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Via E-mail and Courier

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

Attention: Mr. Gary Perkins
Board Counsel

Attention: Mr. Doug Larder
SSG Counsel

Dear Sirs:

Re: Supplementary Submission of Canadian Natural Resources Limited
("CNRL") regarding GB 2003-28 Final Hearing
Proceeding No. 1347905: Phase 3 Proceedings under Bitumen
Conservation Requirements
Athabasca Wabiskaw-McMurray Area

Further to the submissions made at the Pre-Hearing meeting, CNRL continues to recommend a two-stage process for the Final Hearing. This proposal was commented on by most of the parties:

1. Mr. McLarty on behalf of BP Canada expressed concern about whether there were sufficient issues to make this worthwhile but does favour a pool specific approach (Transcripts Page 18, lines 15-17);
2. Mr. Corbett on behalf of Petro Canada felt that it was not possible to separate the issues from the practical application of those issues (Transcripts Page 89, lines 13-14);
3. Mr. Block on behalf of Nexen suggested that the proposal sounded like an inquiry, that it would be unnecessary and unfruitful, and would be taking a step back in time (Transcripts Page 66, lines 2-10);
4. Mr. Davies on behalf of EnCana does not think that a technical inquiry should be part of the Final Phase 3 Hearing (Transcripts Page 49, lines 15-25 and Page 90, lines 1-8);
5. Mr. Larder on behalf of the SSG is not sure that this process will prevent issues from being raised in the Final Hearing (Transcripts Page 58, lines 16-22);



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6. Mr. Todesco on behalf of Husky supports the CNRL approach (Transcripts Page 63, lines 9-12);
7. Mr. Sali sees merit in this proposal for 2 reasons: advancements have been made and the Board should not make a decision on anything less than the best information available and it is only after the criteria is set that the parties will know the ground rules so that the process can move forward on an application by application basis (Transcripts Page 81, lines 20-25 and Page 82, lines 1-12); and
8. Mr. Bunio on behalf of Paramount Resources supports the CNRL proposal (Transcripts Page 85, lines 17-19).

In summary, the concerns above expressed are generally that the two stage process put forth by CNRL may not result in the desired efficiencies because there may not be sufficient issues to justify Stage 1; and because "application specific" aspects of the rules or criteria established in Stage 1 will still have to be dealt with in Stage 2. Those in support of the two stage process view it as being an efficient and fair way of proceeding in that the parties will be aware of the criteria to be employed before those criteria are applied for or against their interests.

In reply and by way of supplementary submission, CNRL submits the following:

1. All parties at the Pre Hearing Meeting appeared to be in favour of reviewing the criteria used by the Board in the Interim Hearings; although some parties caveat this by saying that this should only occur if such criteria are made an issue by affected parties. In general, such a review of the criteria used by the Board at the Interim Hearings is seen as being consistent with the Board's obligations to ensure that the Final Hearing is a full and fair hearing and that the parties are aware of the case they have to meet. As we have previously stated, CNRL agrees that the Final Hearing must be a full and fair hearing and that the parties should be apprised of the case to be made for or against their interests (pay cut-offs, shale thicknesses etc.). The 2 stage process accomplishes just that.
2. The two criteria that have been put forth in the submissions made on September 7th are:
 - (a) The economic cut-off for potentially recoverable bitumen in the Wabiskaw in the southern portion of the study area (Kirby Field), namely, 10 meters with a bitumen saturation of 50% ("10M Wabiskaw Rule") that was submitted by CNRL; and
 - (b) that there had to be .5 meters of Wabiskaw D Shale present for there to be an effective barrier (the ".5 Rule") that was referred to by Nexen.

