

ALBERTA ENERGY AND UTILITIES BOARD

IN THE MATTER OF PART 2 OF PROCEEDING NO. 1457147,
COALBED METHANE (CBM) REVIEW HEARING

**CENTRICA CANADA LIMITED
SUBMISSIONS AND AUTHORITIES**

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PART I

INTRODUCTION AND STATEMENT OF FACTS

1. Centrica Canada Limited (“Centrica”) has three non-routine applications (“Applications”) before the Alberta Energy and Utilities Board (the “Board”) to establish holdings for the production of gas from the Horseshoe Canyon Formation in the Manito, Bashaw, Leahurst, Stettler, Erskine, Halkirk and Leo fields (located in the Edmonton Group). Centrica is the major or 100% working interest owner and operator of the lands legally described in the Applications. Centrica’s entitlement to recover gas from these areas is confirmed by the leases it referred to in its Applications (the “Leases”).

10-005-2005-11-29 Centrica Application Number 1432330
10-006-2005-12-01 Centrica Application Number 1432917
10-009-2005-12-06 Centrica Application Number 1433647
10-001-Various Dates- Centrica Leases

2. By letters dated December 5, 2005 and December 6, 2005 respectively, Centrica’s Applications were objected to by EnCana Corporation (“EnCana”) and Carbon Development Partnership (“CDP”) (formerly Luscar Ltd. (“Luscar”)) (collectively, EnCana and CDP are referred to herein as the “Coal Owners”), essentially on the basis that the coal owner, rather than the lessee of the natural gas rights is entitled to produce CBM.

10-007-2005-12-05 EnCana Objection
10-008-2005-12-06 Luscar Objection

3. By letters dated December 19, 2005, Centrica responded to EnCana’s and Luscar’s letters of objection.

10-010-2005-12-19 Centrica Response to EnCana
10-011-2005-12-19 Centrica Response to Luscar

4. On May 30, 2006, the Board issued its decision to put “all applications regarding which legal entitlement to CBM is at issue” in abeyance including Centrica’s Applications, “pending issuance of the Board’s decision in Part 2 of Proceeding No. 1457147”.

10-013-2006-05-30 EUB Bulletin 2006-19 re Applications Involving
Objections Relating to the Legal Entitlement of Coalbed Methane

5. Centrica had planned and budgeted for a drilling program of up to 120 CBM wells in Horseshoe Canyon/Edmonton Formation 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 the Applications in abeyance, Centrica's capital program has been directly and adversely impacted.

6. The delay in the drilling and production of the CBM will allow sufficient time for a portion of the CBM reserved within the Leases to be drained by offsetting production from Crown CBM wells.

7. Centrica has suffered a loss of opportunity of obtaining its share of production.

8. By letters dated May 26, 2006 and July 4, 2006, Centrica applied to the Board for intervener status to participate in Part 2 of Proceeding No. 1457147. The Board granted Centrica participation status by letter dated July 19, 2006.

10-012-2006-05-26 Request for Intervenor Status by Centrica
10-014-2006-07-04 Request for Intervenor Status by Centrica
01-030-2006-07-19-EUB Letter to Parties – Decision re Intervenor Status

9. This submission is filed concurrently with the joint submission (the "Joint Submission") filed by Devon Canada Corporation ("Devon"), Fairborne Energy Ltd. ("Fairborne"), ConocoPhillips Canada Resources Corp. ("Conoco"), Quicksilver Resources Canada Inc. ("Quicksilver"), Canpar Holdings Ltd. ("Canpar") and Centrica (collectively the "Gas Producers").

PART II

ISSUES

10. Centrica respectfully submits that the issues to be decided are:
- (i) Is CBM gas?
 - (ii) Are the Applicants entitled to the right to produce gas?

PART III

CENTRICA'S SUBMISSIONS

CBM is Gas:

11. Section 16(1) of the *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6 (“*OGC Act*”) provides as follows:

16(1) No person shall apply for or hold a licence for a well

- (a) for the recovery of oil, gas or crude bitumen, or
- (b) for any other authorized purpose

unless that person is a working interest participant and is entitled to the right to produce the oil, gas or crude bitumen from the well or to the right to drill or operate the well for the other authorized purpose, as the case may be.

***Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6 [TAB A]**

12. The Alberta Energy and Utilities Board Directive 056: *Energy Development Applications and Schedules* (“Directive 056”), “presents the requirements and procedures for filing a licence application to construct or operate any petroleum industry energy development that includes facilities, pipelines, or wells.” Furthermore, Directive 056 “serves as an extensive reference document about the rules that govern energy development in Alberta.”

10-002-2005-09-12 EUB Directive 056 (excerpt)

13. Pursuant to section 7.9.11 *Right to Produce or Operate*, of Directive 056, prior to submitting a well licence application, the applicant must:

- a) be a working interest participant;
- b) be entitled to the right to produce the oil, gas, or crude bitumen from the well or have the right to drill or operate the well for the authorized purpose;
- c) acquire the right to produce from the intended formation for the complete drilling spacing unit (DSU);

10-002-2005-09-12 EUB Directive 056 (excerpt)

14. It is within the Board's authority to *inter alia*, grant a well licence. A decision by the Board to grant a well licence will not determine legal entitlement. Pursuant Directive 056:

The issuance of a well licence or conducting of an EUB audit is not to be relied upon by the licensee or third parties as a legal determination or confirmation of mineral entitlement or the right to produce hydrocarbons or to conduct other activities on lands covered by the licence.

