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Our File No.: 251-154

June 26, 2003

DELIVER

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

Attention: Terry Abel, P. Eng.

Dear Sir:

Re: General Bulletin 2003-16

Enclosed please find two (2) copies of the submission of Devon Canada Corporation respecting the captioned matter.

Yours truly,

BENNETT JONES LLP

L. M. Sali

LMS/mmb
Enclosures

cc: Client

ALBERTA ENERGY and UTILITIES BOARD

IN THE MATTER OF EUB GENERAL BULLETIN 2003-16

SUPPLEMENTARY SUBMISSION OF
DEVON CANADA CORPORATION

Introduction

This submission is in response to EUB General Bulletin 2003-16 ("GB 2003-16") inviting interested parties to provide further submissions and indicate their interest in making an oral submission to the EUB on July 3rd and 4th. As set out in Devon's earlier Submission, Devon is an interested party which intends to make an oral submission at the meeting scheduled for July 3rd and 4th. Although Devon intends to participate in such "consultation meeting", it does so without acknowledging the validity of the process and reserves whatever legal rights may be available to it.

Statement of Position

While couched as a "proposed policy", GB 2003-16 effectively constitutes a decision to shut in all gas in a defined area, whether associated or non-associated with bitumen deposits, without a hearing. In GB 2003-12 the Board suggested that it intended "…to take such steps as it believes necessary to effect the conservation of bitumen in the Wabiskaw-McMurray Formation within the Athabasca Oil Sands Area." In GB 2003-16, the Board advised what those steps were. It did not convene a hearing nor has it expressed any willingness or intention of doing so.

It is Devon's position that the course of action outlined in GB 2003-16 is contrary to legislation, including the *Energy Resources Conservation Act,* the *Administrative Procedures Act*, as well as to the principles of natural justice and due process. The EUB has no choice but to convene a hearing, if it intends to act in a manner so as to adversely affect the rights of industry participants.

GB 2003-12 and GB 2003-16 are directed at wells completed in certain oil sands strata prior to 1 July 1998. For any such wells, ID 99-1 provides as follows:

> For wells completed in the defined oil sands strata prior to 1 July 1998, an application for approval to produce gas will not be required. These wells will be allowed to continue to produce, subject to the resolution of any concerns that may be raised by oil sands leaseholders or by the Board on its own initiative.

While not expressly stated, it is apparent that if concerns are raised, some or all of the same considerations apply to wells completed after 1 July 1998. Of necessity, in any such review, one needs to address a number of considerations which are set out in ID 99-1, including whether the producing gas is associated with the bitumen, the quality of bitumen deposits, regions of influence, and whether there is an effective barrier between the producing gas zone and the bitumen. These matters must be addressed on a well by well basis.

The Decision has been made

In GB 2003-16, the Board stated:

> Having reviewed these submissions, and considering previous relevant views and evidence and its own knowledge, the Board **has decided** to ….

(emphasis added)

The attachment to GB 2003-16 includes the following decision:

> Therefore, to effect bitumen conservation and to provide greater certainty for producers within the Athabasca Wabiskaw-McMurray deposit, the Board **will,**

- effective August 1, 2003, shut in gas production from the Wabiskaw-McMurray in the new reduced application area described below;
- complete a detailed review of shut-in gas production within the new application area described below to allow the productions of non-associated gas;

(emphasis added)

In a further portion of its decision, the Board said:

> **Policy Description**
>
> **Part 1: Wabiskaw-McMurray Gas Shut-in-Effective August 1, 2003**
>
> Effective August 1, 2003, all Wabiskaw-McMurray gas production from wells within the new reduced application area and within overlapping Pool Orders **must be** shut in. Wabiskaw-McMurray gas production from those wells approved for production or wells not required to be shut in, as described in *Decision 2003-023*, are exempt. Wabiskaw-McMurray gas production from wells previously approved under *ID 99-1* but within the new reduced application area **must be** shut in, as the Board believes these wells need to be reviewed in a manner consistent with *Decision 2003-023*. The proposed shut-in will supersede any existing commingling orders. Affected wells will be listed in a forthcoming interim directive.

Notwithstanding its clearly stated positions, in GB 2003-16, the Board says:

> Following these additional consultation steps, the Board will consider all input it receives respecting this conservation policy, together with **all** evidence and argument already on the public record from previous proceedings as described in GB 2003-12, and issue its policy.

(emphasis added)

While this statement gives the appearance of meaningful input, it is contradictory and misleading. In no uncertain terms, the Board has clearly stated that all gas production from the Wabiskaw-McMurray area **will be** shut in, effective August 1, 2003. It is apparent that the Board has already made its decision. ID 99-1 has been ignored or bypassed.

In GB 2003-16, the Board advises that after consultation, it will consider "… all evidence and argument on the public record from previous proceedings as described in GB 2003-12, and issue its policy." Notwithstanding the fact that the Board has already quite clearly decided the issue as is evident from GB 2003-16, it suggests that it will, after consultation consider "… all evidence and argument" already on public record. Furthermore, this assertion begs the question: Who at the Board will consider that evidence and argument? Will that review be conducted by Board members, or Board staff, or some combination of the two? This evidence consists of several thousands of pages of transcript evidence, together with thousands of exhibits. Much of the evidence is of a technical nature. To suggest that meaningful consideration of this evidence and

arguments can occur in a matter of a few short weeks is unrealistic. As an illustration, in Chard/Leismer, the Board's decision was rendered some 9 months after the close of the hearing. Chard/Leismer is but one of the hearings referenced in GB 2003-12. Moreover, it appears that this review has already been performed; that is evident from the statement:

> Based on the evidence and conclusions derived from lengthy proceedings before the Board and on its continuing technical review, the Board believes ….

