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May 26, 2005

By Fax and Subsequently Mailed

FAXED

to EnCana
(to Coalbed Methane):
May 26/05
@ 10:20am
#055

Code Hunter LLP Barristers
850, 440 2 Avenue SW
Calgary, Alberta T2P 5E9

Luscar Ltd.
1600 Oxford Tower
10235 – 101 Street
Edmonton, AB T5J 3G1

Attention: Christian J. Popowich

Attention: Robert Z. Donnick

to Luscar:
May 26/05
@ 10:20am
#057

Dear Mr. Popowich and Mr. Donnick:

**RE: DEVON CANADA CORPORATION
APPLICATION NOS. 1379726 ET AL.
APPLICATIONS FOR WELL LICENCES
APPLICATION NO. 1377141
APPLICATION TO ESTABLISH A HOLDING FOR PRODUCTION OF GAS
FROM THE EDMONTON FORMATION
WIMBORNE FIELD**

The Alberta Energy and Utilities Board (the Board/EUB) has considered EnCana Corporation's (EnCana) objections and submissions contained in its letters of December 23, 2004, January 7, 2005, April 12, 2005 and April 28, 2005, with respect to the following applications that Devon Canada Corporation (Devon) has filed with the Board for well licences with the purpose of producing Coal Bed Methane (CBM):

No. 1380004, 16-15-34-26 W4M	No. 1383129, 8-35-33-26 W4M
No. 1379743, 8-15-34-26 W4M	No. 1379746, 14-15-34-26 W4M
No. 1379763, 15-35-33-26 W4M	No. 1379737, 6-15-34-26 W4M
No. 1379730, 14-35-33-26 W4M	No. 1379726, 6-35-33-26 W4M

The Board also considered Luscar Ltd.'s (Luscar) objections and submissions contained in its letters of January 3, 2005, January 25, 2005, February 18, 2005, April 12, 2005 and April 26, 2005, with respect to the following applications that Devon has filed with the Board for CBM well licences and a holding:

No. 1383132, 6-8-34-26 W4M	No. 1383138, 6-17-34-26 W4M
No. 1383134, 8-8-34-26 W4M	No. 1383139, 8-17-34-26 W4M
No. 1383136, 14-8-34-26 W4M	No. 1383140, 14-17-34-26 W4M
No. 1383137, 16-8-34-26 W4M	No. 1383141, 16-17-34-26 W4M

No. 1380005, 6-9-34-26 W4M
No. 1380013, 14-9-34-26 W4M

No. 1380010, 8-9-34-26 W4M
No. 1380014, 16-9-34-26 W4M

No. 1377141, Holdings for Section 36-33-26 W4M, and Sections 1,2,3,8,9,10,11,14,16,17,19, 22
-34-26 W4M

Furthermore, the Board has considered Devon's applications and related correspondence as well as its submissions dated March 21, 2005 and April 19, 2005.

Pursuant to section 26(2) of the *Energy Resources Conservation Act* (ERCA), the Board will hear an application if it appears to the Board that its decision on an application may directly and adversely affect the rights of a person. The Board makes its decision on a case-by-case basis, taking into account the facts of each application.

The essence of the submissions by EnCana and Luscar is that the Board should deny Devon's applications because Devon does not hold rights to produce CBM, or in the alternative that the Board should hold the applications in abeyance until ownership issues regarding the CBM are settled.

In considering EnCana's objections, the Board noted that EnCana purports to be the fee simple owner of the coal underlying Section 15-34-26 W4M and Section 35-33-26 W4M. EnCana also submits that it is the successor as lessor under petroleum and natural gas leases granted for sections 15 and 35. Devon submits that it is the successor as lessee of the petroleum and natural gas in those sections. EnCana also purports to be the successor as lessor under a transfer wherein the transferor leased out petroleum rights for one of the parcels on which Devon has applied for a well. Devon purports to be the successor as lessee under that petroleum lease.

In considering Luscar's objections, the Board noted that Luscar purports to be the fee simple owner of the coal underlying sections 8-34-26 W4M, 9-34-26 W4M, and 17-34-26 W4M.

Furthermore, the Board noted the arguments and submissions made by EnCana and Luscar in support of their respective objections. In summary, their submissions are that the petroleum and natural gas leases that Devon cites in support of its applications do not grant it the right to produce CBM. The Board also noted that all three parties have submitted that there is no applicable Canadian caselaw with respect to the question of ownership of CBM and that there is contradictory American case law on the issue.

