

SUBMISSION OF DEVON CANADA CORPORATION

INTRODUCTION

This submission is in response to EUB General Bulletin 2003-12 ("GB 2003-12") inviting interested parties to provide written submissions commenting on:

- a) whether existing gas production from the Wabiskaw-McMurray Formation in the Athabasca Oil Sands Area should be shut in; and/or
- b) any alternative measures that might be taken to ensure the conservation of bitumen in the Wabiskaw-McMurray Formation in the Athabasca Oil Sands Area.

Devon Canada Corporation ("Devon") currently has substantial gas production from the Wabiskaw – McMurray Formation in the Athabasca Oil Sands Area, and as such is extremely interested in any proposal or process which would or might lead to shutting in existing gas production from this formation. Devon also wishes to comment on alternative measures to ensure the conservation of bitumen in this area.

I THE REGULATORY ENVIRONMENT

At present, production of gas from oil sands strata is governed by ID-99-1, as amended, which has been incorporated into the existing Regulations. As recently as March 18, 2003, the EUB confirmed its continuing intention to have ID-99-1 govern production of gas from oil sands strata; EUB Decision 2003-023. As a result, Devon continues to operate on the assumption the EUB does not intend to depart from ID-99-1 and specifically that GB 2003-12 does not expressly or by implication depart from ID-99-1.

ID-99-1 provides as follows:

For wells completed in the defined oil sands strata prior to July

1998, an application for approval to produce gas will not be required. These wells will be allowed to continue to produce, subject to resolution of any concerns that may be raised by oil sands leaseholders or by the Board on its own initiative.

ID-99-1 was an outgrowth of the 1998 EUB Inquiry Report (the "Inquiry Report"), and in particular the following comments by the Board:

Therefore, although there may be some impact on future bitumen recovery, the Board will generally allow associated gas production to continue from investments made up to 1 July 1998, unless the Board receives a complaint from an oil sands leaseholder and the subsequent investigation shows continued production from existing gas wells would not be in the long-term public interest. Suitable recognition would have to be given at that time to the cost/benefit of shutting in existing associated gas production. In some instances the Board may also initiate such a review.

Devon is presently unaware of any concerns raised by oil sands leaseholders, other than Petro-Canada and Nexen. It is operating on the assumption that what lies behind GB 2003-12 is the Board itself being concerned "...that steps taken to date have not adequately addressed the impact of existing or 'grandfathered' gas production and believes that this presents a significant risk to bitumen conservation."

Given the recent history touching upon the issues relating to production of gas from oil sands strata, together with the regulatory framework which has been put in place to regulate production of gas from oil sands strata, Devon submits that it is incumbent upon the Board to provide all interested parties with the particulars of its' concerns, including any evidence it has touching upon those concerns. Unless and until it does so, parties such as Devon will not be in a position to provide an informed Submission, nor will they be in a position to know fully the "case they have to meet" in order to be permitted to continue producing their gas. What is at issue is the application of ID-99-1. That requires a review of the evidence specific to any gas production. Anything less would be inconsistent or incompatible with the existing regulatory environment.

II COMPENSATION

Decision 2003-023 shut-in 39 wells in the Chard/Leismer area and denied gas production applications for a further 21 wells in the area. The outcome of the Chard/Leismer hearing was similar in many ways to Decision 2000-22 in the Surmont area where the EUB ordered 146 wells shut-in effective May 1, 2000. In fact, the Board referenced the Surmont decision throughout Decision 2003-023 and ultimately concluded that the overlying principal established by the Board in the Surmont decision continued to apply for Chard/Leismer, specifically, that continued gas production from certain perforated intervals within the Wabiskaw-McMurray presented a high risk to future bitumen recovery.

In April of 2000, the government of Alberta issued a press release regarding the Surmont decision wherein the then Resource Development Minister stated that the government agreed to a process of working with producers affected by Decision 2000-22 to arrive at a fair and equitable solution. In furtherance of this statement, by Order in Council 196/2000, the Lieutenant Governor directed the EUB to prepare a scheme or schemes for the provision of compensation for those persons having an interest in the petroleum and natural gas rights affected by the Surmont shut-in order.

By way of Memorandum of Agreement dated May 1, 2000 (the "MOA"), the Crown, Conoco Canada Resources Ltd. (the bitumen rights holder) and the Surmont Producers Group (the "SPG") agreed to a compensation arrangement whereby the SPG would receive compensation for the shut-in gas to be funded partially by the government and the bitumen rights holder.

As was the case with the Surmont decision, the Chard/Leismer decision created a significant loss for those gas producers who had their production shut-in. As previously established, such gas producers must be compensated for such loss. Further, a compensation arrangement should be established prior to any further gas shut-ins which sets out the compensation obligations of all parties. The requirement to have the bitumen rights holder contribute to the compensation arrangement is essential to ensure the legitimizing of future shut-in applications.

III COMMERCIAL AGREEMENTS

The Board on numerous occasions has indicated its desire to have industry actively participate in seeking resolution to the gas/bitumen issue. In light of the Board's decision in 2003-023 to shut-in most of the wells that were subject to an agreement between Devon and Encana, Devon is very concerned that the Board appears unwilling to allow the industry to explore potential resolution.

Devon is of the view that if an arrangement, commercial or otherwise, can be reached between the bitumen rights holder and P&NG producer, whereby the gas is allowed to produce under certain conditions, the EUB should make every effort to recognize and accept such an agreement. Respectfully, the Board must acknowledge that informed and knowledgeable industry participants have made decisions with due consideration of the risks involved with the view to maximizing potential recovery of resources using technology that is currently available or will be available in the foreseeable future. This type of agreement has the propensity to reduce the volume of gas that may be shut-in unnecessarily. Respecting these agreements will encourage industry participants to attempt to reach commercial arrangements, as the Board has urged. The energy industry in Alberta is mature, responsible, and efficient. The industry, as well as the EUB, is well aware of the need to ensure that reasonable measures are taken to preserve and conserve Alberta's natural resources.

IV ALTERNATIVE MEASURES

The issues and challenges surrounding the production of gas and bitumen will remain so long as the gas rights and bitumen rights continue to be separate. Until there is a clearer understanding of the effect gas production has on the ability to produce bitumen or until a technical solution has been found to allow for concurrent gas and bitumen production, there will be conflict between the gas and bitumen rights holders.

The most obvious way to address this conflict is to reunite the P&NG rights with the bitumen rights. This would give the bitumen rights holder the ability to control the gas pressure to optimize production as well as provide a fuel source for the bitumen project.

One way to achieve this intended objective would be to require any bitumen rights holder seeking to shut-in gas to acquire the gas rights at fair market value. As this issue has arisen due to the rights being separated in the early 1980s, the Province of Alberta should contribute to its resolution. This could involve the government providing interim financing for the acquisition of the gas rights by the bitumen rights holder at very favorable rates with repayment being made through an increase in the royalty once the bitumen is produced.

DEVON CANADA CORPORATION
by its Solicitors, BENNETT JONES LLP

PER: _____
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