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July 26, 2006

By E-mail and Mail

Alberta Energy and Utilities Board
640 - 5 Avenue SW
Calgary, Alberta T2P 3G4

Attention: Mr. Paul Ferensowicz, Energy Team Secretariat

Dear Sir:

Subject: Part 2 of Proceeding No. 1457147
Bears paw Petroleum Ltd., Carbon Development Partnership (Successor in
Interest to Prairie Mines and Royalty Ltd., formerly Luscar Ltd.), Devon Canada
Corporation, EnCana Corporation and Fairborne Energy Ltd.
Clive, Ewing Lake, Stettler and Wimborne Fields
Our files: 507548-4 and 517594-3

My purpose in writing is to respond to the submissions made on behalf of Carbon Development Partnership (CDP) and EnCana Corporation (EnCana) with respect to the request made to the Board on behalf of Devon Canada Corporation (Devon) and Fairborne Energy Ltd. (Fairborne) in our letter of June 28, 2006.

It appears important to emphasize that the request made on behalf of Devon and Fairborne raises no new or unique issues. Rather what is sought is the fair and reasonable application of principles that have been established and which allow some reasonable level of business activity to continue while the debate as to the ownership of gas from coal unfolds. The interim balance achieved to date preserves the legal rights of parties while minimizing the potential for prejudice to occur to either ownership claimant.

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The Board has approved some well licence and holding applications which approvals are currently under review. The review, though, has not negatively impacted the legality or veracity of the approved applications. This, in part, is because interim measures have been established that respond to concerns of potential prejudice by the coal owners. There is no substantive basis on which to distinguish why some contested Devon and Fairborne wells and holdings should be allowed to subsist while other contested applications, which Devon and Fairborne have undertaken to establish, under terms and conditions identical to the subsisting matters, are arbitrarily deferred processing by the Board. Those applications can and should be approved and allowed to produce under the same conditions that the other applications have been approved, which would include the condition that any approval is subject to a further review in the context of the ownership issue and that there is the potential for the decision to be reversed in the future.

Nothing in Mr. Edie's, Mr. Corbett's or Mr. Popowich's letters of July 14, 2006 addressed this fairness issue. Rather Mr. Edie's response advances three other reasons why the request should be denied. One reason relates to the Board's jurisdiction, but that issue is not new or unique to the applications the Board is holding in abeyance. That jurisdictional issue is one that CDP will have the future opportunity to debate but it is not an issue that can or should distinguish those applications that have been approved and implemented from those that are being held in abeyance.

Mr. Edie's second point is that granting the request would confer preferential treatment on Fairborne. That is not correct. The difference in treatment is not preferential. Rather it is treatment that is distinguishable on meritorious grounds. Fairborn and Devon have had to commit to specific measurement conditions to put themselves into a position to obtain the interim relief they have for some wells and to seek the similar relief requested for other applications.

Mr. Edie's third point is that he says the relief requested would constitute discrimination. That seems to only be the other side of the preferential treatment argument. But more significantly, it is an argument that should not lie in the mouth of CDP when CPD is not a party with a claim that it is being discriminated against.

Lastly, CDP says that the accord it reached was acceptable to it because it affected only a small number of wells. CDP's logic and reasoning may be sensible for CDP but it is not logic that should be allowed to dictate a decision of the Board. Indeed, we would hope the Board would consider Fairborne's and Devon's requests on the basis of their substantive merit and not on the basis of CDP's preferences.

EnCana's submission reiterates its position that its dispute impacts on the Board's jurisdiction. The Board's jurisdiction is statutory in nature and, although the Board's discretionary conduct may be affected by EnCana's claims, its jurisdiction is not so affected. This being the only issue raised by EnCana with respect to the relief sought by Devon and Fairborne, there is nothing said that should inhibit the Board from granting the interim relief requested on behalf of Devon and Fairborne.

For the foregoing reasons, and most importantly, to ensure that reasonable fairness prevails to allow Devon and Fairborne to proceed with some of their business interests while matters with respect to the ownership issue are resolved, it is submitted the approach set out herein should be adopted and effected by the Board.

Yours very truly,

FRASER MILNER CASGRAIN LLP

A. L. McLarty

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cc: Ms. Julie Lee HARRS, Carbon Development Partnership
Mr. Robert Donick - Prairie Mines and Royalty Ltd. (formerly Luscar)
Mr. David Pyke, Fairborne Energy Ltd.
Mr. William T. Corbett, Q.C., Field Law - Luscar
Ms. E. Pederson, Freehold Petroleum & Natural Gas
Mr. D. Ostermann, Bearspaw Petroleum Ltd.
Mr. James C. Riley - ConocoPhillips Canada
Mr. Dean Allatt, Legal Counsel - ConocoPhillips Canada
Mr. Alan Harvie, Macleod Dixon LLP - Computershare
Jan Peters, ARC Resources Ltd.
Mr. Christian Popowich, Code Hunter - EnCana
Mr. A. Reid - EnCana
Mr. John Gruber, Thackray Burgess - Bearspaw
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Mr. J. Patrick Peacock, Q.C./Mr. Peter Linder, Q.C., Peacock Linder & Halt LLP - Centrica
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Mr. John E. Lowe, Burnet, Duckworth & Palmer LLP - Canpar
Ms. C. Tuleck, Alberta Energy
Mr. Donald Edie, Q.C., Carscallen Lockwood - Luscar