

**Peacock Linder & Halt LLP**  
**BARRISTERS & SOLICITORS**

Our File: 3593  
Your File:

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July 4, 2006

VIA EMAIL: [paul.ferensowicz@gov.ab.ca](mailto:paul.ferensowicz@gov.ab.ca)

P. Ferensowicz  
Energy Team Secretariat  
Alberta Energy and Utilities Board  
640 – 5<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3G4

Dear Sir:

**Re: Submissions Regarding Request for Intervener Status  
Proceeding No. 1457147  
Bears paw Petroleum Ltd., Devon Canada Corporation, EnCana Corporation,  
Fairborne Energy Ltd. and Luscar Energy Ltd.  
Clive, Ewing Lake Stettler and Wimborne Fields**

Please accept this letter as the submission to the Board in support of the application for intervener status of Centrica Canada Limited (“Centrica”), made pursuant to the letter of May 26, 2006 from Peter T. Linder, Q.C. of our offices, a copy of which is enclosed. For the reasons set out in this submission, we request that Alberta Energy Utilities Board grant intervener status and full participation to Centrica in Part 2 of Proceeding No. 1457147 (the “Proceeding”).

**Direct and Adverse Effect**

Pursuant to Subsection 26(2) of the *Energy Resources Conservation Act* (“ERCA”), the Board shall grant certain participation rights to a person, where it “appears to the Board that its decision on an application may directly and adversely affect the rights of [the] person”. The Alberta Court of Appeal has considered the language of Section 26(2) in *Dene Tha’ First Nation v. Alberta (Energy and Utilities Board)*, 2005 ABCA 68. The Court affirmed the Board’s determination that there are two branches to the test in determining whether a person must be granted rights of participation under 26(2).

The first branch of the test is a legal one, and asks whether a person has a legal claim, right or interest. In other words, the Board must determine whether the person seeking rights of participation has a legal right that is directly and adversely affected. Centrica’s rights are well-known to the Board and the other parties. As set out in our letter of May 26, 2006, Centrica currently has three non-routine applications before the Board to establish holdings for the production of coalbed methane gas from certain properties in which it has legal rights

of ownership (Application Nos: 1432330, 1432917 and 1433647, collectively referred to as the “Centrica Applications”). Centrica had planned and budgeted for a drilling program of up to 120 gas wells for the 2006 drilling season, with perhaps as many as an equivalent additional number of wells to be drilled in future for development of its CBM reserves. As a direct result of the Board’s decision to put its well and holdings applications in abeyance, Centrica’s capital program has been directly and adversely impacted by being put on hold pending a determination of the issue of legal entitlement to CBM.

The second branch of the test is a factual one, which addresses the requirement that the applicant demonstrate that those legal rights “may” be “directly and adversely” affected by the Board’s decision. The Court of Appeal confirmed that this is a factual issue for the Board to determine in its discretion, based on the evidence before it.

The Board has arguably already made the determination that Centrica’s legal rights may be directly and adversely affected by the Board’s decision in the Proceeding. In the Notice of Hearing, the Board states that it has decided, pursuant to Bulletin 2006 – 19, that “all applications regarding which legal entitlement to coalbed methane is at issue will be held in abeyance pending issuance of the Board’s decision” in the Proceeding. Further, the Notice of Hearing was distributed in order “to advise interested persons that the Board is now undertaking a review of the issue of legal entitlement of coalbed methane being produced or intended to be produced from certain wells on split-title freehold lands...”. The Centrica Applications are included among the applications which are being held in abeyance pending the Board’s decision in the Proceeding. Accordingly, it is clear that Centrica qualifies for standing pursuant to Section 26(2) of the ERCA.

Certain of the parties to the Proceeding have argued in earlier submissions that certain applicants for intervener status have not demonstrated that the decision in the Proceeding may have a direct and adverse impact on those parties, because the Board’s decisions are not subject to the principle of *stare decisis*, and because those parties do not have any interest in the actual lands under consideration in the Proceeding. However, Centrica respectfully submits that the Board has given notice, in the Notice of Hearing, that the Proceeding is effectively a review of legal entitlement to coalbed methane on split-title freehold lands, the very issue to be addressed in the Centrica Applications.

Further, Centrica has considerable expertise, experience and knowledge concerning the matters in issue. Its participation would assist the Board in its consideration of the legal and factual issues and of the competing interests of the significant stakeholders. Centrica has significant CBM land holdings with interests in coalbed methane in Alberta, and accordingly it ought to be given standing to participate fully in the Proceeding as mandated by Section 26(2) of the ERCA.