More specifically, the submissions of EnCana were as follows:

- The petroleum and natural gas leases that Devon claims support its applications do not expressly grant Devon the right to produce CBM. Therefore, Devon does not own nor is it entitled to produce CBM as is required by Section 16 of the *Oil and Gas Conservation Act*.

- Canadian case law would suggest that when construing a grant or reservation of mineral rights, the vernacular meaning of the words in the grant or reservation as of the time of the transfer is to be used.
- CBM remains with the coal owner in the leases and in the transfer because of the nature of CBM, in particular by reason of its adsorption to the coal and its inclusion in the coal strata.
- American legal authorities would suggest that title to CBM belongs to the coal owner.
- Devon is in default of the petroleum and natural gas leases pertaining to section 35 and therefore is not an owner nor entitled to the well licences sought. As such the Board should not consider the well licence applications for section 35 until Devon's default is rectified.
- It is in the public interest for the Board to take the time to establish entitlements to develop CBM so that uncertainty and conflict amongst competing interests are minimized.

More specifically, the submissions of Luscar were as follows:

- Luscar's dispute is with the owner of the conventional natural gas, who is in turn Devon's lessor. That conventional natural gas owner did not hold a clear and recognized legal title to the CBM at the time it granted the leases to Devon. As such, Devon can have no better title to the CBM than did its lessor since the lessor cannot give better title than what the lessor holds. The Board is not the appropriate body to determine property rights as between Luscar and Devon's lessor.
- Section 16 of the *Oil and Gas Conservation Act* requires Devon to establish its legal right to produce the CBM. The onus is on Devon, as the Applicant, to demonstrate its entitlement to produce CBM.
- Technology employed relating to the recovery of CBM is irrelevant to any consideration of entitlement to produce that substance.
- There is no evidence before the Board as to the intention of the relevant parties at the time the title to the coal underlying the lands was separated from the balance of the mines and minerals.
- Luscar would be prejudiced by the Board granting Devon the applied for well licences, if the Courts ultimately determine that Luscar is the owner of the CBM underlying the lands, because Luscar's rights of recovery against Devon may well be subject to recognition of capital expended by Devon. Furthermore, Luscar's CBM resource will have been converted by Devon and Luscar may not be successful in recovering damages for the conversion.
- The Board should discount any public interest arguments made by Devon as this is a private property dispute between Devon and Luscar.
- The Board lacks the jurisdiction to make determinations as to the respective property rights of Devon, as lessee from the conventional natural gas owner underlying the lands, and Luscar, as owner of the coal rights underlying the lands.

The Board also noted the following arguments and submissions by Devon in response to the objections of EnCana and Luscar. Devon submits that the Board should grant the licences for the following reasons:

- Devon's applications are for licences to drill wells to enable it to produce natural gas. The title documentation provided to the Board by Devon demonstrates its ownership right and entitlement to produce all natural gas from the wells and zones proposed in its well licence applications. Devon's entitlement to produce natural gas establishes for it a *prima facie* entitlement to the well licences requested. Devon has satisfied the requirements of Section 16 of the *Oil and Gas Conservation Act*. Its entitlement to produce natural gas from the area and from the zones proposed is not disputed.
- The question whether gas produced from coal is a substance other than natural gas that is included within petroleum and natural gas rights has not been judicially considered in Canada.
- Gas sought to be produced is composed primarily of methane and is otherwise indistinguishable from what is commonly and technically accepted as natural gas.
- The technology to be employed and the regulatory authority relating to the recovery of the substance proposed to be recovered are also indistinguishable from those that are generally associated with the recovery of natural gas. Practically, no means appear to exist for the gas in the coal to be recovered as part of the coal recovery operation.
- Devon acknowledges the potential for claims to be advanced by the owners of the coal estate with respect to the ownership of the gas in coal. Devon's applications, if granted, will not affect the opportunity for those ownership claims to be pursued through the courts. Neither EnCana nor Luscar have advanced proposals to recover the gas from coal and they stand to benefit from Devon's venture should their legal ownership position be upheld. Approval of the applications will not prejudice the rights of EnCana or Luscar should any claim advanced by them ultimately prove successful.
- Devon's applications ask the Board to exercise its proper jurisdiction to consider the applications and to issue the well licences. 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. It would be improper for the Board to decline the exercise of the statutory authority conferred on it by acceding to the deferral urged by Luscar and EnCana.
- It is not within the Board's proper jurisdiction to decide whether Devon is in default under its lease. EnCana has other more appropriate avenues available to it should it be entitled to relief with respect to that issue.

