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January 9, 2007

VIA E-MAIL AND COURIER

Alberta Energy and Utilities Board
640 - 5 Avenue SW
Calgary, Alberta T2P 3G4

Attention: Ms. Tamara Bews, Board Counsel

Subject: Proceeding No. 1457147 - Part 2

I am writing as counsel to Devon Canada Corporation¹ and Fairborne Energy Ltd.² in this proceeding.

On January 4, 2007, counsel for EnCana Corporation³ filed a document styled "Surrebuttal Argument." In his covering letter, Mr. Popowich described the surrebuttal argument as relating to ". . . the case *Continental Resources of Illinois Inc. v. Illinois Methane LLC* . . ." which was addressed by several CNG producers in their Reply Arguments."

The process that was established for argument in this proceeding – which was expressly endorsed by Mr. Popowich⁴ on behalf of both his client and Carbon Development Partnership⁵ – did not contemplate surrebuttal argument and none was subsequently requested by the Board.

Mr. Popowich is correct that the *Continental Resources* decision was addressed in the reply arguments that were filed on behalf of Devon, Fairborne and several other parties. However, he fails to acknowledge that no mention whatsoever had been made of that decision – whether by EnCana or Professor Lucas (nor, for that matter, by CDP) – before it was cited in the EnCana argument.⁶ There thus can be no suggestion that the fact that the case was addressed by parties in their reply arguments excuses EnCana in flouting the Board's process. To the contrary, fairness

¹ Devon.

² Fairborne.

³ EnCana.

⁴ Hearing transcript, Day 9 at p. 1425, ll. 11-13.

⁵ CDP.

⁶ Argument of EnCana Corporation, at p. 16.

obliged EnCana to make all of its submissions regarding the *Continental Resources* decision in its argument and not to save some of them for "surrebuttal."

As tempting as it might be in the circumstances, Devon and Fairborne will not make any submissions in response to EnCana unless the Board were to invite them to do so. The Board can be assured that any such submissions would be brief.

Yours very truly,

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cc. Code Hunter
Attn: Christian Popowich

Interested Parties