



FRASER MILNER CASGRAIN LLP

A.L. McLarty, Q.C.
(403) 268-7022
al.mclarty@fmc-law.com

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By Delivery

Alberta Energy and Utilities Board
640 - 5th Avenue, S.W.
Calgary, Alberta T2P 3G4

Attention: Mr. Douglas A. Larder, Q.C., General Counsel

Dear Sir:

Subject: Bulletin 2006-19
Applications by Fairborne Energy Ltd. involving objections relating to the legal entitlement of Coal Bed Methane
Our file no: 517594-3

We are writing on behalf of Fairborne Energy Ltd. ("Fairborne") with respect to certain applications which are being held in abeyance by the Board for the reasons outlined in Bulletin 2006-19. That Bulletin indicates those applications will not be processed by the Board until the Board's decision in Proceeding No. 1457141, which is to address questions of legal entitlement to the natural gas from coal, has been rendered.

The Application

An accord was reached as between Fairborne, as the P&NG rights owner and Carbon Development Partnership ("CDP") (successor in interest to Prairie Mines and Royalty Ltd., formerly known as Luscar Ltd.) as the coal owner, in the context of Proceeding 1457141. The accord allows production of natural gas from coal to occur from zones in which ownership is disputed but in a manner that minimizes the potential for prejudice to either Fairborne or CDP as to their claimed entitlement to the natural gas produced from the coal. Our purpose in writing at this time is to ask the Board to process and render a disposition as to the applications that Fairborne has pending before the Board and to do so on the same terms and conditions that have, in the context of Proceeding No. 1457141, been considered to be acceptable to Fairborne and to CDP. Wells for which licences have been granted are, subject to the conditions agreed upon, able to produce natural gas from coal while preserving rights associated with a future

resolution of the legal entitlement issue. The applications that Fairborne has pending before the Board give rise to identical issues and as such should be accorded similar treatment in the context of similar circumstances and conditions.

Discussion

The Fairborne applications that are being held in abeyance by the Board are:

- (a) Applications for licences for the wells:
 - 9-25-39-24 W4M (9-25)
 - 102/12-25-39-24 W4M (12-25)
- (b) Applications for Holdings for:
 - Section 3-39-24 W4M (3-39)
 - Section 33-39-24 W4M (33-39)
- (c) Licences for the wells:
 - 102/10-35-39-24 W4M; (10-35); and
 - 102/12-35-39-24 W4M (12-35)

which stand suspended, although those wells as part of Proceeding No. 1457141 are the subject of the accord reached by Fairborne and CDP.

All of the above well licence applications, holding applications and well licences are being held in abeyance by the Board as the result of the issue raised by CDP with respect to its claimed legal entitlement to the natural gas from coal on lands to which CDP holds the coal rights.

The purpose of the Board holding these applications in abeyance, where there exists an issue with respect to the legal entitlement to the natural gas produced from coal, is to ensure that the rights of the parties claiming ownership will be reasonably protected and preserved pending the decision by the Board in respect of the proceeding that will be held to consider the issue of legal entitlement. Part 1 of Proceeding 1457141 was scheduled by the Board to provide parties with the opportunity to propose and discuss interim conditions that those parties might consider to be necessary with respect to well licences and holding approvals that are contested.

In the context of Proceeding 1457141, Fairborne provided to Luscar an undertaking that the production from each of its licenced wells was and would continue to be segregated between production from sand zones and production from coal zones and that measurement was being made of individual well production. CDP in its submission filed with the Board, dated June 9, 2006 advised the Board that:

- As long as there is no co-mingling of production from the Fairborne application properties and the production regime described in the Fairborne submission continues, that CDP is satisfied that such production has and will be adequately measured;
- The production regime described in the Fairborne submission should continue until resolution of the CBM ownership issue; and

- That CDP was on the conditions outlined, which included an additional undertaking given by Fairborne, prepared to suspend its request under s. 40(4) of the ERC Act.

The effect of this accord is to allow Fairborne's approved production operations to proceed while the ownership issue is otherwise being addressed by the Board.

In Fairborne's submission, the arrangement between it and CPD reflects a sensible approach to dealing with the ownership dispute while reasonably protecting the rights of the parties. CPD is protected because Fairborne is a substantive entity, there is and will be substantive evidence as to the volume of the substances produced that are in dispute and the property right in dispute is one that is, if necessary, reasonably capable of being resolved through compensation. The arrangement also protects Fairborne's rights because it allows Fairborne to proceed with its business and investment and allows Fairborne to protect and preserve its P&NG property rights, albeit at its peril, if natural gas from coal is ultimately determined to not be part of those rights.

Fairborne believes, in the circumstances, that if other of the applications pending before the Board are able to be brought within the principles of this protective scheme that no reason should exist to treat those applications or the disposition thereof differently. Fairborne therefore requests that the Board continue to process the above applications and to lift the suspensions imposed on the 10-35 and 12-35 wells. With respect to all of those applications and wells, Fairborne undertakes to accept any authorizations granted by the Board on the same terms and conditions described in the Fairborne submission to the Board, dated May 19, 2006 and as reflected in Schedule A to the submission of CDP, dated June 9, 2006.

For the foregoing reasons Fairborne respectfully requests that the Board:

- (a) continue to process and render a disposition, other than as to ownership entitlement, with respect to the Fairborne applications for well licences for the 9-25 and 12-25 wells;
- (b) continue to process and render a disposition, other than as to ownership entitlement, with respect to the Fairborne applications for approvals for holdings in Sections 3 and 33; and
- (c) lift the suspensions imposed on the wells 3-39 and 33-39.

We look forward to the Board's early consideration of and response to this request.

Yours very truly,

FRASER MILNER CASGRAIN LLP


A. L. McLarty

cc: Mr. D. Edie, Q.C. - Carscallen Lockwood LLP
Mr. W. Corbett - Field LLP
Mr. A. Reid - EnCana
Mr. C. Popowich - Code Hunter
Mr. D. Pyke - Fairborne Energy Ltd.
Mr. L. Rollheiser - Devon Canada Corporation