

IN THE MATTER of a CONTRAVENTION
of the *OIL AND GAS ACTIVITIES ACT*
[SBC 2008] Chapter 36
before
The BC OIL & GAS COMMISSION
Case File 2018-023

BETWEEN

The BC Oil & Gas Commission

AND

Pavilion Energy Corp.

ADMINISTRATIVE FINDING

Before

Vice President, Operations, Lance Ollenberger

Representing the BC Oil & Gas
Commission

Enforcement Officer, Shayla Frechette

Representing Pavilion Energy Corp.

Director & President, Cas Morel

Decision Date

August 9, 2018

Introduction:

1. On February 8, 2018, the BC Oil and Gas Commission (Commission) received confirmation that Pavilion Energy Corp. (Pavilion) had failed to maintain its membership with BC One Call.
2. A Contravention Report (the Report) was sent to me on April 18, 2018 alleging that Pavilion and/or Cas Morel (Morel) as Director contravened section 7(1)(d) of the *Pipeline Regulation* (PR). Morel is listed as the sole Director of Pavilion.
3. On April 19, 2018, the Commission sent Pavilion and Morel a letter and the Report informing Pavilion and Morel that I was considering making a finding that they contravened section 7(1)(d) of the PR. The letter informed Pavilion and Morel of their opportunity to be heard in written form and advised that a finding of contravention could result in the Commission imposing an administrative penalty in accordance with section 63 of the OGAA.
4. Pavilion and Morel provided a response in a letter dated May 20, 2018 (the Response).
5. The Commissioner of the BC Oil & Gas Commission has delegated me authority under sections 62 and 63 of the OGAA. I will be making a determination with regards to: whether Pavilion and/or Morel contravened section 7(1)(d) of the PR; whether to impose an administrative penalty under section 63 of the OGAA; and the amount of the penalty, if any. I have reviewed the Report and Pavilion and Morel's Response. In making a determination, I rely on these documents, and the applicable legislation.

Applicable Legislation

6. Section 7(1)(d) of the PR states that a pipeline permit holder must not operate a pipeline approved by the permit unless the holder is a member of BC One Call.
7. Maximum penalties for specific violations are set by regulation. Section 6(3) of the *Administrative Penalties Regulation* (APR) provides that a person who contravenes section 7(1)(d) of the PR is liable to an administrative penalty not exceeding \$50,000.
8. Section 62(1) of the OGAA states that, after providing an opportunity to be heard to a person who is alleged to have contravened a provision of the Act, the regulations, a permit, an authorization or an order, the Commission may find that the person has contravened the provision.
9. Section 62(2) of the OGAA states that if a corporation contravenes a provision referred to in subsection (1), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.
10. Section 62(5) of the OGAA states, in part, that the Commission may not find that a person has contravened a provision of the OGAA or the regulations if the person demonstrates to the satisfaction of the Commission that they exercised due diligence to prevent the contravention.
11. Section 63(1) states that, if the Commission finds that a person contravened a provision of the OGAA or its regulations, the Commission may impose an administrative penalty. Section 63(2) of the OGAA sets out the factors that must be considered when determining whether to impose an administrative penalty under section 63(1) and the amount of the penalty. These include:

- (a) previous contraventions by, administrative penalties imposed on, or orders issued to the person;
- (b) the gravity and magnitude of the contravention;
- (c) the extent of harm to others resulting from the contravention;
- (d) whether the contravention was repeated or continuous;
- (e) whether the contravention was deliberate;
- (f) any economic benefit derived by the person from the contravention;
- (g) the person's efforts to prevent and correct the contravention; and
- (h) other prescribed matters.

Background

- 12. Pavilion is a pipeline permit holder operating in the province of British Columbia. Pavilion currently owns and operates 47 pipelines, 43 of which are active pipelines consisting of 84 active segments.
- 13. On February 8, 2018, the Commission was advised by BC One Call that Pavilion was not a registered member as required under the PR for pipeline permit holders operating active pipelines in BC.
- 14. Pavilion sold all of its BC assets to Quattro Exploration and Production Ltd. (Quattro) in 2015. In a letter to BC One Call dated January 12, 2016, Pavilion requested its account and membership be deactivated due to the fact it had sold all of its BC assets.
- 15. Pavilion acquired its current pipeline permits from Terra Energy Corp. (Terra) on December 8, 2016 and never reactivated its account with BC One Call until February/March of 2018.

Issues

- 16. The issues which I will decide are:
 - Did Pavilion fail to maintain a membership with BC One Call while operating a pipeline approved by the permit?
 - Did Pavilion exercise due diligence in its efforts to maintain a membership with BC One Call while operating a pipeline approved by the permit?
 - If Pavilion contravened section 7(1)(d) of the PR, did Morel authorize, permit or acquiesce in the contravention?
 - If Pavilion and/or Morel are found to have contravened section 7(1)(d) of the PR what if any, administrative penalty to impose?

Did Pavilion fail to maintain a membership with BC One Call while operating a pipeline approved by the permit?

- 17. On February 8, 2018, Commission personnel confirmed with staff from BC One Call that Pavilion was not registered with BC One Call and that their membership had been deactivated since January 20, 2016. Pavilion requested that its account be deactivated in a letter to BC One Call dated January 12, 2016.
- 18. In its Response, Pavilion states that energy consulting company, Niven Fischer Energy Services Inc. (Niven Fischer) provided it complete management and administrative services for the period between November 6, 2015 and April 30, 2016. Pavilion acknowledges that an employee of Niven Fischer sent the letter requesting deactivation of Pavilion's membership

account to BC One Call on behalf of Pavilion on January 12, 2016. I note that the letter was on Pavilion letterhead.

