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March 21, 2005

*By Courier*

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

Attention: Ms. Carla Giesbrecht

Dear Madam:

Subject: Supplemental Information Request  
EUB Applications No. 1379726 et al  
Category and Type: B140  
Application for CBM Well Licences - Wimborne Field  
**Our file no. 507548-4**

We have been asked by Devon Canada Corporation (“Devon”) to respond and to provide the materials and information requested by your letter of March 14, 2005 as support for Devon’s right to produce gas from the applied for wells.

Devon’s entitlement to recover natural gas from the areas identified in the well licence applications is confirmed in the title documentation and the associated petroleum and natural gas lease rights held by Devon. A summary of the well licence applications, associated title and lease rights, previously filed with the Board, is attached, as follows:

- Schedule 1 - Application and Document Summary for 8-34-26 W4
- Schedule 2 - Application and Document Summary for 17-34-26 W4
- Schedule 3 - Application and Document Summary for 9-34-26 W4
- Schedule 4 - Application and Document Summary for 15-34-26 W4
- Schedule 5 - Application and Document Summary for 35-33-24 W4

In making its applications, Devon was aware that EnCana Corporation (“EnCana”) and Luscar Ltd. (“Luscar”) have entitlements to coal rights within the area from which Devon is proposing to produce gas. Issues have been raised by EnCana and Luscar that the natural gas produced from

the coal properties held by these companies might, at some time, be construed by a Canadian court as being within the definition of coal or as having been reserved as part of the coal estate and thus not within the entitlement of Devon's petroleum and natural gas lease rights. Devon accepts the potential for such legal issues to be raised for resolution in the future. No present issue has been raised as to the grants to Devon or as to its right to produce natural gas.

It appears to be common ground, as amongst Devon, EnCana and Luscar, that the question whether gas produced from coal is other than natural gas included within Petroleum and Natural Gas rights has not been judicially considered in Canada, either generally or in the context of the facts and circumstances that exist with respect to the specific coal rights held by EnCana and Luscar. Title disputes in all manner of issue do not constitute a unique or unusual circumstance in Canadian jurisprudence. The Canadian judicial system facilitates the opportunity for such claims to be advanced and to be resolved.

We are of the view that Devon's entitlement to produce natural gas establishes for it a *prima facie* entitlement to the well licences requested. That *prima facie* right is enhanced by:

- The fact the gas sought to be produced is composed primarily of methane and is otherwise indistinguishable from what is commonly and technically accepted as natural gas;
- The technology to be employed and the regulatory authority relating to the recovery of the substance proposed to be recovered are also indistinguishable from those that are generally associated with the recovery of natural gas, while conversely, practically no means appears to exist for the gas in coal to be recovered as part of the coal recovery operation;
- A review of American cases determining ownership of gas in coal under varying grants and reservations indicates that when American courts have considered the meaning of "coal" they have generally come to the conclusion that coal means the solid substance and not the associated gas in the coal;
- The analytical and interpretative approaches accepted by the Canadian courts in petroleum and natural gas split title cases suggests that arguments with respect to ownership of gas in coal would lead to a conclusion that the reservation of coal alone, absent some more particular indications of some other intent will be determined not to include the gas in coal.
- The leading Canadian case of *Borys v. C.P.R.* [1953] 2 D.L.R. 65 (B.C.) suggests that the right to gas in coal is likely to be determined by a Canadian court on the basis of the vernacular meaning of "coal" as that term was understood at the time when the specific coal rights were reserved. There is in that regard no representation before the Board nor is there any indication in any of the title documents to suggest an intent to reserve to the coal owner the right to the gas in the coal;

Devon's application materials establish a strong *prima facie* case for Devon's entitlement to produce gas from the coal. Those application documents, however, also acknowledge the potential for claims to be advanced by the owners of the coal estates with respect to the ownership of the gas in coal. Devon's applications, if granted, will not affect the opportunity for those ownership claims to be pursued through the courts. To the contrary, as neither EnCana nor Luscar

have, themselves, advanced proposals to recover gas from coal, those companies stand only to benefit from Devon's venture should their legal ownership position be ultimately taken as correct. Devon expects to be accountable, should it ultimately be determined that it is not entitled to produce the gas from coal. For these reasons, approval of the applications will not prejudice the rights of EnCana or Luscar, should any claim advanced by them ultimately prove successful. The entitlement issue raised, therefore, serves only to put Devon on notice that it may be at risk to be accountable for the gas it produces. This is a position that Devon has acknowledged and accepted. Devon is sufficiently confident in its entitlement to the gas it is proposing to produce to proceed with the development in the face of that risk.