These two criteria are, in our submission, sufficient to justify Stage one. In any event, the fewer the issues the shorter the Stage 1 hearing. In CNRL's view, the 10M Wabiskaw Rule is as important to this process as the RGS was to the Interim Hearings: the task undertaken was and is to identify where gas is in association with potentially recoverable bitumen. These are the criteria that were most often referred to or relied upon in determining whether gas was in association with potentially recoverable bitumen at the Interim Hearings. CNRL, with respect to the 10M Wabiskaw Rule, is of the view that SAGD projects will not be proceeded with if only 10 meters of bitumen is present and

that industry uses a rule of thumb that at least 15 meters must be present. There was some evidence at the Interim Hearings that industry would not embark on a SAGD project if only 10 meters of bitumen were present.

Nexen's September 7 submission specifically states that it intends to participate in the Final Hearing to "seek an examination of Wabiskaw D Shale as an alleged barrier to vertical communication". We submit that such a review is more properly and efficiently conducted in the context of the 2 stage process recommended by CNRL. The 2 stage process would be procedurally fairer in that all parties would be on notice of the criteria to be reviewed. If, for example, Nexen were to challenge this rule for only 10 wells in 2 pools, those parties who have no interest in the 2 pools could be caught unawares and the rule could be changed without their input.

Accordingly, CNRL submits that a review of the 10M Rule and the .5 Rule in the 2 stage process recommended by CNRL is not only consistent with the stated positions of the parties at the Pre Hearing Meeting, it is also a procedurally fair way to proceed. CNRL is of the view that the review of such criteria only in the context of specific pools is not workable because of the number of wells and pools potentially in issue.

2. The magnitude of the impact of the application of these criteria warrants an independent review that the 2 stage process would provide. Completing Stage 1 before affected parties are required to submit challenges to the production status of particular specific pools are reviewed makes this a more focused and, hence, more efficient process.
3. The 10M Wabiskaw Rule and the .5 Rule should be reviewed on a general basis because that is how they were applied. It is trite to say that the criteria on which the SSG recommendations were based and on which Interim Decisions 2004-45 and 2004-62 were issued was based on the application of that criteria to each of the pools. As was pointed out by many parties at the Pre Hearing Meeting, parties must now be able to challenge that criteria. The question of whether that and other criteria was or remains valid should, in our view, be examined by the Board independent of the application of that criteria to particular pools.
4. Reviewing such issues in the manner that CNRL has requested better facilitates the Board's obligations to ensure that the parties are treated fairly and advises affected parties of the case they have to meet regarding these criteria and any other criteria that are made an issue at Stage 1. As Mr Sali has pointed out, the parties have to know the case they have to meet. This is only really accomplished by laying out the "ground rules" in advance (Transcripts Page 80, lines 6-8).
5. The setting, variation or confirmation of such criteria is consistent with the stated purpose of GB 2003-28: to determine whether the gas being produced from a particular pool was in association with potentially recoverable bitumen. Mr. Larder suggests this should also be the primary issue for the Final Hearing (Transcripts Page 53, lines 6-8). We agree and suggest only that the criteria for the 10M Rule and the .5 Rule be reviewed at Stage 1 so that the parties are aware of the ground rules before they challenge production status of particular pools in Stage 2.
6. It is a more efficient and a better use of Board time to hear evidence on and decide whether that criterion is valid before determining the production status of particular wells

in particular pools. While CNRL cannot speak for other parties, it can state that its challenges will be based on the Board's findings in Stage 1. We submit, therefore, that there is a very real potential for a 2 stage process to shorten Stage 2 considerably. While there will always be application specific issues, the confirmation of these criteria will guide the decision making process of many parties and may result in affected parties adjusting their challenges to the current production status of wells accordingly. A review of the numbers of wells potentially in dispute underscores this point:

- (a) In excess of 1100 wells in the RGS have a top picked for the Wabiskaw D Shale;
- (b) There are nearly 600 wells in the RGS that have cut-offs for the Wabiskaw D Valley fill picked.

None or only a small subset of these need be addressed if the cut-off is established first. Further, if the cut-off is not established first, there is a risk that there will be a two stage process for every well.

