

Scenario #4: Aggregator Dispute Resolution for Fee-for-Service

EXISTING ARRANGEMENTS: A Co. is the manager of a pool of producers. A Co. has a clause in its agreement which states that it can change its fee-for-service structure at any time, upon giving notice to its Producers. For the past three years, A Co. has been operating under a fee structure based on an old agreement that is costing the company money. When the company assessed the gas remaining in its pool, it decided it made sense to raise current fees to a researched amount for another five year, in order to better manage the pool on behalf of its producers. Since the structure of aggregator services has changed in the province, A Co. determined, based on preliminary research that the new fees will be best for all involved, and the forecasts they have developed on the pool will show why it is good business to agree with the new fee-for-service. After examining the original fee-for-service contract, A Co. determined that since either party can serve notice at any time, it will notify its Producers that a new fee will be in effect, and send them a draft of what the new fee structure will be.

Initial Assessment:

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

- Initiate a preliminary meeting with your Producer Advisory Council (PAC) to discuss your plan to change fees and obtain their input
- Identify and summarize *all* of the *deals* of other aggregators, and note the difference between each
- Describe the problems and issues that may arise if your producers refuse the new fee
- Determine if it would be advantageous to have separate meeting with all of the small producers, the mid-size producers, and the large producers in the pool to discuss what they think would be a fair fee structure.

Cost Benefit Risk Analysis

- What are the best and worse case scenarios?
- What can you do to ensure producers will agree to the new fees?
- What are the benefits of having PAC involved in the initial assessment of current fees? What are the risks of conflict with the producers?

Important considerations in selecting a resolution option:

- What dispute resolution options does the contract allow for?
- How should you select an arbitrator?
- How have others successfully changed their fee-for-service in the past?

COMPLICATING FACTORS: The producers in A Co.'s pool have always been satisfied with how the company manages their gas. They have an agreement that is considered 'ahead of its time' in the industry, and they are offered additional product options through A Co.'s other business units. However, the majority of producers in this pool feel that the reserves are fast declining, and do not want to pay higher fees as a result. Many agreed that it would be in their best interest for A Co. not to increase current fees, since only two producers have long vested interest in the pool. However, A Co., although aware of this growing concern among its producers, feels that its current fees structure should be substantially increased for the next five years, and increase a percentage more for three

years thereafter. Even more, the company feels that if it has to be competitive with the other two pools, it must continue to raise its fees, despite producers' discomfort with its actions.

APPROPRIATE DISPUTE RESOLUTION: A Co. served notice to its producers on what the new fees would be. The producers, unhappy with the new fee structure, voted against an increase. However, A Co. vehemently pushed forward the idea of the new fees to certain producers, in the hope that they will influence others in the pool. The company encouraged their Producer Representatives to have lunches with their clients, and to push forward the reasons why A Co., as the marketer of their gas must increase their fees.

Unfortunately, that tactic did not work. The producers, through PAC, were growing more and more unhappy about the way A Co. approached this increase, and suggested that the company present them with a fee that will be fair for all involved. Because neither parties (A. Co and PAC) could decide on how to move forward on this issue, they went to arbitration, as stated in the original contract. After agreeing on the choice of arbitrator, the companies explained their disagreement to that person. The arbitrator, familiar with the marketer/producer relationship, first assessed the other pools' arrangements. Then, the arbitrator proceeded to evaluate what recent fee changes have been proposed, and what approaches were used by the aggregator towards its producers.

The arbitrator noted that a certain B Co. had recently served notice to its producers to increase its fees. B Co., prior to renegotiating its fees, had a team of Analysts conduct a study of the pool's existing reserves, and forecast ahead what the decline will look like. Upon completion of that task, B Co. approached its PAC, and presented its case to them, as well as its reserves' forecast. Then, B Co. met with each group of its producers, and informed them it will increase its fees, but that the producers will benefit from the increase, as it planned on decreasing the fees after five years. With these in mind, the arbitrator ruled in favour of the producers, and asked A Co. to revise its new fee structure. Furthermore, the arbitrator advised A Co. to have better and more preliminary consultations with both its PAC and producers, to ensure they are constantly aware of what the marketer is thinking of doing. The arbitrator showed A Co. its fact-finding sheet, and suggested that the company summarize the other deals, show its producers what fees would be like depending on the pool, so that they gain a better understanding for why A Co. is changing its fees, and what benefits they will get in return. As for the fear of producers that the last one in the pool will have to pay for all, A Co. should reduce its fees accordingly after a given amount of time, to create a win-win situation for all.