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April 4, 2006

ALBERTA ENERGY AND UTILITIES BOARD640 - 5th Avenue S.W.
CALGARY, Alberta
T2P 3G4ATTENTION: Douglas A. Larder, Q.C.
General Counsel**RE: EUB HEARING**

9500 - 1404564 (Luscar Ltd. / Fairborne Energy Ltd.)
9500 - 1406894 (Luscar Ltd. / Devon Canada Corporation)
9500 - 1424930 (Luscar Ltd. / Glacier Energy Limited)
9500 - 1406721 (EnCana Corporation / Devon Canada Corporation)
9500 - 1422781 (EnCana Corporation / Bearspaw Petroleum Ltd.); and
9500 - 1439810 (EnCana Corporation / Bearspaw Petroleum Ltd.)

This letter constitutes the submissions of Luscar Ltd. in response to Mr. Larder's request of March 28, 2006 for input from the parties with respect to the hearing process.

Before detailing Luscar's responses, we would like to address some comments made by Mr. McLarty in his letters of March 28, 2006 and April 3, 2006. While Mr. McLarty suggests the Board's decision to grant Luscar a hearing was a surprise to his clients, the decision was certainly not a surprise to Luscar. Luscar considers the decision to be in accordance with the applicable jurisprudence, legislation and common sense.

Rather than undermining confidence in the Board's decisions, Luscar believes the Board has established that the remedies built into the legislation by sections 39 and 40 of the *Energy Resources Conservation Act* will be applied by the Board in appropriate circumstances. The Board has confirmed that equity and procedural fairness are fundamental considerations in the exercise of its mandate.

Turning now to the specific matters spoken to in Mr. Larder's March 28, 2006 letter, Luscar's comments are set out below.



1. Should the Board consider the issue of legal entitlement to coalbed methane or should the Board focus upon the issue of appropriate interim measure for tracking coalbed methane production?

Luscar believes that any decision of the Board dealing with the issuance of well licenses or approving holding applications will of necessity involve addressing in some fashion the collateral issue of the legal entitlement to coalbed methane where wells are anticipated to be drilled on freehold lands. As Luscar indicated in its oral submission on January 31st, 2006, Luscar believes the Board has three alternatives:

- (a) it could decide that the issue remains open and that, since the applicants have failed to satisfy the Board, pursuant to the legislation, that they are entitled to approval of their well license applications or holding applications, the Board could decide to dismiss such applications;
- (b) the Board could indicate that the applications will be held in abeyance, pending legal determination by the Courts; or
- (c) the Board could, as part of its process, hear evidence and determine the entitlement issue.

Options (a) and (b) have the advantage of requiring the determination to be made by the Courts, as suggested by Mr. McLarty, but may delay the development of the coalbed methane resource.

Luscar believes that the legal entitlement to produce coalbed methane is fundamental to the determination of the current well license and holding applications. If the Board does not elect to proceed in accordance with alternative (a) or (b), then it is a pivotal issue that cannot be ignored and must be an integral part of any hearing.

Luscar will address the issue of appropriate interim measures later in this submission.

2. If the Board considers both the issue of legal entitlement to coalbed methane and the issue of appropriate interim measures for tracking coalbed methane production, should these issues be heard together or separately? Do the parties place a priority on one particular issue?

The timing of the issue of tracking coalbed methane production will, from Luscar's perspective, be dependent upon the Board's decision as to whether the subject matter of the request for review should be suspended pending completion of the review hearing. If the decisions are not



suspended, interim measures for tracking coalbed methane production should be initiated forthwith and the hearing process, to address that issue should be a priority. Luscar would envisage that issue as being narrow in focus resulting in a hearing of limited duration. Luscar concurs with Mr. McLarty's submissions on this point to the effect that the interim measures would be most efficiently dealt with first. Further, it is Luscar's understanding, (from comments made by Mr. McCrank at the hearing on January 31, 2006 (T. 6, II 14-17)), that the well licences 0331663 and 0331714, issued to Fairborne, have already been suspended. Luscar believes that no further action should be taken by the Board and that these licences should remain suspended pending the Board's decision at the end of the hearing.

3. Should persons that are not parties to one of the above-referenced review files be allowed to participate in the review hearing?

Luscar considers that, as legal entitlement issues are factually driven, it would be inappropriate for persons that are not parties to the above referenced files, with interests in the lands under consideration, to be recognized as interveners. The Board's prior decisions are persuasive but not binding upon the Board. Consequently, only persons who may be directly and adversely affected by any decision in these applications should be allowed to participate in the hearing. Other industry participants may be indirectly affected, but not directly.

4. Should the decisions which form the subject matter of the requests for review be suspended pending completion of the review hearing?

Section 40(4) of the *ERCA* provides a specific and extraordinary jurisdiction to the Board to suspend one of its orders pending a hearing. The legislation recognizes that a party may have had its rights directly and adversely affected without the holding of a hearing. The suspension of previous decisions places both sides to the issue in the same position, that is, their respective rights or entitlements will not be determined without a hearing.

While it is unfortunate that some of the gas producers may have expended resources, that certainly does not justify allowing continued production, when the coal owners have not had the benefit of protecting their rights through the hearing process. Any capital which was expended was committed with the understanding of Luscar's underlying claim. The gas producers accepted this risk and those expenditures should not now be a consideration of the Board in its decision to suspend the decisions now proceeding to hearing.



5. **Do the parties anticipate that the Board's Information Requests process, as set out in the *Rules of Practice*, would be helpful?**

Luscar believes that process would be useful.

6. **Do the parties anticipate that a pre-hearing meeting would be helpful?**

Luscar believes that a pre-hearing meeting prior to the commencement of the oral hearing could be useful, depending upon the nature of the hearing and the number of participants.

7. **Do the parties anticipate being able to enter an agreed statement of facts as to which party holds PNG rights and which party holds coal rights in a particular location?**

Luscar believes that in the majority of cases, such agreement will be possible.

8. **Do the parties believe simultaneous submissions would be appropriate?**

Luscar recognizes the Board's desire to expedite matters. However, Luscar is not satisfied that object will be achieved by simultaneous submissions. Luscar believes the normal process pursuant to Section 40 (that is, with the PNG rights holder as applicant, as identified by Mr. Larder in his March 28 letter) will result in a more efficient delineation of issues and a more effective hearing.

The logo for Luscar Ltd. features the word "LUSCAR" in a bold, sans-serif font, with "LTD." in a smaller font to its right. The letters are black and set against a white background.

Although you did not request input on the issue, Luscar has serious concerns about the Board's proposed hearing schedule. Assuming the entitlement issue is part of that process, the middle of June simply does not provide parties with sufficient time to assemble the experts required to properly address that issue. In addition, there are a number of ancillary issues that will also have to be considered. While it is in the interests of all parties to have these applications dealt with expeditiously, the middle of June commencement date is simply unrealistic. Luscar would suggest a more realistic commencement date would be late August or early September, at the earliest.

Yours truly,

A handwritten signature in black ink, appearing to read "Robert Donick", is written over the typed name and title.

LUSCAR LTD.

Robert Donick
Corporate Counsel and
Assistant Corporate Secretary

cc: Field LLP – W.T. Corbett
Fraser Milner Casgrain – A.L. McLarty
Code Hunter – C.J. Popowich
Encana Corporation – L. Stebbins
Vermillion Resources – V. Scott
Bears paw Petroleum Ltd. – R.G. Jensen
Carscallen Lockwood LLP – D. Edie
Thackray Burgess – J. Gruber

WTC/cp