In summary, it is submitted:

- Devon's applications are for licences to drill wells to enable it to produce natural gas;
- Devon's entitlement to produce natural gas from the area and from the zones proposed is not disputed;
- Unless and until it is established that gas in coal is either not "natural gas" within the meaning of Devon's petroleum and natural gas leases or was intended to be and was reserved as part of a coal estate, no basis exists to consider gas in coal as "coal";
- The public interest associated with facilitating reasonable developments, including the recovery and conservation of Alberta's energy resources should lean heavily in favour of Devon's applications being granted;
- The balance of interests as reflected in the absence of any prejudice to EnCana and Luscar, should rest in favour of granting Devon's applications.

Should you have questions or concerns or should there be any additional information that the Board would find helpful in its consideration and disposition of these applications, please let us know. We await the Board's favourable determination of these applications to facilitate timely development.

Yours truly,

**FRASER MILNER CASGRAIN LLP**

A.L. McLarty

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Encs.

cc: Devon Canada Corporation  
Attn: Mr. Lorne Rollheiser

Devon Canada Corporation  
Attn: Ms. Shelly Mueller

## SCHEDULE 1

### Application and Document Summary for Section 8-34-26-W4M

#### Applications

- Application 1383132 - Wimborne 6-8-34-26-W4
- Application 1383136 - Wimborne 14-8-34-26-W4
- Application 1383137 - Wimborne 16-8-34-26-W4
- Application 1383134 - Wimborne 8-8-34-26-W4

#### Mines and Minerals

- The title to all mines and minerals other than coal, held by Apache Canada Ltd. - Title No. 011 101 294 + 61

#### Petroleum and Natural Gas Leases

- Petroleum and Natural Gas Lease, dated March 29, 1994 as between Talisman Energy Inc. and Gulf Canada Resources Limited and ISH Energy Ltd. as to the northeast quarter of 8-34-26 W4, and in respect of which Title No. 011 101 294 + 61 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated July 25, 1994 as between Talisman Energy Inc. and Gulf Canada Resources Limited and ISH Energy Ltd. as to the northwest quarter of 8-34-26 W4, and in respect of which Title No. 011 101 294 + 61 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated January 14, 1994 as between Talisman Energy Inc. and Gulf Canada Resources Limited and ISH Energy Ltd. as to the southeast quarter of 8-34-26 W4, and in respect of which Title No. 011 101 294 + 61 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated November 23, 1994 as between Talisman Energy Inc. and Gulf Canada Resources Limited and ISH Energy Ltd. as to the southwest quarter of 8-34-26 W4, and in respect of which Title No. 011 101 294 + 61 shows an interest held by Devon Canada Corporation.

#### Coal Rights

- The title to coal held by Luscar Ltd. - Title No. 041 128 618 + 7

## SCHEDULE 2

### Application and Document Summary for Section 17-34-26-W4M

#### Applications

- Application 1383134 - Wimborne 16-17-34-26-W4
- Application 1383140 - Wimborne 14-17-34-26-W4
- Application 1383139 - Wimborne 8-17-34-26-W4
- Application 1383138 - Wimborne 6-17-34-26-W4

#### Mines and Minerals

- The title to all mines and minerals other than coal, held by Apache Canada Ltd. - Title No. 011 101 294 + 32

#### Petroleum and Natural Gas Lease Rights

- Grant and Lease of Petroleum between Security Freehold Petroleums Limited and Banff Oil Ltd., dated June 24, 1954 and extended as to the lease area from and after the 25<sup>th</sup> day of September, 1956, to include all of Section 17-34-26-W4, and in respect of which Title No. 011 101 294 + 32 shows an interest held by Devon Canada Corporation.