### **Centrica’s Participation in the Proceeding**

Centrica intends to participate fully in the Proceeding, or in any event to the fullest extent mandated by Section 26(2) of the ERCA. As stated above, Centrica has significant expertise in this regard and will wish to adduce evidence, cross-examine the witnesses of other parties, and make representations by way of argument to the Board.

Centrica intends to adduce evidence demonstrating that coalbed methane is a natural gas that is not distinct in composition or phase from any other type of natural gas, the production of which is governed by the ERCA and

the Board. Centrica will further adduce evidence to demonstrate the variety of reservoirs in which coalbed methane may reside, and the consistency of coalbed methane with the regulatory definition of natural gas. Centrica will address the issues of coal's capacity for adsorption and the generation of natural gas as a product of the coalification process. Centrica will address the history of CBM as a commercial resource and provide an analysis of the case law from other jurisdictions looked at the classification of CBM, from their peculiar regulatory and common law contexts. Centrica will also make submissions on the Canadian and Alberta experience with CBM and other carbon and hydrocarbon substances. Centrica will put into evidence the different formulations of wording used by the parties in the subject leases and compare this to the language used in its own minerals leases. Ultimately, Centrica will demonstrate that common sense, the common law, the unique Alberta regulatory environment and a proper interpretation of the leases in question should guide the Board in reaching a decision on the legal entitlement of CBM, which will impact upon the significant rights and interests of Centrica in its extensive Alberta CBM holdings.

Finally, Centrica will adduce evidence as to the language used in regulatory enactments, guidelines and in leases and industry contracts, demonstrating that coal rights are properly limited to the hard, black, carbonized substance that is generally known and recognized as coal, while CBM is methane that falls into the definition of natural gas.

### **Proposed Disposition of the Proceeding**

Centrica will advocate that the Board dispose of the Proceeding by finding that the law and practice support the position that the legal entitlement to produce coalbed methane on split-title lands ought to belong to the natural gas producers as opposed to the coal owners. Centrica believes that the Board should dispose of the Proceeding in this manner because this conclusion is consistent with the applicable statutes and the longstanding practice of the Board and the Province of Alberta in treating natural gas and coal as two distinct substances belonging to separate estates on split-title land. Coalbed methane is, by definition, a natural gas pursuant to the regulatory laws of the province and, consequently, forms part of the natural gas estate on split-title lands.

### **Communications**

All communications respecting this matter should be directed to:

**Centrica Canada Limited**

Suite 1000, 111 – 5<sup>th</sup> Avenue S.W.

Calgary, Alberta

T2P 3Y6

Attention: Donna Phillips, Vice President of Land

Phone: (403) 290-6709

Fax: (403) 265-4475

E-mail: donna.phillips@directenergy.com

and to counsel for Centrica Canada Limited

**Peacock Linder & Halt LLP**

Suite 1800, 350 – 7<sup>th</sup> Avenue S.W.

Calgary, Alberta

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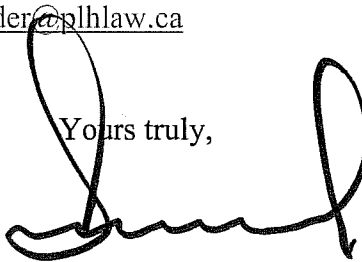
Attention: J. Patrick Peacock, Q.C. and Peter T. Linder, Q.C.

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Yours truly,



J.P. PEACOCK, Q.C.

JLM/mas

cc: Carbon Development Partnership  
1600, 10235 – 101 Street  
Edmonton, Alberta T5J 3G1  
Attention: Ms. Julie Lee Harrs

cc: Fraser Milner Casgrain LLP  
30<sup>th</sup> Floor, 237 – 4<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 4X7  
Attention: Mr. A.L. McLarty, Q.C.

cc: Fairborne Energy Ltd.  
3400, 450 – 1<sup>st</sup> Street S.W.  
Calgary, Alberta T2P 5H1  
Attention: Mr. David Pyke

cc: Field LLP  
1900, 350 – 7<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3N9  
Attention: Mr. William Corbett, Q.C.

cc: Freehold Petroleum & Natural Gas  
Owners Association  
1403 – 12<sup>th</sup> Street N.W.  
Calgary, Alberta T3C 1B3  
Attention: E. Pederseon

cc: Code Hunter LLP  
850, 440 – 2<sup>nd</sup> Avenue S.W.  
Calgary, Alberta T2P 5E9  
Attention: Mr. Christian Popowich

cc: EnCana Corporation  
421 – 7<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 2S5  
Attention: Ms. Lisa Stebbins

cc: Thackray Burgess  
1900, 736 – 6<sup>th</sup> Avenue S.W.  
Calgary, Alberta T2P 3T7  
Attention: Mr. John Gruber

cc: Quicksilver Resources Canada Inc.  
2000, 125 – 9<sup>th</sup> Avenue S.E.  
Calgary, Alberta T2G 0P8  
Attention: D. Johnson, Sr. V.P.

cc: Carscallen Lockwood LLP  
1500, 407 – 2<sup>nd</sup> Street S.W.  
Calgary, Alberta T2P 2Y3  
Attention: Donald C. Edie, Q.C.

