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April 19, 2005

By Fax

Alberta Energy and Utilities Board
540 - 5th Avenue S.W.
Calgary, Alberta T2P 3G4

Attention: Ms. Barbara S. Kapel Holden, Board Counsel

Dear Ms. Kapel Holden:

Subject: EUB Application No. 1379726, et al
Category and Type: B140
Application for CBM Well Licences
Wimborne Field
File No. 507548-4

This is to acknowledge and thank you for your letter of April 15, 2005. We wish to exercise the opportunity to reply to the submissions made to the Board on behalf of Luscar Ltd. ("Luscar") and EnCana Corporation ("EnCana") with respect to the earlier submission we made on behalf of Devon Canada Corporation ("Devon").

The submissions made on behalf of Luscar and EnCana urge the Board to either deny Devon's applications or, in the alternative, to defer approval of the applications pending a judicial determination of Devon's entitlement to produce gas from coal zones ("natural gas in coal" or "CBM"). Each of those submissions warrants a specific response.

The Argument that Approval be Deferred

The submissions of Luscar and EnCana seem to rest on the view that Devon's entitlement to produce CBM has not been conclusively established and as Luscar indicates, the Board lacks the jurisdiction to make determinations as to the respective property rights of Devon and Luscar. This argument is made on the basis of an inaccurate characterization of the jurisdiction the Board is being asked to exercise.

The Board is not being asked, is not required by Devon's applications and for that matter, is not entitled to allocate property rights as among Devon, Luscar and EnCana. Rather, the Board is being asked to exercise its proper jurisdiction to consider the applications and issue the well licences requested by Devon. In the exercise of that jurisdiction, the Board's authority extends to

making such collateral findings of law as may be necessary to enable the Board to exercise its proper statutory jurisdiction. That collateral authority is evident from the appeal provisions in Section 26 of the *Alberta Energy and Utilities Board Act* (AEUB Act) and Section 41 of the *Energy Resources Conservation Act* (ERC Act). Such authority is further confirmed by Section 13 of the AEUB Act and by Section 25 of the ERC Act which provide that matters that may be dealt with by the Board are within its exclusive jurisdiction and are final and conclusive subject only to an appeal on questions of law or jurisdiction.

In our submission, it would be improper for the Board to decline the exercise of the statutory authority conferred on it by acceding to the open ended deferral urged by Luscar and EnCana. A decision by the Board that reflects the Board's collateral assessment of the entitlement issue, whether the decision is to grant or to deny the well licences applied for, will not constitute a decision that is determinative of any party's property rights. To the extent the Board's decision may give rise to a reasonably arguable question of law the opportunity will exist for parties to request that any such issue be considered by the Alberta Court of Appeal.

The Argument that Devon's Application be Denied

Luscar and EnCana urge that Devon's applications be denied on the grounds asserted by them that Devon is not entitled to produce CBM from the wells Devon has proposed be licensed. Luscar and EnCana contend Devon lacks entitlement for what are two distinct reasons.

1. As acknowledged at page 5 of EnCana's submission, "Devon can produce oil and conventional natural gas" but at page 3 of its submission EnCana contends that "CBM is not natural gas". The implication is that CBM must, therefore, be coal. On our understanding and reading of technical texts and the U.S. jurisprudence on CBM ownership, there is little if any support for the contention that CBM is anything other than natural gas. It is certainly correct to say that the entitlement of a party to produce CBM, as considered by the U.S. authorities, has not always been grounded on the nature of CBM as a gas but we are not aware of any authorities that have concluded and substantiated EnCana's contention that CBM is not a gas. We note, consistent with the view that CBM is a gas, IL91-11, in which it is indicated that the Energy Resources Conservation Board and the Alberta Department of Energy consider CBM to be a form of natural gas.

The contention that Devon is not entitled to produce CBM for the reason that CBM is not natural gas is, in our submission, without merit.

2. Although Luscar and EnCana acknowledge that Devon's lease rights extend to the right to produce "conventional" natural gas, those companies take issue with Devon's right to produce natural gas that can be construed as being in the form of CBM. The distinctions drawn as to the origin of or manner in which the natural gas may be found in the reservoir tend to be the product of musings by Luscar and EnCana. The distinctions identified by them are not acknowledged in Section 16(1) or in any other provision of the *Oil and Gas Conservation Act* (O&GC Act). Those distinctions are also not identified or obvious by implication from any of the title documents from which Luscar, EnCana and Devon derive their rights.

