

# CODE HUNTER BARRISTERS

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Alberta Energy & Utilities Board  
1400, 640 – 5 Avenue S.W.  
Calgary, Alberta  
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COPY

Attention: Douglas A. Larder, Q.C.

Dear Sir:

Re: EUB Proceeding No. 1457147  
Review and Variance Applications Nos. 9500-1422781 & 9500-1439810  
EnCana / Bearspaw

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This letter is in response to that of 25 April 2006 of Bearspaw by counsel, as requested by the Board.

EnCana sought review and variance on the basis that it was directly and adversely affected (pursuant to the *Energy Resources Conservation Act*, s.26),<sup>1</sup> and that a hearing was required on the issue of entitlement and preserving the parties' rights pending resolution of that issue.

The EUB by its decision of 9 March 2006 noted that a person who is affected by a Board decision made without a hearing may apply for one, and if the Board determines the person is affected a hearing must be held.

The Board determined that in each of the referenced requests for review, the applicants are affected and a hearing is necessary. The Board set its procedure (as it is entitled to do) to be of a two step hearing on interim measures and then entitlement.

The Board's letter to the parties of 16 December 2005 notes the application for the hearing was made pursuant to section 40 of the *Energy Resources Conservation Act* and the same was said at the 31 January 2006 application.

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<sup>1</sup> 9 January 2006 EnCana application for Review and Variance, p. 9

(F)

In any event, rules 46(5) and (6) of the *AEUB Rules of Practice* show there would be no difference in onus regardless of the section invoked.

As no hearing was held on the original applications by Devon and Bearspaw, there can be no doubt that the hearing granted by the Board 9 March 2006 stands in the place of what ought to have been done.

As the review and variance hearing is but the hearing that should have been had initially by reason of direct and adverse effect on EnCana, it is the applicants who must establish the right to produce all of the substances sought.

As provided in s.26(2) of the *Energy Resources Conservation Act*, the affected party is given an opportunity to contradict facts and allegations in the application following the applicants' submissions.

Where it is sought to produce substances in dispute, it is obvious that the applicant needs to protect the status quo and the equities between the parties – and thus needs show that measurement is possible, accurate and cost-effective – or otherwise the license must be refused.

If Bearspaw had any objection to the Board's 9 March 2006 decision to grant a review under s.40, its remedy was to seek leave to appeal that decision to the Court of Appeal, pursuant to s.26 of the *Alberta Energy and Utilities Board Act*.

In sum, the parties are but where they would be if a hearing had been granted on the objection originally filed, and it is the applicants who must establish effective interim measures to protect the status quo and the equities.

Yours truly,

Christian J. Popowich

CJP/kgw

- cc: John Gruber, Thackray Burgess
- cc: Lars Olthafer, Fraser Milner Casgrain LLP
- cc: Robert Donick, Luscar Ltd.
- cc: William T. Corbett, Q.C., Field LLP
- cc: Lisa Stebbins, EnCana Corporation
- cc: Donald Edie, Carscallen Lockwood LLP
- cc: Velma Scott, Vermilion Resources Ltd.
- cc: Al Reid, EnCana Corporation