8. Conducting stage 2 on a pool specific basis, in and of itself, will foster efficiency in the use of hearing time:
- (a) The majority, if not all, of the evidence at the Interim Hearings was pool specific;
 - (b) The Board issued and we presume will issue its decision on a pool basis;
 - (c) Not all parties have interests in all of the pools. Accordingly, affected parties can better focus their hearing involvement if hearings are pool specific;
 - (d) This would also alleviate, to some degree, the concerns of the SSG about having to cover all of the pools. Only those pools brought into issue by affected parties would be the subject of Phase 2.

This, we submit, would be efficient in that hearing time is more focused and affected parties can gauge their involvement based on the issue under discussion and based on the pool under discussion. If the Final Hearing is not conducted in 2 stages, interested parties will be required to participate through the entire hearing or risk having decisions made that might be contrary to their interest. Parties who may have no interest in the particular pool being challenged are forced to be actively involved in respect of the challenged pool out of need to have input into the reconsideration of the underlying criteria (which may affect other pools or all pools). This could result in a significant extension of the time required to conduct the hearing.

In response to the discussion that ensued over the specific issues set out by Mr. Perkins we reiterate our previous submission. By way of supplementary submission we state that the answer to the questions and issues posed by Mr. Perkins regarding process can only be derived when the procedure by which the production status of the subject wells has been set is viewed in its historical perspective. The prior recommendations of the SSG and the Orders that were issued with the Interim Decisions were in respect of the production status of the subject wells.

It is the production status of those wells that is to again be the subject of the Final Hearing. Accordingly, whether it is characterized as a review or a new hearing, the Board will be hearing evidence on and making a determination on the production status of some or all of the wells that were considered by the Board in the Interim Hearings. To that extent, this Final Hearing could be construed as a review of the Interim Decisions. Treating this as a review, however, would in our submission be unfair because the Interim Orders are subject to a Final Hearing and therefore parties should not have to apply for a review. As was said in the Pre Hearing Meeting: "this is the hearing".

At the interim hearings the SSG was treated as the Applicant because it had been mandated to make the recommendations on production status that were being challenged. We are now in the position where the existing production status must be determined by a Final Hearing to complete the process envisaged by GB 2003-28. This raises the question of who should be treated as applicant and who should file first.

Such procedural questions and issues arise because at the Interim Hearings the SSG was essentially treated as the Applicant and presumably carried some onus to justify its recommendations. The Hearing did, however, proceed on the basis of challenges to those recommendations and it is probably more accurate to say that the party making the challenge bore the onus of showing there was no association. Accordingly, we do not think much turns on who is now characterized as the applicant so long as the parties are treated fairly and all sides of each issue are fully argued. All parties must be provided the opportunity to challenge the current production status of particular pools, to challenge the criteria applied to each pool, and to respond to all evidence advanced against it interests. Where existing criteria are being challenged, the position of the SSG should be stated because the current production status is based on the SSG recommendations and this will ensure that a fair and balanced argument is heard by the Board.

It seems redundant and inefficient to start over by, for example, having the SSG make a new set of recommendations that could then be challenged by affected parties. Accordingly, CNRL recommends starting from the basis of the current production status that has been determined on the basis of evidence submitted at the Interim Hearings. This is most practical and efficient and it is in that context that we submit the affected parties should file only new evidence. By way of clarification, we are not suggesting that affected parties should be in any way constrained or limited on the evidence they can submit. Rather, we are suggesting that the parties should not have to resubmit evidence tendered and spoken to at the Interim Hearings so that within GB 2003-28 the Final Hearing could be considered an extension of the previous Interim Hearings.

A full and fair hearing is required but every effort should be made to make that hearing as efficient as possible in order to reduce the time, cost and effort required by Industry and the EUB.

All of which is respectfully submitted this 21st day of September, 2004

Per:

Patrick J. McGovern

cc: Interested Parties

cc: Client