with industry associations, including the **Canadian Bar Association**, and getting them on side, said **Pat Forrest**, chair of the communications team.

"Ultimately to have success you need individual companies and people in authority in these companies to step forward and say: 'I believe in this,'" added **Jim MacLean**, land manager at **Chevron Canada Resources** and another task force member. The group will be encouraging companies to sign some sort of protocol showing their company's support for appropriate dispute resolution options for all conflicts. That could mean a renewed negotiation, facilitation, mediation, arbitration, a public hearing and/or litigation.

There are definite incentives to companies to resolve conflicts, said MacLean. One is the ability to obtain certainty on a project. The second, less visible, is the lost cost of what persons embroiled in a dispute could otherwise have been working on to generate value, he said. "We like to get deals done as quickly as possible and what landmen are supposed to be doing is bringing opportunities to the table, not spending a lot of time fixing past problems," said **Carolyn Murphy**, president of the **Canadian Association of Petroleum Landmen**. "We know they have to be fixed but there is not a lot of value-added in that."

One of the first litmus tests for a different approach to disputes will be revised operating procedures that govern how CAPL members conduct their business. The draft, which looks at a range of ADR tools, will include a mechanism in which the project people themselves are able to negotiate a solution as a first step, said MacLean. The agreement

provides for one of the parties to initiate a process in which the senior management of both companies becomes involved in trying to resolve the issue.

“The magic of this is to call the right people to the table in a position of authority to make deals and decisions,” added Savage. “In the majority of these situations, once the people have the time to address them, bring the right people to the table and understand each other, that’s all it takes,” he said. “There’s nothing more formal than just sitting around the table and figuring out what it is you are fighting about.”

Management may choose to involve independent third parties to help facilitate discussions, said MacLean, an association member who has been involved in the writing. However, “you are trying to encourage parties in a constructive manner early in the process to talk between themselves, to frame the issue and explore opportunities,” he said. “If those discussions fail, then you start looking at things like arbitration or mediation.”

Larger operators often are involved in very large projects, looking at continuing processes and this can result in litigation, he said. “The biggest contribution we could possibly make would be to help people deal with their disputes themselves earlier (when they are still small) and in a more constructive manner to mitigate the impact.” If companies do end up in a formal dispute resolution process, there will be better tools available for them, MacLean suggested.

However, if the outcome of the task force process is an enormous proliferation of mediations and arbitrations, “then our process would have failed,” he said. While success would be having mechanisms other than litigation that people feel comfortable with, the preferred process is to have “people talking in the right way at the right time and have a regulatory infrastructure that encourages people to do that.”

MacLean, though, emphasized that litigation still needs to be a possible way to resolve a conflict. “It is critical that people understand this isn’t a vehicle to cause people to give up value to be nice to other people,” he said. “It is a vehicle to enable people to communicate more effectively and to resolve disputes more constructively, hopefully without destroying value for their organization.”

The new operating agreement to be released shortly varies significantly from the current agreement, which is silent on dispute resolution except for two or three specific references to where matters may be referred to arbitration, said MacLean. “There is nothing in the document presenting a staged process.”

Feedback from the document is going to be extremely helpful to the entire task force in terms of understanding whether people are now ready for this initiative and a business philosophy that places a value on trying to resolve negotiations other than through the courts, through non-litigation vehicles, he suggested. “Anything that opens up new avenues or encourages new ways of reaching a positive resolution in CAPL’s mind is a good thing,” said Murphy, manager of land and business development at **Stylus**

Exploration Inc. The more ADR becomes a known commodity for lots of different situations and the more it is used, the more likely negotiators are to consider the process before applying to the EUB, she said.

However, the task force is concerned with more than simply changes to the CAPL operating procedure, said Savage. A number of companies have been through the EUB process and while most report a high degree of satisfaction, there is still frustration, he said. Companies want to know why they cannot just get on with their jobs and how they can make the process a little easier to go through.

In 2001, the first full year of operation for the board's Appropriate Dispute Resolution process, seven company-to-company disputes went to third-party mediation. Of these, four dealt with pooling with one each a disagreement over spacing, common carrier and a compressor. The board is now going back to ask participants why they took their disputes to the board, said **Bill Remmer**, ADR co-ordinator.

Gentry Resources Ltd. went through the board's ADR process with a midstream company in a dispute concerning processing fees at its gas plant, said **Rob Poole**, manager of production and engineering. When Gentry opted to build its own plant rather than pay the proposed fees, the other company appealed the application to the EUB. As a result of the ADR process, which involved a mediator knowledgeable in gas processing charges, the midstreamer withdrew its objections. Gentry, though, ran into further delays at the board level, learning that any application involved in an ADR process is more closely scrutinized.

Poole said his company was satisfied with ADR compared to the option of a board hearing. However, he still questions whether the complaint was a legitimate objection or an objection to someone else's business opportunity. "The rules are not strongly written so that a company will not abuse the process," he said. "We tried to negotiate but it had to take an application and an objection to get the parties talking," said Poole. "Do we have to go that far or is there some other way of effectively engaging in ADR?" Remmer said if there are regulatory and company-to-company processes that encourage another company to get in the way of a project there is a need to identify those things and make recommendations to the EUB as to how they might change their practices. "They are an independent tribunal but there needs to be a point they can recognize some of the games that go on," he said.

In a statement, **Neil McCrank**, EUB chairman, said the board "strongly supports" the use of ADR in resolving company-to-company disputes. "Once the guidelines are developed, I will then ask our staff to make recommendations for changes to EUB procedures to better align with the guidelines," he said.