

1900, 736 - 6th Avenue S.W. Calgary, Alberta T2P 3T7

**Patrick J. McGovern**  
**(403) 531-4728 (Phone)**  
**(403) 531-4720 (Fax)**  
**pmcgovern@thackrayburgess.com**

September 7, 2004

Via E-mail and Via Courier

The Alberta Energy and Utilities Board  
14th Floor, Law Branch  
640 - 5th Avenue S.W.  
Calgary, Alberta T2P 3G4

Alberta Energy and Utilities Board  
640 - 5th Avenue S.W.  
Calgary, Alberta  
T2P 3G4

Attention: Mr. Gary Perkins  
Board Counsel

Attention: Mr. Doug Larder  
SSG Counsel

Dear Sirs:

Re: Pre-Hearing Meeting  
Proceeding No. 1347905: Phase 3 Proceedings  
under Bitumen Conservation Requirements  
Athabasca Wabiskaw-McMurray Area

On behalf of Canadian Natural Resources Limited ("CNRL"), we are responding to the Notice of Pre-Hearing Meeting issued in this matter on June 8, 2004.

Please be advised that CNRL will be participating in Pre-Hearing Meeting and in the Final Hearing.

In further response to the request for submissions contained in the Pre-Hearing Notice, we also submit the following regarding the Final Hearing:

1. Scope of the Final Hearing: Many parties, including CNRL, have challenged the "three-phase process" utilized by the Board in respect of GB 2003-28 on the grounds that the limitations and procedures contemplated by GB 2003-28 were contrary to the principles of natural justice and the legislation that governs the Board. Many of these proceedings are still extant in the Court of Appeal. The Board's response to such challenges has generally been that the procedures envisioned by and inherent in GB 2003-28 are such that the procedures followed and orders issued prior to the Final Hearing are "interim" only and that limitations imposed on the previous "interim" hearings would be removed so that the Final Hearing would cure any procedural defects or irregularities and complete the Board's obligations regarding natural justice and procedural fairness. It is, therefore, extremely important that the Final Hearing afford all parties the right to be heard in accordance with those principles and that the scope of



*Thackray Burgess is a member of Globalaw, an international network of more than 70 independent law firms with over 2,600 lawyers located in more than 60 jurisdictions. Through its association with Globalaw and its energy initiative Plexus, Thackray Burgess is able to provide comprehensive, world-wide legal representation to its clients.*

the Final Hearing not be limited in any way. Accordingly, CNRL supports a full and open hearing on all issues regarding the gas over bitumen issue in the area of concern.

CNRL submits that it is unclear as to whether this Final Hearing is a review and rehearing of the First and Second Interim Proceedings and the proceedings by which certain criteria such as the economic cutoff for bitumen in the Wabiskaw were established or whether this is a Board initiated hearing to consider or reconsider all aspects of the gas over bitumen issue. This must be clarified before the Final Hearing can be conducted in a procedurally fair manner. All parties should be apprised of the case they have to meet regarding the production status of the wells in question.

When considering, for example, the cutoff for economic bitumen in the Wabiskaw it is not clear to CNRL whether this Final Hearing is a Board initiated review of that criterion or whether parties who want a change to that criterion are to be treated as applicants. The First and Second Interim Proceedings under GB 2003-28 were based on challenges to SSG recommendations regarding the production status of the wells and pools in question. The SSG was mandated to make recommendations which were based on certain criteria. In CNRL's view, fairness is best served if the SSG is again given a mandate to set out and support the criteria by which those recommendations were made. In other words, the SSG, subject to what is set out below, would continue to be treated as the applicant regarding the production status of the pools in question and for the criteria used to determine that production status. The SSG would also be required to set out its position on all pools and on the criteria employed and to respond to the positions of other parties on such pools and criteria. The SSG position, in accordance with usual hearing protocol, must be subject to challenge and be tested by cross examination.

2. The process to be followed: In light of the time taken for the Chard Hearing, CNRL is, however, concerned that the Final Hearing contemplated in Phase 3 of GB 2003-28, be conducted as efficiently as possible having regard for the above-noted concerns and the concerns of the affected parties and the Board over time and cost. CNRL recommends for consideration by the Board, subject to further discussion and input from stakeholders at the Pre-Hearing Meeting, the following procedure for the Final Hearing:

The Final Hearing be broken into the following stages:

- (i) The first stage of the Final Hearing would be in respect of conceptual issues that are not pool specific. A list of these issues would be determined from submissions by affected parties at the upcoming Pre-Hearing Meeting or at a subsequent Pre-Hearing Meeting if there is concern that not all of the issues will be advanced on September 15, 2004.
- (ii) Once issues that are not pool-specific are put forth by the Board, SSG or affected parties, the Board would set a schedule for consideration of those issues. As is stated above, the SSG would be treated as Applicant and be required to set out its position on the production status of the wells and pools within the AOC and in respect of the issues being addressed, to submit evidence and be subject to cross examination on such

evidence. As part of the “pre-hearing” process there should be information requests.

This would provide a full hearing regarding the issues under consideration. The Board would then make its determination of such issues and move forward in a logical sequence to the application of the criteria established to specific pools. For example, one such issue could be “economic bitumen in the Wabiskaw”. A subsequent issue could be “association with bitumen with a continuous thickness of x meters in the absence of top water”. The Board's decision should, in our view be sufficiently specific and well described that it could be used as an amendment to ID99-1 and allow interested parties to move to the next logical application of that determination.

- (iii) Following the Board's determination of such issues, affected parties would be allowed a reasonable period of time to understand the criteria established by the Board. The affected parties, including the SSG, would then make submissions regarding specific pools on the basis of the criteria established in Stage 1. In other words, at this juncture any party (including the SSG) wishing to challenge the Board's decision regarding any pool or well addressed through the prior interim procedures/hearings would be entitled to do so by making a submission to the Board. Parties would be given a reasonable but limited period of time to prepare submissions (along with supporting evidence). Parties opposed would be given the opportunity to enter written opposition and supporting evidence. The Board would then conduct a hearing or a series of mini-hearings to address each pool in dispute. For example, an affected party may have a gas pool that is in contact with a well where there is a question over the interpreted thickness of bitumen. The Board would then conduct a hearing or hearings on such pool-specific issues in accordance with the Board's established hearing protocol. This process would continue until all pools have been addressed.

From CNRL's perspective, this procedure would assist in an orderly progression of the Final Hearing and would result in a more efficient use of hearing time as there is less likelihood of pool specific issues taking up hearing time before the criteria are established. Such procedures will also make it easier for affected parties to plan and focus their involvement regarding both issues and pools.

From CNRL' s perspective, the procedures submitted herein would allow the Final Hearing to progress in a more orderly, efficient and fair manner. CNRL welcomes input from other participants regarding this suggestion.

In addition to other issues that are likely to be raised by various parties, CNRL asks that at the Final Hearing the Board re-examine the definition of potentially recoverable bitumen in the Wabiskaw.

Yours truly,  
THACKRAY BURGESS



Patrick J. McGovern

cc: Client  
cc: Interested Parties