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Our File No.: 52022-7

July 12, 2005

*VIA FACSIMILE & E-MAIL*

Alberta Energy and Utilities Board  
Law Branch  
640 - 5 Ave SW  
Calgary, AB T2P 3G4

Attention: Mr. Gary D. Perkins

Dear Sir:

Re: **GENERAL BULLETIN 2003-28 (GB 2003-28)  
BITUMEN CONSERVATION REQUIREMENTS  
ATHABASCA WABISKAW-MCMURRAY  
PHASE 3 FINAL PROCEEDING  
PROCEEDING NO. 1347905**

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We are instructed to seek to have a court determine the issues identified in Exhibit I-15, and the subsequent exchange of correspondence relating to that issue, all of which has been separately marked as exhibits. In our opinion, it is important that this issue be addressed promptly, prior to the conclusion of the evidentiary portion of the hearing, and prior to final argument. It does not appear that there are any facts in dispute. The only issue is a legal issue, namely whether there is a need to make disclosure of the information requested, although the Board has yet to provide reasons for its decision to refuse access to the information.

You may recall that when this issue arose in the Chard/Leismer hearing, certain parties, including the Board itself, argued that the initial application to the Court of Appeal for leave to appeal was premature, as the Board had not yet rendered a final decision. Justice McFadyen heard that leave application and reserved. Some months later, she issued a decision denying leave on the basis that the application was premature. After the Board issued its final decision, Justice Conrad heard a fresh application for leave to appeal and granted leave.

It is our submission that the current situation requires the natural justice issue to be determined prior to the conclusion of the hearing. It is noteworthy that at the time of the previous application for leave to Justice McFadyen, the hearing itself was concluded even though a decision had not been rendered. The current situation is different. The hearing is not concluded and all parties can benefit

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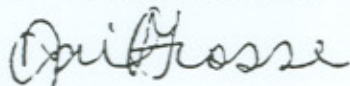
going forward from the ruling of a court on this issue. In our submission, it is not desirable for any party to leave the issue unresolved, either pending the Board's decision and a likely appeal or during an interim leave to appeal process extended by arguments of prematurity as we saw in Chard/Leismer. Given the decisions of both Justices McFadyen and Conrad, there does not appear to be any real doubt that there is a serious arguable issue.

One possible approach is to have everyone consent to leave to appeal on the two natural justice issues set out in Justice Conrad's decision (items 2 and 3 in paragraph 46), accompanied by a request that the Court of Appeal convene a panel on short notice. We would be prepared to file our factum within 2 days of leave to appeal being granted. Another approach is Judicial Review in the Court of Queen's Bench. Again, we would be prepared to work on a short timeline. This is a narrow, discrete legal issue that should be dealt with efficiently and expeditiously.

I submit that it would be helpful to gain as much consensus as possible in order to expedite the process in the most efficient manner. I am therefore soliciting the views of interested parties as to procedure. Of course, if we do not receive responses that lend themselves to an early and effective resolution to the issue, we will proceed as we consider necessary.

Yours truly,

**BENNETT JONES LLP**



*for* L. M. Sali

LMS:ds

cc: Client  
cc: Interested Parties