

Proceeding No. 1457147

Via Email

August 23, 2006

Fasken Martineau DuMoulin LLP
Barristers and Solicitors
Patent and Trade-mark Agents
3400 First Canadian Centre
350 7th Avenue SW
Calgary, Alberta
T2P 3N9

Attention: Mr. A.W. (Sandy) Carpenter

Dear Sir:

RE: PROCEEDING NO. 1457147, COALBED METHANE (CBM) REVIEW HEARING

By letter dated August 18, 2006, you requested on behalf of your client, Apache Canada Ltd. (Apache), that the Alberta Energy and Utilities Board (the Board/EUB) grant leave to Apache to intervene in Proceeding No. 1457147. In this correspondence, Apache indicates, among other things, that:

- It is a mineral rights holder and lessor of such rights in property described as 8-34-26 W4M. This property covers Application No. 1383132 which comprises part of the subject matter of Proceeding No. 1457147.
- It also has significant holdings in the immediate vicinity of the areas that are the subject matter of the Proceeding No. 1457147 for the purpose of coalbed methane development.

Apache argues that it has a direct interest in and may be adversely affected by the outcome of Proceeding No. 1457147.

Subsequently, the Board invited the registered and interested parties listed on Schedule A to respond to Apache's request to intervene. In response, the Board only received written submissions from:

- Canpar Holdings Ltd. (Canpar),
- Computershare Trust Company of Canada (Computershare),
- EnCana Corporation (EnCana), and

- Quicksilver Resources Canada Inc. (Quicksilver).

Based on the submissions received, the Board notes that Canpar, Computershare, and Quicksilver do not oppose the Board granting Apache's request to intervene. EnCana takes no position on whether Apache is directly and adversely affected by Application No. 1383132.

The Board's Decision

In identifying who may participate at a public hearing, the Board is governed by section 26 of the *Energy Resources Conservation Act*, which provides that those persons whose rights may be directly and adversely affected by the approval of any energy development are entitled to an opportunity to lead evidence, cross-examine, and give argument—in short, full participation at a hearing, or “standing.” Others who may not be able to meet the standing test are not afforded participation rights by statute.

The Alberta Court of Appeal decided in *Dene Tha' First Nation v. Alberta (Energy & Utilities Board)* that the “standing” test set forth in section 26(2) of the *Energy Resources Conservation Act* has two branches. The first branch is purely a legal test (i.e. whether the claim, right or interest being asserted by the person is one known to law). The second branch is a purely factual test (i.e. whether the Board has information which demonstrates that the applications before the Board may directly and adversely affect those legal interests or rights).

The Board notes that Apache has asserted rights of ownership and other rights in relation to the property described as 8-34-26 W4M and Application No. 1383132 which comprises part of the subject matter of Proceeding No. 1457147. As such, it is the Board's view that Apache can be considered a person who may be directly and adversely affected by the Board's decision in connection with Application No. 1383132 within the proceeding. Accordingly, the Board grants intervener status to Apache on the specific application it holds interests in the underlying land (namely, for Application No. 1383132).

Notwithstanding the foregoing, the Board's practice has been to allow participation by persons who do not qualify as interveners as long as they offer relevant information. Apache may also participate with respect to those applications on which they do not have intervener status. As previously noted, Canpar, Computershare, and Quicksilver do not oppose the Board granting Apache's request to intervene. EnCana takes no position on whether Apache is directly and adversely affected by Application No. 1383132.

As a final matter, the Board notes that Apache indicates that at this point it does not anticipate filing any evidence but requests only to reserve the right to participate in the hearing, cross-examine any parties that present evidence at the hearing, and make submissions or argument in response to issues raised during the course of the proceeding. However, the Board has determined that it will not grant Apache's request to reserve its rights as indicated above.

The Board has a duty to ensure fairness to all parties (which includes ensuring that a fair procedure has been followed so that each party knows the case that must be met). The Board

further believes that there are fairness considerations to all parties who are entitled to know the case they have to meet, who have engaged the Board's process, retained counsel, and pre-filed exhibits. In the present proceeding, the Board has established certain hearing procedures that are set out in its Notices of Hearing dated June 23, 2006 and July 27, 2006 and its letters dated July 19, 2006 and July 27, 2006.

As a matter of fairness to all parties, the Board has determined that Apache must also follow these processes. Accordingly, the Board has determined that:

- Apache must inform the Board and the parties by 2:30 pm on August 23, 2006 if Apache will be participating as a natural gas holder (Bears paw, Devon, Fairborne and the other third parties natural gas holders) or as a coal rights holder (EnCana and CDP).
- Apache must address and comply with the all matters set out in the Board's decision of July 27, 2006 by 1 pm on August 25, 2006.
- Apache must address and comply with the all matters set out in the Board's Amended Notice of Hearing dated July 27, 2006.

If you have any questions or comments, do not hesitate to contact the undersigned.

Yours truly,

A handwritten signature in cursive script, appearing to read "Douglas A. Larder".

Douglas A. Larder, Q.C.
General Counsel

cc: Legal Counsel (See Attached Schedule A)

Schedule A –

Registered Party or Third Party Participant	Legal Counsel	Law Firm or Energy Company
ARC Resources Ltd.	R. Craig Steele	Thackray Burgess
Bears paw Petroleum Ltd.	John Gruber	Thackray Burgess
Canpar Holdings Ltd.	John Lowe	Burnet, Duckworth & Palmer LLP
Carbon Development Partnership (re: Devon Canada Corporation Applications)	William T. Corbett, Q.C.	Field LLP
Carbon Development Partnership (re: Fairborne Energy Ltd. Applications)	Donald Edie, Q.C.	Carscallen Lockwood LLP
Centrica Canada Limited	Pat Peacock, Q.C.	Peacock Linder & Halt LLP (PLH)
Centrica Canada Limited	Johanna Price	PLH
Centrica Canada Limited	Niall Armstrong	Centrica Canada Limited
Computershare Trust Company of Canada	Alan Harvie	Macleod Dixon LLP
ConocoPhillips Canada Resources Corp.	Hugh Williamson, Q.C.	Borden Ladner Gervais LLP
ConocoPhillips Canada Resources Corp.	Anne Schenkenberger	ConocoPhillips Canada Resources Corp.
Devon Canada Corporation	Lorne Rollheiser	Devon Canada Corporation
Devon Canada Corporation and Fairborne Energy Ltd.	Bernard Roth	Fraser Milner Casgrain LLP
EnCana Corporation	Katherine Reiffenstein	Code Hunter LLP
EnCana Corporation	Alan Reid	EnCana Corporation
Freehold Petroleum and Natural Gas Owners Association	Tibor Osvath	Rae & Company
Quicksilver Resources Canada Inc.	Gavin Fitch	McLennan Ross LLP
Quicksilver Resources Canada Inc.	David Farmer	McLennan Ross LLP