

Our File: 185563 DGD

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VIA FACSIMILE AND EMAIL

Alberta Energy and Utilities Board
640 – 5 Avenue S.W.
Calgary, Alberta 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 Proceeding**

The following is in response to your letter dated February 9, 2004.

In your letter, you state, with respect to the seven EnCana Corporation (“EnCana”) wells identified in our February 3, 2004 correspondence, that:

“... upon the issuance of the Regional Geological Study and the Staff Submission Group’s recommendations, new information or circumstances arise that warrant reviewing the production status of the wells cited in your letter.”

The implication here is that a determination has been made to review Decision 2003-23 in respect of the seven EnCana wells. It is not apparent whether this determination was made by the Board or by the Staff Submission Group. In any event, EnCana was given no notice that the matter was under consideration by the Board and was provided with no opportunity to make representations about whether Decision 2003-23 should be reviewed.

In your letter, you also state that:

“Including the wells in the Phase 3 proceeding is also consistent with the Board’s stated intention to review the final status of all Wabiskaw-McMurray gas production in the area defined in GB 2003-28.”

There are two points to be made here. The first point is that the “final status” of the seven EnCana wells was determined by the Board in Decision 2003-23. The second point is that there is no indication in GB 2003-28 that the Board intended to again review the status of these wells in the Phase 3 proceeding. As stated in Mr. Bruni’s letter of December 17, 2003:

“In *GB-2003-28* the Board indicated its intention to decide the status of all gas production **subject to the interim shut in order** by April 1, 2004, on an interim or final basis.”
[Emphasis added]

and as stated in the GB itself:

“Phase 1 consists of an interim shut-in order with provision for temporary exemptions. ...

Phase 2 provides oil sands leaseholders, EUB staff, and other affected parties an opportunity to challenge a gas producer’s exemptions from the interim shut-in order through an expedited process...

Phase 3 will decide the final status of all gas production **subject to the interim shut-in order and exemptions** with Board proceedings, if necessary.”
[Emphasis added]

Wells considered by the Board in Decision 2003-23 are not subject to the interim shut-in order; in fact, GB 2003-28 expressly excludes such wells from the interim shut-in order.

In light of the foregoing, it remains our position that the Board cannot review the status of the seven EnCana wells in the Phase 3 proceeding. To do so would, in our respectful submission, be contrary to the rules of natural justice and would constitute an error of law.

Yours very truly,

D. G. DAVIES

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cc: INTERESTED PARTIES **VIA FACSIMILE**