Although EnCana and Luscar appear to invite the Board to engage in a debate on the issue of mineral ownership of CBM, the Board was of the view that it did not need to determine this issue in making its decision on the applications in question. The Board had before it a number of applications for well licences to produce CBM from the Edmonton formation, and one application to establish a holding for the production of gas from the

Edmonton Formation, all submitted by Devon. Such applications must meet the Board's requirements for applications for natural gas wells.

EnCana and Luscar focus on section 16 of the *Oil and Gas Conservation Act* to argue that Devon is not entitled to produce CBM because Devon has not demonstrated that it has a legal right to do so. The Board has found that the leases Devon submitted in support of its applications demonstrate sufficiently Devon's entitlement to produce all natural gas from the wells and zones it applied for. The leases have not been cancelled or otherwise determined to be invalid. The Board noted that Luscar and EnCana do not dispute Devon's right to produce natural gas and that there is no settled law on the issue of ownership of CBM or on the issue of whether natural gas produced from coal is a substance other than natural gas. Therefore, the Board has determined that Devon has satisfied the requirement of section 16 of the *Oil and Gas Conservation Act* by demonstrating that it has the rights to produce the natural gas that is the subject of its applications.

As the EnCana and Luscar objections rest on the issue of CBM ownership and because they have not objected to the proposed wells on the basis of any potential surface impacts or on the basis of equity issues regarding the holding, the Board has dismissed its objections. EnCana and Luscar have not demonstrated that they may be directly and adversely affected by the Board's decision with respect to the applications, in accordance with section 26 of the *Energy Resources Conservation Act*. Accordingly, the Board will issue the applied for licenses and order to Devon in due course.

The Board encourages the parties to avail themselves of ADR in order to resolve the issues raised in connection with these applications. Should you wish further information on the Board's ADR process, please feel free to contact David Hill of the EUB's Business Operations and Developments Group at (403) 297-5839.

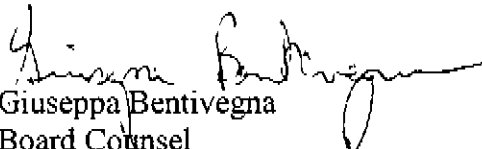
Attached please find an information page listing the appeal and review options of the EUB. If EnCana or Luscar wish to file a review request, please note the attached rules as to the contents of a review request.

To be considered, the review request must contain new or different information than that which has already been considered by the Board. If it is submitted that the Board made an error of law or jurisdiction, the party must explain the facts on which it bases this statement. Otherwise the review request may be dismissed without further process.

In addition, if the review request does not contain the information as required by section 46 of the Alberta Energy and Utilities Board Rules of Practice, the review request may be returned.

If you have any questions, please contact the undersigned at (403) 297-8332, or fax (403) 297-7031, or Carla Giesbrecht at (403) 297-4461 or fax (403) 297-4117.

Yours truly,


Giuseppa Bentivegna
Board Counsel

Enclosure

pc: Allan McLarty, Q.C., Fraser Milner Casgrain
-> Shelley Mueller, Devon Canada Corporation

APPEAL AND REVIEW OF EUB DECISIONS

Decisions of the Alberta Energy and Utilities Board may be appealed or reviewed. What follows is a brief description of the appeal and review process, but in no way is meant to be an exhaustive explanation of either process.

APPEAL

In certain situations a party may appeal a Board decision to the Alberta Court of Appeal. In order to proceed with such an appeal you must first obtain permission from the Alberta Court of Appeal and an application requesting leave must be filed within 30 days from the date the Board's decision is issued.

REVIEW

1. The Board itself has the power to review, rescind, change, alter or vary any order or direction that it makes. In order to seek such a review, a person must provide the following to the Board in writing:
 - a) a clear and concise statement of facts relevant to your application;
 - b) the grounds on which your application is made;
 - c) a brief explanation as to the nature of the prejudice or damage that has resulted or will result from the order, decision or direction;
 - d) a brief description of the remedy sought; and
 - e) your name, address, telephone number, fax number and an available email address;

The information set out above must also be sent to all other persons who are involved in the original application that resulted in the order, decision, or direction was made.

Upon receiving this application and after requesting submissions from all other interested parties, the Board will first review the application to determine whether it raises a substantial doubt as to the correctness of the original decision or that new facts or circumstances exist since the original decision was made. To be successful a person will have to show that the Board has either erred and that that error has impacted the decision or that the new facts or changes in circumstances could lead the Board to change the decision.

2. In addition to the above, where a Board decision was made without a hearing a person may apply to the Board for a review. Such a request must be made to the Board in writing within 30 days after the decision was made. An application for a review must contain the same information as above, in #1.

To be successful a person must show the Board how the subject of the decision (i.e. the well or pipeline) potentially directly and adversely affects him or her.