**Peacock Linder & Halt LLP**  
BARRISTERS & SOLICITORS

Our File: 3593  
Your File:

**Peter T. Linder, Q.C.**  
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May 26, 2006

**via E-mail**

Alberta Energy and Utilities Board  
Applications Branch, Resources Applications Group  
640 – 5<sup>th</sup> Avenue S.W.  
Calgary, AB T2P 3G4

**Attention: Karine Fisher**

Dear Madam:

**Re: Request for Intervener Status  
Proceeding No. 1457147  
Bears paw Petroleum Ltd., Devon Canada Corporation, EnCana Corporation, Fairborne Energy  
Ltd. and Luscar Energy Ltd.  
Clive, Ewing Lake Stettler and Wimborne Fields**

We are counsel for Centrica Canada Limited (“Centrica”). On behalf of Centrica, we hereby request that the Alberta Energy Utilities Board (hereinafter referred to as the “Board” or the “EUB”) grant intervener status to Centrica in Proceeding No. 1457147 (the “Proceeding”).

We understand that there are two parts to the Proceeding relating to the EUB’s consideration of issues arising out of the production of Coal Bed Methane (“CBM”) from freehold lands in the Province of Alberta. Centrica objects in principle to the imposition of interim conditions for the measurement and accounting of CBM production on the approvals for its holdings and well licenses. However, Centrica’s primary interest is in Part 2 of the Proceeding and, therefore, its request for intervener status is in respect of Part 2. We understand from the Notice of Hearing that in Part 2 of the Proceeding, the Board will consider the issue of legal entitlement to coalbed methane being produced or intended to be produced from the wells that have been licensed to Bears paw Petroleum Ltd., Devon Canada Corporation and Fairborne Energy Ltd.

Centrica has extensive interests in CBM in Alberta and may be directly and adversely affected by any decision rendered by the Board in the Proceeding. Currently, Centrica has made three non-routine applications to the Board to establish holdings for the production of coalbed methane gas from the Horseshoe Canyon Coals in the Manito, Bashaw, Erskine, Stettler, Leahurst, Gadsby, Halkirk, and Leo Fields (application numbers: 1432330, 1432917 and 1433647 collectively referred to herein as, the “Centrica Applications”). Attached for your reference you will find copies of e-mails Centrica received from the EUB confirming registration of the Centrica Applications.

Both of EnCana Corporation (“EnCana”) and Luscar Ltd. (“Luscar”), who are parties to the Proceeding, have served letters of objection to the Centrica Applications, copies of which are attached. The issue of legal entitlement raised by EnCana and Luscar in respect of the Centrica Applications is the same issue of legal entitlement raised in the Proceeding. As such, Centrica has a direct and substantial interest in the outcome of Part 2 of the Proceeding. In addition, Centrica has considerable expertise, experience and knowledge concerning the matters in issue. Its participation would assist the EUB in its consideration of the legal and factual issues and of the competing interests of the significant stakeholders.

The Centrica Applications are currently under review and have been under review since December 2005. It is our understanding that the status of the Centrica Applications will remain the same until a decision is rendered in the Proceeding. Despite the fact that Centrica is not named in the Proceeding, any decision by the Board in the Proceeding may directly and adversely affect Centrica and the Centrica Applications.

Centrica’s significant CBM land holdings and pending applications give it standing to speak to the important matters being addressed by the EUB in the Proceeding. We submit that Centrica should be afforded the opportunity to intervene so that its voice may be heard and its interests protected. Given the likelihood that any decision made by the Board in the Proceeding will impact Centrica’s Applications and operations, we respectfully urge the Board to allow Centrica to intervene in the Proceeding.

If you have any questions or require any further information, please feel free to contact the writer.

Yours truly,



PETER T. LINDER, Q.C.

PTL\*cynthia

Enclosures

cc: Centrica Canada Limited  
Attention: Niall Armstrong