A number of parties affected by GB 2003-12 and GB 2003-16 were not participants in some or all of the previous proceeding described in GB 2003-12. Consequently, they will have had no opportunity to test any of that evidence, present their own evidence, or make argument.

The need for a hearing

The legislative framework, including ID 99-1, together with the provisions of the *Energy Resources Conservation Act* and the *Administrative Procedures Act*, mandate that before the EUB can act in such a way as to adversely affect property rights, it must conduct a hearing. Moreover, in the present circumstances, in view of the fact that the current initiative was instituted at the instance of the Board itself, it is necessary to ensure that all available information or evidence which the Board has in its possession which has influenced its thought process, or may have some influence or bearing on any decision it has made or may make, be made available to all interested parties, well in advance of any hearing date.

The Board is a creature of statute, and as such is governed by the legislation which creates it, or any legislation which affects the manner in which the Board must act. There is no circumstance available to the Board which would permit it to avoid the legislative requirements, or to act in a manner contrary to the principles of natural justice or due process. The Board cannot proceed by way of policy to do that which it must do by way of hearing. There is long standing legal authority for this proposition.

Moreover, a hearing in the context of the issues identified in GB 2003-12 and 2003-16, means a hearing which takes place only after full and complete disclosure of all issues, as well as the

evidence or facts bearing upon those issues. Circulating two general bulletins, followed by a meeting at which affected parties are to be afforded 45 minutes to state their case is wholly unreasonable. Devon's interests alone are valued at well in excess of $100,000,000.

Complete transparency is a must. It is also Devon's position that the members sitting as panel members at the hearing must ensure that any evidence, submissions, or commentary made to them, at any time, during the course of the process be made available to all interested parties. There can be no exceptions.

As part of this process, to the extent that the sitting panel has, or will receive evidence, commentary, or submissions from Board staff, it is Devon's position that the sitting panel **must** make full and complete disclosure of the entirety of that material, as well as who is providing the commentary, evidence, or submissions to the sitting panel, and their qualifications. Parties which may be affected by the decision need to be satisfied that they have been provided with any and all information which is relevant, placed before the sitting panel, or has or may have influenced the Board in its decision-making process. They also need to know of the qualifications of those providing any evidence or commentary. An illustration of both the need and effectiveness of a hearing is Chard/Leismer, where as a consequence of the process, significantly fewer wells than requested were shut in. While that decision is under review for other reasons, it provides a current illustration of the process at work.

ID 99-1, which has been promulgated as a regulation remains a key ingredient of the process. That was reaffirmed by the Board in Decision 2003-023, as follows:

> The Board believes that every effort must be made to ensure the efficiency of the process contemplated by *ID 99-1.* However, the Board notes the complex nature of the evidence forming the basis of the decisions being made and the need to ensure fairness. Accordingly, the Board would be prepared to review *ID 99-1* if sufficient evidence were submitted pointing to a problem with the current process. The Board does not find the evidence submitted to this proceeding to be sufficiently complete and conclusive to indicate what, if any, changes to *ID 99-1* are warranted. Therefore, the Board continues to believe that the current application

process is appropriate to ensure that potentially at risk bitumen is not jeopardized.

Nothing has changed, if it has, an explanation is warranted.

Devon is aware of the Board's concerns as to whether there is a prior need to provide or develop an area-wide geological map. To the extent that there is such a need, as a precondition of addressing properties on an individual basis, Devon is prepared to participate in that process. Once that process has been completed, each producing well within the area under consideration can be reviewed.

Non-Associated Gas

The treatment of non-associated gas as set out in GB 2003-16 is not justified under any circumstance. There is no suggestion that it poses any conservation risk whatsoever. The effect of shutting-in non-associated gas is to cause irreparable loss and damage to producers which is completely unwarranted, and is beyond the Board's jurisdiction or legislative mandate.

Outside of the legal concerns relating to GB 2003-16, the proposed date of August 1st for the shut in creates many operational difficulties which will result in significant volumes of non-associated gas being shut in as well as unnecessary additional costs being incurred by the gas producers.

As the Board is well aware, most of the wells affected by GB 2003-16 are in winter only access areas. By shutting in the gas effective August 1st, the gas producers will not be afforded the ability to properly access the wells and infrastructure to ensure that the Wabiskaw-McMurray production is shut in in the most efficient and economic manner. For the reasons which will follow, if there is to be any Order shutting in any gas, it should not be effective prior to May lst 2004.

Without having the ability to properly access the ordered shut in wells due to terrain conditions prior to winter, Devon will not be able to complete the necessary workovers and recompletions and make the alterations required to its infrastructure to ensure that the non-associated gas in the area can be produced and processed. Devon estimates that the value of its non-associated gas which would be unnecessarily shut-in would exceed $13,000 a day, or nearly $400,000 a month.

Further, shutting in gas will necessitate substantial changes to Devon's plants and equipment which will require significant capital costs and sufficient time to obtain the necessary regulatory approvals and complete construction.

Summary

The issues identified in both GB 2003-12 and GB 2003-16 have generally been known to the Board for at least 7 years. The issues remain essentially the same as they were in 1996, although the solutions to the resolution of the issues have advanced considerably. It is unreasonable and unfair to industry to expect industry to respond to what is now perceived as an urgent situation, by compromising fundamental rights which are so critical to the process. Doing so is simply unacceptable. It is not an option.

DEVON CANADA CORPORATION
By Its Solicitors, BENNETT JONES LLP
PER:

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June 26, 2003 **L.M. SALI, Q.C.**