19. Pavilion subsequently acquired active pipelines through a transfer of assets from Terra on December 8, 2016. However, no attempt was made by Pavilion or its consulting company, Niven Fischer, to contact BC One Call to ensure it reactivated its membership or to inquire on the status of its membership.
20. The Report states that as of February 8, 2018, Pavilion was the permit holder for 43 active pipelines, including 84 active segments. Pavilion did not dispute in its Response that it was operating pipeline from December 8, 2016 to March, 2018 without being a member of BC One Call.
21. Therefore, I find Pavilion failed to maintain a membership with BC One Call while operating a pipeline approved by the permit.

Did Pavilion exercise due diligence in its efforts to maintain a membership with BC One Call while operating a pipeline approved by the permit?

22. Pursuant to section 62(5) of the OGAA, I may not find that Pavilion contravened section 7(1)(d) of the PR if Pavilion demonstrates to my satisfaction that it exercised due diligence to prevent the contravention. The test to be applied is whether Pavilion has demonstrated that it took all reasonable steps to prevent the contravention. Pavilion is not required to show that it took all possible or imaginable steps to avoid the contravention. The standard is not one of perfection, but rather of a reasonable person in similar circumstances.
23. On February 8, 2018, the Commission notified Pavilion that it did not have an active membership with BC One Call as required by the PR and advised Pavilion it must immediately initiate the registration process to activate its membership status with BC One Call to resolve the non-compliance.
24. Pavilion states that it assumed it was still an active member with BC One Call because it received one invoice after Rhodes Petroleum Corporation (Rhodes) and Pavilion amalgamated and Rhodes took over ownership and control of Pavilion. Rhodes was aware at that time that Pavilion had sold all of its BC assets to Quattro prior to the completion of the amalgamation on April 30, 2016 where it assumed the name of Pavilion.
25. On December 8, 2016, the Commission approved a transfer of pipelines from Terra to Pavilion. As a permit holder, it is the responsibility of Pavilion to ensure it has satisfied all regulatory requirements. It is not adequate to assume Pavilion is in compliance and meeting its obligations under legislation. It is reasonable to expect that as soon as the transfer of ownership of the pipelines was complete, Pavilion would have verified established requirements for pipeline permit holders and confirm it had fulfilled its responsibilities in accordance with regulation.
26. Pavilion has failed to satisfy me that it took all reasonable steps to prevent the contravention. I find that Pavilion contravened section 7(1)(d) of the PR.

If Pavilion contravened section 7(1)(d) of the PR, did Morel authorize, permit or acquiesce in the contravention?

27. Section 62(2) of the OGAA states that if a corporation contravenes a provision referred to in subsection (1), a director, agent or officer of the corporation who authorized, permitted or acquiesced in the contravention also contravenes the provision.
28. I must decide if Morel authorized, permitted or acquiesced in the contravention. Morel is listed as the sole director of Pavilion and has been a main point of contact for Pavilion's assets. As the sole director, Morel has responsibility for ensuring that Pavilion is in compliance with all legislated requirements and is meeting its regulatory obligations. I note, however, that there is a line of case law that suggests that the terms "authorizes, permits or acquiesces" require actual knowledge or intent when it comes to contraventions on the part of directors or other individuals¹. Although the line of case law is primarily in the securities context, I find it persuasive in the context of s. 62(2) of the OGAA as well. In order for me to find that Morel contravened section 7(1)(d) of the PR, I must be satisfied that he had actual knowledge with respect to the contravention.
29. After reviewing the Report and the Response, I can find no evidence of actual knowledge of the contravention on the part of Morel. Instead, it seems to me that failure to register with BC One Call was an oversight on the part of Pavilion. Although Pavilion should have had better processes in place to ensure that this type of oversight did not occur, given they had previously been registered with BC One Call, I cannot find that Morel had specific knowledge or intent with respect to the failure to register.
30. For the reasons above, I do not find that Morel authorized, permitted or acquiesced in the contravention.

If Pavilion and/or Morel is found to have contravened section 7(1)(d) of the PR what if any, administrative penalty is to be imposed?

31. Section 63 of the OGAA sets out factors that the Commission must take into consideration when determining whether or not to impose an administrative penalty. In the following paragraphs, I consider the applicability of those factors to this contravention.
32. At the time of this contravention, there were no previous contraventions by or administrative penalties imposed on Pavilion, however there were six previous orders issued to Pavilion.
33. The gravity and magnitude of the contravention is low yet there was a risk to public safety or the environment if there had been an incident as a result of the failure to identify Pavilion's pipelines.
34. There was no harm to others as a result of the contravention.
35. The contravention was not repeated but was continuous from December 8, 2016 to March 27, 2018 while Pavilion was not an active member of BC One Call. This is relevant as Pavilion had previously been a registered member of BC One Call, and was familiar with the process.
36. The contravention was not deliberate but attributed to an assumption and mistaken belief that Pavilion was in compliance.

¹ *Re Spangenberg*, 2016 BCSECCOM 72 at para. 84. See also *Alberta (Securities Commission) v. Workum*, 2010 ABCA 405 at para. 34.

37. There was a small economic benefit derived from failing to pay the appropriate registration and number of ticket fees for 15 months.
38. Pavilion did correct the noncompliance by completing the required registration to reactivate its account and membership with BC One Call once notified of the failure by the Commission.

Conclusion

39. I have found that Pavilion contravened section 7(1)(d) of the PR. Based on the above discussion of the various factors set out in section 63(2), I am imposing an administrative penalty of \$250.00.



Lance Ollenberger
Vice President, Operations
BC Oil & Gas Commission

Date: August 9, 2018