10-002-2005-09-12 EUB Directive 056 (excerpt)

15. The only issue is whether CBM is gas and whether the Applicants' leases entitle them to the right to produce gas.

16. Since as early as August of 1991, the Energy Resources Conservation Board and the Alberta Department of Energy considered CBM to be a form of natural gas.

10-001-1991-08-26 EUB Informational Letter 91-11 re Coalbed Methane Regulation

17. The *OGC Act* defines "gas", "raw gas" and "marketable gas" as follows:

"gas" means raw gas or marketable gas or any constituent of raw gas, condensate, crude bitumen or crude oil that is recovered in processing and that is gaseous at the conditions under which its volume is measured or estimated;

"raw gas" means a mixture containing methane, other paraffinic hydrocarbons, nitrogen, carbon dioxide, hydrogen sulphide, helium and minor impurities, or some of them, that is recovered or is recoverable at a well from an underground reservoir and that is

gaseous at the conditions under which its volume is measured or estimated;

“marketable gas” means a mixture mainly of methane originating from raw gas, if necessary through the processing of the raw gas for the removal or partial removal of some constituents, and that meets specification for use as a domestic, commercial or industrial fuel or as an industrial raw material;

Oil and Gas Conservation Act, R.S.A. 2000, c. O-6 [TAB A]

18. The substance in issue in these well licence and holding applications fits within the definitions in the *OGC Act*.

19. The *Coal Conservation Act, R.S.A. 2000, c. C-17 (“CC Act”)*, on the other hand, defines coal as follows:

“coal”, in addition to its ordinary meaning, includes manufactured chars, cokes and any manufactured solid coal product used or useful as a reductant or energy source or for conversion into a reductant or energy source;

Coal Conservation Act, R.S.A. 2000, c. C-17 [TAB B]

20. Furthermore, in Alberta, the right to natural gas on Crown lands is governed by the *Mines and Minerals Act R.S.A. 2000, c. M-16*. Under the *Mines and Minerals Act*, natural gas and coal are treated as distinct substances and are leased separately. This principle recognizes that natural gas may exist in a variety of reservoir rocks, including coal seams. Under the *Mines and Minerals Act*, coal lessees do not have the right to recover CBM (except in certain circumstances; ie. for safety reasons).

Mines and Minerals Act, R.S.A. 2000, c. M-16 [TAB C]

21. Also, CBM is subject to the same Alberta Energy and Utilities Board (“EUB”) drilling, production and operational rules and regulations as other natural gas. Furthermore, the EUB treats CBM as natural gas for royalty and tenure purposes.

10-003-2004-01-01 EUB EnerFAQs No. 10 re Coalbed Methane

22. The Coal Owners cannot establish a competing claim for CBM under the Alberta legislative definitions and regulatory practice.

23. The Gas Producers as part of their joint submission have put forward an expert report of Matthew J. Mavor (the “Mavor Report”) which firmly confirms that CBM is natural gas:

CBM and coal are distinct and differ from one another both on the surface after extraction from the ground and in the subsurface before and after disturbance by man.

CBM is a natural gas that can be produced from coal seams by industry-wide natural gas drilling and completion techniques. It is generally indistinguishable from natural gas produced from sandstone, shale, carbonate, or other rock types in both composition and economic value.

From a reservoir engineering standpoint, CBM shares very similar flow characteristics through coal seams as natural gas flow through other rock types.

18-001-2006-08-25 Joint Submission re Expert Opinion of Matthew J. Mavor

24. It is clear that in Alberta, CBM is natural gas and is not coal. This distinction is supported by Alberta legislation and is supported by the technical and scientific report of Matthew J. Mavor.

The Grant of “leased substances”:

25. The well license and holding Applicants all have leases which grant the right to produce natural gas. The granting clauses in the leases held by Centrica are virtually indistinguishable from the leases of the other applicants (Devon, Fairborne and Bears paw Petroleum Ltd. (“Bears paw”)) and are variously described as follows:

1(e) “leased substances” – means petroleum, natural gas and related hydrocarbons except coal.

1(e) “leased substances” - means natural gas and includes associated substances to the extent only that the rights thereto belong to the Lessor by virtue of its ownership of the natural gas rights.

... DOTH HEREBY GRANT AND LEASE unto the Lessee all the petroleum, natural gas and related hydrocarbons (except coal and valuable stone), all other gases, and all minerals and substances (whether liquid or solid and whether hydrocarbon or not) produced in association with any of the foregoing or found in any water

contained in an oil or gas reservoir (all hereinafter referred to as the “leased substances”) ...

