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April 25, 2006

Via Fax

Douglas A. Larder, Q.C.
General Counsel
Alberta Energy and Utilities Board
Law Branch
640 - 5th Avenue S.W.
Calgary, Alberta
T2P 3G4

Re: Review and Variance Applications
9500-1422781 (EnCana Corporation/Bearspaw Petroleum Ltd.) and
9500-1439810 (EnCana Corporation/Bearspaw Petroleum Ltd.)
Our Reference: BPW044

This is further to our letter dated April 4, 2006, and the letter from the Alberta Energy and Utilities Board (the "Board") dated April 21 2006.

By way of background, the Board issued a letter dated March 9, 2006 in which it discussed review applications by EnCana Corporation ("EnCana") and Luscar Ltd. ("Luscar"). The Board referenced requests for review pursuant to Sections 39 and 40 of the *Energy Resources Conservation Act* ("ERCA"). The March 9, 2006 letter indicated that the Board would be holding a review hearing into the Board's decision to grant the approvals that ultimately became the subject of the above-referenced review applications.

By way of a letter dated March 28, 2006, the Board posed a number of questions to the parties with respect to certain procedural and substantive matters affecting the proposed hearing. In our letter dated April 4, 2006, we indicated to the Board that we were not clear whether Bearspaw was to be subject to a hearing pursuant to Section 39 of the ERCA, or a review and variance hearing pursuant to Section 39 of the ERCA and Rule 46 of the Board's *Rules of Practice*. Our April 4, 2006 letter requested the Board's clarification in this regard.

We raised this issue in a number of subsequent telephone discussions with the Board. We indicated to the Board that it was Bearspaw's position that the Board did not have the jurisdiction to grant EnCana a hearing pursuant to Section 40 of the ERCA as EnCana had not applied for such relief. In being granted as Section 40 hearing, EnCana was being placed in a more favourable position in the pending proceedings, and in Bearspaw's view, there was no

justification for this. The Board indicated that it would consider Bears paw's position in this regard.

In a telephone discussion which took place on April 20, 2006, the Board advised that it was of the view that it could hold a Section 40 hearing in respect of the above-captioned EnCana applications and in fact intended to do so. The Board then issued its letter dated April 21, 2006, in which it confirmed that EnCana was being granted a hearing under Section 40, and that the first phase of the hearing was to deal with the issue interim measures for the tracking of CBM production, with the second to deal with the issue of ownership of CBM. Bears paw is assuming that this letter is not setting out a decision of the Board that tracking measures are required for the Bears paw approvals, but rather that the phase 1 hearing will decide this issue on the evidence tendered. Bears paw asks the Board for clarification in this regard.

In any event, we are instructed to register with the Board Bears paw's strong objection to the Board's granting EnCana a Section 40 hearing.

We would point out that the Board has not, to our knowledge, advised as to the factual or legal basis for the decision to grant EnCana a section 40 hearing when the application was for a review and variance pursuant to Section 39/Rule 46.

It is Bears paw's position that there are substantive differences between a hearing granted pursuant to Section 39 of the ERCA and one granted under Section 40. In a hearing pursuant to Section 39 of the ERCA (and Rule 46 of the *Rules of Practice*) there exists a presumption that the decision subject to review was made in accordance with the relevant legislation, and after the Board's proper consideration of all of the relevant facts. The onus then rests upon the review applicant (EnCana) to displace those presumptions. Bears paw submits that the threshold which must be met in order to satisfy this onus is not insignificant.

In a hearing pursuant to Section 40 of the ERCA, as Bears paw understands it, there is no presumption in favour of the original decision made by the Board, and the onus rests with the party applying (Bears paw) for the original licence or approval to satisfy the Board that the requisite pre-conditions have been met.

As a result, EnCana, at the expense of Bears paw, is being placed in a more favourable position in the scheduled hearings. Rather than EnCana having to displace the presumption that the Board's decision to issue the Bears paw approvals without conditions was proper and correct (which is the result which naturally flows from the EnCana Section 39 review and variance applications), Bears paw has the onus of demonstrating that no interim tracking measures are required, is alternatively, that if they are required, the cost of same is for EnCana.

Moreover, it appears from the correspondence and the submissions made at the January 31, 2006 proceeding, that EnCana is the proponent of the "tracking" issue. As such, it is logical that EnCana, as the applicant, first make submissions as to why any tracking is warranted and its suggested specifics of same, and for Bears paw to respond. Bears paw submits that this further militates in favour of the Bears paw/EnCana matters proceeding by way of a Section 39 hearing, with EnCana as the applicant.

In conclusion, Bears paw requests that the Board confirm that EnCana's above-captioned review applications are to be heard pursuant to the review and variance provisions contained in

Section 39 of the ERCA and Rule 46 of the Board's *Rules of Practice*. If the Board is not prepared to do this, please advise us as soon as possible so that Bears paw may take the necessary steps to protect its position.

THACKRAY BURGESS

A handwritten signature in black ink, appearing to read 'JG', is written over the firm name 'THACKRAY BURGESS'.

John Gruber

JG/las

cc: See Attached Schedule "A"

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Schedule "A"

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