

Bulletin 2008-50

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Processing of Applications for Coalbed Methane Development

In its *Decision 2007-024* in the matter of Bears paw Petroleum Ltd., Devon Canada Corporation and Fairborne Energy Ltd. on March 28, 2007, the Alberta Energy and Utilities Board (EUB, as predecessor to the Energy Resources Conservation Board ([ERCB/Board])) considered a number of applications for well licences, compulsory pooling orders, and holding orders related to coalbed methane (CBM) development. After holding a public hearing and carefully considering the scientific, regulatory, and legal issues relating to the issue, the EUB determined that natural gas holders, as opposed to coal holders, were entitled to the CBM for EUB regulatory purposes. Certain coal holders who disagreed with *Decision 2007-024* appealed it to the Alberta Court of Appeal. The appellants have now discontinued those appeals, and *Decision 2007-024* stands.

Since the issuance *Decision 2007-024*, the ERCB has received and continues to receive a large number of objections to applications for well licensing, compulsory pooling, and holding orders from coal holders who take issue with the Board's ruling in *Decision 2007-024* regarding entitlement to CBM for regulatory purposes. These CBM objections are based on CBM entitlement as a result of coal ownership. Sometimes CBM objections include assertions that approval of the application may result in trespass and damage to the coal. Applications to which CBM objections relate must be filed as nonroutine and are processed by the Board as such.

In keeping with the Board's direction to ERCB staff in *Decision 2007-024* to consider each objection on its merits, pending the outcome of the coal holders' appeals of *Decision 2007-024* to the Court of Appeal, the ERCB has considered each CBM objection on its merits and rendered decisions in each case. Each CBM objection is received, processed, considered on its merits, and adjudicated on. This process consumes significant ERCB staff and resources. Without exception, the Board has dismissed the CBM objections on the basis that they failed to raise any new or unique circumstances not considered and addressed in *Decision 2007-024*.

Given the recent discontinuance of the appeals of *Decision 2007-024* by the coal holders, the ERCB considers *Decision 2007-024* to be the definitive position in Alberta in respect of CBM entitlement for ERCB regulatory purposes.¹ However, certain coal holders continue to assert their entitlement to CBM through various civil actions commenced against gas holders in the Alberta Court of Queen's Bench, and those coal holders continue to file CBM objections to ERCB applications.

Due to the significant ongoing administrative burden on ERCB staff and resources posed by CBM objections, the ERCB has decided to revisit its approach to these types of applications. The Board recognizes the need for coal holders to be notified of applications that involve gas or CBM

¹ As it recognized in *Decision 2007-024*, the Board was and is not making final or conclusive decisions that bind the parties for all purposes when it finds that an applicant is the owner of or otherwise entitled to produce the resource. The Board recognizes that the matter of legal ownership of CBM for nonregulatory purposes remains unresolved and that the ultimate authority to decide that issue belongs to the courts.

production, as they may have an interest in the application. However, the continued filing of CBM objections that do not differ in any material way from the conclusions in *Decision 2007-024* and the subsequent processing of such applications as nonroutine is administratively inefficient and burdensome.

The Board reiterates that its determination of CBM entitlement in *Decision 2007-024* was made for ERCB regulatory purposes only. Based on the conclusions in *Decision 2007-024*, pending a final court decision to the contrary, the Board does not consider objections that assert CBM entitlement based on coal ownership alone and/or assertions of potential trespass or damage to the coal holders' minerals to be valid grounds for denying applications for well licensing, compulsory pooling, and holding orders relating to gas and/or CBM development.

Therefore, in the interests of administrative efficiency for all parties (including the natural gas holders/lessees, coal holders, and the ERCB), effective January 1, 2009, applicants for well licensing, compulsory pooling, and holding orders and any other applications relating to gas or CBM development may file routinely, following the required notification of the coal owner(s) and any other potentially affected party, provided that 1) filers of CBM objections do not raise any new or unique concerns or claims that do not relate to CBM entitlement based on coal ownership and/or trespass or potential damage to the coal resulting from gas or CBM production; and 2) no other parties object to the application.

Coal holders may elect to continue to file CBM objections. However, if the Board receives CBM objections that do not raise any new or unique concerns, and provided that the applicant has complied with all applicable ERCB requirements related to notification, ERCB staff will return the objection to the objecting party and will permit the applicant to proceed routinely.

The Board emphasizes that this is an exceptional situation that is causing the Board to take exceptional measures. All other objections filed with the ERCB will continue to be processed in the usual manner and will be considered and adjudicated on their merits.

Dan McFadyen
Chairman