1(e) “leased substances” means all natural gas and related hydrocarbons (except coal), and all materials and substances (except valuable stone), whether liquid, solid or gaseous and whether hydrocarbons or not, produced in association with natural gas or related hydrocarbons or found in any water contained in any reservoir;

...DOES HEREBY GRANT AND LEASE unto the Lessee all the natural gas and related hydrocarbons (except petroleum, coal and valuable stone), all other gases, and all minerals and substances (whether liquid, solid or gaseous and whether hydrocarbons or not) produced in association with any of the foregoing or found in any water contained in any reservoir (hereinafter referred to as “leased substances”) ...

1(e) “leased substances” means all petroleum, natural gas and related hydrocarbons (except coal), and all materials and substances (except valuable stone), whether liquid, solid or gaseous and whether hydrocarbons or not, produced in association with petroleum, natural gas or related hydrocarbons or found in any water contained in any reservoir;

10-001-Various Dates Centrica Leases

26. The common thread in Centrica’s Leases and in the leases presented to the Board by the other applicants is the grant of natural gas. There is nothing in the leases or the reservations that excludes any particular form or type of gas.

27. The Applicants, have demonstrated that they are entitled to produce the natural gas from the wells and zones they have applied for. The Coal Owners do not dispute that the Applicants have the right to produce natural gas from the wells and zones that they have applied for.

28. The Coal Owners argue that CBM is excluded or reserved from the natural gas grants in the leases, and that gas stored in coal should be treated differently from gas stored elsewhere. This flies in the face of the Alberta legislative definitions, the regulatory practice and the technical and scientific evidence which establishes that CBM is natural gas and distinct from coal.

CBM and the Common Law:

29. There is no Canadian jurisprudence that says CBM is included in the definition of “coal” or that gas stored in coal is different from gas stored in any other reservoir. To treat CBM as coal rather than gas runs contrary to the principle established in the leading case of *Borys v. Canadian Pacific Railway* (1951) 4 D.L.R. 427. The finding of the Court in *Borys* on this issue was described by the Supreme Court of Canada in *Anderson v. Amoco Canada Oil & Gas* 2004 Carswell Alta 941 at page 14, as follows:

The Judicial Committee of the Privy Council agreed with the Alberta courts that in determining “the meaning which is to be attributed to ‘petroleum’ in the original reservation”, the vernacular meaning at the time of the transfer should be used, if one could be discerned (p. 70).

***Borys v. Canadian Pacific Railway* (1953) 2 D.L.R. 65 (JCPC) [TAB D]**

***Anderson v. Amoco Canada Oil & Gas* 2004 Carswell Alta 941 (SCC) at page 14 [TAB E]**

30. The law dictates that the Board should give the terms “natural gas” and “coal” their plain and ordinary meaning, as they were used in the vernacular, when the subject leases were entered into.

31. The Canadian Oxford Dictionary defines “coal” as “a hard black or blackish rock, mainly carbonized plant matter, found in underground seams and used esp. as a fuel.” The same dictionary defines “natural gas” as “an inflammable mainly methane gas found in the earth’s crust, not manufactured.”

The Canadian Oxford Paperback Dictionary, (Ontario: Oxford University Press, 2000) [TAB F]

32. The fact that coal beds contain methane has been well-known for as long as coal has been mined; nothing has changed. The only thing that has changed in the short term and in the long term is the economics of its production.

33. It is respectfully submitted that CBM is not coal, CBM is natural gas.

34. There is nothing before the Board that would allow it to find that the Applicants are not entitled to produce the CBM from the wells and zones they have applied for.

35. It is respectfully submitted that the Applicants have satisfied the requirements of section 16 of the *Oil and Gas Conservation Act* and section 7 of Directive 056 by demonstrating that they each have the right to produce the natural gas that is the subject of their applications. Accordingly, the Board should grant the licenses applied for.

36. Should the Board decide not to grant the licenses or defer a decision, this will in effect give the Coal Producers a virtual veto over freehold CBM production, diminishing the value of the Gas Producers' rights. The delay in freehold CBM production will continue to severely impact freehold CBM production, as the lessees of natural gas on adjacent Crown Lands, unencumbered by claims of coal owners, continue to deplete the resource.

Conclusions:

37. The Applicants have sufficiently demonstrated that they are entitled to produce natural gas.

38. It is clear that CBM is not coal and that CBM is in fact natural gas.

39. In consideration of the foregoing, it is respectfully submitted that the Board should grant the well licenses and holding applications applied for.

ALL OF WHICH IS RESPECTFULLY SUBMITTED, this 25th day of August, 2006.

PEACOCK LINDER & HALT LLP

Per: "J.P. PEACOCK"

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LIST OF AUTHORITIES

- A. *Oil and Gas Conservation Act*, R.S.A. 2000, c. O-6
- B. *Coal Conservation Act*, R.S.A. 2000, c. C-17
- C. *Mines and Minerals Act*, R.S.A. 2000, c. M-16
- D. *Borys v. Canadian Pacific Railway* (1953) 2 D.L.R. 65 (JCPC)
- E. *Anderson v. Amoco Canada Oil & Gas* 2004 Carswell Alta 941 (SCC)
- F. *The Canadian Oxford Paperback Dictionary*, (Ontario: Oxford University Press, 2000)