#### Coal Rights

- The title to coal held by Luscar Ltd. - Title No. 041 128 618 + 12

### SCHEDULE 3

#### Application and Document Summary for Section 19-34-26-W4M

##### Applications

- Application 1380014 - Wimborne 16-9-34-26-W4
- Application 1380013 - Wimborne 14-9-34-26-W4
- Application 1380010 - Wimborne 8-9-34-26-W4
- Application 1380005 - Wimborne 6-9-34-26-W4

##### Mines and Minerals

- The title to all mines and minerals other than coal, held by Apache Canada Ltd. - Title No. 011 101 294 + 31

##### Petroleum and Natural Gas Lease Rights

- Grant and Lease of Petroleum between Security Freehold Petroleums Limited and Banff Oil Ltd., dated June 24, 1954 and extended as to the lease area from and after the 25<sup>th</sup> day of September, 1956, to include the whole of Section 9-34-26-W4, and in respect of which Title No. 011 101 294 + 31 shows an interest held by Devon Canada Corporation.

##### Coal Rights

- The title to coal, held by Luscar Ltd. - Title No. 041 128 618 + 11

## SCHEDULE 4

### Application and Document Summary for Section 15-34-26-W4M

#### Applications

- Application 1380004 - Wimborne 16-15-34-26-W4
- Application 1379746 - Wimborne 14-15-34-26-W4
- Application 1379743 - Wimborne 8-15-34-26-W4
- Application 1379737 - Wimborne 6-15-34-26-W4

#### Mines and Minerals

- The title to all mines and minerals held by PanCanadian Petroleum Limited - Title No. 761 007 969

#### Petroleum and Natural Gas Leases

- Gas Lease and Grant, dated January 3, 1963 between Elias Robanski and Arthur Hazle as to the southeast quarter of Section 15-34-26-W4, and in respect of which Title No. 761 007 969 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated June 5, 1969 between the Calgary and Edmonton Railway Company and Canadian Pacific Oil and Gas Limited as to the southwest quarter of Section 15-34-26-W4, and in respect of which Title No. 761 007 969 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated January 30, 1962 between the Calgary and Edmonton Railway Company and the British American Oil Company Limited as to the northeast quarter of Section 15-34-26-W4, and in respect of which Title No. 761 007 969 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated July 19, 1957 between the Calgary and Edmonton Railway Company and the British American Oil Company Limited as to the northwest quarter of Section 15-34-26-W4, and in respect of which Title No. 761 007 969 shows an interest held by Devon Canada Corporation.

## SCHEDULE 5

### Application and Document Summary for Section 35-33-26-W4M

#### Applications

- Application 1379763 - Wimborne 15-35-33-26-W4
- Application 1379730 - Wimborne 14-35-33-26-W4
- Application 1383129 - Wimborne 8-35-33-26-W4
- Application 1379726 - Wimborne 6-35-34-26-W4

#### Mines and Minerals

- The title to all mines and minerals held by PanCanadian Petroleum Limited - Title No. 761 007 597

#### Petroleum and Natural Gas Lease Rights

- Petroleum and Natural Gas Lease, dated June 5, 1964 between the Calgary and Edmonton Railway Company and the British American Oil Company Limited as to the southeast quarter of Section 35-33-26-W4, and in respect of which Title No. 761 007 597 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated June 5, 1964 between the Calgary and Edmonton Railway Company and Canadian Pacific Oil and Gas Limited as to the southwest quarter of Section 35-33-26-W4, and in respect of which Title No. 761 007 597 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated June 5, 1964 between the Calgary and Edmonton Railway Company and Canadian Pacific Oil and Gas Limited as to the northwest quarter of Section 35-33-26-W4, and in respect of which Title No. 761 007 597 shows an interest held by Devon Canada Corporation.
- Petroleum and Natural Gas Lease, dated June 5, 1964 between the Calgary and Edmonton Railway Company and Canadian Pacific Oil and Gas Limited as to the northeast quarter of Section 35-33-26-W4, and in respect of which Title No. 761 007 597 shows an interest held by Devon Canada Corporation.