It is common ground, as amongst Luscar, EnCana and Devon, that issues that have not been conclusively resolved may be identified and advanced with respect to various of those party's claimed rights to CBM. We are of the view and have represented to the Board that Devon's right to produce natural gas entitles it to all natural gas unless the grant of natural gas or some collateral reservation, such as to the coal, can be construed as having been intended to also reserve the CBM. We also noted earlier that no evidence of any intention to reserve CBM has been adduced. To the contrary, Luscar indicated it did not adduce such evidence because of its perception of the Board's jurisdiction, that it is not open to the Board to determine a party's property rights. The fact is, Luscar has had the opportunity to provide the Board with more than its unsubstantiated assertions but has declined to do so.

For EnCana's part, it similarly elected not to adduce any actual evidence of an intent to reserve CBM but instead advanced some general theories from which it suggests approaches to inferring the intent of the parties, when the original grants and reservations were made. Devon obviously disagrees with EnCana's speculative conclusions but accepts that neither EnCana's views nor Devon's disagreement can be taken to be conclusive.

In response to our earlier submission that Devon had established a *prima facie* right to the natural gas and to the well licences sought, Luscar and EnCana did not dispute Devon's contentions but rather advanced the position that a *prima facie* right is not sufficient. Neither Luscar nor EnCana have opined as to the level of ownership confirmation that they would consider to be sufficient to be taken as conclusive. Black's Law Dictionary, 8th Edition, defines *prima facie* "...as sufficient to establish a fact or raise a presumption unless disproved or rebutted". In like manner a *prima facie case* is defined as being a party's production of enough evidence to allow a trier of fact to infer the fact at issue and to rule in the party's favor" The facts here are that the title documentation provided to the Board by Devon are demonstrative of an ownership right and entitlement, on Devon's part, to produce all natural gas from the wells and zones proposed by its well licence applications. Devon's rights and entitlements are subject only to those rights being disproved or rebutted. No such evidence, much less proof, has been adduced by either Luscar or EnCana.

For these reasons we submit Devon has satisfied the requirements of Section 16(1) of the *Oil and Gas Conservation Act*. Devon, however, acknowledges that Luscar and EnCana, should they wish to dispute the Board's decision to grant the well licences, have the right and the opportunity to contest the decision and ownership issue directly and may do so in a court having jurisdiction to make a determination and allocation of any of the property rights they may place in issue .

As an aside, we note EnCana has advanced a position that Devon is in default under its Section 35 lease and has urged the Board to not consider Devon's well licence application for Section 35 until Devon's default has been rectified. Absent this application by Devon, the opportunity for EnCana to seek relief with respect to an asserted lease default would not exist. This is because it is not within the Board's proper jurisdiction to decide whether Devon is in default under its lease. Indeed, EnCana has other more appropriate avenues available to it should it be entitled to relief

with respect to that issue. The Board's authority should not be used as a vehicle to facilitate the indirect achievement, for EnCana, of that which cannot be achieved directly.

Summary

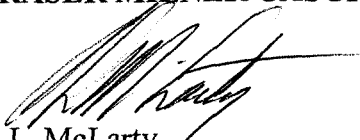
The well licences requested by Devon should be granted.

Devon has demonstrated a right and an entitlement to produce all natural gas which should be respected unless and until it is shown that Devon's rights were not intended to extend to the production of natural gas in the form of CBM. Although we acknowledge the arguments of Luscar and EnCana to the contrary, we believe the better view is that, if challenged, Devon's entitlement to CBM, consistent with its right to produce natural gas, will be confirmed. Unless the Board disagrees, this is sufficient to satisfy the Board's obligation with respect to the assessment required of it to be made pursuant to section 16(1) of the O&GC Act to enable the Board to issue the well licences requested. Moreover, even if the positions represented by Luscar and EnCana are eventually shown, through a court challenge, to have some merit, neither company has demonstrated any significant prejudice or that compensation will not be an adequate remedy for any loss that might be incurred by it. Conversely, if Devon's applications are denied and the merit of Devon's position is eventually confirmed, Devon will have no recourse to compensation or other relief for any loss that will be incurred by it.

From the perspective of the broad public interest, Devon submits a decision of the Board to grant the proposed well licences will also better facilitate the development of CBM properties in a timely manner, all of which is in the greater Alberta public interest. As indicated in Devon's applications if, to the contrary, Devon's applications are denied that will necessarily stagnate the development of this CBM for so long as Luscar and EnCana are able to assert that issues of entitlement have not been conclusively resolved.

A reasonable assessment of the respective legal entitlements of the parties as well as a balancing of the parties' interests both favour a conclusion by the Board that the well licences requested by Devon should be granted.

Yours truly,
FRASER MILNER CASGRAIN LLP


A.L. McLarty

cc: Christian Popowich – Code Hunter
Shelley Mueller – Devon Canada Corporation
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